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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4778-15T2

BARRY HIRSCHBERG and
ELIZABETH HIRSCHBERG,

Plaintiffs-Appellants,

v.

BOROUGH OF NORTHVALE PLANNING
BOARD, BOROUGH OF NORTHVALE,
JORGE PEREZ, EMMA PEREZ, and
NER FAMILY ASSOCIATES, LLC,

Defendants-Respondents.

Argued January 17, 2018 — Decided February 2, 2018

Before Judges Fuentes, Manahan and Suter.

On appeal from Superior Court of New Jersey,
Law Division, Bergen County, Docket No.
L-6154-15.

Barry Hirschberg, appellant, argued the cause
pro se.

Gregg F. Paster argued the cause for
respondent Borough of Northvale Planning Board
(Gregg F. Paster & Associates, attorneys;
Gregg F. Paster, of counsel and on the brief;
Alfred A. Egenhofer, on the brief).

Antimo A. Del Vecchio argued the cause for respondent NER Family Associates (Beattie Padovano, LLC, attorneys; Antimo A. Del Vecchio, of counsel; Daniel L. Steinhagen, on the brief).

PER CURIAM

Barry and Elizabeth Hirschberg (Hirschbergs) appeal from an order granting summary judgment in favor of the Borough of Northvale Planning Board (Board), and NER Family Associates, LLC (NER). The order dismissed the Hirschbergs' action in lieu of prerogative writs.¹

On appeal, the Hirschbergs raise the following arguments:

POINT [I]

SUMMARY JUDGMENT SHOULD BE OVERTURNED BECAUSE THERE REMAIN SEVERAL MATTERS OF MATERIAL FACT UNRESOLVED AND BECAUSE THE LOWER COURT JUDGE COMMITTED PLAIN AND/OR HARMFUL ERROR.

POINT [II]

PLAINTIFFS WERE DENIED THE RIGHT TO HAVE THEIR CASE HEARD AND DECIDED AT TRIAL BASED UPON THE APPROPRIATE STANDARD FOR DECIDING A PREROGATIVE WRITS ACTION, WHICH REQUIRES THE COURT TO FIND IF THE PLANNING BOARD'S DECISION IS ARBITRARY, CAPRICIOUS OR UNREASONABLE.

POINT [III]

DEFENDANT'S INTENTIONAL MISREPRESENTATIONS AND LACK OF CANDOR TO THE PLANNING BOARD AND

¹ The order also denied the NER Family Associates', LLC, claim for counsel fees based on its argument that the Hirschbergs' argument was frivolous. NER filed a cross-appeal, which it withdrew on January 10, 2017.

THE TRIAL COURT LEAD TO THE ERRORS MADE BY JUDGE FRISCIA AND TO THE LOWER COURT'S ERRONEOUS GRANTING OF SUMMARY JUDGMENT.

POINT [IV]

JUDGE FRISCIA ERRED WHEN SHE IGNORED THE FACT THAT JUDGE CONTILLO AMENDED AND CLARIFIED HIS MARCH 3, 2019 ORDER² AFTER THE FORM OF JUDGMENT HEARING ON MAY 5, 2009[,] WHICH WAS REFLECTED IN HIS SELF AUTHORED MAY 5, 2009 FINAL JUDGMENT.

POINT [V]

EVEN IF PRIOR LITIGATION HAD SOMEHOW IMPARTED DOMINANT EASEMENT RIGHTS TO THE THREE NER LOTS THEREBY GRANTING ACCESS TO THOSE LANDLOCKED PARCELS, THOSE RIGHTS WOULD AND COULD NOT LEGALLY TRANSFER TO THE PEREZ PROPERTY OR TO ANY OTHER PROPERTY, THEREFOR APPLICANT WOULD NOT HAVE STREET ACCESS TO ALL THE PROPERTY THAT WAS THE SUBJECT OF THE SUBDIVISION BECAUSE BY LAW, ANY SUCH RIGHTS WOULD AND COULD NOT BENEFIT THE PEREZ PROPERTY OR ANY OTHER PROPERTY.

POINT [VI]

NER DEFENDANT ROBERT U. DEL VECCHIO COMES TO COURT WITH UNCLEAN HANDS. (ISSUE NOT RAISED BELOW).

Having reviewed the record and considered the Hirschbergs' arguments and the applicable law, we are convinced that these arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). Suffice it to state that contrary


² This date is incorrect. The decision by Judge Contillo, to which the Hirschbergs' refer, was issued on March 3, 2009 in Smothergill v. Hirschberg, BER-C-345-07 (Ch. Div. March 3, 2009).

to their repeated assertions, their arguments find no support in the record or have already been considered and rejected by the courts.

We affirm for the reasons set forth in the comprehensive written opinion of Judge Lisa Perez Friscia, which is supported by substantial credible evidence. Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 483-84 (1974); R. 2:11-3(e)(1)(A).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION