

## C.A. No.

1. This case involves a walkway between the house located on Plaintiffs' ocean-front property and the beach, which walkway has been in continuous and open use since the 1950's to present.

2. Despite that Plaintiffs and their predecessors, under claim of right, hostilely, openly, actually, and continually, have used and maintained the walkway for more than sixty years, Defendant has unilaterally decided “to fill the existing gap in the sand fence, so it will be clear that the existing route to the beach should no longer be used.”

3. Defendant’s threatened actions are in derogation of Plaintiffs’ property rights, are vindictive, and without any legal basis or cause.

### **PARTIES AND JURISDICTION**

4. Plaintiffs John and April Delaney (“Plaintiffs”) are the current owners of 2 Ocean Drive, Rehoboth, Delaware 19971 identified for assessment and taxation purposes as Sussex County Parcel No. 334-14.05-122.00 in Henlopen Acres (the “Property”).

5. Defendant Henlopen Acres Beach Club, Inc. (“Defendant”) is the current owner of 3 Ocean Drive, Rehoboth, Delaware 19971 identified for assessment and taxation purposes as Sussex County Parcel No. 334-14.05-121.00 in Henlopen Acres.

6. This Court has subject matter jurisdiction over this action pursuant to Article IV, § 10 of the Delaware Constitution and 10 *Del. C.* §§ 341 and 342, along with its traditional exercise of equitable jurisdiction over Quiet Title actions.

## FACTUAL ALLEGATIONS

7. Henlopen Acres is a residential development beside the Lewes and Rehoboth Canal. It was developed by architect and engineer Colonel Sherman Corkran in the 1930's, who deeded the land to a corporation he named Henlopen Acres, Inc., with the goal of developing a residential community offering a wooded setting on an ocean beach.

8. In 1957, Henlopen Acres, Inc. deeded the Property, then known as Lot 177, to Edward A. Beard and Phyllis H. Beard (the "Beards").

9. In 1958, Henlopen Acres, Inc. deeded the land adjacent to the Property on the west to the Henlopen Acres Beach Club, Inc. to be used solely as a beach club.

10. In 1959, the Beards constructed a residence on the Property.

11. In 1965, the Beards transferred the Property to Christopher Beard, Ralph Richardson Beard, and Stephanie Jocelyn Beard (the "Beard Children").

12. In 1979, the Beard Children sold the Property to Marsh S. and Mary Jane Marshall.

13. Since the 1950's when a house was first constructed on the Property, the owners of the Property have maintained a walkway (the "Walkway") running, in a straight line, from the home directly to the beach.

14. Since at least 1980, the Walkway has been demarcated by wooden planks.

15. Since the 1950's, the owners of the Property have hostilely, openly, actually, and continually possessed the Walkway to the exclusion of all others to access the beach from the residence.

16. In 2000, the Property was transferred to Maura C. Marshall, Donna N. Constantinople, Jenifer M. Lippincott, and Marsh S. Marshall, Jr. (the "Marshall Children").

17. In 2010, the Marshall Children sold the Property to Plaintiffs, John and April Delaney.

18. The Walkway was pictured in the listing for the Property, along with an aerial photograph showing the Walkway connecting the residence to the beach.

19. Since coming into possession of the Property, Plaintiffs have hostilely, openly, actually, and continually possessed the Walkway to the exclusion of all others to access the beach from the residence.

20. Defendant has contested Plaintiffs' ownership and right to use the Walkway.

21. On February 27, 2023, Plaintiffs received a letter from Defendant in which Defendant demanded the removal of the Walkway and indicated that it intended to plant dune grass on the Walkway from Defendant's "property line to the

beach, and to fill the existing gap in the sand fence, so it will be clear that the existing route to the beach should no longer be used.” Defendant further stated it “will keep the sand fence low in front of [Plaintiffs’] property to avoid obstruction of their view.”

### **DECLARATORY JUDGMENT ALLEGATIONS**

22. The controversy regarding the Walkway involves the rights and legal relations of the parties seeking declaratory relief, as it relates to Plaintiffs’ claim of possession and ownership of the Walkway.

23. Plaintiffs’ claims are asserted against Defendant who has an interest in contesting Plaintiffs’ position.

24. Plaintiffs’ and Defendant’s interests are real and adverse; they hold competing views on the possession and ownership of the Walkway.

25. The issue involved is ripe for judicial determination because the issue has come to a head given Defendant’s recent action of demanding that Plaintiffs remove the Walkway and advising of its intent to plant dune grass in violation of Plaintiffs’ possessory rights.

### **COUNT I ADVERSE POSSESSION**

26. The factual allegations of the preceding paragraphs are hereby incorporated by reference as if fully set forth.

27. Since at least 1980, Plaintiffs and their predecessors have, under a claim of right, hostilely, openly, actually, and continually possessed the Walkway to the exclusion of all others, including, without limitation, Defendant.

28. As described herein and to be proven at trial, Plaintiffs and their predecessors-in-interest have, for a continuous period of at least twenty years, possessed, maintained, and used the Walkway for access from the Property to the beach.

29. Plaintiffs and their predecessors' use, possession, and ownership of the Walkway meets the requirements of 10 *Del. C.* § 7901.

30. By reason of the foregoing, legal title to the Walkway has vested in Plaintiffs.

31. Plaintiffs are entitled to a declaration that Plaintiffs, and not Defendant or any other parties, are the owners of the fee simple absolute interest in the Walkway.

## **COUNT II ACQUIESCENCE**

32. The factual allegations of the preceding paragraphs are hereby incorporated by reference as if fully set forth.

33. In the alternative, and only to the extent that title to the Walkway is not found to lie with Plaintiffs via adverse possession, Plaintiffs claim ownership of the Walkway under the doctrine of acquiescence.

34. Defendant acquiesced in the exclusive possession and use of the Walkway by Plaintiffs and Plaintiffs' predecessors-in-interest for at least twenty years, as described above.

35. Plaintiffs, Plaintiffs' predecessors-in-interest, and Defendant treated as the boundary line between their properties the line which gives ownership of the Walkway to Plaintiffs, for at least twenty years.

36. Plaintiffs have established ownership of the disputed parcel by acquiescence, and Defendant is estopped from asserting ownership as to the Walkway.

### **COUNT III PRESCRIPTIVE EASEMENT**

37. The factual allegations of the preceding paragraphs are hereby incorporated by reference as if fully set forth.

38. In the alternative, and only to the extent that title to the Walkway is not found to lie with Plaintiffs, Plaintiffs and its predecessors have used the Walkway openly, notoriously, exclusively, and adversely to the rights of others on a continuous basis for at least twenty years, resulting in Plaintiffs acquiring a prescriptive easement for the Walkway which Plaintiffs and any subsequent owners of the Property may continue to use for access to the beach.

**WHEREFORE**, Plaintiffs respectfully request the following relief:

(a) that the Court declare that the fee simple absolute interest of Plaintiffs to the Walkway shall be and is otherwise forever quieted and confirmed;

(b) that the Court grant Plaintiffs such other relief as may be deemed proper and necessary by the Court, including an Order or deed confirming Plaintiffs' ownership of the Walkway suitable for recording with the Office of the Recorder of Deeds in and for Sussex County, Delaware, as conclusive evidence of Plaintiffs' ownership of the Walkway;

(c) that, alternatively to (A) and (B), the Court issue an Order confirming Plaintiffs' prescriptive easement as to the Walkway;

(d) that the Court issue a preliminary and permanent injunction enjoining and restraining Defendant from interfering with Plaintiffs' possessory interest and right to use the Walkway; and

(e) that the Court grant such further relief as the interests of justice may require, including the costs of this action and attorneys' fees as permitted by law and equity.

Respectfully submitted,

BARNES & THORNBURG LLP

/s/ Thomas E. Hanson, Jr.

Thomas E. Hanson, Jr. (No. 4102)

222 Delaware Ave, Suite 1200

Wilmington, Delaware 19801

Tel: 302-300-3447

Email: [thanson@btlaw.com](mailto:thanson@btlaw.com)

*Attorneys for Plaintiffs*

*John and April Delaney*

**Of Counsel:**

James H. Hulme Esq.

Laurel LaMontagne, Esq.

**ARENTFOX SCHIFF LLP**

1717 K Street, NW

Washington, DC 20006

Telephone: (202) 857-6000

Facsimile: (202) 857-6395

Email: [james.hulme@afslaw.com](mailto:james.hulme@afslaw.com)

Dated: March 3, 2023