

**Brighton Grassroots, LLC v Town of Brighton  
Planning Bd.**

2019 NY Slip Op 33914(U)

December 3, 2019

Supreme Court, Monroe County

Docket Number: E2018007330

Judge: John J. Ark

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This opinion is uncorrected and not selected for official publication.

At an IAS Motion Term of the Supreme Court of the State of New York held in and for the County of Monroe at the Hall of Justice, Civic Center Plaza, Rochester, New York, on the 3rd day of December, 2019.

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF MONROE

BRIGHTON GRASSROOTS, LLC,

*Petitioner-Plaintiff,*

--against--

TOWN OF BRIGHTON PLANNING BOARD, TOWN OF BRIGHTON TOWN BOARD, TOWN OF BRIGHTON, M&F, LLC; DANIELE SPC, LLC; MUCCA MUCCA LLC; MARDANTH ENTERPRISES, INC.; DANIELE MANAGEMENT, LLC; COLLECTIVELY DOING BUSINESS AS DANIELE FAMILY COMPANIES; ROCHESTER GAS AND ELECTRIC CORPORATION, NMS ALLENS CREEK, INC., THE FIRST BAPTIST CHURCH OF ROCHESTER; ATLANTIC HOTEL GROUP, INC.; 2717 MONROE AVENUE, LLC; MAMASAN'S MONROE, LLC; PLUM GARDEN 66, INC.; 2799 MONROE AVENUE, LLC; QING KAI SUN; 2815 MONROE RETAIL LLC; 2835 MONROE HOLDINGS LLC; 2875 MONROE CLOVER, LLC; MONROE OFFICE SUITES, LLC; CLOVERPARK LIMITED PARTNERSHIP; NEW YORK STATE DEPARTMENT OF TRANSPORTATION; JOHN DOES 1-20; AND ABC CORPORATIONS 1-20,

*Respondents-Defendants.*

**ORDER**

**Index No. E2018007330**

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF MONROE

In the Matter of the Application of  
CLOVER/ALLEN'S CREEK NEIGHBORHOOD  
ASSOCIATION LLC,

*Petitioner-Plaintiff,*

-and-

SAVE MONROE AVE., INC., 2900 MONROE AVE., LLC,  
CLIFFORDS OF PITTSFORD, L.P., ELEXCO LAND  
SERVICES, INC., JULIA D. KOPP, MARK BOYLAN,  
ANNE BOYLAN, and STEVEN M. DEPERRIOR,

*Petitioners-Plaintiffs-Intervenors,*

--against--

M&F, LLC, DANIELE SPC, LLC, MUCCA MUCCA LLC  
MARDANTH ENTERPRISES, INC., M&F, LLC,  
DANIELE SPC, LLC, MUCCA LLC,  
MARDANTH ENTERPRISES, INC., COLLECTIVELY  
DOING BUSINESS AS DANIELE FAMILY COMPANIES,  
TOWN OF BRIGHTON, NEW YORK, TOWN BOARD OF  
THE TOWN OF BRIGHTON, NEW YORK, NMS ALLENS  
CREEK INC. and ROCHESTER GAS AND ELECTRIC  
COMPANY,

**Index No. E2018000937**

and any persons or entities found to have an interest in the  
property subject to this action but not yet named.

For a Judgment Pursuant to New York CPLR Article 78, for a  
Declaratory Judgment pursuant to New York CPLR § 3001,  
and for a judgment to quiet title pursuant to Real Property  
Actions and Proceedings Law Article 15,

*Respondents-Defendants.*

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF MONROE

SAVE MONROE AVE., INC., 2900 MONROE AVE., LLC,  
CLIFFORDS OF PITTSFORD, L.P., ELEXCO LAND  
SERVICES, INC., JULIA D. KOPP, MARK BOYLAND,  
ANNE BOYLAN, and STEVEN M. DEPERRIOR,

*Petitioners-Plaintiffs,*

For Judgment Pursuant to Article 78 of the CPLR and for a  
Declaratory Judgment Pursuant to CPLR § 3001,

--against--

TOWN OF BRIGHTON PLANNING BOARD, DANIELE  
MANAGEMENT, LLC, DANIELE SPC, LLC, MUCCA,  
LLC, MARDANTH ENTERPRISES, INC., M&F, LLC, THE  
DANIELE FAMILY COMPANIES, FIRST BAPTIST  
CHURCH OF ROCHESTER, ROCHESTER GAS AND  
ELECTRIC CORPORATION, NEW YORK STATE  
DEPARTMENT OF TRANSPORTATION, 2717 MONROE  
AVENUE LLC, ATLANTIC HOTEL GROUP, INC.,  
MAMASAN'S MONROE LLC, QING KAI SUN, PLUM  
GARDEN 66, INC., 2799 MONROE AVENUE LLC,  
HEMISPHERE HOTELS, INC. f/k/a APEX HOSPITALITY,  
INC., 2815 MONROE RETAIL OFFICE LCC, 2835  
MONROE HOLDINGS, LLC, MONROE OFFICE SUITES,  
LLC, 2875 MONROE CLOVER LLC, CLOVERPARK LTD.  
PARTNERSHIP, TOWN OF BRIGHTON, NEW YORK,  
TOWN BOARD OF THE TOWN OF BRIGHTON, NEW  
YORK and JOHN DOES 1-10,

**Index No. E2018007331**

*Respondents-Defendants.*

-and-

CLOVER/ALLEN'S CREEK NEIGHBORHOOD  
ASSOCIATION LLC.

*Intervenor-Respondent-Defendant.*

Petitioners-Plaintiffs Brighton Grassroots, LLC (“BGR”) and Clover/Allen’s Creek Neighborhood Association LLC (“CAC”) each having moved this Court to lift the stay of discovery imposed by Respondents-Defendants’ service of certain summary judgment motions, to stay Respondents-Defendants’ pending motions for summary judgment until discovery is completed, and for leave to conduct discovery, all as more fully set forth in their respective papers (the “Petitioners-Plaintiffs’ Motions”), and Respondents-Defendants M&F, LLC, Daniele SPC, LLC, Mucca LLC, Mardanth Enterprises, Inc., individually and collectively doing business as Daniele Family Companies (the “Developer”) and Town of Brighton, New York, Town Board of the Town of Brighton, New York and Planning Board of the Town of Brighton, New York (the “Town”) each having cross-moved this Court for a protective order denying and/or limiting the scope of discovery requested by Petitioners-Plaintiffs, and for leave to conduct discovery of Petitioners-Plaintiffs as to standing and attorney’s fees, all as more fully set forth in their respective papers (collectively, the “Respondents-Defendants’ Cross Motions”), and

**UPON READING AND FILING** BGR’s proposed Order to Show Cause for BGR’s Motion for leave to conduct discovery on Public Trust and Permissive Referendum claims (NYSCEF Doc. No. 152), the Affirmation of Mindy Zoghlin dated July 26, 2019 with exhibits A – G (NYSCEF Doc. Nos. 153 – 160), BGR’s July 26, 2019 Memorandum of law in support of motion (NYSCEF Doc. No. 161), the Order to Show Cause signed by Justice Odorisi (NYSCEF Doc. No. 162) with Notice of Entry (NYSCEF Doc. No. 163), BGR’s Memorandum of Law in support of motion (NYSCEF Doc. No. 164); and the Affirmation of Mindy Zoghlin dated July 26, 2019 with exhibits A – P (NYSCEF Doc. Nos. 263 – 281), all in support of BGR’s motion, and

**1. UPON READING AND FILING** CAC's proposed Order to Show Cause to lift the discovery stay and for a stay of Respondents-Defendants' motions for summary judgment (NYSCEF Doc. No. 126), the Court's Order to Show Cause (NYSCEF Doc. No. 145-146), the Affirmation of Laurie Styka Bloom dated September 17, 2017 with exhibits A-P thereto (NYSCEF Doc. No. 127-143), all in support of CAC's motion, and

**2. UPON READING AND FILING** the Orders to Show Cause dated September 24, 2019 and September 25, 2019 in each of the above-captioned proceeding (NYSCEF Doc. Nos. 166 and 167 [CAC], 261 and 262 [BGR], and 198 and 199 [SMA] ), the Affirmation of Warren B. Rosenbaum dated September 20, 2019 with Exhibits A-J- \_\_\_ annexed thereto (NYSCEF Doc. Nos. 150-160 [CAC], 245-255 [BGR], and 182-192 [SMA]), and the Affirmation of John A. Mancuso dated September 20, 2019 (NYSCEF Doc. Nos. 163 [CAC], 258 [BGR], and 195 [SMA]), and the Developer's Memorandum of Law in Opposition to Petitioner-Plaintiff's Motion for Discovery and in Support of Developer's Cross-Motion for a Protective Order and for Discovery on Standing and Attorney's Fees dated September 20, 2019 (NYSCEF Doc. No. 161 [CAC], 256 [BGR], and 193 [SMA]) all in support of the Respondents-Defendants' Cross Motions and in opposition to "Petitioners-Plaintiffs' Motions, and

**3. UPON READING AND FILING** BGR's September 27, 2019 Memorandum of Law in Opposition to Respondents-Defendants' Cross Motions (NYSCEF Doc. Nos. 282, 328), the Affidavit of Howard Jacobson sworn to September 27, 2019 with Exhibits A- F (NYSCEF Doc. Nos. 283-289, 329-335), BGR's September 27, 2019 Reply Memorandum of Law (NYSCEF Doc. Nos. 290, 309), the Affirmation of Mindy Zoghlin dated September 27, 2019 with Exhibits A- P (NYSCEF Doc. Nos. 291- 308, 310-327), all in further support of Petitioners-Plaintiffs' Motions and in opposition to Respondents-Defendants' Cross Motions, and

**4. UPON READING AND FILING**, the September 30, 2019 Affirmation of Laurie Styka Bloom in further support of Petitioners-Plaintiffs' Motions and in Opposition to Respondents-Defendants' Cross Motions (NYSCEF Doc. No. 168), and

**5. UPON READING AND FILING** Save Monroe et al ("SMA")'s September 30, 2019 Memorandum of Law in support of Petitioners-Plaintiffs' Motions (CAC NYSCEF Doc. No. 169; SMA NYSCEF Doc. No. 200), all in further support of Petitioners-Plaintiffs' Motions and in Opposition to Respondents-Defendants' Cross Motions, and

**6. UPON READING AND FILING**, the Reply Affirmation of Warren B. Rosenbaum, dated October 7, 2019 with Exhibits A-B thereto (NYSCEF Doc. Nos. 170-172 [CAC], 336-338 [BGR], and 201-203 [SMA]), and the Reply Affirmation of John A. Mancuso dated October 7, 2019 (NYSCEF Doc. No. 173 [CAC], 339 [BGR], and 204 [SMA]), in further support of Respondents-Defendants' Cross Motions, and

**7. AFTER HEARING** Nixon Peabody LLP (Laurie Styka Bloom, Esq. and Robert W. Burgdorf, Esq. of counsel), attorneys for CAC; The Zoghlin Group, PLLC (Mindy L. Zoghlin, Esq., of counsel), attorneys for BGR; and Hodgson Russ (Charles W. Malcomb, Esq., of counsel), attorneys for SMA, all in support of the Petitioners-Plaintiffs' Motions and in opposition to Respondents-Defendants' Cross Motions; and Woods Oviatt Gilman LLP (Warren B. Rosenbaum, Esq. of counsel), attorneys for the Developer, and Weaver Mancuso Frame PLLC (John A. Mancuso, Esq., of counsel), attorneys for the Town, all in opposition to the Petitioners-Plaintiffs' Motions and in support of the Respondents-Defendants' Cross Motions, and due deliberation having been had, it is hereby

**8. ORDERED** that Petitioners-Plaintiffs' Motions seeking to lift the stay of discovery imposed by the Town and Developers' filing of summary judgment motions in the various

actions, is granted and the stay is lifted and discovery by BGR, SMA and CAC on the public trust doctrine and permissive referendum claims may proceed, including discovery of non-parties; and it is further

**9. ORDERED** that any further initial discovery demands beyond those already served by BGR, SMA and/or CAC, addressed to both parties and non-parties, shall be served on all counsel by no later than October 21, 2019; and it is further

**10. ORDERED** that Respondents-Defendants' responses to the document demands served by CAC, BGR and/or SMA shall be served by no later than December 13, 2019; and it is further

**11. ORDERED** that Petitioners-Plaintiffs' Motions seeking to stay the motions for summary judgment filed by the Town and Developer on July 3, 2019 (in the BGR and SMA actions) and on July 23, 2019 (in the CAC action) pending completion of the discovery addressed above is granted and a new schedule for such motions will be addressed once discovery is completed; and it is further

**12. ORDERED** that Respondents-Defendants' Cross Motions seeking a protective order denying and/or limiting the scope of discovery requested by CAC, BGR and SMA is denied without prejudice to renewal in the event that judicial intervention is required to resolve any future discovery-related disputes as may arise during the course of the discovery as hereby ordered; and it is further

**13. ORDERED** that Respondents-Defendants' Cross-Motions seeking to lift the stay of discovery imposed by the filing of summary judgment motions in the various actions in order to conduct discovery related to their affirmative defenses of lack of standing is granted as more fully set forth below, and the Town and Developer shall serve discovery demands to Petitioners-

Plaintiffs on the issue of BGR, SMA and CAC's standing by no later than October 21, 2019; and it is further

14. **ORDERED** that Petitioners-Plaintiffs' responses to the document demands to be served by the Town and Developer shall be served by no later than December 13, 2019; and it is further

15. **ORDERED** that on the cross-motions of Respondents-Defendants Town and Developer, the automatic stay which arose by reason of the pending summary judgment motions in each of these proceedings pursuant to CPLR §3214(b) be and the same hereby is lifted to the extent of granting leave to the Town and the Developer to seek discovery related to their respective affirmative defenses of Petitioners-Plaintiffs' alleged lack of standing, including the services of notice of depositions and requests for documents directed to the issue of standing, which may include, without limitation, the amount and identity of the sources of Petitioners-Plaintiffs' funding for the costs and expenses of this litigation; and it is further

16. **ORDERED**, that as to any depositions Respondents-Defendants Town and Developer may notice of CAC, SMA and/or BGR relative to standing, the respective Petitioners-Plaintiffs entities shall each identify and produce a corporate designee for such depositions with knowledge of standing and the amount and sources for Petitioners-Plaintiffs' funding for the costs and expenses of this litigation, provided, however, that BGR shall produce in the first instance Howard Jacobson as such a witness to be deposed, and further provided that the deposition of Robert Burgdorf may not be taken absent further application to and order of this Court following the completion of the deposition of the CAC-designated deponent; and it is further

17. ORDERED that, all parties reserve and do not waive any objections they may have to any specific discovery demands and further reserve the right to seek all available relief from the Court to address any such objections.

Signed this 3<sup>rd</sup> December day of ~~November~~, Rochester, New York



Hon. John J. Ark  
Justice of the Supreme Court

11/16/19