

135 Sapphire LLC v 137-25 Sapphire St. Family LP

2020 NY Slip Op 35468(U)

July 21, 2020

Supreme Court, Queens County

Docket Number: Index No. 702528/2019

Judge: Janice A. Taylor

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This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE JANICE A. TAYLOR IAS Part 15
Justice

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135 SAPPHERE LLC.,

Plaintiff(s),

Index No.:702528/19

Motion Date:1/7/20

- and -

Motion Seq. No: 4

137-25 SAPPHERE STREET FAMILY
LIMITED PARTNERSHIP, TRINCHESE
CONSTRUCTION, INC., LOUIS- also known as
LUIGI-TRINCHESE, JOHN DOE and JANE DOE,

Defendant(s).

FILED

**7/22/2020
12:15 PM**

**COUNTY CLERK
QUEENS COUNTY**

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The following papers numbered 1-13 read on this motion by plaintiff 135 Sapphire LLC (135 Sapphire) for a preliminary injunction enjoining defendants 137-25 Sapphire Street Family Limited Partnership (137-125 Sapphire), Trinchese Construction, Inc., Louis a/k/a Luigi Trinchese (Trinchese), John Doe and Jane Doe from trespassing on plaintiff's property, and a cross-motion by defendants to dismiss the complaint pursuant to CPLR §3211 and/or §3212 and for a declaratory judgment entitling them to continue using disputed property owned by plaintiff.

Papers
Numbered

Notice of Motion-Affirmation-Exhibits-Service.....	1	-	4
Notice of Cross-Motion- Affirmation-Exhibits-Service...	5	-	8
Affirmation in Opposition-Exhibits-Service.....	9	-	11
Reply Affirmation-Service.....	12	-	13

Upon the foregoing papers it is ordered that this motion and cross-motion are determined as follows:

Plaintiff 135 Sapphire LLC ("135 Sapphire") is sole owner of real property located at 135-27 Sapphire Street, Lot 42 in Howard Beach, New York ("the Subject Property"), which it acquired by deed dated July 11, 2016. Defendant 137-25 Sapphire Street Family Limited Partnership ("137-125 Sapphire") is the owner of real property located at 137-125 Sapphire Street, Lot 45 ("the Adjoining Property"). Defendant Trinchese Construction, Inc., Louis a/k/a Luigi Trinchese ("Trinchese") is a partner of the defendant entities. The parties dispute use and control of a

strip of land running along the front portion of plaintiff's property,¹ which defendants use to access their property.

Plaintiff avers that shortly after purchasing the Subject Property, it learned that defendants were driving through the Subject Property, and asked Trinchese to stop defendants from doing so, including via communications between counsel for the parties. Plaintiff alleges that defendants repeatedly continued to trespass on its property long after the cease and desist deadline in their attorneys' communications. Plaintiff reports multiple instances of placing locks or other protective barriers to prevent entry to the Subject Property, which defendants then allegedly repeatedly broke or removed in order to access the disputed land. Plaintiff's complaint seeks declaratory and injunctive relief, alleging causes of action sounding in trespass and nuisance, while defendants asserted counterclaims based on adverse possession and seek a declaratory judgment in their answer.

The court turns first to defendants' cross-motion for dismissal and a declaratory judgment. Defendants claim they have acquired a "right to use" the disputed land through adverse possession. The court notes that defendants plead only a counterclaim for adverse possession, as pertaining to ownership of the disputed land, rather than usage thereof. Nevertheless, a party seeking to establish a claim of title to real property by adverse possession must prove, by clear and convincing evidence, that (1) the possession was hostile and under claim of right, (2) actual, (3) open and notorious, (4) exclusive, and (5) continuous for the statutory period of ten years (see *Bursky v Gerratano*, 184 AD3d 796 [2020]; *Diaz v Mai Jin Yang*, 148 AD3d 672 [2017]; *CSC Acquisition-NY, Inc. v 404 County Rd. 39A, Inc.*, 96 AD3d 986, 987 [2012]). A party claiming adverse possession may establish possession for the statutory period by "tacking" the time that the party possessed the property onto the time that the party's predecessor adversely possessed the property (see *Munroe v Cheyenne Realty, LLC*, 131 AD3d 1141, 1142 [2015]; *Stroem v Plackis*, 96 AD3d 1040, 1042 [2012]).

For tacking to apply, a party must show that the party's predecessor intended to and actually turned over possession of the alleged adversely possessed land, along with the portion of land included in the deed (see *Diaz*, 148 AD3d at 674; *Ram v Dann*, 84 AD3d 1204 [2011]). Additionally, where the adverse possession is not founded upon a written instrument, the possessor must also establish that the disputed property was either "usually

¹ Some discrepancy exists regarding whether this disputed strip of land is actually part of Lot 42, owned by plaintiff, or part of the adjacent Lot 15, which is also owned by plaintiff.

cultivated or improved" or "protected by a substantial inclosure" (*Munroe*, 131 AD3d at 1142; *Goldschmidt v Ford Street, LLC*, 58 AD3d 803 [2009]).

Here, defendants claim their statutory ten-year period began from July 5, 2004, when non-party Vincent Langona, one of the prior owners of the Adjoining Property, purchased it from Plaza Home LLC to be used by his son, John Langona, for his home improvement business. When Vincent Langona died in June 2011, John Langona, acting as Executor of his father's estate, conveyed the Adjoining Property to Crescent Bedrock Properties, Inc. ("Crescent"), an entity controlled by Trinchese, on December 12, 2012. On June 21, 2016, Crescent conveyed the Adjoining Property to 137-25 Sapphire, an entity also controlled by Trinchese.

Defendants submit, *inter alia*, the affidavits of non-party John Langona and defendant Trinchese, which each assert that defendants' and non-parties Vincent and John Langona's actions of driving through the disputed land belonging to plaintiff to access the Adjoining Property for over fourteen years from 2004 to the time this action was commenced in 2019, are sufficient to establish a right to use through adverse possession. In opposition to the cross-motion, plaintiff submits the affidavit of Farhad Bokhour ("Bokhour"), who owned the Subject Property at the time Vincent Langona purchased the Adjoining Property. Non-party Bokhour attested that in or about 2004, he agreed to give an individual named John, who either was or represented the new owner of Lot 45, permission to use part of Lot 15 in order to access Lot 45. Bokhour further stated that he informed plaintiff of such arrangement with defendants' predecessors in July 2016, when he sold his properties to Zirk Union Tpke LLC, an entity affiliated with plaintiff.

This court finds that the affidavit of non-party Bokhour raises triable issues regarding whether defendants' use of the disputed land was in fact permissive, rather than hostile and under claim of right (see *Yee v Panousopoulos*, 176 AD3d 1142, 1145 [2019]; *Diaz*, 148 AD3d at 674; *Vitale v Witts*, 93 AD3d 714 [2012]). Moreover, no evidence indicates that defendants' predecessors adversely possessed the disputed land and intended to and actually did transfer possession to defendants when transferring the deed to the Adjoining Property (see *Ram*, 84 AD3d 1204), such as necessary for a chain of title tacked together to satisfy the statutory period. Notably, defendants also have not demonstrated that they took any steps to cultivate, improve or enclose the disputed land (see *Finger v 192 Grand Street Realty LLC*, 184 AD3d 551 [2020]; *Skyview Motel, LLC v Wald*, 82 AD3d 1081, 1082 [2011]; *Almeida v Wells*, 74 AD3d 1256, 1258 [2010]). Thus, based on the record it cannot be said as a matter of law that defendants acquired the disputed land by adverse possession warranting judgment in its favor. Additionally, defendants did


not demonstrate any grounds for dismissing plaintiff's causes of action for trespass or nuisance.

Turning to plaintiff's motion, a party seeking a preliminary injunction, must demonstrate, by clear and convincing evidence: (1) a likelihood of ultimate success on the merits, (2) irreparable injury absent the granting of the preliminary injunction, and (3) a balancing of equities in its favor (see *Deutsch v Grunwald*, 165 AD3d 1035 [2018]; *84-85 Gardens Owners Corp. v 84-12 35th Ave. Apt. Corp.*, 91 AD3d 702 [2012]; *Brookhaven Baymen's Assn., Inc. v Town of Southampton*, 85 AD3d 1074, 1078 [2011]). The purpose of a preliminary injunction is to preserve the status quo until a decision is reached on the merits (see *Icy Splash Food & Beverage, Inc. v Henckel*, 14 AD3d 595, 596 [2005]).

Here, the only injury plaintiff alleges is the vandalism resulting from defendants' repeated attempts to break plaintiff's locks and other barriers meant to keep defendants off its property. While possibly demonstrative of trespass and/or nuisance, such damage may be sufficiently compensated by monetary damages, particularly in light of the fact that plaintiff's property is a vacant lot (see *Swartz v Swartz*, 145 Ad3d 818, 822 [2016]; *International Shoppes, Inc. v At the Airport, LLC*, 131 AD3d 926, 938 [2015]). Thus, the court finds that plaintiff fails to demonstrate that it would suffer irreparable injury in the absence of a preliminary injunction, and no injunctive relief is warranted to maintain the status quo herein (see *Rowland v Dushin*, 82 AD3d 738 [2011]; cf. *Deutsch*, 165 AD3d 1035). The court has considered the parties' remaining contentions and finds them unavailing. Accordingly, plaintiff's motion and defendants' cross-motion are both denied.

Dated: July 21, 2020

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JANICE A. TAYLOR, J.S.C.

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QUEENS COUNTY**

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