

**2832 Linden Blvd. Realty LLC v Health Ins. Plan of  
Greater N.Y., Inc.**

2021 NY Slip Op 32879(U)

December 21, 2021

Supreme Court, Kings County

Docket Number: Index No. 515466/20

Judge: Carl J. Landicino

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 81 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 21<sup>st</sup> day of December, 2021.

P R E S E N T:

HON. CARL J. LANDICINO,  
Justice.

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2832 LINDEN BOULEVARD REALTY LLC,

Plaintiff,

- against -

HEALTH INSURANCE PLAN OF GREATER NEW YORK, INC.,  
LINDEN BOULEVARD THEATRES LLC,  
NEW YORK CITY DEPARTMENT OF FINANCE, and  
THE CITY OF NEW YORK,

Defendants.

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DECISION AND ORDER

Index No. 515466/20

Mot. Seq. No. 1

The following e-filed papers read herein:

NYSCEF Doc No.:

Notice of Motion, Affidavits (Affirmations), Memorandum of Law, and Exhibits Annexed _____	<u>14-37</u>
Affirmation in Opposition _____	<u>40</u>
Reply Affirmation and Exhibits Attached _____	<u>46-51</u>

In this action pursuant to RPAPL article 15 to determine claims to real property and for declaratory relief, plaintiff 2832 Linden Boulevard Realty LLC (“plaintiff”) moves (motion sequence #1) for summary judgment as against defendants Linden Boulevard Theatres LLC (the “neighboring owner”), New York City Department of Finance (“DOF”), and The City of New York (collectively with DOF, the “City defendants”). Plaintiff has discontinued this action as against the remaining defendant, Health Insurance Plan of Greater New York, Inc. (“HIP”).

## Background

On February 14, 2019, plaintiff apparently purchased from HIP commercial property located at 2832 Linden Boulevard in Brooklyn, New York (Block 4495, Lot 1) (the “property”), in an all-cash deal for \$11.3 million, in order to redevelop it as a 240-bed nursing home.<sup>1</sup> The property (aside from the existing, and apparently to be demolished, one-story structure thereon) consists of a plot of land measuring 200 feet in width by 500 feet in length.<sup>2</sup> The length of the property on one side borders “the easterly side of Ruby Street (60 feet wide).”<sup>3</sup> Ruby Street is the so-called “paper street,” meaning that it has been mapped by the City of New York (at least since the early 1900s) but in actuality has never been open, prepared for use, or used as a street; nor has it been assigned a tax lot number (as is the case here).

In April 2019 and May 2020, plaintiff (through a building-zoning consultant and then by counsel, respectively) requested, in each instance, that DOF assign a tax lot number to a parcel which adjoins the property at the Ruby Street side (the “additional parcel”). More particularly, the additional parcel extends from the edge of the property to the centerline at Ruby Street’s easterly side.<sup>4</sup> The additional parcel measures 30 feet in width (*i.e.*, one-half of Ruby Street’s width of 60 feet) by 500 feet in length (*i.e.*, the length of the side of the property adjoining Ruby

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<sup>1</sup> See Bargain and Sale Deed, dated February 14, 2019 (the “February 14, 2019 deed”), as amended by Confirmatory Bargain and Sale Deed, dated June 3, 2020, as further amended by Quitclaim Deed, dated December 21, 2020 (NYSCEF Doc No. 18, 19, and 31, respectively); *see also* Verified Complaint, dated August 14, 2020 (the “complaint”), ¶ 28 (NYSCEF Doc No. 27).

<sup>2</sup> See NYC Digital Tax Map, effective December 6, 2008 (NYSCEF Doc No. 28).

<sup>3</sup> See “Legal Description” annexed to the February 14, 2019 deed.

<sup>4</sup> See Complaint, ¶ 1 (“The [additional] Parcel consists of the easterly half of the unimproved and unmapped portion of Ruby Street, between Linden Boulevard and Loring Avenue”).

Street). At the time of its alleged conveyance to plaintiff as part of the property, the additional parcel was fenced off from the property on all four sides and was not used by plaintiff's predecessor-in-title (*i.e.*, HIP) for parking or for any other purpose.<sup>5</sup>

Plaintiff argued before DOF (and so reiterates in this action) that it owns the additional parcel notwithstanding the metes-and-bound description in the underlying deed to the contrary. For proof of its alleged ownership of the additional parcel, plaintiff relied (and still relies) on the recital in the underlying deed that the conveyance of the property included "any land lying in the bed of any streets and roads abutting the property to the center lines thereof."<sup>6</sup> In December 2019 and again in July 2020, DOF denied plaintiff's requests. DOF explained, in each instance, that it could not determine, based on plaintiff's submissions,<sup>7</sup> whether plaintiff owned the additional parcel.<sup>8</sup> Significantly, DOF never asserted (nor does it assert here) that the City of New York owns the additional parcel.<sup>9</sup>

In August 2020, plaintiff commenced this action for a declaration, pursuant to RPAPL 1501, that it owns the additional parcel and for a declaratory judgment, in effect pursuant to CPLR 3001, that defendants (*i.e.*, the neighboring owner and the City defendants) have no interest in the additional parcel.<sup>10</sup> After defendants separately joined issue, plaintiff moved for summary

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<sup>5</sup> See ALTA/NSPS Land Title Survey, performed on February 8, 2018 (the "survey") (NYSCEF Doc No. 47).

<sup>6</sup> See Feb. 14<sup>th</sup> deed (the second "TOGETHER" clause").

<sup>7</sup> Plaintiff's submissions to DOF (with the exception of the chain-of-title chart noted below) essentially mirrored its submissions in this action.

<sup>8</sup> See emails to and from DOF, as well as plaintiff's counsel letter to DOF (NYSCEF Doc No. 28-29).

<sup>9</sup> See letter, dated November 9, 2018 from the Office of the Brooklyn Borough President (NYSCEF Doc No. 28)

<sup>10</sup> See complaint (the First and Second Causes of Action, respectively).

judgment. Whereas the neighboring owner failed to respond to plaintiff's motion, the City defendants indicated in their response that they took no position (albeit with a qualifier noted below) as to whether plaintiff is (or is not) the owner of the additional parcel. The City defendants qualified their response with a proviso that "should the Court direct any changes to the metes and bounds of the . . . Property, . . . it should direct the Plaintiff to comply with the required administrative process, delineated in 19 RCNY § 54-01 et seq., in order to effectuate a lawful merger of the [additional] Parcel with the . . . Property."<sup>11</sup> At the hearing on the motion initially held on June 9, 2021, the Court directed plaintiff to submit supplemental papers concerning the chain of title for the additional parcel. On July 15, 2021, plaintiff submitted its response which, as relevant to the Court's determination, includes a chart of the chain of title for the former tax lots which comprised the additional parcel (the "chain-of-title chart").<sup>12</sup> On September 22, 2021, the Court heard further oral argument and reserved decision.

### Discussion

The starting point is the language of the statute at issue. RPAPL 1501 provides, in relevant part, that:

"(1) Where a person claims an estate or interest in real property . . . [,] such person . . . may maintain an action against any other person, known or unknown . . . to compel the determination of any *claim adverse* to that of the plaintiff which the defendant makes, or which it appears from the public records, or from the allegations of the complaint, the defendant might make. . ." (emphasis added).

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<sup>11</sup> See the City's Affirmation in Response, dated March 3, 2021, ¶ 6 (NYSCEF Doc No. 40).

<sup>12</sup> See Exhibit 4 (chart) to plaintiff's reply affirmation (NYSCEF Doc No. 50).

The purpose of RPAPL 1501, is “to give relief to a party in possession of land where another *claimed an interest* in the land but had brought no suit to enforce the claim” (*Porcher v Frueauff*, 82 NYS2d 10, 11-12 [Sup Ct, NY County 1948] [emphasis added], *affd without opinion* 276 App Div 997 [1st Dept 1950], *appeal dismissed* 302 NY 697 [1951], *lv denied* 278 App Div 764 [1st Dept 1951]). “To maintain an equitable quiet title claim, a plaintiff must allege . . . the existence of a removable cloud on the property, which is *an apparent title*, such as a deed or other instrument, that is *actually invalid or inoperative*” (*Ray v JP Morgan Chase Bank, N.A.*, 145 AD3d 812, 813 [2d Dept 2016] [emphasis added]).<sup>13</sup> Whereas allegations of “an [adverse] interest” or “apparent title” are sufficient to withstand a motion to dismiss the complaint for failure to state a claim under CPLR 3211 (a) (7) (*see Matter of Marchand v New York State Dept. of Envtl. Conservation*, 51 AD3d 795, 796 [2d Dept 2008]), such allegations are not sufficient where, as here, summary judgment is sought (*see* CPLR 3212 [b] [“The motion (for summary judgment) shall be granted if, upon all the papers and proof submitted, the cause of action . . . shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party.”]).

Here, plaintiff has failed to demonstrate, *prima facie*, its entitlement to summary judgment, without regard to the sufficiency of the City defendants’ response. The reasons are two-fold. First, plaintiff has presented no case or controversy for the Court to resolve because no defendant has asserted an adverse interest in (or an apparent title to) the additional parcel. Although DOF

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<sup>13</sup> As the First Judicial Department observed, “[e]ssential to the maintenance of an action to determine a claim to real property is that the complaint state a claim, by the defendant, of an estate or interest in the real property, *adverse* to that of the plaintiff (RPAPL 1515 [1] [b])” (*East 41st St. Assoc. v 18 E. 42nd St., L.P.*, 248 AD2d 112, 114 [1998] [internal quotation marks omitted; emphasis added]).

previously denied plaintiff's requests to recognize the additional parcel as a separate tax lot, plaintiff in this action is not challenging DOF's determination in that regard.<sup>14</sup> Second, and more fundamentally, where, as here, "the deed describes the grant as starting at a corner of an intersection, and then running along parallel to or bounding on a street or streets to the beginning point, the grant is limited to the *exterior* line of the street" (here, the exterior line of Ruby Street) (*see City of Albany v State*, 28 NY2d 352, 356 [1971] [emphasis added]). In this regard, plaintiff has failed to show that the deeds in the chain of title – for *each* conveyance for *each* of the old tax lots comprising the additional parcel – contain *specific* language indicating that "title extend[ed] to the center line of" Ruby Street (*compare Borducci v City of Yonkers*, 144 AD2d 321, 322 [2d Dept 1988]). Moreover, the deeds in the chain of title<sup>15</sup> fail to include even the *boilerplate* language which is intended to encompass, as part of the conveyance, "any streets and roads abutting the above-described premises to the center lines thereof."<sup>16</sup> Further undermining plaintiff's position is the fact that the additional parcel, at the time of its alleged conveyance to plaintiff as part of the property, was fenced off for the entire length of 500 feet on the side which adjoined the property (as well as was fenced off on its other sides), and that it had not been used by plaintiff's transferor for parking or for any other purpose.<sup>17</sup>

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<sup>14</sup> In any event, "RPAPL 1501 does not authorize the commencement of a special proceeding" (*Matter of Griffin v Panzarin*, 305 AD2d 601, 602 [2d Dept 2003]).

<sup>15</sup> Again, for each conveyance for each of the old tax lots comprising the additional parcel.

<sup>16</sup> *See* the Chain-of-Title Chart (NYSCEF Doc No. 50).

<sup>17</sup> *See* Survey annexed to the Title Report (NYSCEF Doc No. 47).

Nothing in the record indicates that resort to the administrative remedies under General City Law § 35 or New York City Charter § 197-c would be futile. Plaintiff's remedies, at least at this time, are administrative (not judicial) in nature.

**Conclusion**

Accordingly, it is

ORDERED that plaintiff's motion in Seq. No. 1 is *denied*; and it is further

ORDERED that to reflect the prior stipulated dismissal of defendant Health Insurance Plan of Greater New York, Inc. from this action, the caption is amended to read as follows:

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2832 LINDEN BOULEVARD REALTY LLC,

Plaintiff,

- against -

Index No. 515466/20

LINDEN BOULEVARD THEATRES LLC,  
NEW YORK CITY DEPARTMENT OF FINANCE, and  
THE CITY OF NEW YORK,

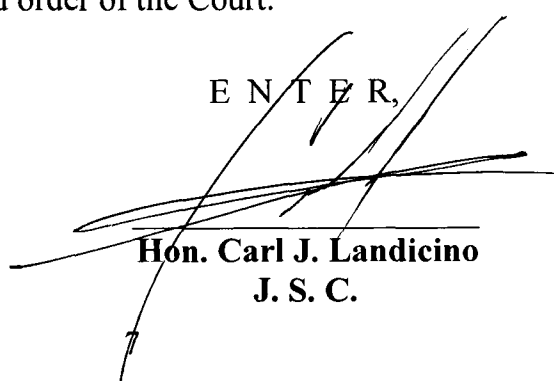
Defendants.

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The Corporation Counsel of the City of New York is directed to electronically serve a copy of this decision and order on the other parties' respective counsel and to electronically file an affidavit of service thereof with the Kings County Clerk.

This constitutes the decision and order of the Court.

E N T E R,



Hon. Carl J. Landicino  
J. S. C.

KINGS COUNTY CLERK  
FILED  
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