

Matter of Glasser v Pinto
2024 NY Slip Op 35614(U)
March 15, 2024
Supreme Court, Westchester County
Docket Number: Index No. 50629/2023
Judge: Paul I. Marx
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF WESTCHESTER
 HON. PAUL I. MARX, J.S.C.

-----X
 In the Matter of BARBARA GLASSER,

Petitioner,

-against-

KIM PINTO,

Respondent.
 -----X

To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

Index No. 50629/2023

DECISION AND ORDER

Motion Seq. No. 1 and 2

The papers filed electronically through NYSCEF as documents numbered 1-6, and 9-10 were read on: (1) Petitioner's Petition to Quiet Title (Motion #1); and (2) Petitioner's motion to quiet title (Motion #2).

Upon the foregoing papers, it is ORDERED that the Petition and motion are disposed as follows.

BACKGROUND

On October 25, 2023, Petitioner Barbara Glass, self-represented, commenced this proceeding by Verified Petition against Respondent Kim Pinto, Petitioner's immediately adjacent neighbor, seeking to "quiet title" to a small strip of land on Ms. Pinto's property onto which Ms. Glasser's house encroaches. Petitioner asserts that she owns two contiguous lots in Yonkers, New York, having the addresses of 279 Woodworth Avenue and 273 Woodworth Avenue, which the City of Yonkers allegedly requires her to combine. While undergoing that process, Petitioner discovered that her "little house extends minutely onto the property of my neighbor, Ms. Kim Pinto, and has for the over 100 years that my house has been in existence." Doc # 1 at p 2. Respondent owns the property at 281 Woodworth Avenue. Petitioner recounts her efforts to resolve the matter with Respondent prior to filing suit.¹ Doc # 1 at p 5.

¹ Petitioner obtained an affirmation by Joel Richard Kupferman, Esq., which was placed at the end of a letter she wrote to Respondent, which stated that the letter was "a binding and legal document". The Yonkers Law Department did not accept the letter, and allegedly advised Petitioner to bring a quiet title action.

Amongst her efforts, Petitioner prepared a document for Ms. Pinto's signature, addressed to Sam Borelli, Commissioner of the Department of Housing and Buildings in Yonkers, New York, dated On August 7, 2023, which stated:

I, Kim Pinto, agree that a tiny corner of Barbara Glasser's house located at 279 Woodworth Avenue, Yonkers, NY 10701, can overlap as per survey (see attached) of my property at 281 Woodworth Avenue, Yonkers, NY 10701 with no penalty or damage of any kind.

On January 31, 2023, Petitioner wrote a letter to Ms. Pinto in which she stated that:

In the process of combining the two lots owned by me, Barbara Glasser at 279 Woodworth Avenue and 273 Woodworth Avenue in Yonkers, NY 10701, it has come to my attention that a small corner of my house at 279 Woodworth Avenue, Yonkers, NY 10701 seems to be slightly on the property at 281 Woodworth Avenue, owned by Ms. Kim Pinto.

Ms. Pinto did not respond to Petitioner's efforts by signing the August 7, 2023 statement, or acknowledging the January 31, 2023 letter, which the Yonkers Law Department rejected in any event.

On November 14, 2023, Ms. Pinto, self-represented, served and filed a Verified Answer to the Petition, wherein she states, in full, that "Plaintiff has not provided sufficient legal documentation to ascertain credibility of claim. Nor has there been any reasonable discussion regarding matter prior to being served." Doc # 6.

On December 22, 2023, the parties appeared before the Court for a conference. The Court directed the parties to speak with their title insurers and return to court on January 24, 2024.

On December 22, 2023, Petitioner filed a motion seeking the identical relief sought in her Petition. Respondent did not respond to the motion.

On January 24, 2024, the parties again appeared before the Court. They were unable to reach a resolution of the matter. Therefore, the Court will consider Petitioner's motion and the Petition.

DISCUSSION

Petitioner's motion seeking the same relief requested in the Petition is denied, because Petitioner has not filed an affidavit of service of the motion on Respondent.

The Petition to quiet title is denied for failure of sufficient proof.

The Court of Appeals stated in *Robert E. Becker v Owen J. Murtagh*, 19 NY3d 75, 80-81 [2012], that “[w]here there has been an actual continued occupation of premises under a claim of title, exclusive of any other right, but not founded upon a written instrument or a judgment or decree, the premises so actually occupied, and no others, are deemed to have been held adversely”. For a party to establish a claim of adverse possession, “the occupation of the property must be (1) hostile and under a claim of right (*i.e.*, a reasonable basis for the belief that the subject property belongs to a particular party), (2) actual, (3) open and notorious, (4) exclusive, and (5) continuous for the statutory period (at least 10 years)” *Id.* at 81 (citing *Walling v Przybylo*, 7 NY3d 228, 232 [2006]; *Ray v Beacon Hudson Mountain Corp.*, 88 NY2d 154, 159 [1996]; *see also Belotti v Bickhardt*, 228 NY 296, 302 [1920]). Furthermore, “[t]he character of the possession must be such ‘that [it] would give the owner a cause of action in ejectment against the occupier’ ”. *Id.* (quoting *Brand v Prince*, 35 NY2d 634, 636 [1974]). The Court of Appeals stated that “[b]ecause the acquisition of title by adverse possession is not favored under the law, these elements must be proven by clear and convincing evidence”. *Id.* (citing *Ray*, 88 NY2d at 159; *Van Valkenburgh v Lutz*, 304 NY 95, 98 [1952]).

A party claiming title by adverse possession need not show “enmity or specific acts of hostility in order to establish the element of hostility”. *Becker v Murtagh, supra* at 81 (quoting *Greenberg v Sutter*, 257 AD2d 646, 646 [2nd Dept 1999]). This element is established where a party “asserts a right to the property that is ‘adverse to the title owner and also in opposition to the rights of the true owner’ ”. *Id.* (quoting *Walling*, 7 NY3d at 232–233; *see Monnot v Murphy*, 207 NY 240, 245 [1913]. “If the party who claims to have acquired title to the parcel by adverse possession acknowledges during the [statutory] period that actual ownership of the property rests in the titled owner, the possession of the parcel is not under a claim of right, and any claim of adverse possession is defeated.” *Dittmer v Jacwin Farms, Inc.*, 224 AD2d 477, 478 [2nd Dept 1996] (citing *Van Gorder v Masterplanned, Inc.*, 78 NY2d 1106; *Manhattan School of Music v Solow*, 175 AD2d 106; *Stauffer Chemical Co. v Costantini*, 38 AD2d 863).

On or about August 7, 2023, when Petitioner sent Ms. Pinto a statement addressed to the Yonkers Buildings Department for her signature, Petitioner acknowledged Ms. Pinto’s legal title to the portion of the property underlying a corner of Petitioner’s house. Therefore, in order to show that Petitioner’s claim was not defeated, she must set forth sufficient proof to show her adverse

possession of the disputed property for the applicable statutory period--10 or 15 years--prior to August 7, 2023. All Petitioner offers is her own statement that her house has existed for more than 100 years. That is not sufficient. Petitioner does not state how long she has owned the two lots and whether she was aware of the encroachment when she purchased the house. "The applicable statutory period is 15 years for those whose possession commenced prior to September 1, 1963, the date on which the statutory period was changed, and 10 years for those whose possession began thereafter." *City of Tonawanda v Ellicott Creek Homeowners Ass'n, Inc.*, 86 AD2d 118, 121 [4th Dept 1982] (citing *Carrington v McNeil*, 58 AD2d 719 [3rd Dept 1977]; *Reiter v Landon Homes*, 31 AD2d 538 [2nd Dept 1968]). Petitioner has offered nothing to establish the applicable time period and her claim of right during that period.

Moreover, Petitioner has not provided the metes and bounds of the portion of Ms. Pinto's property for which she seeks adverse possession.² "[A] precise description of the adversely possessed area [is] necessary to appropriately quiet title and ensure marketability of title to both parties' parcels". *Goss v Trombly*, 39 AD3d 1128, 1130 [3rd Dept 2007] (citing *Guardino v Colangelo*, 262 AD2d 777, 780 [3rd Dept 1999]).

Accordingly, it is

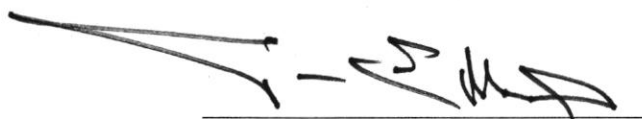
ORDERED that the Petitioner's motion is denied; and it is further

ORDERED that the Petition is denied and dismissed.

The foregoing constitutes the Decision and Order of the Court.

Dated: March 15, 2024
White Plains, New York

ENTER


HON. PAUL I. MARX, J.S.C.

² Petitioner does not seek to acquire an easement by prescription, however, the elements are the same as those for title by adverse possession: the use must be adverse, open and notorious, continuous, and uninterrupted for the requisite time period. *Boumis v Caetano*, 140 AD2d 401, 402 [2nd Dept 1988].