

**Abouliissan v Kingsland 79 LLC**

2025 NY Slip Op 30635(U)

February 18, 2025

Supreme Court, Kings County

Docket Number: Index No. 510852/16

Judge: Ingrid Joseph

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 83 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 18<sup>th</sup> day of February, 2025.

PRESENT: HON. INGRID JOSEPH, J.S.C.  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----X  
MOHAMMED ABOULISSAN,  
Plaintiff,  
-against-  
KINGSLAND 79 LLC,  
Defendant.  
-----X

Index No. 510852/16  
Mot. Seq. Nos. 14-15

**DECISION AND ORDER OF  
REFERENCE - MEDIATION**

The following e-filed papers read herein:  
Notice of Motion/Cross-Motion and  
Affidavits (Affirmations) Annexed \_\_\_\_\_  
Opposing Affidavits (Affirmations) \_\_\_\_\_  
Affidavits/Affirmations in Reply \_\_\_\_\_

NYSCEF Doc Nos.:  
529-545; 549-552  
569-575; 577-578  
554-558; 559-567

Upon the foregoing papers in this action, Plaintiff Mohammed Aboulissan (Aboulissan) seeks inter alia for a judgment declaring that he has a prescriptive easement over the driveway of certain real property. Defendant Kingsland 79 LLC (defendant) moved for an order: (1) pursuant to CPLR 3211 (a) (1), (7), and (10), dismissing the Plaintiff's second and fourth causes of action for an easement by prescription and injunctive relief, respectively; and (2) precluding Aboulissan from presenting evidence that "[he] did not have notice of [his] lack of right to use [defendant's] driveway"<sup>1</sup> (Seq. No. 14). Aboulissan cross-moved for an order: (1) pursuant to CPLR 3025 (b), granting him leave to serve a supplemental summons and amended complaint; and (2) pursuant to CPLR 6513, extending the duration of the notice of pendency (Seq. No. 15).

In December 1986, Aboulissan purchased real property located at 241 79<sup>th</sup> Street in Brooklyn (Block 05968, Lot 0067) (Reel 1949, Page 1453) (the underlying property). In 1987, the owner of the adjacent property located at 237 79<sup>th</sup> Street (Block 05968, Lot 0069) abandoned that property, and in 2012, the City of New York demolished the house on it. In May 2016, defendant purchased the 237 79<sup>th</sup> Street property from its prior owner named Frank Landy (the prior owner) for the sum of \$324,257, erected a fence around it, and built a new home (the adjacent property).

Aboulissan, who allegedly had been using the driveway of the adjacent property to access the rear of the underlying property since 1991, commenced this action in June 2016 seeking (among other things) a judgment declaring that the prior owner of the adjacent property had given him an express easement or,

<sup>1</sup> Defendant's Notice of Motion, dated September 8, 2023, page 1, ¶ (b) (NYSCEF Doc No. 529).

alternatively, declaring that he had obtained a prescriptive easement over the driveway.<sup>2</sup> Thereafter, Aboulissan moved (among other things) for summary judgment declaring that he had a prescriptive easement over the driveway, and defendant cross-moved (among other things) for summary judgment declaring that Aboulissan did not have an express easement or a prescriptive easement over the driveway.

In an order dated April 20, 2017 (the April 2017 order), the Court (Jimenez-Salta, J.) granted that branch of defendant's cross-motion which sought relief with respect to the cause of action alleging an express easement. However, it found that there was a triable issue of fact as to whether Aboulissan had established an easement by prescription. The motion court denied that branch of Aboulissan's motion which was for summary judgment declaring that he had a prescriptive easement and that branch of defendant's cross-motion which was, in effect, for summary judgment declaring that Aboulissan did not have a prescriptive easement. *See Aboulissan v Kingsland 79 LLC*, 2017 NY Slip Op 33076(U) (Sup Ct, Kings County 2017) (*Aboulissan I*).

On July 28, 2017, Aboulissan filed a notice of pendency against the adjacent property (NYSCEF Doc No. 196) (notice of pendency). The notice of pendency expired and, to date, has not been renewed.

On defendant's appeal from *Aboulissan I*, the Second Judicial Department in January 2020 affirmed the April 2017 order, agree[ing] with the [motion court's] determination that the parties' submissions raised a triable issue of fact as to whether [Aboulissan] obtained an easement by prescription [over the adjacent property]." *Aboulissan v Kingsland 79, LLC*, 179 AD3d 878, 889 (2d Dept 2020).

While the appeal in *Aboulissan I* was pending, defendant renewed its cross-motion for summary judgment, submitting an additional affidavit from the prior owner. In an order, dated September 23, 2019, the Court (Jimenez-Salta, J.) granted defendant's renewed cross-motion. By judgment, dated November 6, 2019 (the November 2019 judgment), the Court granted judgment in favor of defendant and against Aboulissan, dismissing the complaint, and on defendant's counterclaim pursuant to RPAPL Article 15 to quiet title, declaring that Aboulissan did not have an easement over the adjacent property, and canceling the aforementioned notice of pendency. *See Aboulissan v Kingsland 79, LLC*, 2019 WL 13258495 (Sup Ct, Kings County 2019), *judgment entered* 2019 WL 13258679 (Sup Ct, Kings County 2019) (*Aboulissan II*).

Defendant recorded the November 2019 judgment in *Aboulissan II* with the Office of the City Register of the City of New York on January 27, 2020 under CRFN 2020000032533 as against *each* of the adjacent property and the underlying property. In addition, defendant recorded the Second Judicial Department's January 2020 determination in *Aboulissan I* on February 21, 2020 under CRFN 2020000068927 against the adjacent property, but not against the underlying property. The two recordings with the City Register's Office against the adjacent property were inconsistent on their face. Whereas the

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<sup>2</sup> When Aboulissan commenced this action in June 2016, he was the sole owner of the underlying property. By deed dated July 31, 2019 and recorded August 26, 2019 under CRFN 2019000271907, Aboulissan conveyed the underlying property to himself and his wife as tenants by the entirety.

motion court's November 2019 judgment in *Aboulissan II* was in favor of defendant, the Second Judicial Department's January 2020 determination in *Aboulissan I* was neutral, as it was neither in favor of defendant nor Aboulissan. Adding to this confusion, defendant did not record against the underlying property the Second Judicial Department's January 2020 determination in *Aboulissan I*.

Aboulissan appealed the November 2019 judgment in *Aboulissan II* to the Second Judicial Department. While the appeal in *Aboulissan II* was pending, defendant conveyed the adjacent property to nonparties Christina Stathakos and Helen Andros (collectively, the new owners) by deed, dated August 21, 2020 and recorded September 4, 2020 under CRFN 2020000249966, for the sum of \$1,755,000, inclusive of the purchase-money mortgage in the principal sum of \$653,550 executed and delivered to a nonparty lender, dated August 21, 2020 and recorded September 4, 2020 under CRFN 2020000249967. Approximately 1-1/2 years later, the new owners obtained a credit-line mortgage, dated April 21, 2022 and recorded May 27, 2022 under CRFN 2022000215786, in the maximum principal amount of \$50,000 secured by the adjacent property.

On November 1, 2022, the Second Judicial Department heard oral argument on *Aboulissan II* appeal. By decision and order, dated December 28, 2022, the Second Judicial Department reversed the November 2019 judgment and reinstated the complaint in *Aboulissan II*. See *Aboulissan v Kingsland 79, LLC*, 211 AD3d 996 (2d Dept 2022). The Second Judicial Department in *Aboulissan II* held (at pages 997-998) that defendant "was not entitled to summary judgment dismissing the complaint and on its counterclaim to quiet title" because "triable issues of fact exist[ed] as to whether [Aboulissan's] use of the driveway portion of the [adjacent] property was permissive."

\* \* \*

While the instant motion and cross-motion were pending and before the Court reserved decision thereon on February 14, 2024, Aboulissan and his nonparty wife, Souad Aboulissan, as tenants by the entirety, conveyed the underlying property to Souad Aboulissan, by deed dated January 12, 2024 and recorded January 18, 2024 under CRFN 2024000015131. Thus, from and after January 12, 2024, nonparty Souad Aboulissan (and no one else) has been the sole owner of the underlying property, as reflected on the Automated City Register Information System (ACRIS). Because ACRIS is a governmental Web site, the court is permitted to take judicial notice of the officially recorded documents available at that site. See *Kingsbrook Jewish Med. Ctr. v Allstate Ins. Co.*, 61 AD3d 13, 20 (2d Dept 2009) ("material derived from official government Web sites may be the subject of judicial notice").

Inasmuch as Aboulissan no longer has any interest in the underlying property, he is no longer the real party in interest in this action. See *MLS Funding Corp. v Comprehensive Cardiac Servs. of New York, P.C.*, 188 AD3d 870, 871 (2d Dept 2020).<sup>3</sup> Thus, the motion and cross-motion cannot be entertained on the

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<sup>3</sup> When the Court reserved decision on the motion and cross-motion on February 14, 2024, neither the Court nor the parties' respective counsel were aware of the change of ownership of the underlying property

merits in light of the changed circumstances. Aboulissan's post-conveyance affidavit, dated February 13, 2024, averring that he is the "plaintiff of the instant action," while facially correct, is misleading because it fails to mention his prior conveyance of the entirety of his interest in the underlying property to his wife one month earlier by deed, dated January 12, 2024 (NYSCEF Doc No. 578).

Accordingly, it is hereby,

ORDERED that in Seq. Nos. 14 and 15, defendant's motion and Aboulissan's cross-motion are both *denied with leave to renew, pending substitution of a proper party plaintiff*; and it is further

ORDERED that, considering the advanced age of this action, the issuance of two interim appellate decisions, and the newly arisen need to substitute a proper party plaintiff herein:

(1) This action is referred to an initial mediation session in accordance with the Kings County Supreme Court, Civil Term Presumptive Mediation Program Rules,<sup>4</sup> to be conducted virtually;

(2) An initial 90-minute mediation session with a mediator assigned from the court's Roster of Mediators is offered free of charge to the parties and nonparty new owners, after which any further mediation is charged to the parties and nonparty new owners at a rate to be agreed upon beforehand. This initial mediation session must occur within 45 days after electronic service of this decision and order with notice of entry by defendant's counsel; and

(3) The County ADR Coordinator will contact the assigned mediator, parties, nonparty new owners, and/or their respective counsel via e-mail. The parties, nonparty new owners, and/or their respective counsel shall then initiate a conference call with the assigned mediator to schedule the initial mediation session; and it is further,

ORDERED that defendant's counsel, Edward A. Vincent, Esq., at Borchert & LaSpina, P.C., is directed to electronically serve a copy of this decision and order with notice of entry on Aboulissan's counsel, Jonah S. Zweig, Esq., at The Zweig Law Firm, P.C., and on the new owners' counsel, Bill Tsevis, Esq., at Solomon & Siris, P.C., and to electronically file an affidavit of service thereof with the Kings County Clerk.

This constitutes the decision and order of the court.

  
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Hon. Ingrid Joseph, J.S.C.

Hon. Ingrid Joseph  
Supreme Court Justice

<sup>4</sup> <https://www.nycourts.gov/LegacyPDFS/courts/2jd/kings/civil/ADR/KingsCountySupremeCourt-PresumptiveMediationRules.pdf>