

**Hoagland v Miller**

2025 NY Slip Op 30853(U)

March 14, 2025

Supreme Court, Kings County

Docket Number: Index No. 515149/2022

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 14<sup>th</sup> day of March, 2025.

P R E S E N T: HON. INGRID JOSEPH, J.S.C.  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----X  
DAVID HOAGLAND,

Plaintiff,

-against-

Index No.: 515149/2022

KAREN MILLER, DAVID STEWART, CARL HOAGLAND, DEBORAH WOODS, MIRIAM CLARK, JOHN DOE, JANE DOE, JEAN HOLLAND, NIREE HOLLAND, LINDA HOLLAND, JOAN SCOTT, STEPHANIE HOAGLAND, SAMANTHA HOAGLAND, and THE BROOKLYN FOUNDATION LLC,

**DECISION & ORDER**

(Mot. Seq. No. 4)

Defendants.

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The following e-filed papers read herein:

NYSCEF Doc. Nos.:

Notice of Motion/Affirmation in Support/Exhibit.....	50 – 52
Affirmation in Opposition/Exhibits/Memorandum of Law.....	55 – 60
Reply Affirmation/Exhibits.....	64 – 65

Defendant The Brooklyn Foundation LLC (“BK Foundation”) moves for an order, pursuant to CPLR 3211 (a) (1), (7) and (8), dismissing Plaintiff David Hoagland’s (“Plaintiff”) first amended complaint<sup>1</sup> as against it (Mot. Seq. No. 4). Plaintiff opposes the motion.

This action concerns real property located at 1005 Dean Street in Brooklyn, New York (the “Property”). Plaintiff commenced this action seeking to obtain a declaratory judgment that he is the sole owner of the Property by adverse possession and to quiet title. In his first amended complaint, Plaintiff asserts that his great grandfather purchased the Property in 1923. Plaintiff

<sup>1</sup> Only the first, second and fourth causes of action in the first amended complaint are asserted against BK Foundation. The third cause of action is only asserted against defendant David Stewart.

further asserts that his maternal grandmother, Florence Holland, was the last owner on a recorded deed and she passed in 1945. Florence's husband Joseph died in 1947. Florence and Joseph had six children: Beatrice Holland, William Holland, Joseph Holland, Martha Rogers, James Holland, and Timothy Holland. Beatrice and William Holland were appointed administrators of Florence's estate. Florence and Joseph's other children, Joseph Holland, Martha Rogers, James Holland and Timothy Holland renounced their rights to letters of administration.

Beatrice had four children—Plaintiff, defendant Carl, Stephen (deceased), and Martha (deceased). Plaintiff asserts that Carl and Stephen stopped residing at the Property in or around 1976 (Amended Complaint ¶ 22). In addition, Plaintiff asserts that Stephen's children, defendants Samantha and Stephanie Hoagland, have not resided there since 1976 (*id.*). Plaintiff further claims that Martha lived in the Property with her son, defendant David Stewart, until her death in 2004 (*id.* at ¶ 28). According to Plaintiff, David left the Property in 2015 (*id.* at 30).

Plaintiff alleges that from 1947 until Beatrice's death in 2001, the only residents of the Property were Beatrice and her four children. Plaintiff asserts that all other descendants besides Beatrice's four children cannot be co-tenants since adverse possession claims regarding co-tenancy began to run in 1947. Plaintiff argues that any claim to co-tenancy for all other individuals expired in 1967.

In 2020, Plaintiff claims that defendant Karen Miller ("Karen"), Plaintiff's cousin, quitclaimed her alleged interest in the Property to BK Foundation for \$20,000. Plaintiff maintains that this was a wrongful transfer since Karen had no interest in the Property. In 2021, Plaintiff recorded an heirship deed.

BK Foundation now moves to dismiss on the basis that Plaintiff's own admissions in the first amended complaint demonstrate that the accrual of any cause of action for adverse possession has not begun to commence. Specifically, BK Foundation points to Plaintiff's admissions that his sister Martha lived at the Property until her death in 2004 and her son David remained there until 2015. Thus, BK Foundation contends that the ten-year exclusive occupancy required to end the presumption of possession among all co-tenants will not cease until 2025 and any cause of action for adverse possession will not ripen until 2035. Accordingly, BK Foundation argues that Plaintiff's first cause of action (declaratory judgment) and second cause of action (quiet title) must be dismissed for failure to state a cause of action. In addition, BK Foundation asserts that Plaintiff's fourth cause of action (equitable quiet title) seeking to void BK Foundation's chain of title fails to

state a cause of action. BK Foundation argues that it is not barred from claiming title to a portion of the Property because Plaintiff failed to plead that Beatrice's possession was hostile and adverse as to her brother James Holland ("James"), who is Karen's grandfather. In addition, BK Foundation maintains that Plaintiff's own exhibits annexed to the first amended complaint demonstrate that Beatrice did not have exclusive possession. Specifically, BK Foundation notes that in her petition seeking Letters of Administration, Beatrice claimed that her brother Joseph Holland and her sister Martha Rogers resided at the Property; thus, she did not have exclusive occupancy.

In opposition, Plaintiff maintains that his first amended complaint pleads a prima facie case that BK Foundation's claims to an interest in the Property are null and void. With respect to his mother Beatrice, Plaintiff asserts that she became the sole inhabitant of the Property beginning in 1947 and the sole possessory tenant until 1957. From 1957 to 1967, Plaintiff argues that Beatrice, as exclusive occupant, established exclusive possession of the Property and that her possession was open, notorious and hostile. According to Plaintiff, it is implicit that Beatrice's possession was hostile as it was against the potential claims of all her family members. In the Surrogate Court petition, Plaintiff asserts that James's address was listed as 120 Kingsboro 1st Walk in Brooklyn and he was thus not a resident in the Property. Plaintiff contends that the petition supports the claim that Beatrice established adverse possession against James as of 1967 and thereby extinguished any claim that Karen inherited a co-tenancy interest that could be sold to BK Foundation. With respect to his aunt Martha, Plaintiff avers that it is irrelevant that she is listed as residing at the Property in the petition. Even if it was relevant, Plaintiff maintains that whether she lived in the Property in 1947 or not or whether she moved out sometime after is an issue of fact.

Moreover, Plaintiff asserts that the claim for adverse possession has ripened. Plaintiff argues that whether his sister Martha resided in the Property until 2004 has no bearing on whether BK Foundation has an interest in the Property since it admittedly does not stem from Martha or Plaintiff's other siblings. Further, Plaintiff asserts that BK Foundation has not cited to any authority holding that James' co-tenancy is revived because Plaintiff and his siblings lived in the Property. With respect to Beatrice's possession, Plaintiff maintains that while the first amended complaint does not state "open and hostile," BK Foundation was put on notice that Plaintiff claims Beatrice established adverse possession against her siblings from 1947 to 1967. In his affidavit supplementing this first amended complaint, Plaintiff states that during this time period, the other

members of the family knew Beatrice lived at the Property with her children and did not allow cousins to live there. Accordingly, Plaintiff asserts that the first amended complaint, together with his affidavit, properly pleads a claim for adverse possession. To the extent the Court finds that it does not, Plaintiff requests leave to amend the first amended complaint.

In its reply, BK Foundation maintains that Plaintiff's possession is not exclusive since David still has rights to possession as a distributee of Martha Hoagland. Since Plaintiff is not an adverse possessor, BK Foundation argues that he cannot tack onto any claim of Beatrice to cut off rights devolving from his aunt Martha.<sup>2</sup>

“On a motion to dismiss the complaint pursuant to CPLR 3211 (a) (7) for failure to state a cause of action, the court must afford the pleading a liberal construction, accept all facts as alleged in the pleading to be true, accord the plaintiff the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*Breytman v Olinville Realty, LLC*, 54 AD3d 703, 703-704 [2d Dept 2008]). “Moreover, ‘[a] court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint, and upon considering such an affidavit, the facts alleged therein must also be assumed to be true’” (*Canzona v Atanasio*, 118 AD3d 837, 838 [2d Dept 2014], citing *Kopelowitz & Co., Inc. v Mann*, 83 AD3d 793, 797 [2d Dept 2011]). “Where, as here, evidentiary material is submitted and considered on a motion pursuant to CPLR 3211 (a) (7), and the motion is not converted into one for summary judgment, the question becomes whether the plaintiff has a cause of action, not whether the plaintiff has stated one, and unless it has been shown that a material fact claimed by the plaintiff to be one is not a fact at all, and unless it can be said that no significant dispute exists regarding it, dismissal should not eventuate” (*YDRA, LLC v Mitchell*, 123 AD3d 1113, 1114 [2d Dept 2014]).

The Court will first address Plaintiff's first and second causes of action. A party seeking to acquire sole title by adverse possession, must establish that his or her occupation of the property is “(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)” (*Estate of Becker v Murtagh*, 19 NY3d 75, 81 [2012]). “However, ‘[w]here, as here, the party claiming adverse possession is a tenant-in-

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<sup>2</sup> DK Foundation's reply asserted that its interest flowed from Plaintiff's aunt Martha Rogers, instead of his uncle James (NYSCEF Doc No. 64, ¶¶ 5-7). However, in the exhibit filed after its reply DK Foundation acknowledged this error (NYSCEF Doc No. 66).

common in exclusive possession, the statutory period required by RPAPL 541 is 20 years of continuous exclusive possession before a cotenant may acquire full title by adverse possession” (*Vassilakos v Vassilakos*, 228 AD3d 701, 703 [2d Dept 2024], quoting *DeRosa v DeRosa*, 58 AD3d 794, 795 [2d Dept 2009]; see also *Myers v Bartholomew*, 91 NY2d 630, 634-635 [1998]).

Since Plaintiff concedes that David remained at the Property until 2015, his claim for adverse possession has not yet ripened. At the very least, there is another 10 years left “of exclusive possession before a cotenant may be said to have adversely possessed a property owned by tenants-in-common” (*Myers*, 91 NY2d at 635; see also *Buckheit v Aiken*, 232 AD3d 842, 843 [2d Dept 2024]). Thus, Plaintiff’s first and second causes of action premised on adverse possession are dismissed against DK Foundation.

The Court next turns to Plaintiff’s fourth cause of action. “To maintain an equitable quiet title claim, a plaintiff must allege actual or constructive possession of the property and the existence of a removable cloud on the property, which is an apparent title, such as in a deed or other instrument, that is actually invalid or inoperative” (*Acocella v Wells Fargo Bank, N.A.*, 139 AD3d 647, 649 [2d Dept 2016]). Here, it is uncontested that BK Foundation’s alleged interest to the Property flows from James Holland, Karen’s grandfather and Plaintiff’s uncle. BK Foundation argues that this cause of action fails since Plaintiff did not claim Beatrice’s possession was hostile and adverse as against James and she did not have exclusive possession. Upon review of the first amended complaint and Plaintiff’s affidavit, the Court finds that Plaintiff sufficiently alleged that he was in possession of the Property and that there exists a removable cloud on the Property in the form of the deed, purporting to convey title to the Property from Karen to DK Foundation (see *Harrison DGR44, LLC v Luiso 44 Harrison, LLC*, 219 AD3d 1413, 1415 [2d Dept 2023]). Not only does the Court find that Plaintiff stated a cause of action, but Plaintiff also *has* a cause of action. The fact that Plaintiff’s aunt Martha and uncle James are listed as residing at the Property in 1950, the date of the Surrogate Court’s petition, is not dispositive. It is undisputed that Beatrice lived at the Property until her death in 2001. Thus, Beatrice had 51 years to establish the requisite 20-year period for exclusive possession. Therefore, a significant dispute exists as to whether James Holland had an interest in the Property such that his descendent Karen could properly transfer her interest to DK Foundation. Thus, the portion of DK Foundation’s motion seeking to dismiss the fourth cause of action is denied.

Accordingly, it is hereby

ORDERED, that Defendant The Brooklyn Foundation LLC's motion to dismiss (Mot. Seq. No. 4) is granted to the extent that the first and second causes of action are dismissed against it.

All other issues not addressed herein are without merit or moot.

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**