

**2832 Linden Blvd. Realty LLC v
New York City Dept. of Fin.**

2025 NY Slip Op 31543(U)

April 28, 2025

Supreme Court, Kings County

Docket Number: Index No. 515466/2020

Judge: Patria Frias-Colón

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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF KINGS Part 20
 HON. PATRIA FRIAS-COLÓN, J.S.C.

-----X
 2832 Linden Boulevard Realty LLC,

PLAINTIFF,

-against-

The New York City Department of Finance, the City
 of New York, Jane Doe and John Doe,

DEFENDANTS.
 -----X

Index # 515466/2020
 Cal. # 1 Mot. Seq. # 4

DECISION/ORDER

Recitation as per CPLR §§ 2219(a) and/or
 3212(b) of papers considered on review of this
 motion:

NYSCEF Doc #s 115-124; 149-154 by Def. City
 NYSCEF Doc #s 130-147; 155-156 by Plaintiff

Upon the foregoing papers and after hearing oral argument on December 4, 2024, and due deliberation thereon, the motion by the City Defendants for summary judgment pursuant to CPLR §§ 3212 and 3103(a) is GRANTED to the extent that the complaint is dismissed as against them. The branch of the motion seeking a protective order is DENIED without prejudice.

BACKGROUND

Plaintiff commenced the instant action by filing a summons and complaint on or about August 21, 2020, seeking to quiet title pursuant to Article 15 of the Real Property Actions and Proceedings Law (“RPAPL”) with respect to the easterly half of an unimproved and unmapped portion of Ruby Street, between Linden Boulevard and Loring Avenue, in Brooklyn, New York.¹

Subsequently, Plaintiff moved for summary judgment, asserting there existed no material issues of fact concerning its entitlement to judgment quieting title.² By Order dated December 21, 2021 (Landicino, J.),³ the Court denied Plaintiff’s motion, finding that Plaintiff failed to establish *prima facie* entitlement to summary judgment, as it had not presented a case or controversy appropriate for adjudication and failed to establish that its chain of title included specific language conveying the subject parcel.⁴ The Appellate Division affirmed said Order by Decision and Order dated January 22, 2025.⁵

Thereafter, on May 23, 2024, the City Defendants moved for summary judgment,⁶ contending Plaintiff’s claims must be dismissed as against it because the City claims no estate, right, title, or interest in the subject property. The City further moved for a protective order, asserting that Plaintiff’s demands to depose former City employees are irrelevant and intended to cause unreasonable

¹ NYSCEF Doc. #s 1 & 2.

² NYSCEF Doc. #s 14-15.

³ NYSCEF Doc. # 52.

⁴ *Id.* at pp. 5-6.

⁵ NYSCEF Doc. # 159.

⁶ NYSCEF Doc. # 115.

annoyance, harassment, and burden.⁷

In opposition, Plaintiff argues that the Department of Finance's refusal to confirm Plaintiff's ownership of the subject parcel constitutes a cloud on title.⁸ Plaintiff points specifically to the Department's denial of Plaintiff's requests to recognize the parcel as a separate tax lot.⁹ Plaintiff relies on *Hanigan v. State*, 213 A.D.2d 80 (3d Dept. 1995),¹⁰ arguing that municipal action or inaction may constitute a cloud on title under appropriate circumstances.¹¹ Plaintiff further argues that the City's request for a protective order should be denied because Plaintiff does not seek to depose any non-parties and therefore, the protective order is not necessary.

In reply, the City argues that *Hanigan* is distinguishable, as that case involved undisputed ownership of the land adjacent to navigable waters where the State could assert a future interest, whereas here Plaintiff's ownership of the subject parcel is disputed and the City asserts no interest, present or future.¹² The City also renews its arguments in support of its request for a protective order, contending that Plaintiff has not demonstrated the relevance of discovery sought from former City employees and that such discovery would cause undue burden and harassment.¹³

DISCUSSION

Standard of Review: Summary Judgment

A party seeking summary judgment must demonstrate, *prima facie*, entitlement to judgment as a matter of law by tendering sufficient evidence in admissible form to eliminate any material issues of fact. See CPLR 3212(b); *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986); *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980); *Korn v Korn*, 135 A.D.3d 1023, 1024 (3d Dept. 2016). The failure to make such a showing mandates denial of the motion regardless of the sufficiency of opposing papers. See *Alvarez*, 68 N.Y.2d at 324; *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985). Upon the movant's satisfaction of this burden, the burden shifts to the opposing party to produce evidence in admissible form sufficient to raise a triable issue of fact. See CPLR § 3212; *Alvarez*, 68 N.Y.2d at 324; *Zuckerman*, 49 N.Y.2d at 562. "[A]verments merely stating conclusions, of fact or of law, are insufficient to defeat summary judgment." *Banco Popular North America v Victory Taxi Management, Inc.*, 1 N.Y.3d 381, 383 (2004) (internal quotations omitted). The evidence must be viewed in the light most favorable to the nonmoving party, according that party the benefit of every favorable inference. See *Fortune v Raritan Building Services Corp.*, 175 A.D.3d 469, 470 (2d Dept. 2019); *Emigrant Bank v Drimmer*, 171 A.D.3d 1132, 1134 (2d Dept. 2019).

⁷ *Id.* at pp. 6-7.

⁸ NYSCEF Doc. # 131 at pp. 10-11.

⁹ *Id.*

¹⁰ In *Hanigan*, plaintiffs brought a quiet title action, in part, against the State of New York to confirm their ownership of a small pond located on their property. *Hanigan*, 213 A.D.2d at 81-82. The State argued that the action should be dismissed against it because it had no property interest in the pond and therefore there was no justiciable controversy. *Id.* at 82-83. The Court found plaintiffs could maintain the quiet title action against the State because the action taken by the State, specifically in refusing to enforce plaintiffs' rights in the pond, was adverse to the interests claimed by the plaintiffs. *Id.* at 83-85.

¹¹ *Id.* at p. 11.

¹² NYSCEF Doc. # 149 at pp. 7-10.

¹³ *Id.* at pp. 12-13.

Defendant City's Summary Judgment Motion

RPAPL § 1501(1) authorizes a person claiming an estate or interest in real property to maintain an action against any person to compel the determination of any adverse claim. See *Hanigan v. State*, 213 A.D.2d 80 (3d Dept. 1995); *Marchand v. New York State Dept. of Env't. Conservation*, 51 A.D.3d 795 (2d Dept. 2008). To prevail in a quiet title action, a plaintiff must establish actual or constructive possession of the property and the existence of a removable cloud on title, defined as an apparent title that is invalid or inoperative. *Zuniga v. BAC Home Loans Servicing, L.P.*, 147 A.D.3d 882 (2d Dept. 2017).

To obtain summary judgment in a quiet title action, the movant must establish *prima facie* either that it holds title or that the opposing party's claim to title is without merit. *Ortiz v. Eldert 294, LLC*, 223 A.D.3d 911 (2d Dept. 2024) (quoting *1259 Lincoln Place Corp. v. Bank of New York*, 159 A.D.3d 1004 [2d Dept. 2018]).

Here, the City has established *prima facie* that it does not assert any right, title, or interest in the subject property. Plaintiff's reliance on *Hanigan* is misplaced, as that case involved plaintiffs who had undisputed ownership of property adjacent to a pond subject to potential future claims of navigability by the State. In contrast, here, Plaintiff's own ownership of the subject parcel is in dispute, and the City has neither asserted nor suggested any present or future claim of ownership.

Moreover, the City's denial of Plaintiff's administrative requests to recognize a separate tax lot does not constitute a cloud on title within the meaning of RPAPL Article 15. Any challenge to such administrative determinations must be brought in a special proceeding under CPLR Article 78, and not via an action to quiet title. See *2832 Linden Blvd. Realty LLC v. Health Ins. Plan of Greater New York, Inc.*, No. 515466/20, 2022 WL 72769 (Sup. Ct. Kings County Jan. 6, 2022); *Wheeler v. Trifera, LLC*, 209 A.D.3d 862 (2d Dept. 2022).

Accordingly, the City's motion for summary judgment is granted, and the complaint is dismissed as against the City.

Defendant City's Request for Protective Order

CPLR § 3103(a) empowers a court to issue protective orders to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice. See *Cascardo v. Cascardo*, 136 A.D.3d 729 (2d Dept. 2016). A party seeking such relief must make a factual showing of the specific harm sought to be avoided. *Id.* "Trial courts are vested with broad discretion to issue appropriate protective orders to limit discovery, and this discretion is to be exercised with the competing interests of the parties and the truth-finding goal of the discovery process in mind." *Id.* at 729-730 (quoting *Brignola v. Pei-Fei Lee, M.D., P.C.*, 192 A.D.2d 1008 [3d Dept. 1993]).

Here, the City has not made the requisite factual showing, as Plaintiff represents that it does not seek to depose non-party witnesses and has not served any deposition notices upon the individuals identified. Accordingly, the City's motion for a protective order is premature and is denied without prejudice to renew should future circumstances warrant.

CONCLUSION

Therefore, for the reasons stated herein, the City's motion for summary judgment is granted and the Plaintiff's complaint is hereby dismissed as to the City Defendants and the City's request for a protective order is denied without prejudice.

This constitutes the Decision and Order of the Court.

Date: April 28, 2025
Brooklyn, New York



Hon. Patria Frias-Colón, J.S.C.