Matter of City of New York (Maple St. Passive Recreation Space & Communtiy Garden)

2025 NY Slip Op 33470(U)

September 15, 2025

Supreme Court, Kings County

Docket Number: Index No. 521398/2018

Judge: Wayne Saitta

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 89 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 15th day of September 2025.

P R E S E N T:

HON. WAYNE SAITTA, Justice.

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In the Matter of the Application of the CITY OF NEW YORK, relative to acquiring title in fee simple absolute to VERIFIED PETITION certain real Property known as Kings County Tax Block 5030, Lot 72, needed for

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MAPLE STREET PASSIVE RECREATION SPACE AND COMMUNITY GARDEN

DECISION & ORDER

located in the area generally bounded by Lincoln Road on the north; Rogers Avenue on the east; Maple Street on the south; and Nostrand Avenue on the west, in the Borough of Brooklyn, City and State of New York.

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The following papers read on this motion:

	NYSCEF Doc Nos
Notice of Motion/Order to Show Cause/ Petition/Affidavits (Affirmations) and Exhibits	63-72
Cross-motions Affidavits (Affirmations) and Exhibits	
Answering Affidavit (Affirmation)	73,75
Reply Affidavit (Affirmation)	76-79
Supplemental Affidavit (Affirmation)	80, 132,133

In this Eminent Domain Proceeding, Housing Urban Development LLC moves for release of the advance payment that the CITY OF NEW YORK ("the CITY") had deposited with the Court.

On December 14, 2018, the CITY acquired title to 237 Maple Street, Brooklyn, New York (the "Property"). Prior to vesting, the Property had been owned by Germaine Kirton, who died intestate on July 20, 1990.

In 2003, a deed was recorded purporting to convey the Property to Brooklyn LLC for consideration of $5,000. The grantors listed on this deed were Alexander Kirton and Alan Kirton who were identified as the "sole survivors for the Estate of Oscar and Germaine Kirton Deceased, Intestate". Brooklyn LLC subsequently purported to convey the Property to movant Housing Urban Development LLC.

Housing Urban Development LLC is a private company and is not related to the United States Department of Housing and Urban Development.

In 2014, Housing Urban Development LLC filed a Quiet Title Action against Germaine Kirton. The Estate of Germaine Kirton was subsequently substituted as a defendant in that action. On December 8, 2020, the Surrogate's Court granted limited Letters of Administration to Brian Morris, a nephew of the decedent, who was made a defendant in the Quiet Title Action.

Both Housing Urban Development LLC and Brian Morris, as administrator of the Estate of Germaine Kirton, subsequently filed claims in this Eminent Domain Proceeding asserting ownership of the Property.

As the title to the Property was in dispute, the CITY obtained an order to deposit the advance payment in Court.

In March of 2025, Housing Urban Development LLC and Morris entered into a stipulation settling the Quiet Title Action. The stipulation was not so ordered by the court and there was no judicial determination of title.

Housing Urban Development LLC asserts that the advance payment should be released and distributed based on the stipulation of settlement.

The CITY opposes the motion and argues (1) that the stipulation of settlement did not determine who was the owner(s) of the Property, (2) that several heirs of Germaine Kirton were not made parties to the Quiet Title Action, (3) that Property did not pass through the Estate of Germaine Kirton and (4) that Brian Morris did not have authority to enter into the stipulation on behalf of the Estate.

In New York, when a person dies intestate, any real Property they owned at the time of death automatically vests directly to their distributes, as tenants in common (*see LCD Holding Corp v Powell-Allen* 203 AD3d 811 [2d Dept 2022]; *U.S. Bank Trust, N.A. v Gedeon*, 181 AD3d 745 [2d Dept 2020]; *Matter of Blango*, 166 AD3d 767 [2d Dept 2018]).

In an Order dated November 4, 2015, the judge in the Quiet Title Action appointed a guardian ad litem to represent the interests of the missing and unknown heirs of Germaine Kirton and directed the guardian to make diligent and exhaustive efforts to ascertain the existence of any heirs of Germaine Kirton, as well as the existence of Alexander Kirton and Alan Kirton.

Altanese Cato, who was retained as a genealogical expert in the Quiet Title Action, submitted an affidavit which indicated that there are several distributees of Germaine Kirton entitled to a partial estate in the Property who were not named parties in the Quiet Title Action. Further, Cato was unable to locate or confirm the existence of Alexander Kirton or Alan Kirton.

In March of 2025, Housing Urban Development LLC and Morris entered into a stipulation settling the Quiet Title Action. The stipulation was not so ordered by the court and there was no judicial determination of title.

The Court rejects Housing Urban Development LLC's argument, that because it and Morris are the only two claimants in this proceeding, their stipulation settling the Quiet Title Action should be sufficient to clear title in this action.

The most serious problem is that none of the distributees identified by Cato, other than Morris, were a party to the stipulation so they are not bound by it.

Morris, as administrator of the Estate, had no authority to divest the distributees of any of their interests in the Property. Where a decedent dies intestate, any real Property they owned passes directly to the distributees and is not part of the administrable estate (*see LCD Holding Corp v Powell-Allen*, 203 AD3d 811 [2d Dept 2022]; *Matter of Blango*, 166 AD3d 767 [2d Dept 2018]; *Wells Fargo Bank NA v Miglio*, 197 AD3d 776 [2d Dept 2021]).

In *LCD Holding Corp v Powell-Allen*, the Second Department reversed an order that dismissed a partition action with leave to commence a proceeding in Surrogates Court. The court held that because the decedent died intestate the distributees became owners of the property as of the date of death without the need for action by the administrator, and that plaintiff, as a distribute, had the right to maintain a partition action because the property was not part of the estate (*Id* at 812-813).

In *Matter of Blango*, the Second Department held that the Surrogates Court should not have granted a petition of the executor of an estate of an intestate decedent to set aside deeds executed by certain of the decedent's distributees because title automatically vested in the distributees (*Id* at 768).

In *Wells Fargo Bank NA v Miglio,* the Second Department held that, where a mortgagor dies intestate, a foreclosure action may be commenced directly against the distributees rather than the estate, provided no deficiency judgment is sought against the mortgagor, because the property automatically vested in the distributees (*Id* at 777).

A second problem is that the guardian ad litem appointed in that case to protect the interests of the distributees was not a party to the stipulation.

Further, at the time he signed the stipulation, Morris did not have the authority to enter into it. The temporary letter of administration restrained Morris from collecting and administering more than $499,999.99 in assets belonging to the decedent without further order from this Court. The amount of the advance payment is $ 2,419,655.33.

Lastly, the report of Cato, found no evidence that Alexander Kirton or Alan Kirton, who executed the deed claiming to the sole heirs of Germaine Kirton, are in fact heirs of Germaine Kirton, raising significant questions of fact about the validity of the 2003 deed to Brooklyn LLC.

Given these defects, the Court is not bound by the stipulation. In an eminent domain proceeding, the award belongs to the title owner at the time of vesting, and a claimant must establish title in order to recover.

Where there is a dispute as to title, Eminent Domain Procedure Law (EDPL) §505 provides that the court in the eminent domain proceeding has jurisdiction to determine all questions relating to title.

As there had not been a determination as to who their heirs of Germaine Kirton are, the Court adjourned the motion to release the advance payment pending a framed issue hearing pursuant to the EDPL §505 to determine who had title to the Property at the time of vesting. That hearing was held on September 8, 2025.

Prior to commencement of the hearing, the Court precluded movant Housing Urban Development LLC from offering evidence supporting or asserting a claim that it was the owner of the Property by adverse possession.

Ten days before trial, Housing Urban Development LLC submitted subpoenas seeking documents from the New York City Buildings Department and Department of Finance. Corporation Counsel and Morris opposed the subpoenas on the grounds of timeliness and relevance.

At a conference on the proposed subpoenas on September 3, 2025, Housing Urban Development LLC stated that the documents sought were relevant to a claim of adverse possession.

Housing Urban Development LLC had not raised a claim of adverse possession in this proceeding. Its motion papers asserted that Housing Urban Development LLC was entitled to the advance payment based on the stipulation in the Quiet Title Action and on the deed from Alexander and Alan Kirton.

The Court held that as Housing Urban Development LLC had not asserted a claim of adverse possession in this proceeding, it could not assert that new theory on the eve of the hearing.

At the hearing, Morris called three of the distributees of Germaine Kirton: Hazel Wilson Richardson, Suzette Petal Kissoon, and Brian Morris.

Morris also called Altanese Cato, a genealogist through her testimony birth, death and marriage certificates of the distributees were put into evidence.

Hazel Wilson Richardson, Suzette Petal Kissoon and Cato all testified credibly that the Property had been owned by Oscar Kirton and Germaine Kirton as husband and wife,

that Oscar Kirton pre-deceased Germaine Kirton, and Germaine Kirton was the sole owner of the Property when she died on July 20, 1990.

They further testified that Germaine Kirton died intestate, leaving no children, natural or adopted, and that she had five sisters: Flossie Ann Euphrosine Wilson (née Knight, Julia Ena Suber (née Knight), Amy Excille Ford (née Knight), Leota Elizabeth Elliot (née Knight), and Clarise Knight.

They further testified that Julia Ena Suber, Leota Elizabeth, and Clarise died leaving no children, natural or adopted, that Amy Excille Ford predeceased Germaine and left one child, Brian Morris, and that Flossie Anne Wilson predeceased Germaine and left three children: Godfrey Wilson, Nest Wilson, and Keith Wilson.

They further testified that Godfrey Wilson post deceased Germaine and left three children: Collin Wilson, Hazel Wilson Richardson, and Carol Wilson Paterson,

They further testified that Nest Wilson post deceased Germaine and left three children: Kathleen Melody Kissoon Randall, Suzette Petal Kissoon Driver, and Nobel Kissoon.

They further testified that Keith Wilson post deceased Germaine and left six children: Margret Eleanor Wilson, David Wilson, Claire Wilson Wolcott, Peter Wilson, Darrel Wilson, and Dane Wilson.

Cato testified that she conducted an investigation to determine the heirs of Germaine Kirton. She determined that the only heirs of Germaine Kirton were Hazel Wilson Richardson, Carol Wilson Patterson, Kathleen Melody Kissoon Randall, Suzette Petal Kissoon Driver, Noble Kissoon, Margaret Eleanor Wilson Horsham, David Wilson, Claire Wilson Wolcott, Peter Wilson, Darrel Wilson, Dane Wilson and Brian Morris.

Cato based her conclusions on the death certificate of Germaine Kirton, the marriage certificate of Germaine and Oscar Kirton, the death certificate of Oscar Kirton, the birth certificate of Flossie Knight, the death certificate of Flossie Knight, the death certificate of Julia Suber, the Petition for Letters of Administration for Julia Suber, the death certificate of Amy Ford, the death certificate of Leotta Elliott, the death certificate of Godfrey Wilson, the birth certificate of Nest Wilson, the death certificate of Nest Kissoon, an obituary of Sylvan Kissoon, the certificate of death of Keith Wilson, an obituary of Keith Wilson, the birth certificate of Brian Morris, the birth certificate of Hazel Wilson, the birth certificate of Suzette Petal Kissoon, the marriage certificate of Suzette Kissoon and Peter Driver, the marriage certificate of Amy Morris and Edward Ford, the birth certificate of Keith Wilson, the marriage license of Leota Knight and Leslie Elliott, and the marriage certificate of Hazel Wilson and Alexander Richardson.

These documents were all put into evidence and corroborated the testimony of Hazel Wilson Richardson, Suzette Petal Kissoon, and Brian Morris.

Cato further testified that she conducted a search as to the pedigree of Alexander Kirton and Alan Kirton and found no evidence that they were children, natural or adopted, of Germaine Kirton.

Housing Urban Development LLC called no witnesses. The only evidence offered by Housing Urban Development LLC were two notes purportedly by Alexander Kirton and Alan Kirton that were neither sworn nor affirmed. One of the notes stated that they sold they received $5,000 for the sale of the Property. The other note states that they are the biological sons of Germaine Kirton and William Patterson, who was not married to Germaine. This note also states that they were later adopted by Oscar Kirton. The note does not state their date or place of birth or date of adoption.

Housing Urban Development LLC offered no birth certificates or adoption records of either Alexander Kirton or Alan Kirton to demonstrate their parentage. Housing Urban Development LLC put in no evidence to corroborate the notes of Alexander Kirton or Alan Kirton.

Based on the lack of any details in the notes, such as dates and place of birth that would allow the alleged relation to Germaine to be verified, and the fact the Housing Urban Development LLC did not produce any birth certificates or adoption records to corroborate the notes, the court finds the notes unreliable and unworthy of belief.

Based on the credible testimony of the witnesses called, the Court finds:

That the Property had been owned by Oscar Kirton and Germaine Kirton as husband and wife;

That Oscar Kirton pre-deceased Germaine Kirton and Germaine Kirton was the sole owner of the Property when she died on July 20, 1990;

That Germaine Kirton died intestate and left no children natural or adopted;

That Germain Kirton had five sisters: Flossie Ann Euphrosine Wilson née Knight, Julia Ena Suber née Knight, Amy Excille Ford née Knight, Leota Elizabeth Elliot née Knight, and Clarise Knight;

That Julia Ena Suber, Leota Elizabeth, and Clarise died leaving no children natural or adopted;

That Amy Excille Ford predeceased Germaine and left one child, Brian Morris;

That Flossie Anne Wilson predeceased Germaine and left three children: Godfrey Wilson, Nest Wilson, and Keith Wilson;

That Godfrey Wilson post deceased Germaine and left three children: Collin Wilson, Hazel Wilson Richardson, and Carol Wilson Patterson;

That Nest Wilson post deceased Germaine and left three children: Kathleen Melody Kissoon Randall, Suzette Petal Kissoon Driver, and Nobel Kissoon;

That Keith Wilson post deceased Germaine and left six children: Margaret Eleanor Wilson Horsham, David Wilson, Claire Wilson Wolcott, Peter Wilson, Darrel Wilson, and Dane Wilson;

That neither Alexander Kirton, nor Alan Kirton, are children or heirs of Germaine Kirton;

That neither Alexander Kirton nor Alan Kirton had any interest or estate in the Property;

That the deed dated January 15, 2003, purportedly conveying the Property from Alexander Kirton and Alan Kirton to Brooklyn LLC is void ab initio and a nullity;

That Brooklyn LLC never obtained an interest or estate in the Property;

That the deed dated April 6, 2011, purportedly conveying the Property from Brooklyn LLC to Housing Urban Development LLC, is a nullity;

That Housing Urban Development LLC does not have, and never obtained, any interest or estate in the Property, and therefore is not entitled to any part of the condemnation award;

That, at the time of Germaine's death, her only distributees were Geofrey Wilson, Nest Wilson, Keith Wilson, and Brian Wilson, each of whom were vested in a ¼ interest in the Property as tenants in common;

That at the time the CITY acquired title, Geofrey Wilson, Nest Wilson, and Keith Wilson were deceased;

That no evidence was presented whether Geofrey Wilson, Nest Wilson, or Keith Wilson died intestate;

That the ¼ interests of Geofrey Wilson, Nest Wilson, and Keith Wilson in the Property belong to their Estates, if they had a will, or to their aforementioned children, if they died intestate.

WHEREFORE, it is ORDERED that the motion Housing Urban Development LLC for release of the advance payment authorized by the CITY and deposited in the Court, is Denied.

ENTER:

JSC

HON. WAYNE SAITTA
J.S.C.