

Richardson Condominium v City of New York
2026 NY Slip Op 31552(U)
April 10, 2026
Supreme Court, New York County
Docket Number: Index No. 158838/2024
Judge: Carol Sharpe
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. CAROL SHARPE PART 52M

Justice

-----X INDEX NO. 158838/2024

RICHARDSON CONDOMINIUM, MOTION DATE 02/03/2025

Plaintiff, MOTION SEQ. NO. 002

- v -

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF BUILDINGS **DECISION + ORDER ON
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32

were read on this motion to/for DISMISSAL.

Defendants The City of New York and the New York City Department of Buildings (“DOB”) (collectively “The City”), filed a motion to dismiss plaintiff’s action pursuant to CPLR 3211(a)(7), and CPLR §7803 and 3211(a)(2). Plaintiff filed opposition and The City filed a reply. The motion is granted.

A summons and complaint was filed by plaintiff on September 25, 2024, seeking a declaratory judgment under CPLR §3001 that penalties (currently totaling \$121,000.00) related to plaintiff’s failure to provide a required façade report for the building located at 214 Richardson Street, Brooklyn, New York, under The City’s Façade Inspection Safety Program (“FISP”), should be waived and considered an uncollectible debt because The City failed to bring an action to collect such penalties within the three-year statute of limitations specified under CPLR §214 (2). The City filed a motion to dismiss the action on January 6, 2025 (“Motion Seq. #1” (NYSCEF Doc. #8)), that was later withdrawn as plaintiff filed an amended complaint on January 13, 2025 (NYSCEF Doc. #14). Plaintiff’s amended complaint added a claim that, pursuant to Real Property Actions and Proceedings

Law (“RPAPL”) § 1501(1), “the condominium project located at 214 Richardson Street, Brooklyn, NY is free and clear of any DOB civil penalties issued pursuant to FISP Violation No. 073118FISPNRF01371” (NYSCEF Doc. #14).

The City filed the instant motion on February 3, 2025, seeking to dismiss plaintiff’s amended complaint on the grounds that pursuant to CPLR 3211(a)(7), plaintiff has failed to state a cause of action for declaratory relief as the FISP violation penalties continue to accrue because plaintiff has yet to deliver the required façade report and no action has been commenced by The City to which plaintiff can make the affirmative defense of the action being time-barred; that plaintiff is not entitled to relief under RPAPL §1501(1) as the FISP violation is not a “removable cloud” on the title, allowing The City to obtain some ownership interest in the property that hinders plaintiff’s rights; and that pursuant to CPLR 3211(a)(2) the Court does not have subject matter jurisdiction as plaintiff failed to exhaust all of its remedies before filing the action, and the action should have been brought as an Article 78 proceeding pursuant to CPLR §7803.

The City established that New York City Charter § 643 empowers the DOB to enforce the Building Code of the City of New York, the Zoning Resolution of the City of New York, and other laws rules and regulations governing the construction and use of structures in New York City. Title 28 of the Admin. Code of the City of New York set forth DOB’s method of enforcement and inspection of the exterior walls and the filing of reports. DOB established in Title 1 Rules of the City of New York (“RCNY”) § 103-04, certain rules related to the inspection of exterior walls and appurtenances, along with the civil penalties for failure to file the reports and the procedures to challenge to the imposition of penalties. (NYSCEF Doc. #21, pg. 2-5). It is undisputed that plaintiff did not challenge the penalties or file the required reports. It is also undisputed that The City did not commence an action to enforce the civil penalties.

Plaintiff opposes the motion on the grounds that the FISP violation penalties that are more than three years old should be considered uncollected debt; that such civil penalties are considered a “removable cloud” under the RPAPL and that The City provided no option for plaintiff to make a request to waive the penalties; and that The City mistakes the nature of the proceeding in that no request is being made of the administrative agency warranting an Article 78 proceeding as plaintiff only seeks clarification as to whether the penalties are still due and payable to The City.

Pleadings which are the subject of a CPLR 3211 motion to dismiss are liberally construed, the court is to accept the facts as alleged in the complaint to be true, accord plaintiff “the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory.” (*Leon v Martinez*, 84 NY2d 83, 87-88, 614 NYS2d 972, 638 NE2d 511 [1994]). “...[T]he question is whether plaintiffs have a cause of action, not whether they have properly labeled or artfully stated one...” (*Chanko v Am. Broad. Cos. Inc.*, 27 NY3d 46, 52, 29 NYS3d 879, 49 NE3d 1171 [2016]; *Rovello v Orofino Realty Co.*, 40 NY2d 633, 635, 389 NYS2d 314, 357 NE2d 970 [1976]). “Whether a plaintiff can ultimately establish its allegations is not part of the calculus...” (*EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 19, 832 NE2d 26, 31, 799 NYS2d 170, 175 [2005]), and “a motion to dismiss pursuant to CPLR 3211 (a)(7) must be denied “unless it has been shown that a material fact as claimed by the pleader to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it” (*Guggenheimer v Ginzburg*, 43 NY2d at 275)” (*Sokol v Leader*, 74 AD3d 1180, 1182, 904 NYS2d 153, 156 [2nd Dept 2010]).

CPLR § 3001 which governs declaratory judgment provides in pertinent part that “[t]he supreme court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed.” “Before an action is even commenced, any declaration as to the applicability of a period of limitations is purely advisory, since it can have no immediate effect and may never resolve

anything” (*Employers' Fire Ins. Co. v Klemons*, 229 AD2d 513, 514, 645 NYS2d 849 [1996]; *Prand Corp. v Gardiner*, 176 AD3d 1127, 1129, 111 NYS3d 393, 395 [2nd Dept 2019] [Statute of limitation is an affirmative defense to an action which may be raised in a responsive pleading or motion before filing the responsive pleading]). “A declaratory judgment action thus “requires an actual controversy between genuine disputants with a stake in the outcome,” and may not be used as “a vehicle for an advisory opinion” (Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C3001:3)” (*Long Is. Light. Co. v Allianz Underwriters Ins. Co.*, 35 AD3d 253, 826 NYS2d 55 [1st Dept 2006]). “Courts do not make mere hypothetical adjudications, where there is no presently justiciable controversy before the court, and where the existence of a ‘controversy’ is dependent upon the happening of future events.” (*Prashker v. United States Guar. Co.*, 1 N Y 2d 584, 592). “The controversy must be present, real, definite, and substantial, and must be sufficiently matured so as to be ripe for judicial decision and final determination [internal citation omitted].” (*Park Ave. Clinical Hosp. v Kramer*, 26 AD2d 613, 613-614, 271 NYS2d 747 [4th Dept 1966]), *affd* 19 NY2d 958, 228 NE2d 411, 281 NYS2d 359 [1967]); (*Waterways Dev. Corp. v Lavalle*, 28 AD3d 539, 540, 813 NYS2d 485 [2d Dept 2006]). Here, The City has not commenced an action for the penalties against plaintiff, thus the request for a declaratory judgment based on the statute of limitations would only be advisory in nature as there is no controversy between the parties. As such, plaintiff has failed to state a cause of action and failed to establish that the Court has jurisdiction over the subject matter.

The City seeks dismissal on the grounds that plaintiff failed to exhaust its administrative remedies. The general rule is that “one who objects to the act of an administrative agency must exhaust available administrative remedies before being permitted to litigate in a court of law” (*Watergate II Apts. v Buffalo Sewer Auth.*, 46 NY2d 52, 57, 412 NYS2d 821 [1978]). Exceptions to that general rule include where the agency’s action is beyond its power, the action is unconstitutional, and the remedy would be futile or would result in irreparable damage (*id.*; *Town of Oyster Bay v*

Kirkland, 19 NY3d 1035, 954 NYS2d 769 [2012]). Title 1 RCNY § 103-04(d)(4) contains a process to contest the civil fines imposed. Plaintiff has not submitted any evidence to support an exception to the general rule of exhausting the administrative remedies before commencing an action in court. In fact, plaintiff does not contest whether it should have brought an Article 78 proceeding but argues instead that it is not disputing the validity of the FISP violation or the penalties assessed and is only seeking clarification as to whether the penalties are still owing and payable (NYSCEF Doc. #23, pg. 2).

It is well established that RPAPL §1501 governs quiet title actions when there are issues regarding adverse claims to ownership interests in real property (*see 630 6A LLC v U.A. Bank Trust N.A.*, 234 AD3d 566, 227 NYS3d 247 [1st Dept 2025]). RPAPL §1501(1) which governs who may maintain an action, states in pertinent part that “[w]here a person claims an estate or interest in real property;...or where a municipal corporation has purchased an estate or interest in real property at a sale conducted by it for unpaid taxes against the property and the time within which redemption from such sale may be made has expired and such municipal corporation claims it; such person or municipal corporation...may maintain an action against any other person...to compel the determination of any claim adverse to that of the plaintiff which the defendant makes, or which it appears from the public records, or from the allegations of the complaint, the defendant might make....” “To maintain a cause of action to quiet title, 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 to the property, such as in a deed or other instrument, that is actually invalid or inoperative [internal citation omitted]” (*Zuniga v BAC Home Loans Servicing, L.P.*, 147 AD3d 882, 883, 47 NYS2d 374 [2d Dept 2017]; *Davis v Augoustopoulos*, 198 AD3d 528, 529, 156 NYS3d 168, 170 [1st Dept 2021]).

Plaintiff fails to show that the FISP violation penalties qualify as a “cloud” on the title of the property. The City has not sought a judgment or lien against the property, sought to purchase an estate or interest in the property, or taken any other steps to affect the title. Plaintiff’s complaint is that the penalties are viewable when a search of plaintiff’s address is conducted. The penalties being viewable alone do not constitute a cloud on the title. The City has established its entitlement to dismissal of the action as there is no justiciable controversy warranting a declaratory judgment and RPAPL 1501(1) is not applicable under the facts of this case. Accordingly, it is hereby

ORDERED, that The City’s motion to dismiss is granted in its entirety; it is further

ORDERED, that this action is discontinued in its entirety; it is further

ORDERED, that The City, within twenty (20) days of the date of this Order, shall serve this Order with Notice of Entry on all parties and the Clerk of the General Clerk’s Office, and file proof of service within (10) days from effectuating said service; and it is further

ORDERED, that service of this Order upon the Clerk of the General Clerk’s Office shall be made in hard-copy format if this action is a hard-copy matter or if it is an e-file case, shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-filing” page on the court’s website).

This constitutes the Decision and Order of the Court.

ENTER:

April 10, 2026
DATE



HON. CAROL SHARPE, J.S.C.
HON. CAROL SHARPE
J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED		
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

APPLICATION:

CHECK IF APPROPRIATE:

<input type="checkbox"/>	NON-FINAL DISPOSITION		
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE