

## Appellate Division Affirms Summary Judgment Order Dismissing Neighbor's Suit for a Right-of-Way Over Carter Ledyard Client's Development Site

January 08, 2021

On January 7, 2021, the New York Appellate Division, First Department, affirmed a 2020 lower court order in favor of Carter Ledyard client 42 West 18th Street Realty Corp.'s (Realty Corp.), which granted its motion for summary judgment dismissing a neighboring condominium's claim for a right-of-way through Realty Corp.'s vacant lot. The lot had been approved by the Landmarks Preservation Commission and City Planning for development into a 17-story condominium, but construction was delayed due to the plaintiff's filing of a *lis pendens* at the start of the litigation.

The Appellate Division ruled that "Plaintiff failed to establish its entitlement to a prescriptive easement by clear and convincing evidence, as the presumption of hostility does not arise where, as here, the use is not exclusive." A pre-litigation letter sent by Carter Ledyard to the condominium not only demonstrated that Realty Corp. had given "broad permissive use of the lot by the public and by plaintiff," but was also a critical piece of evidence that stopped the accrual of the condominium's claim. As the Appellate Division found, "[b]ecause the letter was sent before the 10-year period required for establishing a prescriptive easement accrued, and plaintiff had no evidence as to its predecessor-in-interest's earlier use, plaintiff failed to present evidence of the requisite hostility necessary to establish its entitlement to a prescriptive easement."

The Appellate Division also affirmed that the lower court properly vacated the *lis pendens* and awarded Realty Corp. its costs and attorneys' fees in defending the action.

Carter Ledyard attorneys Alan S. Lewis and Jacob H. Nemon represented Realty Corp. on the appeal.

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