

Carter Ledyard Wins Summary Judgment Dismissing Neighbor's Claim for Right-Of-Way Over Development Site

January 14, 2020

On January 6, 2020, New York County Supreme Court Justice Barbara Jaffe granted CLM client 42 West 18th Street Realty Corp.'s (Realty Corp.) 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 court found no evidence that either the plaintiff (a condominium formed in 2007) or its predecessors had used the lot in a manner that was hostile to Realty Corp.'s rights for a period of 10 years, the minimum to establish a prescriptive easement claim. Carter Ledyard's pre-litigation letter granting the plaintiff permission to use the lot until the beginning of construction, together with members of the public who used the lot as a shortcut between city streets, stopped the clock on any claim the plaintiff may have had. Additionally, the court found that the plaintiff could not meet its burden of showing that its use of the lot was exclusive or separate since the lot was open to the general public.

Besides dismissing the lawsuit, the court cancelled the lis pendens and granted Realty Corp. an award of any costs and expenses it incurred as a result of the lis pendens, including its attorneys' fees in defending the action. A court referee will hold a hearing concerning the amounts of attorneys' fees and other costs to be awarded to Realty Corp.

Carter Ledyard attorneys Alan S. Lewis and Jacob H. Nemon represented Realty Corp. in the litigation.

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