

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

U & Me Homes, LLC v. County of Suffolk

2026 NY Slip Op 03331 · No. 2021-06018, 2021-06019 · Decided May 27, 2026

SUMMARY

The Appellate Division, Second Department reversed a judgment declaring a restrictive covenant void and of no legal effect. It held that the defendants established that the covenant was intended to run with the land, was not extinguished by merger following a tax deed and redemption, and was authorized as a condition of sale, while issues under RPAPL 1951 remained for further proceedings. The matter was remitted to the Supreme Court, Suffolk County, for appropriate declarations and further proceedings.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Betsy Barros, J.P.; Paul Wooten, J.; Janice A. Taylor, J.; James P. McCormack, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	May 27, 2026
DOCKET	2021-06018, 2021-06019
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The County and Town defendants separately appealed from an order granting the plaintiff summary judgment on its fourth cause of action and denying the defendants' cross-motions for summary judgment, and from a judgment declaring the restrictive covenant void and without legal effect.
STANDARD OF REVIEW	Summary judgment requires the moving party to establish prima facie entitlement to judgment as a matter of law; if that showing is made, the opposing party must raise a triable issue of fact. The appellate court reviewed the judgment on the law.
PRECEDENTIAL VALUE	Published New York Appellate Division decision

PARTIES

County of Suffolk, Clerk of the County of Suffolk, Town of Southampton, Town of Southampton Planning Board v. U & Me Homes, LLC

TOPICS

covenants and restrictions

real estate

appellate procedure

declaratory judgment

standard of review

PRACTICE AREAS

real estate

property law

municipal law

appellate procedure

remedies

QUESTIONS PRESENTED

1. Whether the restrictive covenant was intended to run with the land and therefore could be enforced against a subsequent purchaser.
2. Whether the restrictive covenant was extinguished by merger when Suffolk County acquired the property through a tax deed and Route 58 later redeemed it.
3. Whether Suffolk County was authorized to include the restrictive covenant as a condition of the public auction sale under the Code of Suffolk County.
4. Whether the defendants were entitled to summary judgment defeating the plaintiff's claim under RPAPL 1951 that the restrictive covenant was unenforceable because it provided no actual and substantial benefit and should be extinguished upon a balancing of the equities.
5. Whether the appeals from portions of the interlocutory order were properly before the Appellate Division after entry of the final judgment.

HOLDINGS

1. The appeals from the order were dismissed because the right of direct appeal terminated upon entry of the judgment, and no appeal as of right lay from the portion of the order that sua sponte made a declaration without deciding a motion made on notice. The issues presented by those portions of the order were nevertheless reviewable on the appeals from the judgment.
2. The restrictive covenant was intended to run with the land and was enforceable against subsequent purchasers because the surrounding circumstances established the parties' intent, and the plaintiff failed to raise a triable issue of fact.
3. The restrictive covenant was not extinguished by merger when Suffolk County acquired the property by tax deed and Route 58 later redeemed it.
4. The defendants established prima facie that Suffolk County was authorized to include the restrictive covenant as a condition of the public auction sale, and the plaintiff failed to raise a triable issue of fact.
5. The defendants were not entitled to summary judgment on the plaintiff's RPAPL 1951 claim because they failed to establish prima facie that the plaintiff's alleged hardships did not outweigh the restrictive covenant's benefit to the party seeking enforcement.

KEY QUOTATIONS

*“"[A] restrictive covenant will run with the land and will be enforceable against a subsequent purchaser of the land when the following requirements are satisfied: (1) it must appear that grantor and grantee intended that the covenant should run with the land; (2) it must appear that the covenant is one touching or concerning the land with which it runs; [and] (3) it must appear that there is privity of estate between the promisee or party claiming the benefit of the covenant and the right to enforce it, and the promisor or party who rests under the burden of the covenant"” ([*2])*

*“"In order to state a cause of action pursuant to RPAPL 1951, a plaintiff seeking a declaration that a restrictive covenant is unenforceable must allege that, upon a balancing of the equities, the restrictive covenant is of no actual and substantial benefit to the party seeking to enforce it"” ([*2])*

FACTUAL BACKGROUND

Suffolk County acquired property in Southampton located within protected groundwater and aquifer districts and later sold it at public auction subject to a deed restriction eliminating development rights except for a possible 50-foot extension of Laurel Valley Drive. The property passed through several owners, including Route 58, which briefly lost and then redeemed the property after a tax deed, before ultimately being conveyed to U & Me Homes. U & Me Homes sought to build a one-family home but was denied a building permit because of the restrictive covenant.

PROCEDURAL HISTORY

U & Me Homes commenced a declaratory judgment action challenging a restrictive covenant in a deed that limited development rights on property in Southampton. Supreme Court granted the plaintiff summary judgment on the claim that the covenant did not run with the land, denied the defendants' cross-motions concerning the first through fourth causes of action, and entered judgment declaring the covenant void. The Appellate Division dismissed the appeals from the order, reversed the judgment, granted the defendants summary judgment on the second, third, and fourth causes of action, left the first cause of action unresolved, and remitted for further proceedings and appropriate declarations.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Proceed on the second amended complaint with respect to the surviving causes of action and thereafter enter a judgment making appropriate declarations consistent with the Appellate Division's determination.

CASES CITED

- Matter of Aho, 39 NY2d 241, 248
- Housing Opportunity Multi-Family Efforts ("HOME") v Village of Airmont, N.Y., 230 AD3d 1120, 1122
- Orange & Rockland Utils. v Philwold Estates, 70 AD2d 338, 343, mod 52 NY2d 253

- Brody v St. Onge, 167 AD2d 671, 673
- Perry-Gething Found. v Stinson, 218 AD2d 791, 792
- Castle Assoc. v Schwartz, 63 AD2d 481, 486
- Behar v Wiblishauser, 99 AD3d 838, 841
- Neri's Land Improvement, LLC v J.J. Cassone Bakery, Inc., 65 AD3d 1312, 1314
- Chambers v Old Stone Hill Rd. Assoc., 1 NY3d 424, 434
- Ramaquois Real Estate Co., LLC v Town of Haverstraw, 219 AD3d 1538, 1540
- Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853
- Lanza v Wagner, 11 NY2d 317, 334

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