

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

Brownyard v County of Suffolk

Brownyard v. County of Suffolk, 2025 NY Slip Op 07274 (N.Y. Ct. App. 2025) · No. 2022-08939; 2023-02125 ·  
Decided December 24, 2025

SUMMARY

The Appellate Division, Second Department, reversed an order granting the plaintiffs' motion for a protective order and limiting discovery to certain original plaintiffs. The court held that, because individual standing was a threshold issue and each plaintiff had to establish personal monetary damages, the defendants demonstrated that the requested discovery was material and necessary.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                 |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of New York, Appellate Division, Second Judicial Department                                                                                                                                                                          |
| WRITING FOR THE COURT | Mark C. Dillon, J.P.; Valerie Brathwaite Nelson, J.; Helen Voutsinas, J.; Phillip Hom, J.                                                                                                                                                                       |
| JURISDICTION          | Supreme Court of the State of New York, Appellate Division, Second Judicial Department                                                                                                                                                                          |
| DECIDED               | December 24, 2025                                                                                                                                                                                                                                               |
| DOCKET                | 2022-08939; 2023-02125                                                                                                                                                                                                                                          |
| DISPOSITION           | reversed                                                                                                                                                                                                                                                        |
| PROCEDURAL POSTURE    | The defendants appealed from an order granting the plaintiffs' motion for a protective order striking specified discovery requests and limiting discovery to three original plaintiffs, and from an order that, upon reargument, adhered to that determination. |
| STANDARD OF REVIEW    | The Appellate Division reviewed the Supreme Court's supervision of discovery and issuance of a protective order for an improvident exercise of discretion, while also reviewing the applicable discovery rules as matters of law.                               |
| PRECEDENTIAL VALUE    | Published opinion                                                                                                                                                                                                                                               |
| PARTIES               | County of Suffolk, et al. v. Bruce Brownyard, et al.                                                                                                                                                                                                            |

TOPICS

discovery dispute

standing

civil procedure

appellate procedure

standard of review

## PRACTICE AREAS

civil procedure

discovery

standing

municipal law

tax litigation

## QUESTIONS PRESENTED

1. Whether the Supreme Court improvidently exercised its discretion by striking the defendants' discovery requests and limiting discovery to the three original plaintiffs.
2. Whether the requested discovery was material and necessary to the defense, including the defendants' standing defense.
3. Whether the appeal from the order entered upon reargument was academic after reversal of the underlying order.

## HOLDINGS

1. The Supreme Court improvidently exercised its discretion by striking requests for production numbers 2, 3, 4, 6, 7, 8, 10, 11, 12, and 13 and limiting discovery to the original plaintiffs; the protective-order motion therefore had to be denied.
2. The appeal from the February 6, 2023 order was dismissed as academic because reversal of the October 24, 2022 order eliminated the operative underlying determination.

## KEY QUOTATIONS

*“Pursuant to CPLR 3101(a), '[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action'” (at \*2)*

*“In determining whether to issue a protective order, the court must balance the competing interests of the parties and the truth-finding goal of the discovery process” (at \*2)*

*“Inasmuch as individual standing is a threshold requirement to maintain an action, each plaintiff must show that he or she personally suffered monetary damages as a result of the challenged practices” (at \*2)*

## FACTUAL BACKGROUND

The plaintiffs alleged that the defendants exceeded their authority by retaining certain real property tax revenue. The third amended complaint added approximately 400 alleged aggrieved taxpayers as plaintiffs, and the defendants asserted lack of standing as an affirmative defense. The defendants sought discovery from each plaintiff concerning matters material to whether the individual plaintiffs personally suffered monetary damages from the challenged practices.

## PROCEDURAL HISTORY

The plaintiffs commenced an action for declaratory and injunctive relief concerning the defendants' retention of certain real property tax revenue. After approximately 400 additional alleged aggrieved taxpayers were added as plaintiffs, the defendants served discovery requests, interrogatories, and deposition notices on each plaintiff. The

plaintiffs moved for a protective order, which the Supreme Court granted in part by striking discovery requests and limiting discovery to the original plaintiffs. The Supreme Court later adhered to that determination upon reargument. The Appellate Division reversed the October 24, 2022 order, vacated the corresponding portion of the February 6, 2023 order, denied the protective-order motion, and dismissed the appeal from the February 6 order as academic.

#### DISPOSITION

reversed

#### REMAND INSTRUCTIONS

The plaintiffs' motion for a protective order was denied. The portion of the February 6, 2023 order adhering to the protective-order determination was vacated, and the appeal from that order was dismissed as academic. One bill of costs was awarded to the defendants.

#### CASES CITED

- Smith-Percival v MTA Bus Co., 232 AD3d 928, 929
- Oleynik v Rozenfeld, 230 AD3d 1152, 1154
- Rawlins v St. Joseph's Hosp. Health Ctr., 108 AD3d 1191, 1193
- Alfaro v Schwartz, 233 AD2d 281, 282
- 101CO, LLC v Sand Land Corp., 189 AD3d 942, 944
- Kopelevich & Feldsherova, P.C. v Geller Law Group, P.C., 222 AD3d 956, 958
- Murray v Empire Ins. Co., 175 AD2d 693, 695
- Hamed v Alas Realty Corp., 209 AD3d 628, 629

#### OPINION

Brownyard v. County of Suffolk 2025 NY Slip Op 07274

PER CURIAM.

Brownyard v County of Suffolk ( 2025 NY Slip Op 07274 ) Brownyard v County of Suffolk 2025 NY Slip Op 07274 Decided on December 24, 2025 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on December 24, 2025

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Second Judicial Department MARK C. DILLON, J.P.

VALERIE BRATHWAITE NELSON

HELEN VOUTSINAS

PHILLIP HOM, JJ. 2022-08939

2023-02125 (Index No. 1596/15) [\*1]Bruce Brownyard, et al., respondents, v County of Suffolk,

et al., appellants. Berkman, Henoch, Peterson & Peddy, P.C., Garden City, NY (Joseph E. Macy, Robert A. Carruba, and Daniel J. Evers of counsel), for appellants. Pillsbury Winthrop Shaw Pittman LLP, New York, NY (James M. Catterson, Brianna Walsh, Danielle M. Stefanucci, and Stephanie LaGumina of counsel), for respondents. DECISION & ORDER In an action, inter alia, for declaratory and injunctive relief, the defendants appeal from (1) an order of the Supreme Court, Suffolk County (David T. Reilly, J.), dated October 24, 2022, and (2) an order of the same court dated February 6, 2023. The order dated October 24, 2022, granted the plaintiffs' motion for a protective order to the extent of striking requests for production numbers 2, 3, 4, 6, 7, 8, 10, 11, 12, and 13 of the defendants' first notice for discovery and inspection and limiting discovery to the plaintiffs Bruce W. Brownyard, Anton Bondy, and Harbor Club, LLC. The order dated February 6, 2023, insofar as appealed from, upon reargument, adhered to the determination in the order dated October 24, 2022, granting the plaintiffs' motion for a protective order to the extent of striking request for production number 7 of the defendants' first notice for discovery and inspection and limiting discovery to the plaintiffs Bruce W. Brownyard, Anton Bondy, and Harbor Club, LLC. ORDERED that the order dated October 24, 2022, is reversed, on the law and in the exercise of discretion, the plaintiffs' motion for a protective order is denied, and so much of the order dated February 6, 2023, as, upon reargument, adhered to the determination in the order dated October 24, 2022, granting the plaintiffs' motion for a protective order to the extent of striking request for production number 7 of the defendants' first notice for discovery and inspection and limiting discovery to the plaintiffs Bruce W. Brownyard, Anton Bondy, and Harbor Club, LLC is vacated; and it is further, ORDERED that appeal from the order dated February 6, 2023, is dismissed as academic in light of our determination on the appeal from the order dated October 24, 2022; and it is further, ORDERED that one bill of costs is awarded to the defendants. In January 2015, the plaintiffs Bruce W. Brownyard, Anton Bondy, and Harbor Club, LLC (hereinafter collectively the original plaintiffs), commenced this action, alleging, inter alia, that [\*2]the defendants exceeded their authority in retaining certain real property tax revenue. The third amended complaint named approximately 400 additional alleged aggrieved taxpayers as plaintiffs. The defendants interposed an answer asserting affirmative defenses, including lack of standing. Thereafter, the defendants served their first notice for discovery and inspection, first set of interrogatories, and notice to take deposition upon each plaintiff. In December 2019, the plaintiffs moved for a protective order limiting discovery. In an order dated October 24, 2022, the Supreme Court granted the plaintiffs' motion to the extent of striking requests for production numbers 2, 3, 4, 6, 7, 8, 10, 11, 12, and 13 of the defendants' first notice for discovery and inspection and limiting discovery to the original plaintiffs. In November 2022, the defendants moved, among other things, for leave to reargue their opposition to the plaintiffs' motion for a protective order. In an order dated February 6, 2023, the court, inter alia, upon reargument, adhered to the determination in the order dated October 24, 2022, granting the plaintiffs' motion for a protective order to the extent of striking request for production number 7 of the defendants'

first notice for discovery and inspection and limiting discovery to the original plaintiffs. The defendants appeal. "Pursuant to CPLR 3101(a), '[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action'" ( *Smith-Percival v MTA Bus Co.* , 232 AD3d 928 , 929). "CPLR 3103(a) permits a court to 'make a protective order denying, limiting, conditioning or regulating the use of any disclosure device' so as 'to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts'" ( *Oleynik v Rozenfeld* , 230 AD3d 1152 , 1154). "In determining whether to issue a protective order, the court must balance the competing interests of the parties and the truth-finding goal of the discovery process" ( *id.* [internal quotation marks omitted]). "[T]he fact that 'the documents sought may be available in public records does not, in itself, preclude production of those records from a party'" ( *Rawlins v St. Joseph's Hosp. Health Ctr.* , 108 AD3d 1191 , 1193, quoting *Alfaro v Schwartz* , 233 AD2d 281, 282 ). "'The supervision of discovery, and the setting of reasonable terms and conditions for disclosure, are matters within the sound discretion of the trial court'" ( *Smith-Percival v MTA Bus Co.* , 232 AD3d at 929, quoting *101CO, LLC v Sand Land Corp.* , 189 AD3d 942, 944 ). Here, the Supreme Court improvidently exercised its discretion in striking requests for production numbers 2, 3, 4, 6, 7, 8, 10, 11, 12, and 13 of the defendants' first notice for discovery and inspection and limiting discovery to the original plaintiffs ( see *Kopelevich & Feldsherova, P.C. v Geller Law Group, P.C.* , 222 AD3d 956 , 958). Inasmuch as individual standing is a threshold requirement to maintain an action, each plaintiff must show that he or she personally suffered monetary damages as a result of the challenged practices ( see *Murray v Empire Ins. Co.* , 175 AD2d 693, 695 ). Thus, the defendants demonstrated that the requested documents were material and necessary to the defense of this action ( see *Hamed v Alas Realty Corp.* , 209 AD3d 628, 629 ). DILLON, J.P., BRATHWAITE NELSON, VOUTSINAS and HOM, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court