

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

Franklyn A. Morgan, et al. v. Larry Suco, et al.

2022 NY Slip Op 02404 (App. Div. 2022) · No. 2019-09125 · Decided April 13, 2022

SUMMARY

The Appellate Division, Second Department, affirmed dismissal of the plaintiffs' action, in effect under RPAPL article 15, seeking to quiet title concerning an alleged fence encroachment. The court held that the action was time-barred under CPLR 212(a) because the fence had been erected more than ten years before the action was commenced, and the plaintiffs failed to show that the limitations period was tolled or inapplicable.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Per curiam; Mark C. Dillon, J.P.; Colleen D. Duffy, J.; Francesca E. Connolly, J.; Linda Christopher, J.
JURISDICTION	New York
DECIDED	April 13, 2022
DOCKET	2019-09125
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiffs appealed from an order granting the defendants' CPLR 3211(a)(5) motion to dismiss the complaint as time-barred.
STANDARD OF REVIEW	Whether the complaint was properly dismissed as time-barred under CPLR 3211(a)(5), including whether the defendants established expiration of the applicable limitations period and whether the plaintiffs raised a factual issue concerning tolling or applicability.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Franklyn A. Morgan, et al. v. Larry Suco, et al.

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QUESTIONS PRESENTED

1. Whether an action effectively brought under RPAPL article 15 to quiet title and recover possession of real property was time-barred under CPLR 212(a).
2. Whether the plaintiffs raised a question of fact concerning tolling, inapplicability of the limitations period, or commencement of the action within the limitations period.

HOLDINGS

1. An action to recover real property or its possession, including the plaintiffs' action effectively brought under RPAPL article 15, was time-barred because the fence had been erected more than ten years before the action was commenced.
2. Dismissal under CPLR 3211(a)(5) was proper because the defendants established that the action was time-barred and the plaintiffs failed to raise a question of fact concerning tolling, applicability of the statute of limitations, or timely commencement.

KEY QUOTATIONS

"A person claiming title to real property, but not in possession thereof, must act, affirmatively and within the time provided by statute"

"[a]n action to recover real property or its possession cannot be commenced unless the plaintiff, or his predecessor in interest, was seized or possessed of the premises within ten years before the commencement of the action"

FACTUAL BACKGROUND

The plaintiffs and defendants were neighboring property owners, and the plaintiffs alleged that a fence on the defendants' property encroached on the plaintiffs' property. The fence had been erected more than ten years before the plaintiffs commenced the action in July 2018.

PROCEDURAL HISTORY

The plaintiffs commenced an action in July 2018 seeking, among other relief, to quiet title to real property based on an alleged fence encroachment. The Supreme Court, Westchester County, granted the defendants' motion to dismiss the complaint as time-barred, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- WPA Acquisition Corp. v. Lynch, 82 A.D.3d 1215, 1216
- Downes v. Peluso, 115 A.D.2d 454, 454
- Ford v. Clendenin, 215 N.Y. 10, 17
- Matter of Marini, 119 A.D.3d 584
- Nautilus Land Owners Corp. v. Gilbert, 253 A.D.2d 862
- Kotlyarsky v. Abrazi, 188 A.D.3d 853, 854
- Barry v. Cadman Towers, Inc., 136 A.D.3d 951, 952

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