

56 A.D.3d 536

(Cite as: 56 A.D.3d 536, 867 N.Y.S.2d 188)

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Nissan Realty Co., LLC v. JDL Holdings, LLC  
56 A.D.3d 536, 867 N.Y.S.2d 188  
NY,2008.

56 A.D.3d 536867 N.Y.S.2d 188, 2008 WL  
4889655, 2008 N.Y. Slip Op. 08719

Nissan Realty Co., LLC, Appellant  
v  
JDL Holdings, LLC, Respondent.  
Supreme Court, Appellate Division, Second De-  
partment, New York

November 12, 2008

CITE TITLE AS: Nissan Realty Co., LLC v JDL  
Holdings, LLC

## HEADNOTE

Adverse Possession  
What Constitutes

Dollinger, Gonski & Grossman, Carle Place, N.Y.  
(Michael J. Spithogiannis of counsel), for appellant.  
Sweeney, Gallo, Reich & Bolz, LLP, Rego Park,  
N.Y. (Rashel M. Mehlman and Michael H. Reich of  
counsel), for respondent.

In an action, inter alia, pursuant to RPAPL article  
15 to compel the determination of claims to real  
property, the plaintiff appeals from an order and  
judgment (one paper) of the Supreme Court,  
Queens County (Agate, J.), dated January 2, 2008,  
which granted the defendant's motion for summary  
judgment dismissing the complaint and for sum-  
mary judgment on its counterclaim, among other  
things, for a judgment declaring that it is the lawful  
owner of the property, and declared, in effect, that  
the defendant is the lawful owner of the property.

Ordered that the order and judgment is affirmed,  
with costs.

In November 1981 the plaintiff Nissan Realty Co.,

LLC (hereinafter Nissan), purchased certain real  
property in Long Island City. In December 2003 the  
defendant JDL Holdings LLC (hereinafter JDL)  
purchased adjoining property. Subsequently, Nissan  
claimed that it had acquired, through adverse pos-  
session, an area of JDL's adjoining property  
(hereinafter the disputed area) based on its use of a  
loading dock within, and its alleged erection of a  
fence around, the disputed area. Seeking to quiet  
title to the disputed area, Nissan commenced this  
action pursuant to RPAPL article 15. JDL then  
moved for summary judgment dismissing the com-  
plaint and on its counterclaim for a judgment de-  
claring it to be the owner of the disputed property,  
and restoring it to possession.\*\*2

A party seeking to obtain title to real property by  
adverse possession not based upon a written instru-  
ment must establish that the property was either  
“usually cultivated or improved” (RPAPL 522 [1])  
or “protected by a substantial enclosure” (RPAPL  
522 [2]). Additionally, the party must demonstrate  
by clear and convincing evidence that the posses-  
sion was hostile and under claim of right, actual,  
open and notorious, exclusive, and continuous for a  
period of 10 years (see *Walling v Przybylo*, 7 NY3d  
228, 232 [2006]).\*537

Here, JDL established its prima facie entitlement to  
summary judgment by demonstrating that Nissan  
had not substantially enclosed the disputed area or  
usually cultivated or improved the disputed area (*see Giannone v Trotwood Corp.*, 266 AD2d 430,  
431 [1999]). In opposition, Nissan failed to raise a  
triable issue of fact. Accordingly, the Supreme  
Court properly granted JDL's motion for summary  
judgment dismissing the complaint and on its coun-  
terclaim for a judgment declaring it the lawful own-  
er and restoring it to possession (*see Zuckerman v  
City of New York*, 49 NY2d 557, 562 [1980]).

Nissan's remaining contentions either are without  
merit or have been rendered academic in light of  
our determination. Mastro, J.P., Rivera, Covello

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and Leventhal, JJ., concur.

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York

NY,2008.

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