

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**JOE DELANO WALCKER III,**

**Plaintiff,**

**v.**

**5:17-cv-889  
(TJM/TWD)**

**TRUEX & HOVEY, RICHARD D. HOVEY, and  
CAROL HOVEY,**

**Defendants.**

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**THOMAS J. McAVOY,  
Senior United States District Judge**

**DECISION & ORDER**

**I. INTRODUCTION**

This *pro se* action involving a real property dispute between private actors, (Dkt. No. 1), was referred to the Hon. Thérèse Wiley Dancks, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). In her September 13, 2017 Order and Report-Recommendation, Dkt. No. 3, Magistrate Judge Dancks recommends that the complaint (Dkt. No. 1) be dismissed without leave to amend for lack of subject matter jurisdiction. Plaintiff Joe Delano Walcker III filed objections to the Order and Report-Recommendation. See Obj., dkt. # 4.

**II. STANDARD OF REVIEW**

When objections to a magistrate judge's report and recommendation are lodged, the district court makes a "*de novo* determination of those portions of the report or

specified proposed findings or recommendations to which objection is made.” See 28 U.S.C. § 636(b)(1); see also United States v. Male Juvenile, 121 F.3d 34, 38 (2d Cir. 1997) (The Court must make a *de novo* determination to the extent that a party makes specific objections to a magistrate’s findings.).

After reviewing the report and recommendation, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.” 28 U.S.C. § 636(b).

### **III. DISCUSSION**

Having considered Plaintiff’s objections and having completed a *de novo* review of the issues raised by the objections, the Court has determined to adopt Magistrate Judge Dancks’s recommendations for the reasons stated in her thorough report. Further, the Court finds that the dismissal must be without prejudice.<sup>1</sup> See Hernandez v. Conriv Realty Assocs., 182 F.3d 121, 123 (2d Cir. 1999)(When a case is dismissed for lack of federal subject matter jurisdiction, “Article III deprives federal courts of the power to dismiss [the] case with prejudice.”).

### **IV. CONCLUSION**

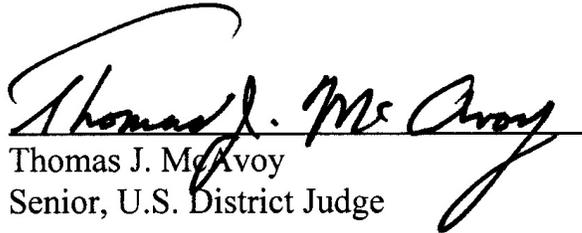
Accordingly, the Court accepts and adopts Magistrate Judge Dancks’s Order and Report-Recommendation (Dkt. # 3) in its entirety. The complaint (Dkt. No. 1) is **DISMISSED without prejudice and without leave to amend** for lack of subject matter jurisdiction.

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<sup>1</sup>A dismissal without prejudice in this court allows the plaintiff to file an action concerning the same real property dispute in state court.

**IT IS SO ORDERED.**

Dated: October 3, 2017

  
Thomas J. McAvoy  
Senior, U.S. District Judge