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In the
United States Court of Appeals
For the Second Circuit

AUGUST TERM, 2025

ARGUED: FEBRUARY 2, 2026

DECIDED: JUNE 18, 2026

Docket No. 25-762

MAXIM LEVIN, VODKA PROPERTIES LLC,
Plaintiffs-Appellants,

v.

CITY OF BUFFALO, BYRON W. BROWN, Individually and In His
Capacity as the Mayor, JAMES COMERFORD, JR., Individually and In
His Capacity as the Commissioner of the Department of Permit &
Inspection Services, LOU PETRUCCI, Individually and In His Capacity
as the Deputy Commissioner of the Department of Permit &
Inspection Services, TRACY KRUG, Individually and In His Capacity
as an Inspector for the City of Buffalo, KEVIN COYNE, Individually
and In His Capacity as an Inspector for the City of Buffalo,
Defendants-Cross-Defendants-Appellees,

EMPIRE DISMANTLEMENT CO.,
Defendant-Cross-Claimant-Appellee.

Appeal from the United States District Court
for the Western District of New York.

1 Before: WALKER, PARKER, AND BIANCO, *Circuit Judges*.

2

3 Plaintiffs-Appellants (“Plaintiffs”), Maxim Levin and Vodka
4 Properties LLC, brought this action against the City of Buffalo, certain
5 City employees, and a private demolition company following the
6 2019 emergency demolition of a residential building Plaintiffs owned
7 in Buffalo. The parties dispute whether (1) illegal drug activity on the
8 property, which culminated in a late August overdose death on it
9 where a needle was later found and (2) the building’s vacant,
10 abandoned, and structurally compromised state were sufficiently
11 established at the time to justify the City’s decision to order an
12 emergency demolition under city law.

13 On appeal, Plaintiffs challenge the district court’s grant of
14 summary judgment on four of their Section 1983 constitutional claims
15 and two additional claims under New York state law. Plaintiffs also
16 challenge the district court’s dismissal of their Section 1983
17 constitutional claims on qualified immunity grounds against
18 individual employees and officials of the City; dismissal of their
19 Section 1983 constitutional claims against a private demolition
20 company; and dismissal of their claims against the City of Buffalo for
21 lack of municipal liability.

22 For the reasons explained below, with respect to the procedural
23 due process, unlawful taking, and unreasonable seizure claims, we
24 conclude that summary judgment was unwarranted because there are
25 questions of material fact as to whether the conditions of the property
26 justified invoking the City’s emergency demolition authority, which
27 is a central issue underlying the resolution of each of those
28 constitutional claims. In addition, because of the uncontroverted
29 evidence demonstrating that Commissioner James Comerford, Jr.,
30 was the City’s final policymaker with respect to the emergency
31 demolition decision, the district court erred in granting summary
32 judgment on the municipal liability claim due to a failure to show an
33 official policy or custom. Moreover, given the disputed factual issues
34 regarding whether the circumstances were sufficient to support an

1 emergency demolition, the district court also erred in granting
2 summary judgment to the Commissioner on the ground of qualified
3 immunity with respect to the procedural due process, unlawful
4 taking, and unreasonable seizure claims. Finally, we affirm the
5 district court's grant of summary judgment in all other respects.

6 Accordingly, we AFFIRM in part, VACATE in part, and REMAND
7 Plaintiffs' remaining claims to the district court for further
8 proceedings consistent with this opinion.

9

10 _____
11 R. ANTHONY RUPP III (Chad A. Davenport and
12 Paul D. Jager, *on the brief*), Rupp Pfalzgraf LLC,
Buffalo, NY, *for* Appellants.

13 ROBERT E. QUINN, City of Buffalo, Buffalo, NY, *for*
14 Appellees.

15

16 PER CURIAM:

17 Plaintiffs-Appellants ("Plaintiffs"), Maxim Levin and Vodka
18 Properties LLC, brought this action following the 2019 emergency
19 demolition of a residential building they owned in Buffalo, New York
20 (the "Property"), by the City of Buffalo (the "City"). The Defendants
21 are set forth in the caption. The parties dispute as to whether (1)
22 illegal drug activity on the property, which culminated in a late
23 August overdose death on it where a needle was later found and (2)
24 the building's vacant, abandoned, and structurally compromised
25 state were sufficiently established at the time to justify the City's
26 decision to order an emergency demolition under city law.

27 Plaintiffs initially brought fourteen causes of action—(1) ten
28 42 U.S.C. § 1983 ("Section 1983") constitutional claims against the
29 City, City Defendants, and Empire Dismantlement Company
30 ("Empire," the private demolition company) and (2) four New York

1 common law claims against Empire. On July 13, 2023, a magistrate
2 judge (Leslie G. Foschio, *M.J.*) issued a Report and Recommendation
3 on Plaintiffs' fourteen claims. The magistrate judge recommended, in
4 relevant part, denying Plaintiffs' summary judgment motion,
5 granting Empire's motion for summary judgment, and granting in
6 part and denying in part the City Defendants' motion for summary
7 judgment.

8 In particular, the magistrate judge recommended granting
9 Empire's motion for summary judgment as to Plaintiffs' Section 1983
10 constitutional claims after finding a "lack of state action by Empire"
11 and, accordingly, determining that Empire was a private actor not
12 susceptible to Section 1983 liability. Special App'x at 38. The
13 magistrate judge separately recommended denying Plaintiffs' and
14 City Defendants' motions for summary judgment as to Plaintiffs'
15 procedural due process, unlawful taking, and unreasonable seizure
16 claims. As to those claims, the magistrate judge identified disputed
17 facts regarding notice to the owner and the condition of the building,
18 which the magistrate judge found could call into question the City's
19 decision to order its emergency demolition, and therefore precluded
20 summary judgment on those claims. *See, e.g.*, Special App'x at 50–52.
21 The magistrate judge recommended denying the City Defendants'
22 assertion of qualified immunity because of these questions of material
23 fact. Ultimately, the magistrate judge recommended that Plaintiffs'
24 due process, unlawful taking, and unreasonable seizure claims
25 proceed against the individual City Defendants and the City.

26 On February 29, 2024, the district court (John L. Sinatra, Jr., *J.*)
27 accepted the magistrate judge's recommendation in part but
28 sustained objections in part in two relevant respects. First, the district
29 court dismissed Plaintiffs' procedural due process claim after
30 determining there was no genuine dispute as to notice.¹ Second, the

¹ We note here, and discuss further below, that in granting summary judgment on Plaintiffs' procedural due process claim, the district court did not address whether the condition of the building necessitated an emergency demolition, as the magistrate judge had.

1 district court held, contrary to the magistrate judge's
2 recommendation, that the individual City Defendants (Brown,
3 Comerford, Petrucci, Krug, and Coyne) were entitled to summary
4 judgment on qualified immunity grounds because they acted
5 reasonably. The district court ordered that this action proceed only
6 against the City of Buffalo on Plaintiff's unlawful taking claim and
7 reserved decision on Plaintiffs' unreasonable seizure claim.

8 In a subsequent Decision and Order, dated April 30, 2024, the
9 district court ordered that it would allow Plaintiffs' unreasonable
10 seizure claim to proceed against the City of Buffalo because
11 "questions of material fact" existed, specifically "whether City
12 Defendants' invocation of the Commissioner's emergency
13 condemnation and demolition authority to demolish the Building
14 were warranted based on the condition of the Building and
15 Property" Special App'x at 109. As a result, Plaintiffs' unlawful
16 taking and unreasonable seizure claims against the City were
17 permitted to proceed.

18 On March 4, 2025, the district court received supplemental
19 briefing and reconsidered whether Plaintiffs' unlawful taking and
20 unreasonable seizure claims could proceed against the City, given the
21 magistrate judge's earlier, separate determination that Plaintiffs had
22 not sufficiently alleged municipal liability. *See id.* at 117 (concluding
23 that "Plaintiffs ha[d] adduced no evidence regarding the asserted
24 demolitions amounting to an official policy or custom" (quoting the
25 magistrate judge's Report and Recommendation)). After also
26 determining that Plaintiffs failed to establish any viable municipal
27 (*Monell*) liability claim against the City, the district court dismissed
28 Plaintiffs' constitutional unlawful taking and unreasonable seizure
29 claims in their entirety. *See id.* at 115–17, 120 (adopting the magistrate
30 judge's finding).

Instead, the district court only discussed whether there was a genuine
dispute of material fact as to whether Plaintiffs received adequate
notice.

1 viewing the evidence in the light most favorable to the non-moving
 2 party, "there is no genuine issue as to any material fact and the
 3 moving party is entitled to judgment as a matter of law." *See Nabisco,*
 4 *Inc. v. Warner-Lambert Co.*, 220 F.3d 43, 45 (2d Cir. 2000); Fed. R. Civ.
 5 P. 56(a).

6 I. Section 1983 Claims

7 A. Fourteenth Amendment Procedural Due Process Claim

8 Plaintiffs argue that they were deprived of procedural due
 9 process in connection with the demolition of their building. A review
 10 of a procedural due process claim involves a "two-step inquiry" in
 11 which we must determine "(1) whether [the plaintiff] possessed a
 12 liberty or property interest and, if so, (2) what process [] was due
 13 before [the plaintiff] could be deprived of that interest." *Ciambrello v.*
 14 *Cnty. of Nassau*, 292 F.3d 307, 313 (2d Cir. 2002). While pre-
 15 deprivation hearings are normally required before an individual's
 16 property may be taken by the government, the Supreme Court has
 17 held that in emergency situations a city may satisfy procedural due
 18 process by making available "some meaningful means by which to
 19 assess the propriety of [its] action at some time after the initial
 20 taking." *Parratt v. Taylor*, 451 U.S. 527, 539 (1981), *overruled on other*
 21 *grounds, Daniels v. Williams*, 474 U.S. 327 (1986); *see also WWBITV, Inc.*
 22 *v. Vill. of Rouses Point*, 589 F.3d 46, 50 (2d Cir. 2009) ("Where there is
 23 an emergency requiring quick action and where meaningful pre-
 24 deprivation process would be impractical, the government is relieved
 25 of its usual obligation to provide a hearing, as long as there is an
 26 adequate procedure in place to assess the propriety of the deprivation
 27 afterwards.").

28 There is no dispute that Plaintiffs had a protected interest in the
 29 property that they owned. The parties disagree, however, over
 30 whether procedural due process was satisfied. The parties dispute
 31 whether there was a genuine factual dispute as to the condition of the
 32 Property, both as to drug use on it and as to its physical state, that
 33 justified an emergency demolition without a pre-deprivation hearing,

1 and whether Plaintiffs received constitutionally adequate notice of
2 the remedies available to them.

3 The City Defendants had broad authority to declare an
4 emergency demolition by virtue of the City Code and Charter, and in
5 particular, where a building was “deem[ed] to be an immediate threat
6 to the health, welfare and safety of the public.” Supplemental App’x
7 at 117; *see id.* at 119–20 (similar). As our circuit precedent recognizes,
8 the Supreme Court directs us to accord deference to the decision to
9 invoke the emergency procedure and not to engage in a hindsight
10 analysis of whether the totality of the impairment to the property
11 actually created an immediate danger to the public. *See Catanzaro v.*
12 *Weiden*, 188 F.3d 56, 62 (2d Cir. 1999) (citing *Hodel v. Va. Surface Mining*
13 *& Reclamation Ass’n*, 452 U.S. 264, 302–03 (1981)). Under that
14 deferential standard, “the due process guarantee is offended only
15 when an emergency procedure is invoked in an abusive and arbitrary
16 manner; therefore, there is no constitutional violation unless the
17 decision to invoke the emergency procedure amounts to an abuse of
18 the constitutionally afforded discretion.” *Id.* In *Catanzaro*, we
19 emphasized that we were not “suggest[ing] that the government may
20 simply avoid affording due process to citizens by arbitrarily invoking
21 emergency procedures” —rather, “where there is competent evidence
22 allowing the official to reasonably believe that an emergency does in
23 fact exist, or that affording pre[-]deprivation process would be
24 otherwise impractical, the discretionary invocation of an emergency
25 procedure results in a constitutional violation only where such
26 invocation is arbitrary or amounts to an abuse of discretion.” *Id.* at
27 63.

28 Defendants argue that their authority to order an emergency
29 demolition in this case derived from two conditions on the vacant
30 property that created a safety concern for the neighborhood. The
31 conditions were (1) illegal drug activity, which culminated in a late
32 August overdose death on the Property where a needle was later
33 found and (2) the building’s “vacant, abandoned, and [] structural[ly]
34 compromise[d]” state. Appellees’ Br. at 6. We conclude that there are

1 disputed issues of material fact with respect to each part of this
2 justification that preclude summary judgment on this critical question
3 of whether the City abused its discretion in determining that an
4 emergency demolition was warranted.

5 First, while our independent review of the record reveals more
6 evidence of illegal drug activity than just the “one needle” that
7 Plaintiffs indicate, Appellants’ Brief at 41, the question is whether all
8 the evidence concerning illegal drug activity, taken together,
9 presented an “*immediate* threat to the health, welfare and safety of the
10 public[.]” Supplemental App’x at 117 (emphasis added). In terms of
11 evidence supporting the presence of illegal drug activity constituting
12 an immediate threat, between March 2015 and July 2019, the City of
13 Buffalo received at least seven complaints related to vagrants and
14 drug use on the Property. In August 2019, the City received a police
15 complaint about a drug overdose death on the Property. Shortly after
16 this report, investigators found a used needle on the Property. But,
17 in dispute of Defendants’ argument about the immediacy of the
18 threat, we note that approximately one month elapsed between the
19 drug overdose death and the demolition of the Property in late
20 September 2019. In further dispute of whether there was an
21 immediate threat, as the Report and Recommendation noted, “there
22 is no evidence in the record that after the overdose of a single drug
23 user at the Property, there remained any public health risk based on
24 drug use at the Property[.]” Special App’x at 50. More broadly, the
25 record is devoid of evidence regarding the City’s consideration of
26 alternative measures short of demolition that could address any
27 ongoing public safety risk created by continuing drug use on the
28 Property pending a scheduled hearing, which was only three weeks
29 away at the time of the demolition. Indeed, the Commissioner
30 testified that, if it had been brought to his attention that there was a
31 court proceeding or court hearing that was scheduled for a specific
32 property, he “would [have] wait[ed] for the hearing” as opposed to
33 moving forward with an emergency demolition. App’x at 245. In
34 short, drawing all inferences in Plaintiffs’ favor, we conclude that
35 disputed factual issues preclude summary judgment for Defendants

1 as to whether the City's determination that drug activity at the
2 Property warranted an emergency demolition ultimately
3 "amount[ed] to an abuse of discretion." *Catanzaro*, 188 F.3d at 63.

4 The record, admittedly sparse, also presents conflicting
5 evidence about whether the building was in imminent danger of
6 collapse. Therefore, we also find that the structural integrity of the
7 building was sufficiently disputed to preclude granting summary
8 judgment as to the second part of the City's justification for ordering
9 an emergency demolition.

10 Thus, summary judgment was inappropriate. The existence of an
11 emergency is a "material fact . . . vigorously contested by the parties"
12 because both justifications relied upon by the City remain in dispute.
13 *Burtnieks v. City of New York*, 716 F.2d 982, 988 (2d Cir. 1983).

14 Plaintiffs also challenge the efficacy of the notice they received
15 from the City in advance of the demolition. We hold that the notice
16 was sufficient. "[D]ue process requires only that a state take steps
17 reasonably calculated to provide actual notice, not that the notice
18 actually reach [the property owner] . . . before the government may
19 take his property." *Oneida Indian Nation of N.Y. v. Madison Cnty.*, 665
20 F.3d 408, 429 (2d Cir. 2011) (citation modified).

21 Defendants took reasonable steps to provide notice to Plaintiffs
22 prior to the building's demolition. Defendants posted at the building
23 notice of the pending demolition and sent this notice via certified and
24 regular mail to the owners. The City's efforts at notice distinguish
25 this case from those in which we found pre-deprivation notice
26 insufficient. *See, e.g., WWBITV*, 589 F.3d at 48 (plaintiffs learned of the
27 demolition from a friend); *Burtnieks*, 716 F.2d at 984 (plaintiff learned
28 about the demolition through her plumber). We therefore find no
29 dispute of material fact as to the notice provided to Plaintiffs.

30 While the district court did address the question of notice, it did
31 not address whether such notice, paired with the conditions on the
32 Property, were such that Plaintiffs' procedural due process rights

1 were protected absent a pre-deprivation hearing. Without knowing
2 whether the cited conditions of the Property warranted an emergency
3 demolition, an issue that must be resolved at trial given the disputed
4 factual issues discussed above, we are unable to conclude that “the
5 government [was] relieved of its usual obligation to provide a
6 hearing” and that the procedure afforded to Plaintiffs was adequate.
7 *WWBITV, Inc.*, 589 F.3d at 50; *see also Hellenic Am. Neighborhood Action*
8 *Comm. v. City of New York*, 101 F.3d 877, 880 (2d Cir. 1996) (“When the
9 deprivation occurs in the more structured environment of established
10 state procedures, rather than random acts, the availability of
11 postdeprivation procedures will not, ipso facto, satisfy due process.”).

12 As a result, we vacate the district court’s grant of summary
13 judgment on Plaintiffs’ procedural due process claim and remand it
14 to the district court for further proceedings.²

15 **B. Fourteenth Amendment Substantive Due Process**

16 We agree with the district court’s grant of summary judgment
17 for Defendants, and related denial of summary judgment for
18 Plaintiffs, on Plaintiffs’ substantive due process claim because it is
19 derivative of Plaintiffs’ more explicit constitutional claims. The
20 Supreme Court has held that, in the Section 1983 context, “[w]here a
21 particular Amendment ‘provides an explicit textual source of
22 constitutional protection’ against a particular sort of government
23 behavior, ‘that Amendment, not the more generalized notion of
24 substantive due process, must be the guide for analyzing these
25 claims.’” *Albright v. Oliver*, 510 U.S. 266, 273 (1994) (plurality) (citation
26 modified). The rule announced in *Oliver* applies here because the

² We similarly conclude that the disputed issues of material fact on the procedural due process claim with respect to the Commissioner’s invocation of the emergency demolition authority also preclude summary judgment with respect to the unlawful taking claim under the Fifth Amendment, as well as the unreasonable seizure claim under the Fourth Amendment.

1 crux of Plaintiffs' substantive due process claim is found in explicit
2 textual sources: the Fourth and Fifth Amendments.

3 As a result, we affirm the district court's grant of summary
4 judgment on Plaintiffs' substantive due process claim.

5 **C. Plaintiffs' Remaining Section 1983 Claims and *Monell***
6 **Liability**

7 Apart from the questions of material fact precluding summary
8 judgment on Plaintiffs' Fifth and Fourth Amendment claims, the
9 district court granted summary judgment to the City and dismissed
10 the case after determining that Plaintiffs failed to produce evidence to
11 support a claim of municipal liability under *Monell*. See *Monell v.*
12 *Dep't of Soc. Servs.*, 436 U.S. 658 (1978). The district court erred in
13 doing so.

14 To establish municipal liability under *Monell*, a plaintiff "must
15 first prove the existence of a municipal policy or custom" that caused
16 his injuries and then "must establish a causal connection . . . between
17 the policy and the deprivation of his constitutional rights." *Vippolis v.*
18 *Vill. of Haverstraw*, 768 F.2d 40, 44 (2d Cir. 1985), *cert. denied*, 480 U.S.
19 916 (1987). A municipality can face liability "where that
20 organization's . . . policies or customs that it has sanctioned [] led to
21 an independent constitutional violation." *Segal v. City of New York*,
22 459 F.3d 207, 219 (2d Cir. 2006); *Monell*, 436 U.S. at 694 (involving a
23 policy that was "the moving force of the constitutional violation").

24 Indeed, a single decision by a designated policymaker may be
25 sufficient to establish the existence of municipal policy under *Monell*.
26 See *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483 (1986) (holding that
27 "municipal liability under § 1983 attaches where . . . a deliberate
28 choice to follow a course of action is made from among various
29 alternatives by the official or officials responsible for establishing final
30 policy with respect to the subject matter in question"); see also
31 *Gronowski v. Spencer*, 424 F.3d 285, 296 (2d Cir. 2005). "Where a city
32 official 'has final authority over significant matters involving the

1 exercise of discretion,' his choices represent government policy."
2 *Gronowski*, 424 F.3d at 296 (quoting *Rookard v. Health & Hosps. Corp.*,
3 710 F.2d 41, 45 (2d Cir. 1983)).

4 Plaintiffs here established that Commissioner Comerford was a
5 policymaker who had final, discretionary authority to order
6 emergency demolitions in the City of Buffalo, a "significant matter"
7 at the heart of Plaintiffs' various constitutional deprivation claims. *Id.*
8 Plaintiffs' Complaint and Objection to the magistrate judge's Report
9 and Recommendation allege facts that sufficiently establish the
10 Commissioner as the "final policymaker" who invoked the
11 emergency demolition procedure upon Plaintiffs' Property. *See*
12 App'x at 18, 47–48 (noting the Commissioner was "responsible for
13 setting, reviewing, and enforcing the policies and regulations of the
14 City of Buffalo");³ *id.* at 929–30 (describing the Commissioner as "a
15 policymaker or [with] the power to make official policy in regard to
16 demolition, and that a Constitutional violation occurred directly or
17 indirectly from his command to survive a motion for summary
18 judgment[']").

19 Further, "[a]n allegation of policy-making authority...
20 requires proof of the official's scope of employment and his role
21 within the municipal or corporate organization." *Rookard*, 710 F.2d at
22 45. The Commissioner's authority in this realm is clearly prescribed
23 under the City of Buffalo's Code and Charter, which both parties
24 reference throughout the record. Supplemental App'x at 117, 119–20
25 (City of Buffalo Code and Charter). Defendants' deposition
26 testimony also supports the fact that the Commissioner was granted
27 discretionary authority to make these emergency demolition
28 decisions. *See, e.g.*, App'x at 210–11; *id.* at 132–33. This was sufficient

³ With regard to the demolition of the Property, the Complaint states that the Commissioner was contacted by an inspector requesting emergency demolition, that he signed the Notice of Condemnation with Defendant Petrucci, and that he was authorized by the Buffalo Common Council to enter a contract for the demolition of the Property.

1 proof to support Plaintiffs' claim that the Commissioner was a final
2 policymaker, thereby subjecting the City of Buffalo to *Monell* liability
3 for his decision to order an emergency demolition of the Property in
4 this case. As final policymaker, the Commissioner's decision to order
5 an emergency demolition of Plaintiffs' Property directly led to its
6 destruction and, therefore, a possible constitutional violation in the
7 form of property seizure and taking.

8 We therefore vacate the district court's grant of summary
9 judgment to Defendants on Plaintiffs' municipal liability claim.
10 Similarly, Plaintiffs' Fifth Amendment unlawful taking and Fourth
11 Amendment unreasonable seizure claims against the City are
12 remanded to the district court for further consideration alongside
13 Plaintiffs' procedural due process claim.

14 **D. Liability for Plaintiffs' Remaining Section 1983 Claims**

15 The parties dispute which parties, if any, may be held liable for
16 Plaintiffs' remaining Section 1983 claims. We agree that Empire was
17 properly excluded from Section 1983 liability because Empire is a
18 private actor, not a state actor, and its actions in this case did not
19 amount to state action. With the exception of the Commissioner, we
20 also agree with the district court's dismissal of all claims against the
21 individual City Defendants on the grounds of qualified immunity.
22 Thus, the case may proceed only against the City, for the reasons
23 described above, and the Commissioner, for the reasons elaborated
24 on below, with respect to Plaintiffs' remaining Section 1983 claims.

25 **a. Empire**

26 Section 1983 permits civil liability against persons who, acting
27 under color of state law, deprive an individual of rights, privileges, or
28 immunities secured by the Constitution and laws of the United States.
29 42 U.S.C. § 1983; *see also Burtnieks*, 716 F.2d at 986. For the individual
30 City Defendants and the City, with regard to the constitutional claims,
31 "there is no question that the first prerequisite is met" and that the
32 "conduct complained of [was] committed by a person acting under

1 color of state law[.]” *Burtnieks*, 716 F.2d at 986. The district court
 2 properly dismissed Plaintiffs’ Section 1983 claims against Empire,
 3 however, because Empire acted as a private—not state—actor, and
 4 thus was not liable under Section 1983.

5 Empire was a private company and therefore presumptively
 6 not a state actor. A private entity, however, is not precluded from
 7 being held liable as a state actor. “[A] ‘state action’ occurs where the
 8 challenged action of a private party is ‘fairly attributable’ to the state.”
 9 *Logan v. Bennington Coll. Corp.*, 72 F.3d 1017, 1027 (2d Cir. 1995) (citing
 10 *Lugar v. Edmonson Oil Co.*, 457 U.S. 922, 937 (1982)). This may occur
 11 when the private entity “is a state official, . . . [and] has acted together
 12 with or has obtained significant aid from state officials, or because
 13 [their] conduct is otherwise chargeable to the State.” *Id.*
 14 “Characterizing a private party as a ‘state actor’ is a fact-specific
 15 inquiry,” and we consider factors such as “the public function of the
 16 party’s conduct, whether the private party acted under state
 17 compulsion, the nexus between the party’s conduct and the state, and
 18 whether the party’s conduct was jointly undertaken with the state.”
 19 *Id.* (citing *Lugar*, 457 U.S. at 939).

20 We agree with the magistrate judge that “Empire’s
 21 involvement was limited to the physical demolition of the [b]uilding
 22 on the Property on September [30], 2019, pursuant to a contract with
 23 the City that was awarded based on Empire’s submission of the
 24 winning, *i.e.*, lowest, bid for demolition.” Special App’x at 38. Empire
 25 played no role in deciding whether the demolition should take place.
 26 Given Empire’s limited role in executing the challenged demolition,
 27 we agree with the district court’s grant of summary judgment in favor
 28 of Empire on all of Plaintiffs’ Section 1983 claims.

29 **b. Individual City Defendants**

30 “In a § 1983 action, it is well-settled that qualified immunity
 31 shields a defendant from personal liability for damages so long as his
 32 conduct did not violate clearly established statutory or constitutional
 33 rights of which a reasonable person would have known.” *Kaluczky v.*

1 *City of White Plains*, 57 F.3d 202, 207 (2d Cir. 1995) (citation modified).
2 As discussed *supra*, at the time of the demolition, it was clearly
3 established that, absent an emergency, procedural due process under
4 the Fourteenth Amendment generally required a pre-deprivation
5 hearing before a property right could be terminated. *See Hodel*, 452
6 U.S. at 298–300; *Parratt*, 451 U.S. at 539–40. Because Plaintiffs’ Section
7 1983 claims are based on “clearly established” constitutional rights,
8 qualified immunity protects the individual City Defendants from
9 having to defend against Plaintiffs’ claims only so long as “it was
10 objectively reasonable for [them] to believe that [their] acts did not
11 violate those rights.” *Kaminsky v. Rosenblum*, 929 F.2d 922, 925 (2d Cir.
12 1991).

13 With respect to the Commissioner, we conclude that he is not
14 entitled to qualified immunity at the summary judgment stage
15 because there are disputed factual issues regarding whether the
16 circumstances were sufficient to constitute an emergency. These
17 factual disputes also preclude a determination as to whether that
18 decision by the Commissioner was objectively reasonable for
19 purposes of qualified immunity.

20 However, we agree with the district court that Plaintiffs failed
21 to develop an issue of material fact as to the objective reasonableness
22 of the remaining individual City Defendants given the varying roles
23 these different individuals played in gathering the relevant
24 information pertaining to the Property as compared to the
25 Commissioner’s unique role in making the ultimate decision. In other
26 words, the other individual City Defendants merely observed or
27 inspected the Property at various points in time and reported their
28 findings to the Commissioner, who then made the decision, based
29 upon all the information that had been gathered over time, that the
30 circumstances were sufficient to constitute an emergency that
31 warranted demolition without a hearing. Under these circumstances,
32 with respect the remaining individual City Defendants, it was
33 objectively reasonable for them to believe that their limited
34 participation did not violate Plaintiffs’ constitutional rights.

1 *Kaminsky*, 929 F.2d at 925. Because we find their actions to be
2 objectively reasonable under those circumstances, we affirm the
3 district court's decision to grant qualified immunity to the individual
4 City Defendants, other than the Commissioner, and to dismiss the
5 claims against them.

6 **II. New York Common Law Claims**

7 Finally, Plaintiffs reassert their New York common law claims
8 against Empire for negligence and trespass. We agree with the district
9 court's grant of summary judgment for Empire on these claims.

10 Plaintiffs' negligence claim fails because Plaintiffs "cannot
11 establish that Empire breached any duty owed to Plaintiffs as
12 required for a negligence claim[.]" App'x at 904. Plaintiffs' trespass
13 claim also fails because Empire was "'licensed or privileged' to enter
14 private premises when [Empire] obtained the consent of the owner or
15 another whose relationship to the premises gives [them] authority to
16 issue such consent." *People v. Graves*, 555 N.E.2d 268, 269 (N.Y. 1990).
17 Empire may avoid liability for trespass here because the City, whom
18 Empire contracted with, gave Empire permission to enter Plaintiffs'
19 land.

20 For these reasons, we affirm the district court's grant of
21 summary judgment to Empire on Plaintiffs' negligence and trespass
22 claims.

23 * * *

24 We have considered the remaining arguments and find them
25 without merit. For the foregoing reasons, the judgment of the district
26 court is:

27 **AFFIRMED** in part as to:

- 28 • The district court's grant of summary judgment in favor of
29 Empire for Plaintiffs' Section 1983 and state law claims;

- 1 • The district court’s dismissal of all claims against the
2 individual City Defendants, with the exception of the
3 Commissioner, on qualified immunity grounds;
4 • The district court’s grant of summary judgment on Plaintiffs’
5 substantive due process claim;

6 **VACATED** in part as to:

- 7 • The district court’s grant of summary judgment in favor of
8 the City, and dismissal of the case in its entirety, after finding
9 no *Monell* liability;
10 • The district court’s grant of summary judgment in favor of
11 the Commissioner on qualified immunity grounds;
12 • The district court’s grant of summary judgment in favor of
13 the City and Commissioner on Plaintiffs’ procedural due
14 process, unlawful taking, and unreasonable seizure claims;
15 and

16 **REMANDED** to the district court for further proceedings consistent
17 with this opinion.