

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____

Argued - May 4, 2007

ROBERT W. SCHMIDT, J.P.
REINALDO E. RIVERA
DANIEL D. ANGIOLILLO
RUTH C. BALKIN, JJ.

2007-00617

DECISION & ORDER

Giuseppina Costanza, respondent, v Josephine
Galluzo, appellant (and a third-party action).

(Index No. 16301/00)

Thaniel J. Beinert, Brooklyn, N.Y. (Marc A. Merolesi of counsel), for appellant.

Wolfson & Carroll, New York, N.Y. (John W. Carroll of counsel), for respondent.

In an action for the partition and sale of real property, the defendant appeals from a judgment of the Supreme Court, Kings County (Douglass, J.), dated December 20, 2006, which, inter alia, distributed to her only an undivided one-sixth interest in the net proceeds from the sale of the property.

ORDERED that the judgment is affirmed, with costs.

“A partition action, although statutory, is equitable in nature and the court could compel the parties to do equity between themselves when adjusting the distribution of the proceeds of sale” (*Cook v Petito*, 208 AD2d 886; *see Berlin v Wojnarowski*, 32 AD3d 810, 811; *Lemcke v Lemcke*, 13 AD3d 1062; *Oliva v Oliva*, 136 AD2d 611, 612). In this case, the Supreme Court did not improvidently exercise its discretion in its distribution of the net proceeds of the sale of the subject real property between the parties in accordance with their ownership interest share (*id.*; *see Hunt v Hunt*, 13 AD3d 1041, 1042, *lv denied* _____ NY3d _____ [May 3, 2007]).

SCHMIDT, J.P., RIVERA, ANGIOLILLO and BALKIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

June 5, 2007

COSTANZA v GALLUZO