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

D30267
Y/prt

_____AD3d_____ Submitted - January 18, 2011

WILLIAM F. MASTRO, J.P.
MARK C. DILLON
RANDALL T. ENG
SANDRA L. SGROI, JJ.

2009-10658 DECISION & ORDER

Tarlach MacNiallias, respondent, v
Kevin Potter, appellant.

(Index No. 531/06)

Kevin Potter, Corona, N.Y., appellant pro se.

Steven Zalewski & Associates, P.C., Kew Gardens, N.Y. (Dustin Bowman of counsel), for respondent.

In an action for the partition and sale of real property and for an accounting, the defendant appeals from an order and judgment (one paper) of the Supreme Court, Queens County (Weiss, J.), dated October 1, 2009, which granted the plaintiff's motion to confirm the report of a referee dated July 9, 2007 (Baum, Ref.), directed that the property be sold at auction, and further directed that, after the satisfaction of all outstanding mortgages, the plaintiff be awarded the sum of $57,451.85, with the remainder of the proceeds to be divided equally between the plaintiff and the defendant.

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

The plaintiff Tarlach MacNiallias and the defendant Kevin Potter were domestic partners. They purchased a house in Corona, Queens, as tenants in common, on March 31, 1997. Their relationship subsequently deteriorated, and MacNiallias moved out of the house in July 2002. MacNiallias thereafter commenced the instant action to sell the property and divide the proceeds between himself and Potter. A referee was appointed to determine the parties' respective interests in the property.

MacNiallias submitted an affidavit, loan statements, copies of checks, the original mortgage agreement, refinanced mortgage agreements, and statements from his checking account, in order to demonstrate his interest in the property. Potter testified in opposition that he had some repairs done to the house, including fixing a leak in the ceiling, and replacing a bathtub. The referee found that MacNiallias established that he was entitled to receive the sum of $57,451.85, representing his contributions to the value of the house. MacNiallias moved to confirm the referee's report, and Potter opposed the motion. In an order and judgment (one paper) dated October 1, 2009, the Supreme Court, Queens County, granted MacNiallias's motion to confirm the referee's report, directed that the house be sold at auction, and directed that, after the satisfaction of all outstanding mortgages, MacNiallias be awarded the sum of $57,451.85, with the remainder of the proceeds to be divided equally between him and Potter.

The report and recommendations of a referee should be confirmed if its findings are supported by the record (*see Sichel v Polak,* 36 AD3d 416; *Baker v Kohler,* 28 AD3d 375). Here, the Supreme Court properly concluded that the referee's report was supported by the record.

The defendant's remaining contentions are without merit.

MASTRO, J.P., DILLON, ENG and SGROI, JJ., concur.

ENTER:

Matthew G. Kiernan
Clerk of the Court