

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

D34699
C/kmb/hu

_____AD3d_____

Argued - March 8, 2012

REINALDO E. RIVERA, J.P.
CHERYL E. CHAMBERS
SHERI S. ROMAN
SANDRA L. SGROI, JJ.

2010-08291

DECISION & ORDER

Sherman Holley, respondent, v Jacqueline Hinson-Holley,
also known as Jacqueline Hinson, appellant.
(Action No. 1)

Yuval Golan, plaintiff, v Sherman Holley, respondent.
(Action No. 2)

(Index Nos. 34520/08, 320/09)

Yvette V. Dudley, P.C., Springfield Gardens, N.Y. (Samson Freundlich of counsel),
for appellant.

In two related actions, inter alia, for the partition and sale of real property, which were joined for trial, Jacqueline Hinson-Holley, also known as Jacqueline Hinson, the defendant in Action No. 1, appeals, as limited by her brief, from so much of an order of the Supreme Court, Kings County (Schack, J.), dated July 2, 2010, as granted that branch of the motion of Sherman Holley, the plaintiff in Action No. 1 and the defendant in Action No. 2, which was for summary judgment on the cause of action for partition in Action No. 1, appointed a referee to hear and report with respect to an accounting of the property, and, sua sponte, granted leave to Sherman Holley to commence an action for partition of the adjacent property.

ORDERED that the appeal from so much of the order as appointed a referee to hear and report with respect to an accounting of the property is dismissed, without costs or disbursements, as the appellant is not aggrieved by that portion of the order (*see* CPLR 5511); and it is further,

ORDERED that the appeal from so much of the order as, sua sponte, granted leave to Sherman Holley to commence an action for partition of the adjacent property is dismissed, without

December 26, 2012

Page 1.

HOLLEY v HINSON-HOLLEY, also known as HINSON
GOLAN v HOLLEY

costs or disbursements, as no appeal lies as of right from an order which does not determine a motion made on notice, and we decline to grant leave to appeal (*see* CPLR 5701[a][2]); and it is further,

ORDERED that the order is affirmed insofar as reviewed, without costs or disbursements.

In 1980, Sherman Holley, the plaintiff in Action No. 1 and the defendant in Action No. 2, and his then-wife, Jacqueline Hinson-Holley, also known as Jacqueline Hinson (hereinafter Hinson), the defendant in Action No. 1, purchased, as tenants by the entirety, certain real property in Brooklyn. The parties were divorced in 1986. As a result of the divorce, Holley and Hinson owned the subject property as tenants in common, since their ownership as tenants by the entirety was extinguished as a matter of law (*see Goldman v Goldman*, 95 NY2d 120, 122; *Pando v Tapia*, 79 AD3d 993, 994-995).

In December 2008, Holley commenced Action No. 1 against Hinson seeking, among other things, partition of the subject property. Holley moved in Action No. 1, inter alia, for summary judgment on the cause of action for partition. Hinson opposed the motion on the grounds, among others, that she was entitled to an accounting, and that summary judgment was premature because discovery had not yet taken place. The Supreme Court, inter alia, granted that branch of Holley's motion which was for summary judgment on the cause of action for partition, and appointed a referee to hear and report with respect to an accounting of the property.

Hinson may not appeal from so much of the order as appointed a referee to hear and report with respect to an accounting of the property, since she requested that relief, and therefore is not aggrieved by that portion of the order (*see* CPLR 5511; *Russo v Russo*, 275 AD2d 406).

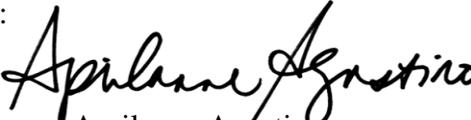
Holley established his prima facie entitlement to judgment as a matter of law on the cause of action for a partition of the subject property by submitting, inter alia, a copy of the deed to that property indicating that he was a tenant in common with Hinson and that he owned a 50% interest therein (*see Donlon v Diamico*, 33 AD3d 841, 842; *Dalmacy v Joseph*, 297 AD2d 329, 330). In opposition, Hinson failed to raise a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324).

Hinson's remaining contention is without merit.

Accordingly, the Supreme Court properly granted that branch of Holley's motion which was for summary judgment on the cause of action for partition.

RIVERA, J.P., CHAMBERS, ROMAN and SGROI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court

December 26, 2012

Page 2.

HOLLEY v HINSON-HOLLEY, also known as HINSON
GOLAN v HOLLEY