



[2003].) In claims of ineffectiveness of counsel, mere vague and unsubstantiated allegations as to law office failure will not suffice. (Eretz Funding v Shalosh Assocs., 266 AD2d 184 [1999].) Moreover, where the court finds that the default was not the result of a single oversight or mistake, but part of an overall pattern of disregard for the court process, relief will be denied. (Santiago v New York City Health & Hosps. Corp., 10 AD3d 393 [2004].) Here, defendant makes no showing to support his claims against his prior counsel, and, in consideration of his long history of delay in these proceedings, the court finds that defendant has failed to adequately excuse his default. Moreover, defendant's affirmation in support of his motion fails to establish a meritorious defense to the underlying motion. (Santiago v New York City Health & Hosps. Corp., supra.) Accordingly, the main motion is denied in all respects.

Moreover, it is noted that, despite plaintiffs' apparent cross motion for such relief, a declaratory judgment must be sought and commenced as an action, and not through a notice of motion. (See, Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR 3001, C3001:21, at 449.) It is noted that, to the extent that plaintiffs seek declaratory relief in their complaint, they do not bring a motion for summary judgment in their favor for the same. Similarly, while plaintiffs request money judgment in their favor, they do not come forward with a demand for a sum certain. Rather, they seek a hearing on this issue, in combination with an accounting. Plaintiffs do, however, correctly perceive that their claims will be most appropriately resolved through an action for partition. (RPAPL 901.) Where, as here, it is claimed that a tenant in common has failed to contribute to carrying charges and expenses, the remaining tenants may properly seek the equitable remedy of partition. (Bufole v Greek, 152 AD2d 527 [1989]; Ferguson v McGloughlin, 184 AD2d 294 [1992].) Insofar as all parties acknowledge the need for an accounting, the same is a necessary incident of an action for partition. Accordingly, the cross motion is granted to the extent that plaintiffs shall have leave to amend their complaint so as to seek the relief of partition, with the remainder of the relief requested on their cross motion to be denied without prejudice to resolution in such an action for partition. (CPLR 3025[b].)

That branch of the cross motion seeking sanctions is denied.

Dated: December 8, 2004

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J.S.C.