

Chenet v Dunayevich
2010 NY Slip Op 31964(U)
July 21, 2010
Sup Ct, Queens County
Docket Number: 17758/08
Judge: Howard G. Lane
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submitted in support of the claim. Pursuant to the Verified Complaint, plaintiff seeks, inter alia, a sale of the subject premises based upon a partition and a division of the proceeds between the parties according to their respective rights, after the payment of all monies expended by plaintiff for maintenance and upkeep of the property. Additionally, plaintiff seeks an accounting and a portion of monies for rent and profits defendant has collected in relation to an alleged rental of the basement of the premises. At the conclusion of the Inquest, the court requested that plaintiff submit a memorandum of law with regard to the amount of damages being sought by the plaintiff. The memorandum of law was submitted and reviewed by the court.

FINDINGS OF FACT

On April 15, 2008, Iris Chenet, the former wife of plaintiff Marcel Chenet and the mother of the defendant Ivan R. Dunayevich, by deed conveyed her one-half interest of a legal two-family home located at 76-13 88th Avenue, Woodhaven, New York 11421 (hereinafter referred to as "the premises") to the plaintiff. Prior to the conveyance, the grantor, Iris Chenet, owned one-half interest of the premises as a tenant in common with the defendant, Ivan R. Dunayevich. As a result of the conveyance, both plaintiff and defendant each owned a one-half interest in fee of the premises as tenants in common. The testimony and documentary evidence submitted at Inquest

established that plaintiff and defendant own the premises, as tenants in common. Currently, the premises are possessed by Iris Chenet on the first floor, the defendant on the second floor and allegedly by other tenants, in the basement. From April 15, 2008 when title was conveyed to plaintiff to date, the plaintiff has neither been in possession of the premises nor has defendant permitted or allowed plaintiff access to the premises.

Plaintiff paid \$8,201.62 for real estate taxes and interest for the period prior to his ownership starting from July 1, 2007 through April 14, 2008; and for the period which he was the owner of the premises from April 15, 2008 through June 30, 2010. Similarly, the plaintiff paid \$2,350.07 for water and sewer charges for the premises for the billing period of July 1, 2009 through June 30, 2010. Plaintiff seeks to recover all monies paid in connection with the water and sewer charges and real estate taxes for the premises.

DISCUSSION

The court determines that the plaintiff has a right to maintain the partition action. However, as the parties never entered into an agreement to forgo partition and sell the property, plaintiff's "right to partition remains governed by statute (RPAPL 901 et seq.), and before partition and sale may be directed, 'such issues as the interests of the parties and

whether partition may be had without great prejudice should first be determined' (citations omitted)." (*Wolfe v. Wolfe*, 187 AD2d 628, 629 [2d Dept 1992]).

The testimony and documentary evidence submitted at and after the Inquest establish that on June 23, 2009 plaintiff made a payment to the New York City Department of Finance in the amount of \$8,201.92 for the period of July 1, 2007 through July 30, 2010 for the real estate taxes and a payment of \$2,350.07 for the period of July 1, 2009 through June 30, 2010 for the water and sewer charges.

The court further determines, based upon the plaintiff's testimony, and upon the admitted documentary evidence, plaintiff is entitled to be reimbursed for the amount of \$8,201.92 for the period of July 1, 2007 through July 30, 2010 for the real estate taxes and \$2,350.07 for the period of July 1, 2009 through June 30, 2010 for the water and sewer charges, for a total of \$10,551.99.

Although plaintiff claims that the defendant has illegally rented the basement of the premises, has not received any portion of the rents or profits in connection with same, and seeks an accounting of all monies that were collected so as to receive one-half of the total amount, plaintiff submitted no evidence documentary or otherwise to support the allegations regarding the rental of the basement of the premises.

CONCLUSION

Accordingly, after inquest, plaintiff is awarded judgment: for partition of the premises to the extent that a sale shall be ordered upon confirmation of the report of the referee to be appointed in the order to be submitted hereon. The referee shall ascertain and report the rights, shares and interests of the parties to this action in the property described in the complaint and of which partition is sought, and an abstract of the conveyances by which the same are held, and to report whether the property, or any part thereof, is so circumstanced that a partition thereof cannot be made without great prejudice to the owners. Such referee shall report on and take an account of the rents and/or profits, if any, collected and distributed by any of the parties hereto, take proof of capital improvements, repairs, taxes, insurance and all other expenditures made in connection with maintaining the value of said property by either party in a manner consistent with this decision. If the referee determines that a sale of said property, or any part thereof, is necessary, then he or she shall ascertain whether there is any creditor not a party to this action who has a lien on the undivided share or interest of any party hereto, pursuant to RPAPL 913, and report to the Court with all convenient speed the name of each creditor whose lien is satisfactorily proved before him or her, the nature and extent of

said lien, the date thereof and the amount due or become due thereupon.

The County Clerk is directed to enter judgment accordingly. Submit an order of reference consistent with this memorandum decision.

A courtesy copy of this memorandum decision is being mailed to counsel for plaintiff.

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Howard G. Lane, J.S.C.