

Verdi v Verdi

2014 NY Slip Op 31689(U)

May 30, 2014

Sup Ct, Queens County

Docket Number: 703090/2012

Judge: Howard G. Lane

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This opinion is uncorrected and not selected for official publication.

MEMORANDUM *Ullmann*

SUPREME COURT - QUEENS COUNTY
IA PART 6

LAWRENCE VERDI,

BY: **LANE, J.**

Plaintiff,

DATED: May 27, 2014

-against-

INDEX NO.: 703090/12

VINCENT VERDI and JP MORGAN CHASE
BANK, N.A.,

MOTION DATE:
April 17, 2014

Defendants

MOTION CAL. NO.: 105

MOTION SEQUENCE NO.: 2

That branch of the motion by defendant Vincent Verdi for an Order of Reference pursuant to RPAPL 915 and CPLR 4311 is hereby granted solely to the following extent:

In a decision/order dated October 22, 2013, this Court held, in relevant part:

Plaintiff in this action seeks a partition and the sale of premises located at 62-49 82nd Street, Middle Village, New York premises).

Plaintiff's cross motion to partition and sell the property is denied. RPAPL 915 provides that, in an action for partition, an interlocutory judgment shall determine "the right, share, or interest of each party in the property." Where the property was so circumstanced that a partition thereof could not be made without great prejudice to the owners, the interlocutory judgment shall direct that the property be sold at public auction. Otherwise, the interlocutory

FILED
MAY 30 2014
COUNTY CLERK
QUEENS COUNTY

judgment in favor of the plaintiff shall direct that partition be made between the parties according to their respective right, share, or interest. Here, there has been no interlocutory judgment determining the right, share, or interest of each party in the subject property. While it has been established that the parties are tenants in common to the property, their disagreements as to their respective rights, shares, or interests in this property remain unresolved. Such issues as the rights, shares, or interests of the parties, and whether partition may be had without great prejudice, should be determined and declared by the court, after the referee reports to the court on these issues, before a partition or sale may be directed (see *Goldberger v Rudnicki*, 94 AD3d 1048 [2012]; *Lauriello v Gallotta*, 70 AD3d 1009 [2010]; *Wolfe v Wolfe*, 187 AD2d 628, 629 [1992]; *Grossman v Baker*, 182 AD2d 1119 [1992]; *George v Bridbord*, 113 AD2d 869 [1985]).

In the case at bar, while defendant Verdi counterclaims that he is the 2/3 owner of the Premises, plaintiff alleges that the parties are each 1/2 owners of the Premises and seeks leave to sell the Premises and divide the proceed equally between himself and defendant Verdi. As such, summary judgment directing the sale of the Premises is not warranted until an accounting can be held to determine the parties' respective rights, shares and interests in the Premises.

Furthermore, RPAPL 231(1), requires that any sale of the Premises be through public auction (see e.g. *Lauriello v Gallotta*, *supra*).

A referee shall ascertain the rights, shares and

interest of the parties herein and to determine whether partition may be had without great prejudice.

Because a partition is equitable in nature, necessarily incident thereto is an accounting so that the parties' respective rights to a share of the proceeds may be determined (*Tedesco v Tedesco, supra; Deitz v Deitz*, 245 AD2d 638 [3d Dept 1997]).

The Court will designate a referee in the order to be entered hereon.

That branch of defendant Verdi's motion seeking an order granting an extension of his time to move for summary judgment pursuant to CPLR 3212(a) is hereby granted.

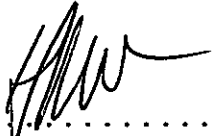
Pursuant to CPLR 3212, a motion for summary judgment "shall be made no later than one hundred twenty days after the filing of the note of issue, except with leave of court on good cause shown." In the instant case, the record reveals that the Note of Issue was filed on January 15, 2014. Therefore, all summary judgment motions need have been made on or about May 15, 2014. Any summary judgment motion made later than one hundred twenty days after the filing of the note of issue, requires court approval and a showing of "good cause." In *Brill v City of New York*, the Court of Appeals held that: "'good cause' in CPLR 3212(a) requires a showing of good cause for making the delay in the motion - - a satisfactory explanation for the untimeliness - - rather than simply permitting meritorious, non judicial

findings, however tardy." 2 NY3d 648 (NY 2004). "[S]tatutory time frames - like court-ordered time frames - are not options, they are requirements, to be taken seriously by the parties. Too many pages of the Reports, and hours of the courts, are taken up with deadlines that are simply ignored." (*Micelli v State Farm Automobile Insurance Company*, 3 NY3d 725 [2004][internal citations omitted]; see also *Dettmann v Page*, 18 AD3d 422 [2d Dept 2005; *First Union Auto Finance, Inc. v Donat*, 16 AD3d 372 [2d Dept 2005]).

The Court finds that defendant has presented good cause shown for an extension in filing a late summary judgment motion. It is undisputed that plaintiff filed a note of issue prior to the appointment of a referee and the performance of an accounting. The Court finds that defendant has provided good cause.

Accordingly, that branch of defendant's motion for leave to serve a late summary judgment motion is granted.

Settle order.



 HOWARD G. LANE, J.S.C.