

Durant v Lawrence
2020 NY Slip Op 32823(U)
July 24, 2020
Supreme Court, Kings County
Docket Number: 514010/2016
Judge: Richard Velasquez
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 24rd day of July, 2020.

PRESENT:

HON. RICHARD VELASQUEZ,
Justice.
-----X
BEVERLY DURANT,
Plaintiff,

Index No. 514010/2016
Seq # 005/006

- against -

JUNEL LAWRENCE,
Defendant.
-----X

The following e-filed papers read herein:

NYCEF Doc. Nos.

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed _____	86-87,90,91, 105-107,109
Opposing Affidavits (Affirmations) _____	100 112
Reply Affidavits (Affirmations) _____	112

After having heard Oral Argument on July 1, 2020 and upon review of the foregoing papers, defendant Junel Lawrence (Lawrence or defendant), in motion sequence (mot. seq.) five, moves for an order, (1) pursuant to CPLR 1012 and 1013, permitting Patricia Livingstone¹ (Livingstone), to intervene as a defendant and permitting her to file an

¹ Livingstone is also referred to in the papers as Patricia Livingstone-Thompson.

answer, and (2) pursuant to CPLR 1001 (a), adding Livingstone as a party to this partition action, permitting her to file an answer, and amending the caption to add Livingstone as a defendant. (MS#5).

In mot. seq. six, plaintiff Beverly Durant (Durant or plaintiff), cross-moves, pursuant to CPLR 3212 and Article 9 of the RPAPL, for summary judgment and for orders: (1) directing the sale of real property located at 474 Utica Avenue, Brooklyn, New York 11203 (the subject premises) and conveying the subject premises to the purchaser; (2) for an accounting to be had of defendant's tenure as de facto trustee/manager of the subject premises of rent and other money received, expenditures incurred in the course of management, including, but not limited to the mortgage, taxes, insurance, improvements and related disbursements for material and supplies and upon completion of accounting, for a pay out of the proceeds of the sale such sums as shall be ascertained to be due to the respective parties hereto; (3) appointing a referee and holding a hearing to determine the credits and offsets between and among the parties for subject premises, currently held by the parties herein as tenants in common; (4) awarding plaintiff attorney's fees and costs associated with this action and the sale of the subject premises; (5) adjudging, by said sale and conveyance, that the parties in title, and all persons claiming through or under them subsequent to the filing of the order of sale, be barred of all right, title, and interest in the subject premises in possession, reversion, remainder or otherwise; and (5) directing that the residue of the money arising from the sale of the subject premises be divided and paid in equal shares to the parties in title subject to such credits and offsets as may be determined to exist between and among the parties. (MS#6).

Background

In October of 2012, plaintiff and defendant (collectively, the parties) acquired title to the subject premises, a residential dwelling, as tenants-in-common by deed recorded on October 12, 2012.²

On August 11, 2016, plaintiff commenced this action for partition and sale of the subject premises by filing a summons and complaint. In the complaint, plaintiff alleges that since acquiring the subject premises, the parties have leased the premises and used the rental income to maintain the premises and make mortgage payments on same. The complaint further pleads that the parties' relationships deteriorated and became acrimonious, making it impossible for the parties to work together to maintain the premises in good condition.

On January 6, 2017, when defendant failed to interpose an answer or otherwise appear, plaintiff filed a motion for a default judgment. By order filed on May 3, 2017, the court granted the motion and scheduled an inquest for August 3, 2017. Thereafter, on June 6, 2017, by quitclaim deed and in consideration for ten dollars, defendant conveyed his ownership interest in the subject premises to Livingstone. On July 31, 2017, defendant moved, by order to show cause, to vacate the default, which the court granted the same day.

In her answer and counterclaim, filed on June 13, 2018, defendant alleges that the parties purchased the subject premises on behalf of proposed-intervenor Livingstone, pastor of the Pentacostal Deliverance and Reconciliation Ministry (PDRM), with which the

² The deed itself, submitted by plaintiff, does not show the amount that was paid by the parties for the subject premises. Nor is there evidence in the record before the court of the parties' relationship with Edele Pierre-Louis, the conveyor of the deed, if any.

parties were affiliated. Defendant alleges that (1) Livingstone gave plaintiff money for the down payment, (2) the parties obtained a mortgage, and (3) Livingstone paid the closing costs, as well as all the costs to maintain the subject premises, including all mortgage payments to date. Defendant contends that the parties agreed to deed the subject premises to Livingstone after their purchase. Livingstone also allegedly renovated the first floor, converting it into a sanctuary for PRDM, and renovated the second floor for living space for her family. Approximately a year after the parties acquired the subject premises for Livingstone's use, Livingstone allegedly leased commercial space across the street from the subject premises, relocated PDRM to the commercial space, and then reconverted the first floor of the subject premises from a sanctuary to a living space. Livingstone allegedly spent over \$75,000 in renovations and improvements to the subject premises. In the answer, defendant denies the existence of a rental agreement between the parties and Livingstone.

Defendant's Motion Permitting Livingstone to Intervene

Defendant seeks to add Livingstone as a party, arguing that intervention is liberally allowed by the courts, where, as here, the party seeking to intervene has a bona fide interest in the litigation. In this regard, defendant contends that by virtue of her transfer of her share of the subject premises to Livingstone, plaintiff and Livingstone now jointly own the subject premises as tenants in common, and Livingstone's rights with respect to the property would be adversely impacted if partition were granted. Defendant further claims that Livingstone has a claim for constructive trust, which would defeat plaintiff's claim for partition because if that were the case, plaintiff is not the true owner of the property. Defendant asserts that plaintiff does not deny that Livingstone has an interest

in the subject premises. Moreover, defendant contends that plaintiff would not be prejudiced by allowing Livingstone to intervene, because up until the filing of this motion, plaintiff has not made any discovery requests of defendant, and, although she has requested to take defendant's deposition, has not taken any steps to do so. Plaintiff has also allegedly refused to comply with defendant's discovery demands, thereby delaying the scheduling of her own deposition.

In support of the motion, defendant submits an affidavit from Livingstone sworn to on July 21, 2017, which was previously submitted in support of defendant's motion to vacate the default judgment. In the affidavit, Livingstone avers that she came to know the parties through their affiliation with PDRM, and that the parties were made aware of her desire to purchase a home that would also serve as a worship place for PDRM. Livingstone confided in the parties that she was unable to purchase a home because her credit score was not high enough to obtain a mortgage. When the subject premises became available, the parties allegedly offered to assist Livingstone in obtaining a mortgage. Livingstone claims that she did not tender any consideration to the parties for their assistance with the purchase. Livingstone allegedly attended the closing with plaintiff; defendant, who was unable to attend, provided power of attorney. According to Livingstone, the parties did not pay any out of pocket costs associated with the purchase and closing. Livingstone contends that since the closing, she has made all the mortgage payments for the subject premises, including escrow for taxes and insurance, to Wells Fargo, and that she has made payments by automatic electronic fund transfer, checks and money orders. She asserts that the monthly mortgage payments are made in her name alone. In support of this contention, defendant submits Livingstone's redacted

bank statements showing automatic payments from a Chase bank account to "WI Home Mtg" as well as electronic checks to "WFHM Mortgage."

Livingstone further asserts that since the closing, she and her family have been the sole occupants of the subject premises, and that the parties have never resided there. Moreover, Livingstone argues that there was no lease agreement between her and the parties, and that the parties merely assisted her in obtaining financing for the purchase. Livingstone contends that since the closing, she and her husband have made significant improvements to the property, including, but not limited to, conversion of the first floor into a sanctuary, and conversion of the sanctuary into a two-bedroom apartment. She denies plaintiff's contention that the property is in a dilapidated condition. Livingstone avers that consistent with the understanding between herself and the parties, defendant removed herself from the deed and added Livingstone in her stead.

Plaintiff opposes the motion to intervene. Plaintiff contends that the subject premises is being rented to Livingstone, who occupies the premises for her business. Plaintiff asserts that she was not notified of defendant's conveyance of her interest in the subject premises to Livingstone. Plaintiff states that defendant never removed plaintiff's name from the mortgage even though plaintiff expressly informed defendant of her desire to sever their relationship. Plaintiff contends that she would be prejudiced if intervention was allowed because the action was commenced three years ago, and intervention would additionally delay the case. To that end, plaintiff states that she desires to sell the property so she can buy her own house and obtain an additional mortgage. Plaintiff alleges that she has not been able to purchase real property in her name due to her income and having to obtain an additional mortgage. Plaintiff also allegedly informed

defendant that she was looking to purchase her own residence, a goal that required the sale of the subject premises and the proceeds therefrom.

Plaintiff also argues that adding another defendant would further delay the case. She further contends that defendant has not shown that Livingstone's right would be adversely affected if intervention were not allowed. Plaintiff asserts that Livingstone cannot argue that she would be prejudiced by now allowing intervention, since she acquired title to the subject premises from defendant fully knowing that the litigation was pending. Plaintiff contends that the subject premises has appreciated in value, is fully rented and is producing income. She alleges that defendant has refused to provide an accounting and share in the proceeds of the income received from the property.

In reply, defendant asserts that plaintiff's counsel's statement in his affirmation in opposition that plaintiff continues to pay rent for the subject premises is a self-serving statement that is not supported by a sworn statement from plaintiff or by any documentary evidence that plaintiff has paid the mortgage, much less the rent. Defendant further contends that there is no prejudice to plaintiff in adding Livingstone as a defendant, as plaintiff was made aware of Livingstone's interest in the premises in 2017 when defendant moved to vacate the default judgment and attached Livingstone's affidavit in support. Defendant argues that plaintiff has also been aware of Livingstone's claim to the property since at least the time of defendant's filing of an answer and counterclaim asserting Livingstone's interest in the subject premises on the basis of the parties' constructive fiduciary responsibilities owed to Livingstone.

Discussion

"Upon timely motion, any person shall be permitted to intervene in any action . . .

when the action involves the disposition or distribution of, or the title or a claim for damages for injury to, property and the person may be affected adversely by the judgment” (CPLR 1012 [a] [3]). In addition, upon timely motion, the court, in its discretion, may permit a person to intervene “when a statute of the state confers a right to intervene . . . or when the person’s claim or defense and the main action have a common question of law or fact” (CPLR 1013; *see also Wells Fargo Bank, N.A. v Mazzara*, 123 AD3d 875, 876 [2d Dept 2015]). “In exercising its discretion, the court shall consider whether intervention will unduly delay the determination of the action or prejudice the substantial rights of any party” (CPLR 1013; *see also Wells Fargo Bank, N.A. v McLean*, 70 AD3d 676, 677 [2d Dept 2010]). Moreover, “[p]ersons who ought to be parties if complete relief is to be accorded between the persons who are parties to the action or who might be inequitably affected by a judgment in the action shall be made plaintiffs or defendants” and “[w]hen a person who should join as a plaintiff refuses to do so he may be made a defendant” (CPLR 1001 [a]).

“Consideration of any motion to intervene begins with the question of whether the motion is timely” (*Yuppie Puppy Pet Prods., Inc. v Street Smart Realty, LLC*, 77 AD3d 197, 201 [1st Dept 2010]; *see also Rotondi v Rotondi*, 151 AD3d 1094, 1095 [2d Dept 2017] [motion to intervene filed seven years after commencement of partition action deemed untimely]; *U.S. Bank Natl. Assn. v Bisono*, 98 AD3d 608 [2d Dept 2012] [motion to intervene in action to foreclose a mortgage more than three and a half years after commencement of the action was filed, and more than two and a half years after the judgment of foreclosure entered, deemed untimely]). Even when a party who was not joined in an action has an apparent right to intervene, his or her delay in seeking to do

say may preclude intervention (*see Mazzara*, 123 AD3d at 876 [delay of four years until after commencement of action, which led to order of reference, rendered intervention untimely]). However, courts should not engage in mere mechanical measurements of time, but should consider whether the delay in seeking intervention would cause a delay in resolution of the action or otherwise prejudice a party (*see Yuppie Puppy*, 77 AD3d at 201; *see also Poblocki v Todoro*, 55 AD3d 1346 [4th Dept 2008] [four year delay from commencement of action in moving to intervene in a medical malpractice action not untimely as defendants failed to demonstrate that they will suffer prejudice from the delay]).

In the instant matter, Livingstone – who resides at the subject premises, now apparently owns half of the subject premises by virtue of the 2017 deed transfer, and contends that plaintiff holds the other half in constructive trust for her – has adequately established that she may be adversely affected by a decision ordering partition and sale of the subject premises (*see CPLR 1012 [a] [3]*; *see also Capital Resources Co. v Prewitt*, 266 AD2d 176, 176 [2d Dept 1999] [co-tenant with ownership interest in a property being foreclosed upon, but whose interest was not directly subject to plaintiff's mortgage, was a necessary party to a foreclosure action by virtue of the co-tenancy, where plaintiff's ultimate goal was to force partition and sale of the intervenor's home]). In addition, the court may properly permit Livingstone to intervene; since Livingston claims that (1) the parties initially purchased the property with her down payment, (2) she has paid the mortgage³, (3) she expended \$75,000 in renovating the subject premises, and (4) it was

³ While Livingstone contends that she has paid the mortgage and has submitted her bank statements showing mortgage payments from a bank account, neither party has provided copies of

the parties' understanding that the subject premises was being held in constructive trust for her (see CPLR 1013).

While defendant has moved to add Livingstone as a party almost three years after commencement of the action and over two years after interposing an answer, courts have permitted intervention in cases where the delay in seeking the relief was longer than three years (see e.g. *Halstead v Dolphy*, 70 AD3d 639 [2d Dept 2010] [intervention sought more than four years from action's commencement granted where note of issue was not yet filed and intervenor stipulated that it would not seek additional discovery]; *Poblocki v Todoro*, 55 AD3d 1346 [4th Dept 2008] [intervention permitted four years after commencement of action]).

Moreover, plaintiff has not established that she will be prejudiced by the delay (see *McLean*, 70 AD3d at 677). Plaintiff submits that she desires to purchase her own home but cannot do so because she already has one mortgage (on the subject premises) and requires funds from the sale of the subject premises to procure a home. However, this matter has been pending for almost four years, and according to defendant, as of the filing of this motion, plaintiff has not provided any discovery – which has also delayed defendant from deposing plaintiff – and has not taken any action to schedule defendant's deposition. Thus, plaintiff's inaction with respect to moving this case toward a resolution belies her contention that she would be prejudiced by any delay. In addition, plaintiff was aware of Livingstone's interest in the subject property, and of the possibility that Livingstone would become a party to the action, as early as July of 2017, when

any relevant mortgage documents. Nor has the plaintiff provided the court with a lease or any other documents in support of her contention that Livingstone rents the property.

Livingstone submitted her affidavit in support of the motion to vacate the default judgment. Further, in support of the motion to vacate the default, defendant submitted her own affidavit seeking to vacate the default as well as to “substitute” Livingstone in her stead, which lends additional support to plaintiff’s awareness of Livingstone’s interest in this action. Finally, the allegations in Livingstone’s affidavit were incorporated in defendant’s answer and counterclaim in 2017. Under these particular circumstances, plaintiff cannot properly maintain that she would be prejudiced by Livingstone’s intervention at this stage of the litigation.

Accordingly, the court grants the motion to allow Livingstone to intervene as a defendant and to interpose an answer, and orders that the caption be amended to reflect Livingstone as an additional defendant.

Plaintiff’s Cross Motion for Summary Judgment

Plaintiff moves for summary judgment for partition and sale of the subject premises, asserting that there are no common questions of law and fact precluding a judgment in her favor. Plaintiff argues that she is merely seeking to terminate her deteriorated business relationship with defendant, which she is legally entitled to do. She states that partition, without a judicial sale, cannot be made without prejudice to the parties. Plaintiff contends that the property has appreciated in value since its acquisition, yet defendant refuses to provide an accounting and share in the residual income received from the property. She avers that partition and sale is the only remedy available to her to prevent additional prejudice and harm so as not to prejudice the parties’ interests. Plaintiff also argues that an accounting is necessary to determine the respective rights, interests and shares of the property. Plaintiff further seeks attorney’s fees and costs.

Plaintiff claims that Livingstone does not have any legal nexus to, or privity with, plaintiff. Rather, plaintiff contends that Livingstone and defendant are acting in collusion with the intent of misleading the court and further delaying partition of the property.

Plaintiff argues that in absence of an agreement between the parties to voluntarily sell the premises and forego partition and sale, a party's right to partition and sale remains governed by statute. She argues that partition is necessary to prevent further or continuing economic harm. She asserts that without partition, she will not be afforded the opportunity for use of the property as she bargained for, and that she has been denied the financial benefit sought upon acquisition of the property, including but not limited to equity appreciation, use and occupancy of the premises, and a share of the net proceeds of rent received.

Defendant opposes the motion on the several grounds. First, defendant contends that the motion is untimely because it was filed in violation of the court's July 24, 2019 order. Pursuant to that order, plaintiff was to serve and file opposition papers on or before September 16, 2019. Instead, plaintiff filed her opposition on September 27, 2019, eight days after defendant's scheduled time to submit a reply. Defendant argues that, more importantly, the scheduling order did not allow for the filing of a cross motion. In that regard, defendant states that while the intervention motion was returnable on October 23, 2019, plaintiff attempted to file this cross motion on the evening of October 22, 2019. After the cross motion was returned by the clerk for correction, on October 23, 2019, plaintiff filed a second notice of motion returnable November 20, 2019, which was again returned for correction. On October 23, 2019, the intervention motion was adjourned to December 18, 2019.

Second, defendant argues that material questions of fact preclude granting summary judgment in plaintiff's favor. In support of this contention, defendant refers to the allegations in her answer and counterclaim, as well as to the allegations in Livingstone's affidavit.

Discussion

A party jointly owning property with another may, as of right, seek a court-ordered partition and sale of the property where he or she no longer wishes to jointly use the property or it appears that a partition cannot be made without great prejudice to the owners (see RPAPL 901; *Khotylev v Spektor*, 165 AD3d 1088, 1089 [2d Dept 2018]; *Trotta v Ollivier*, 91 AD3d 8, 12-13 [2d Dept 2011]). Since partition is not an absolute right but is subject to the equities of the parties, a court has authority to adjust the parties' rights so each receives his or her share of the property and its benefits (see *Hitech Homes, LLC v Burke*, 159 AD3d 489 [2d Dept 2018]; *Khotylev*, 165 AD23d at 1089-1090; *Graffeo v Paciello*, 46 AD3d 613, 614 [2d Dept 2007]; *McVicker v Sarma*, 163 AD2d 721, 722 [2d Dept 1990]). "[B]ecause a partition action is equitable in nature, an accounting is a necessary incident thereto" (*Khotylev*, 165 AD3d at 1090, quoting *Tedesco v Tedesco*, 269 AD2d 660, 661 [3d Dept 2000]).

Actual possession of the property is not a prerequisite to obtaining partition, and constructive possession is sufficient for maintenance of the action (see *Deegan v Deegan*, 247 AD 340 [2d Dept 1936]). In assessing whether physical partition is feasible, or if an order for partition and sale is required, courts consider the resulting prejudice to parties, if any, as well as the practicality of physical partition (see *Snyder Fulton Street, LLC v Fulton Interest, LLC*, 57 AD3d 511, 513 [2d Dept 2008]; *Ferguson v McLoughlin*, 184

AD2d 294, 294 [1st Dept 1992]). While a tenant in common has the right to maintain a partition action,

the remedy is always subject to the equities between the parties (see *Goldberger v Rudnicki*, 94 AD3d 1048, 1050 [2012]; *Arata v Behling*, 57 AD3d 925, 926 [2d Dept 2008]).

A party moving for summary judgment bears the burden of making a prima facie showing of entitlement to judgment as a matter of law and must tender sufficient evidence in admissible form to demonstrate the absence of any material factual issues (see CPLR 3212 [b]; *Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Korn v Korn*, 135 AD3d 1023, 1024 [3d Dept 2016]). Failure to make this prima facie showing requires denial of the motion (see *Alvarez*, 68 NY2d at 324; *Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). Once this showing has been made, the burden shifts to the party opposing the motion to produce evidence in admissible form sufficient to establish an issue of material fact requiring a trial (see CPLR 3212; *Alvarez*, 68 NY2d at 324; *Zuckerman*, 49 NY2d at 562; *Graffeo*, 46 AD3d at 615). “[A]verments merely stating conclusions, of fact or of law, are insufficient to defeat summary judgment” (*Banco Popular North America v Victory Taxi Management, Inc.*, 1 NY3d 381, 383 [2004] [internal quotations omitted]).

A party may move for summary judgment after issue has been joined, either (1) by a date set by a court, provided that such date is no earlier than thirty days after the filing of the note of issue, or (2) if no date is set by the court, no later than one hundred twenty

days⁴ after the filing of the note of issue, except with leave of the court on good cause shown (see CPLR 3212 [a]).

Here, plaintiff's summary judgment motion is timely because the note of issue has not been filed yet. Defendant's contention that the motion is untimely because it was filed in violation of the court's July 24, 2019 order is without merit. In that order, the court directed plaintiff to serve and file an opposition to a different motion – defendant's intervention motion – by September 16, 2019; the order did not, and pursuant to CPLR 3212 (a), could not, dictate the filing of a summary judgment motion. While it appears that the motion was returned by the clerk for correction, it was ultimately received by the court on February 5, 2020 (see NYSCEF No. 109), after defendant submitted an opposition in support of this motion and in reply in support of the motion to intervene on December 12, 2019 (see NYSCEF No. 112).

Turning to the merits of the motion, plaintiff has made a prima facie showing of her entitlement to summary judgment as a matter of law by submitting a copy of the duly-executed deed demonstrating her ownership and right to possession of the property as joint tenant in common (see *Khotylev*, 165 AD3d at 1089); *Weng v Zhao*, 2019 NY Slip Op 50007[U] 62 Misc3d 1206[A] [Sup Ct Kings County 2019]). Plaintiff has also submitted her own sworn affidavit in support of summary judgment, has sworn to the facts that were within her own personal knowledge therein, and has attached a copy of the deed indicating that she was a tenant in common with defendant (see *Holley v Hinson-Holley*, 101 AD3d 1084, 1085-1086 [2d Dept 2012] [plaintiff established entitlement to

⁴ Subject to changes made by the Kings County Supreme Court Uniform Civil Term Rules.

summary judgment as a matter of law by submitting copy of deed indicating he was tenant in common with defendant and owned a 50% interest therein]; *Donlon v Diamico*, 33 AD3d 841, 842 [2d Dept 2006] [holding that there were “no triable issues of fact regarding plaintiff’s right to possession of the property, which is all that she needed to maintain the present partition action” and plaintiff demonstrated entitlement to summary judgment by demonstrating that the subject property was so circumscribed that partition alone cannot be made without great prejudice to the owners]). Plaintiff’s affidavit, sworn to by her, constitutes evidence in admissible form in support of her motion (see *Pagano v Kingsbury*, 182 AD2d 268, 270 [2d Dept 1992]). The burden shifts to respondents to show a material question of fact warranting a trial (see *Alvarez*, 68 NY2d at 324; *Zuckerman*, 49 NY2d at 562).

Defendant’s and Livingstone’s sworn affidavits and exhibits thereto, wherein they contend that the parties purchased the subject premises for Livingstone, that Livingstone paid the mortgage/ maintenance costs, and expended \$75,000 in renovating the premises for her congregation and her family, raise issues of material fact that preclude an award of summary judgment in plaintiff’s favor. In light of defendant’s and Livingstone’s allegations, it is for a trier of fact to determine the rights of the parties with respect to partition and sale of the property (see *George v Bridbord*, 113 AD2d 869, 871 [2d Dept 1985]; *Levine v Goldsmith*, 71 AD 204, 209 [1902]). In addition, as Livingstone’s rights may be affected by a grant of summary judgment, and as the court has only granted the motion to add Livingstone as a defendant herein, consideration of summary judgment at this juncture is premature.

Accordingly, it is **ORDERED** that defendant’s motion, mot. seq. five, for an order,

permitting Livingstone to intervene as a defendant and permitting her to file an answer, and amending the caption to add Livingstone as a defendant, is hereby granted, (MS#5); and it is further

ORDERED that plaintiff's cross motion, mot. seq. six, for an order pursuant to CPLR 3212 and Article 9 of the RPAPL, for summary judgment directing partition and sale of the subject premises, and for other relief, is denied in its entirety, for the reasons stated above. (MS#6). The court has reviewed the parties' remaining contentions and finds them to be without merit. All relief not expressly granted herein is denied.

This constitutes the decision and order of the court.

Dated: Brooklyn, New York
July 24, 2020



HON. RICHARD VELASQUEZ

So Ordered
Hon. Richard Velasquez

JUL 24 2020

2020 AUG 26 PM 3:47
KINGS COUNTY CLERK
FILED