

**Board of Mgrs. of the One Sunset Park
Condominium v Wong**

2021 NY Slip Op 30615(U)

March 1, 2021

Supreme Court, Kings County

Docket Number: 508641/2020

Judge: Debra Silber

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : PART 9**

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**BOARD OF MANAGERS OF THE ONE SUNSET
PARK CONDOMINIUM,**

DECISION / ORDER

Plaintiff,

Index No. 508641/2020

-against-

Motion Seq. # 1

WILSON WONG, ET AL,

Defendants.

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**Recitation, as required by CPLR 2219(a) of the papers considered in the review of plaintiff's
motion for summary judgment in this partition action**

Papers	NYSCEF Doc,
Notice of Motion, Affirmations, Affidavits and Exhibits.....	<u>55-68</u>
Answering Affidavits.....	<u>73-83, 86</u>
Reply Affidavits.....	<u>87</u>

**Upon the foregoing cited papers, the Decision/Order on this application is
as follows:**

Plaintiff moves, in this partition action regarding a fifty-four-family multiple dwelling in Brooklyn, NY, converted in 2009 to a condominium, for summary judgment pursuant to Real Property Law Section 339-cc (the Condominium Act section titled "Repair or Reconstruction") and for related relief. After oral argument, held virtually on Microsoft Teams, the motion is granted solely to the extent that the court hereby grants plaintiff summary judgment and issues this order appointing a Referee to ascertain the parties' rights and interests, as is required prior to a motion to confirm/reject coupled with an application for an interlocutory judgment to sell, and for a determination of whether there are any liens or judgments on the property or against

the parties.

The court finds that the plaintiff has obtained jurisdiction over all of the condominium unit owners, who are all named defendants, and that all of the named defendants have appeared and answered the complaint, that plaintiff has established, as required by RPL §339-cc, that three-fourths or more of the building has been destroyed by fire, and that seventy-five percent or more of the unit owners do not want to repair or restore, which was determined by a vote duly held pursuant to the By-laws, that the plaintiff condominium board is the owner of the superintendent's unit, and as such is a unit owner eligible to bring this partition action, and that a Referee should be appointed to determine the rights and obligations of the parties.

Upon the foregoing papers, and on motion of Herrick, Feinstein, attorneys for plaintiff, which came on to be heard on March 1, 2021, and there being no opposition to the motion, the attorneys for the defendant who is the holder of unsold units having filed an affirmation in support, and the attorneys for the other unit owners having only opposed the branch of the motion which seeks to dismiss their counterclaims, it is hereby **ORDERED** that:

1. Plaintiff is granted summary judgment as against all defendants on their claim for partition.

2. Jeffrey Saltiel, Esq., with offices at Wenig, Saltiel LLP, 26 Court Street, Suite 1200, Brooklyn, NY 11242, 718-797-5700, jsaltiel@ltattorneys.com is appointed Referee in this action, to 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 to take proof of the parties' title and interest in the premises and of the matters set forth in the complaint, and to report whether the property, or any part of the property, is so circumstanced as to require a sale, and whether a partition of the property can be made without great prejudice to the owners.

3. If the Referee concludes that a sale of the property is necessary and appropriate, then the Referee shall secure a lien search and ascertain whether there is any creditor, not a party to the action, who has a lien on the subject property or in the undivided share or interest of any party in the property previously described.

4. The Referee shall prepare a list of the fifty-four apartments, with the names of the unit owners indicated and the names and addresses of the holders of any liens, including mortgages, on the units. Account numbers, if included, shall only include the last four digits. The list of units from the Declaration of Condominium is annexed hereto, which lists the unit numbers and the tax lot numbers.

5. The Referee shall determine whether this partition action should proceed under New York's partition law at RPAPL §901 et seq., or the new NY law recently adopted and adapted from the Commission on Uniform Laws, at RPAPL §993 et seq. Counsel at oral argument indicated they might be able to obtain a stipulation to proceed under the new law, which permits a sale without an auction at the courthouse.

6. The Referee shall report to the court the name of each creditor whose lien is satisfactorily proved before him (or her), the nature and extent of the lien, the date of

the lien and the (approximate) amount due or to become due on each of the liens.

7. The Referee shall make his/her report (by E-Filing same) no later than 90 days from the date of this order, and except for good cause shown, the Plaintiff shall move to confirm the Referee's report and for an interlocutory judgment to sell no later than 90 days from the date of the Referee's report.

8. With the submission of the Referee's Report, the Referee shall include an affirmation of services rendered so the court may award the Referee compensation for his/her services, which sum may be recovered by plaintiff as a cost of litigation.

9. The Referee appointed herein is subject to the requirements of Rule 36.2(c) of the Chief Judge, and, if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall notify the Appointing Judge forthwith.

10. By accepting this appointment the Referee certifies that he/she is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including but not limited to, Section 36.2(e) ("Disqualifications from appointment"), and Section 36.2(d) ("Limitations on appointments based upon compensation").

The branch of the plaintiff's motion which seeks an order dismissing the unit owner defendants' counterclaims (not asserted by the defendant 4401 Sunset Holdings LLC, the holder of unsold units) is denied with regard to the first counterclaim (for an accounting), and granted with regard to the second counterclaim (for a declaratory judgment of the rights of the parties, as it is duplicative of the relief

required of the court in a partition action) .

Accordingly, it is **ORDERED** that the defendants' first counterclaim (for an accounting) is hereby severed and shall continue.

All other relief requested in the motion is denied.

As this action was improperly captioned with regard to the name of the plaintiff, which error is not fatal and may be corrected, it is **ORDERED** that the name of the plaintiff, in accordance with General Associations Law §12, is amended to be:

“Leroy P. Shepherd, as President of the Board of Managers of the One Sunset Park Condominium.”

This shall constitute the decision and order of the court.

Dated: March 1, 2021

ENTER :



Hon. Debra Silber, J.S.C.

EXHIBIT B
TO THE DECLARATION OF
ONE SUNSET PARK CONDOMINIUM
702 44th Street, Brooklyn, NY 11220
Block 641 - Lots 1001-1054

DESCRIPTION OF THE UNITS

UNIT	NUMBER OF BEDROOMS/BATHS KITCHEN, STUDY	APPROXIMATE TOTAL SQ. FT.		BLOCK TAX LOT NO.	% OF COMMON INTEREST	LOCATION IN PORTION OF BUILDING FACING DIRECTION SET FORTH BELOW	COMMON ELEMENTS TO WHICH THE UNIT HAS IMMEDIATE ACCESS
		UNIT	BALCONY/ TERRACE				
1A	1/1+K	878	n/a	741/1001	1.868997	SW	corridor, elevator, stairs
2A	1/1 +K	878	n/a	741/1002	1.868997	SW	corridor, elevator, stairs
3A	2/1	878	n/a	741/1003	1.868997	SW	corridor, elevator, stairs
4A	1/1 +K	878	n/a	741/1004	1.868997	SW	corridor, elevator, stairs
5A	1/1 +K	878	n/a	741/1005	1.868997	SW	corridor, elevator, stairs
6A	1/1 +K	878	n/a	741/1006	1.868997	SW	corridor, elevator, stairs
1B	2/1	860	n/a	741/1007	1.8306831	SW	corridor, elevator, stairs
2B	2/1	860	n/a	741/1008	1.8306831	SW	corridor, elevator, stairs
3B	1/1 +K	860	n/a	741/1009	1.8306831	SW	corridor, elevator, stairs
4B	2/1	860	n/a	741/1010	1.8306831	SW	corridor, elevator, stairs
5B	1/1 +K	860	n/a	741/1011	1.8306831	SW	corridor, elevator, stairs
6B	1/1 +K	860	n/a	741/1012	1.8306831	SW	corridor, elevator, stairs
1C	1/1 +K	830	n/a	741/1013	1.7668221	W	corridor, elevator, stairs
2C	2/1	830	n/a	741/1014	1.7668221	W	corridor, elevator, stairs
3C	1/1 +K	830	n/a	741/1015	1.7668221	W	corridor, elevator, stairs
4C	1/1 +K	830	n/a	741/1016	1.7668221	W	corridor, elevator, stairs
5C	2/1	830	n/a	741/1017	1.7668221	W	corridor, elevator, stairs
6C	2/1	830	n/a	741/1018	1.7668221	W	corridor, elevator, stairs
1D	2/1	922	n/a	741/1019	1.9626626	NW	corridor, elevator, stairs
2D	2/1 +K	1,114	n/a	741/1020	2.3713732	NW	corridor, elevator, stairs
3D	2/1 +K	1,114	n/a	741/1021	2.3713732	NW	corridor, elevator, stairs
4D	2/1 +K	1,114	n/a	741/1022	2.3713732	NW	corridor, elevator, stairs
5D	2/1 +K	1,114	n/a	741/1023	2.3713732	NW	corridor, elevator, stairs
6D	2/1 +K	1,114	n/a	741/1024	2.3713732	NW	corridor, elevator, stairs
1E	1/1 +K	885	n/a	741/1025	1.4581604	NW	corridor, elevator, stairs
2E	1/1 +K	846	n/a	741/1026	1.8008813	NW	corridor, elevator, stairs
3E	1/1 +K	846	n/a	741/1027	1.8008813	NW	corridor, elevator, stairs
4E	1/1 +K	846	n/a	741/1028	1.8008813	NW	corridor, elevator, stairs
5E	2/1	846	n/a	741/1029	1.8008813	NW	corridor, elevator, stairs
6E	1/1 +K	846	n/a	741/1030	1.8008813	NW	corridor, elevator, stairs
1F	Studio/1+S	562	n/a	741/1031	1.1963301	NE	corridor, elevator, stairs
2F	1/1 +K	794	n/a	741/1032	1.6901888	NE	corridor, elevator, stairs
3F	1/1 +K	794	n/a	741/1033	1.6901888	NE	corridor, elevator, stairs
4F	1/1 +K	794	n/a	741/1034	1.6901888	NE	corridor, elevator, stairs
5F	1/1 +K	794	n/a	741/1035	1.6901888	NE	corridor, elevator, stairs
6F	2/1	794	n/a	741/1036	1.6901888	NE	corridor, elevator, stairs
1G	2/1 +K	1,059	n/a	741/1037	2.2542947	NE	corridor, elevator, stairs
2G	2/1 +K	1,059	n/a	741/1038	2.2542947	NE	corridor, elevator, stairs
3G	2/1 +K	1,059	n/a	741/1039	2.2542947	NE	corridor, elevator, stairs
4G	2/1 +K	1,059	n/a	741/1040	2.2542947	NE	corridor, elevator, stairs
5G	2/2+K+S	1,059	n/a	741/1041	2.2542947	NE	corridor, elevator, stairs
6G	2/1 +K	1,059	n/a	741/1042	2.2542947	NE	corridor, elevator, stairs
1H	1/1 +K	792	n/a	741/1043	1.6859314	SE	corridor, elevator, stairs
2H	1/1 +K	792	n/a	741/1044	1.6859314	SE	corridor, elevator, stairs
3H	1/1 +K	792	n/a	741/1045	1.6859314	SE	corridor, elevator, stairs
4H	2/1	901	n/a	741/1046	1.9179599	SE	corridor, elevator, stairs
5H	2/1	901	n/a	741/1047	1.9179599	SE	corridor, elevator, stairs
6H	2/1	901	n/a	741/1048	1.9179599	SE	corridor, elevator, stairs
1J	1/1 +K	754	n/a	741/1049	1.6050408	SE	corridor, elevator, stairs
2J	1/1 +K	754	n/a	741/1050	1.6050408	SE	corridor, elevator, stairs
3J	1/1 +S	754	n/a	741/1051	1.6050408	SE	corridor, elevator, stairs
4J	1/1	645	n/a	741/1052	1.3730123	SE	corridor, elevator, stairs
5J	1/1	645	n/a	741/1053	1.3730123	SE	corridor, elevator, stairs
6J	1/1	645	n/a	741/1054	1.3730123	SE	corridor, elevator, stairs