

**Gelinas LLC v Hayes**

2021 NY Slip Op 34242(U)

September 16, 2021

Supreme Court, Bronx County

Docket Number: Index No. 800450/2021E

Judge: Kenneth L. Thompson, Jr.

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX IA 20 \_\_\_\_\_ X

GELINAS LLC,

Index No: **800450/2021E**

Plaintiff,

-against-

**DECISION AND ORDER**

JACQUELINE HAYES and VALERIE GALLOWAY,

Present:

**HON. KENNETH L. THOMPSON, JR.**

Defendants

\_\_\_\_\_ X

The following papers numbered 1 to read on this **motion for summary judgment**

No	On Calendar of <b>May 20, 2021</b>	PAPERS
Notice of Motion-Order to Show Cause - Exhibits and Affidavits Annexed-----	-----	<b>motion sequence #1 NYSCEF</b>
Memorandum of Law-----	-----	<b>motion sequence #1 NYSCEF</b>

Upon the foregoing papers and due deliberation thereof, the Decision/Order on this motion is as follows:

Plaintiff moves pursuant to CPLR 3212 for summary judgment in favor of plaintiff requiring an accounting of all rental income received by defendant, Jacqueline Hayes, (Hayes), and pursuant to RPAPL 911 appointing a referee and directing the referee to ascertain the rights, shares and interests of the parties in the property sought to be partitioned.

It is undisputed that Hayes and decedent Charlesanna Adams, (Adams), had owned the subject real property as tenants in common when Adams died in 2005. An heirship affidavit dated April 15, 2020, by John V. Galloway jr., indicates that co-defendant Valerie Galloway is a niece of decedent and John Galloway jr. is a nephew of decedent. No other distributees are indicated in the affidavit. John Galloway concludes his affidavit with the statement that he is entitled to a “50% interest in the Estate of Charlesanna Adams.”<sup>1</sup> However, plaintiff contends in his complaint and in plaintiff’s attorney’s affirmation in support, that John Galloway


<sup>1</sup> Paragraph five, heirship affidavit of John Galloway jr. dated April 15, 2020.

had a 25% interest in the estate which was transferred to plaintiff by deed dated May 15, 2020 and codefendant Valerie Galloway owned the remaining 25% interest in the estate. In her answer, Hayes also claims to be a distributee of Charlesanna Adams. Hayes withdrew her petition in Surrogates Court on the return date of a revocation proceeding. Plaintiff contends that Hayes' petition was fraudulent which led to the withdrawal. However, the order of Justice Nelida Malave-Gonzalez dated November 26, 2019, merely memorializes the withdrawal of the petition on the return date of a revocation proceeding. This Court cannot speculate as to the reason for the withdrawal of the petition and dismiss Hayes' claim to being a distributee.

Plaintiff's motion for summary judgment is denied on default as no affidavit of service upon defendant, Jacqueline Hayes, for this motion, has been filed on NYSCEF. Furthermore, it is directed that a proceeding be brought in Surrogate's Court, Bronx County to determine the distributees of the Estate of Charlesanna Adams and determine their respective shares of the estate.

The foregoing constitutes the decision and order of the Court.

Dated: 9/16/2021

  
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KENNETH L. THOMPSON JR./J.S.C.