

Howard v Howard

2022 NY Slip Op 34441(U)

December 20, 2022

Supreme Court, Kings County

Docket Number: Index No. 514701/2022

Judge: Carolyn E. Wade

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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: HON. CAROLYN E. WADE

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CORDELIA HOWARD,

Plaintiff,

Index No. 514701/2022

- against -

DENAE N. HOWARD, as Administrator of the
Estate of William E. Howard, DENAE N. HOWARD,
SAGE K. HOWARD and NIJA I. HOWARD,

DECISION AND ORDER

MS #1 & 2

Defendants.
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Recitation, as required by CPLR §2219(a), of the papers considered in the review of Plaintiff's
Motion and Defendants' Cross-Motion:

<u>Papers</u>	<u>NYSCEF #'s</u>
Order to Show Cause/Notice of Motion and Affidavits/Affirmations Annexed.....	7, 8, 9, 18
Cross-Motion and Affidavits/Affirmations.....	25, 26
Answering Affidavits/Affirmations.....	
Reply Affidavits/Affirmations.....	30

Upon the foregoing cited papers, and after virtual oral argument, Plaintiff, CORDELIA HOWARD ("Plaintiff"), moves (Mot. Seq. No. 1) for an Order pursuant to the Uniform Partition of Heirs Property Act, RPAPL § 993, finding that (i) the real property which is the subject of this action for partition, known as the Proprietary Lease and appurtenant 83 shares of Grey Ghost Owners Corp., 149 Lafayette Avenue, Cooperative Apartment 4 (a/k/a 2B), Brooklyn, New York 11238 ("subject apartment") is "Heirs' Property" as defined by RPAPL § 993(3)(b);

(ii) pursuant to RPAPL § 993(7)(a), issuing notice to all parties, that Plaintiff seeks a partition by sale of the subject apartment, and that Defendants, DENAE N. HOWARD, as Administrator of the Estate of William E. Howard, DENAE N. HOWARD, SAGE K. HOWARD and NIJA I. HOWARD ("Defendants") as the remaining co-tenants have a right to buy out Plaintiff's interest;

(iii) pursuant to RPAPL § 993(5), issuing notice to all parties of the time and place of the settlement conference mandated thereunder, the purpose of the conference and the requirements of

RPAPL § 993, including the determination of the subject apartment's fair market value pursuant to RPAPL § 993(6) and buy out procedures pursuant to RPAPL § 993(7).

Defendants cross-move (Mot. Seq. No. 2) for an order requiring Plaintiff to provide an accounting of rent, profits, and expenses for the subject apartment since March 1, 2020; and to postpone the settlement conference mandated by Real Property Actions and Proceedings Law § 993(5)(c) "at least forty-five (45) days after" Plaintiff provides said accounting.

The underlying partition action arises out of the subject apartment, which was owned by Plaintiff and her late son, William E. Howard ("Mr. Howard") as tenants in common. Following Mr. Howard's passing and in accordance with his Last Will and Testament, Defendants acquired his 50% interest in the property. Plaintiff now seeks a partition by sale of the subject apartment pursuant to RPAPL § 993.

Plaintiff's Motion for a Partition by Sale Pursuant to RPAPL 993 (Seq. No. 1)

The Defendants do not oppose the Plaintiff's motion (Mot. Seq. No. 1), as they concede that: (i) the property is "Heirs' Property," (ii) that Plaintiff owns an undivided one-half interest in the property, (iii) that the Defendants collectively own the other undivided one-half interest in the property, (iv) that pursuant to RPAPL § 993(7)(a), a notice should be issued to all parties as to the Defendants' right to avert partition by sale by exercising the right to purchase Plaintiff's interest in the property, and (v) that notices should be issued to all parties pursuant to RPAPL § 993(5) of the time and place of the statutorily-mandated settlement conference. Accordingly, Plaintiff's motion is **GRANTED**.

Defendants' Cross-Motion for an Accounting of the Subject Apartment (Seq. No. 2)

As for the cross-motion for an accounting of the subject apartments' rents, profits, and expenses since March 1, 2020, Defendants contend that an accounting is necessary prior to a Court scheduled settlement conference to assist the parties during negotiations.

In opposition, Plaintiff asserts that the Defendants are not entitled to an accounting prior to the settlement conference. Plaintiff asserts that RPAPL § 993(5)(g) precludes Defendants from compelling an accounting in advance of the settlement conference.

RPAPL § 993(5)(g) provides that “[a]ny motions submitted by any party to the action may be held in abeyance while the settlement conference process is ongoing, except for motions concerning (i) a determination of the percentage interests, if any, owned by any alleged co-tenant if such interests are in dispute and (ii) compliance with this rule and its implementing rules including applications to extend in the interests of justice any deadlines fixed herein.”

“[P]artition is an equitable remedy in nature and [the] Supreme Court has the authority to adjust the rights of the parties so each receives his or her proper share of the property and its benefits. Further, because a partition action is equitable in nature, an accounting is a necessary incident thereto” (*Khotylev v Spektor*, 165 AD3d 1088, 1089-1090 [2d Dept 2018] [internal citations and quotations omitted]).

Here, the parties agree that the subject apartment is “Heirs’ Property” and that a partition settlement conference is required pursuant to RPAPL § 993. Plaintiff’s refusal to produce an accounting of the subject apartment prior to a settlement conference is unreasonable and is not in compliance with the statute. Moreover, the production of the accounting prior to the settlement conference will assist the parties in resolving the partition action expeditiously. Thus, this Court finds that Plaintiff should produce an accounting of the subject apartment’s rental income, expenses and profits prior to the settlement conference.

Accordingly, it is hereby,

ORDERED, that the Plaintiff’s motion for an order finding that the property is “Heirs’ Property” is **GRANTED** (Mot. Seq. No. 1); and it is further

ORDERED, that pursuant to RPAPL § 993(5)(a), the parties and their counsel shall appear for a mandatory settlement conference on March 15, 2023 at 9:30 AM, in person, in Room 969 at the Supreme Court of the State of New York, Kings County, 360 Adams Street, Brooklyn, New York, 11201, for the purpose of holding settlement discussions pertaining to the relative rights and obligations of the parties with respect to the subject apartment, and it is further

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ORDERED, that at such conference, the parties shall, pursuant to RPAPL § 993(5)(e) negotiate in good faith to reach a mutually agreeable resolution including, but not limited to: a tenancy in common agreement; a co-tenant buyout and the allocation, mechanics and financing thereof as provided by RPAPL § 993(7); a partition in kind as provided in RPAPL § 993(8) and (9); an open market sale as provided in RPAPL § 993(10); or any other agreement or loss mitigation that is fair and reasonable considering the totality of factors listed in RPAPL § 993(9)(a)1; and it is further

ORDERED, that the defendants' cross-motion for an accounting is **GRANTED to the extent** that at least 45 days prior to the scheduled settlement conference, Plaintiff must provide an accounting of all income received, all expenses paid by her, directly or indirectly, in relation to the subject property, and all profits since March 1, 2020. The accounting is to be supported by pertinent bank records.

ORDERED, that pursuant to RPAPL § 993(5)(b), Plaintiff shall serve a copy of this Order on all parties by notice of entry and post a copy of this settlement conference notice in a conspicuous place on the property within thirty (30) days of the date of this Order.

This constitutes the Decision and Order of the Court.

Dated: Dec 20th, 2022



HON. CAROLYN E. WADE, J.S.C.

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 KINGS COUNTY CLERK
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