

New Jersey Estates LLC v Coggins

2023 NY Slip Op 32723(U)

August 7, 2023

Supreme Court, Kings County

Docket Number: Index No. 505375/2020

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**

X

NEW JERSEY ESTATES LLC,

DECISION / ORDER

Plaintiff,

Index # 505375/2020

-against-

Motion Seq. No. 002

GEORGINA COGGINS,

Defendant.

X

Recitation, as required by CPLR 2219(a) of the papers considered in the review of plaintiff's motion for the appointment of a referee and related relief

Papers	NYSCEF
Notice of Motion and Affidavit Annexed.....	<u>48-71</u>
Answering Affidavits.....	<u>85-99</u>
Reply Affidavits.....	<u>80</u>

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

Plaintiffs' motion, in this partition action regarding a one or two-family house in Brooklyn, NY, for summary judgment and an order appointing a referee to ascertain the parties' rights prior to 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, is granted solely to the extent set forth below.

Upon the foregoing papers, and after oral argument and a conference as is required by the Uniform Partition of Heirs' Property Act [RPAPL §993 et seq], held on August 3, 2023, it is ordered that:

1. The court hereby determines that the property is "heirs' property" [RPAPL §993(2)(e), as defendant resides at the premises; and this action shall therefore proceed pursuant to that statute.

2. Plaintiff is not entitled to summary judgment herein, as the court granted defendant's motion, MS #4, simultaneously herewith, which sought leave to amend her *pro se* answer, now that she has counsel. Thus, the motion for summary judgment is premature, despite the fact that this action has languished due to the Covid-19 Pandemic and the court's computer issues, since 2020.

3. Contrary to plaintiff's averments, defendant did answer the complaint, but, as a *pro se* party who opted out of electronic filing, her answer was filed in the County Clerk's minutes, and two separate computer programs needed to be checked for documents in this matter.

4. Jeffrey R. Miller, Esq., with offices at Miller, Leiby & Assoc., 32 Broadway, 13th floor, NY, NY 10004, (212) 227-4200, email: jmiller@millerleiby.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, 115 New Jersey Avenue, Brooklyn, NY, 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; to secure a title search to confirm the conveyances which plaintiff claims has resulted in plaintiff and defendant being the sole owners of the property; to take proof of plaintiff's title and interest in the property; to take an account of the rents being received by defendant, if any; and to report on these matters; and to report whether the property, or any part of the property, is so circumstanced that a partition of the property cannot be made without great prejudice to the owners.

5. The Court directs the Intake Part to upload a Preliminary Conference Order, pursuant to the court's rules, forthwith. (See Discovery Part Rules 2jd |

NYCOURTS.GOV). An RJJ was filed on May 29, 2020, and this action has been in a “black hole” ever since, despite the prior motions.

6. 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 or mortgagor, who has a lien on the subject property or on the undivided share or interest of any party in the property.

7. The Referee shall make his/her report by electronically filing it no later than 120 days from the date of this order and, except for good cause shown, the plaintiff shall then move, as is applicable, for the court to determine the value of the property, if the parties have not agreed as to its value, and/or for an order directing a “Partition by sale,” defined by RPAPL §993(2)(f), as applicable to this property, as “a court-ordered sale of the entire heirs property, . . . whether by auction, sealed bids, or open-market sale conducted under subdivision ten”, which motion shall be made no later than 90 days from the date of the Referee’s report. Further, either party may move for the appointment of a referee to hold a hearing to determine whether the parties have been negotiating in good faith, a procedure specifically contemplated by the statute.

8. Pursuant to the statute, RPAPL §993, subsections 5(e) and (f), while the referee is performing his obligations hereunder and preparing his report:

“(e) Both the plaintiffs and defendants shall 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 in subdivision seven of this section, a partition in kind as provided in subdivisions eight and nine of this section, an open market sale as provided in subdivision ten of this section, or any other agreement or loss mitigation that is fair and

reasonable considering the totality of factors listed in paragraph (a) of subdivision nine of this section.

(f) If the parties do not reach a mutually agreeable resolution, the referee, judicial hearing officer, or other staff designated by the court to oversee the settlement conference process shall make a report of findings of fact, conclusions of law and recommendations for relief to the court concerning any party's failure to negotiate in good faith pursuant to paragraph (e) of this subdivision. If the court determines a plaintiff has failed to negotiate in good faith, the partition action shall be dismissed."

9. 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.

10. 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.

11. By accepting this appointment, the Referee certifies that he/she is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCCR 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").

This shall constitute the decision and order of the court.

Dated: August 7, 2023

ENTER:



Hon. Debra Silber, J.S.C.