

Schwimmer v Schlesinger
2024 NY Slip Op 34980(U)
May 22, 2024
Supreme Court, Kings County
Docket Number: Index No. 525209/2023
Judge: Carolyn E. Wade
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: HON. CAROLYN E. WADE, JSC

MIRIAM SCHVIMMER

Plaintiff,

- against -

SAMUEL SCHLESINGER AND CIPORA
MEISELS AS CO-TRUSTEES OF THE EVA
SCHLESINGER IRREVOCABLE TRUST

Defendants.

Index No.: 525209/2023

ORDER

Mot. Seq. No. 1

2024 MAY 24 A 9:25
KINGS COUNTY CLERK
FILED

Recitation, as required by CPLR 2219(a) of the papers considered in the review of Plaintiff's motion:

Papers	NYSCEF
Notice of Motion and Affidavit Annexed.....	<u>7-23</u>
Answering Affidavits.....	<u>26-42</u>
Reply Affidavits.....	<u>43-44</u>

Upon the foregoing cited papers and after oral argument, MARIA SCHVIMMER's ("Plaintiff") motion for summary judgment, in this partition action, is decided as follows:

Plaintiff's motion is **denied**. This Court determines that the subject mixed-use property located at 531 Bedford Avenue, Brooklyn, New York ("Property") is "heirs property" [RPAPL § 993]. Thus, this matter shall proceed to a settlement conference, as mandated by the Uniform Partition of Heirs' Property Act (UPHPA), which is codified by RPAPL § 993 et seq. The UPHPA supersedes the general partition statutes, including RPAPL § 901.

Under the UPHPA, "heirs property" is defined as:

[R]eal property held in tenancy in common which satisfies all of the following requirements as of the filing of a partition action: (i) there is no agreement in a record binding all of the co-tenants which governs the partition of the property; (ii)

any of the co-tenants acquired title from a relative, whether living or deceased; (iii) the property is used **for residential OR agricultural purposes** (emphasis added); and (iv) any of the following applies: (A) twenty percent or more of the interests are held by co-tenants who are relatives; (B) twenty percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; (C) twenty percent or more of the co-tenants are relatives of each-other; or (D) any co-tenant who acquired title from a relative resides in the property.

RPAPL § 993(2)(e). “If property meets the definition of ‘heirs property,’ the property shall be apportioned in accordance with the [UPHPA] unless all of the co-tenants otherwise agree in a record” (*Rubino v. Est. of Betancourt*, 2023 US Dist LEXIS 54251,*9 [EDNY Mar. 29, 2023] (citing *Maspeth Place Corp. v. Walcott-Francis*, 74 Misc3d 1204[A] [Sup Ct, Bronx County 2022]); *see also* RPAPL § 993(3)(b)-(c)).

Contrary to Defendants’ contentions, this Court finds that all of the elements have been satisfied for the Property to be deemed Heirs Property, pursuant to the UHPA.

First, it is undisputed that there is no binding agreement that exists governing the rights to partition the Property (*see* RPAPL § 993(2)(e)(i)). Second, all co-tenants acquired title from a family member (*see* RPAPL § 993(2)(e)(ii)).

Third, the UHPA requires that the property be used for residential or agricultural purposes (*see* RPAPL § 993(2)(e)(iii)(A); *see* Exhibit 8 to Defendants’ opposition papers and Exhibit “A” to Plaintiff’s reply papers). There is no requirement in the UHPA that the property be zoned for residential use only, so long as it is used for residential purposes (*Rubino v. Est. of Betancourt*, 2023 US Dist LEXIS 54251,*9 [EDNY Mar. 29, 2023]; *see also Ave Holding 1 LLC v. Lowenbraun*, 2021 WL 1501594 [Sup Ct, N.Y. County 2021] (mixed-use property in Manhattan deemed heirs property within the meaning of RPAPL § 993, thereby triggering the remaining provisions of the statute)].

Here, pursuant to the 2022 deed, the Property is used for residential purposes; to wit, it is a one to three family house residential dwelling with one storefront/office. Moreover, pursuant to the original 1938 Certificate of Occupancy, it is a two-family house residential dwelling with a doctor's office.

Finally, it is undisputed that the Property is owned by relatives, with a percentage of it being held in a Trust for the benefit of Eva Schlesinger, Plaintiff's mother (*see* RPAPL § 993(2)(e)(iv)(A); *New Jersey Estates LLC v. Georgina Coggins*, 2023 WL 5016997 [Sup Ct, Kings County 2023]; *see also 2nd Ave Holding 1 LLC v. Lowenbraun*, 2020 WL 1248754, at *1 [Sup Ct, N.Y. County 2020]).

Pursuant to the Referee Referral Order signed by this Court, **a Court Referee will conduct a settlement conference** and otherwise comply with the procedural requirements prescribed by the UHPA.

Accordingly, based upon the above, Plaintiff's motion for summary judgment is **denied**.

This constitutes the Decision and Order of this Court.

Dated: May 21st, 2024

KINGS COUNTY CLERK
FILED
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HON. CAROLYNE. WADE, JSC