SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. PAUL A. GOETZ** **PART** 47

Justice

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LINCOLN T.K. NYEU,

INDEX NO. 155350/2021

Plaintiff,

- v -

FONG-YEE NYEU, FONG-MING NYEU, KATHRYN NYEU, JOHN DOE, JANE DOE

Defendants.

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This action arises from a dispute between plaintiff and defendants over the purchase, ownership and management of a condominium unit located at 201 West 72nd Street, Apt 17H, New York, NY 10023 (the condominium), which is owned by plaintiff's nieces, defendants Fong-Yee Nyeu and Fong-Ming Nyeu (NYSCEF Doc No 1). Plaintiff's four causes of action are for (1) "imposition of a constructive trust over 1/3 of the fee interest, rents, income, and appreciation, in and to the" condominium, (2) a declaratory judgement that "Plaintiff is the owner in fee simple absolute of an undivided one-third interest in and to the" condominium, (3) sale and partition of the condominium, and (4) attorneys' fees (NYSCEF Doc No 1). By decision and order dated April 2, 2024, the parties' motion and cross-motion for summary judgment were denied because "the credibility of the parties is the critical factor in resolving [the] dispute as to the nature of the transfer of money from the Fund to Martin," plaintiff's deceased brother and father of Fong-Yee and Fong-Ming (MS #3, NYSCEF Doc No 149). A bench trial was held on March 31 and April 1, 2025.[1] The parties were afforded an opportunity to submit post-trial

[1] After the trial, defendants withdrew all three of their counterclaims (NYSCEF Doc No 191).

OTHER ORDER – NON-MOTION

proposed findings of fact and conclusions of law, which were submitted on May 22 and May 23, 2025 (NYSCEF Doc Nos 189, 190, 192).

In their proposed findings of fact and conclusions of law, the parties agree that: in 1994, plaintiff, Martin, and their sister, defendant Kathryn Nyeu (collectively, the siblings), established a joint bank account at Credit Suisse, which was funded by one or both of their parents (NYSCEF Doc Nos 189 ¶¶ 2-3 [stating the account was funded by the siblings' "mother, Francis Nyeu and father C.Y. Nyeu"]; 192 ¶ 5 [stating the account was funded by the siblings' "now-deceased mother"]); in 2000, funds were withdrawn from the joint account so that Martin could purchase the condominium for his daughters, and a deed in their names was executed on December 19, 2000 (NYSCEF Doc Nos 189 ¶ 8; 192 ¶ 12); and Martin agreed to repay the loan by either replenishing the joint account or paying Lincoln his share of the money (NYSCEF Doc Nos 189 ¶ 15; 192 ¶ 9). However, plaintiff asserts that "[a]s part of the same promise, Lincoln and Martin agreed that the New York [condominium would] be 'family property' which would accrue to the benefit of the family" with Lincoln as a tenant in common (NYSCEF Doc No 189 ¶¶ 14, 46). Defendants assert that they never promised plaintiff that he would have any ownership interest in the condominium, nor is there any documentary evidence that Martin made such a promise (NYSCEF Doc Nos 192 ¶¶ 17-19; 159 ¶ 19; 187[2] p. 98).

In assessing the credibility of the parties and weight of the evidence, it is notable that plaintiff's allegations in his complaint do not match his post-trial proposed findings of fact. The complaint alleges that when Lincoln, Kathryn, and Martin's father died in 1990, he "bequest to his children . . . $300,000 US to be divided by them equally"; and in 2000, all three siblings agreed to use this inheritance to purchase the condominium (NYSCEF Doc No 1 ¶¶ 9-12).

[2] NYSCEF Doc No 187 only includes the affidavit of service of the transcript. However, a copy of the transcript was received by the court via email on May 14, 2025.

Kathryn, however, stated that she had "no personal knowledge of [plaintiff's] claim that [] our father [] bequest to [us] $300,000 to be divided amongst us equally," and that plaintiff's claim that the siblings "agreed to use our shares of the alleged inheritance to purchase the [condominium] is false and at no time was [she] a party so such agreement" (NYSCEF Doc No 160 ¶¶ 16-20).[3] Plaintiff's proposed findings of fact state that the joint account was established in 1994 and "funded with money in [an] account [] owned by [their] mother [and] father"; and that the promises made were between plaintiff and Martin, without reference to Kathryn's participation in these conversations (NYSCEF Doc No 189 ¶¶ 14-16). These unexplained discrepancies weigh against plaintiff's credibility as to the timeline, source of the funds, and the promises allegedly made.

Though not dispositive, plaintiff does not allege that he: communicated to his nieces that he believed himself to be a tenant in common with them (NYSCEF Doc Nos 159, 161 [his nieces affirmatively stating that no such communications took place]); attempted to exercise his purported "right to take and occupy the whole of the premises" as a tenant in common (*Oliva v Oliva*, 136 AD2d 611, 612 [2nd Dept 1988]); or sought one-third of the rental proceeds while the condominium was rented out to third parties (*Goldberg v Ochman*, 143 AD2d 255, 257 [2nd Dept 1988] [tenants in common are entitled to "an amount of rent [in] proportion" to their interest]).

Regarding the documentary evidence, plaintiff's name does not appear on the deed to the condominium (NYSCEF Doc No 164), nor is reference made to a tenancy in common in any other documents (*see, e.g.*, NYSCEF Doc No 165 [designating plaintiff as a successor agent for power of attorney with respect to the condominium without mention of any other interest he may

[3] Also notable is that, though Kathryn "stand[s] to benefit []from" plaintiff's claims—because, if successful, she would also be entitled to a one-third ownership interest in the property—she stated she "cannot support[her] brother Lincoln's claims . . ., as [she] know[s] them to be untrue" (NYSCEF Doc No 160 ¶ 15).

have]). Additionally, as noted in the April 2, 2024 decision and order, the letter from Martin to plaintiff dated October 23, 2000 states only: "I can repay our parents' fund or your money" (NYSCEF Doc No 173); it does not make any representation as to plaintiff's interest in the condominium.

Thus, the only admissible evidence of the promise as alleged by plaintiff is plaintiff's own testimony, which must be counterbalanced with the testimony and other evidence presented by defendants (*Fryling v Omer Constr. Co.*, 286 AD2d 983, 983-84 [4th Dept 2001] ["the parties gave conflicting testimony, and the court had the advantage of seeing the witnesses and assessing their credibility"]; *Verrilli v Verrilli*, 172 AD2d 990, 992 [3rd Dept 1991] ["Rejection of [a party's] version of the facts [is] well within the trial court's discretion in resolving issues of credibility"]). Here, plaintiff "offered no documentation for his assertions regarding" Martin's alleged promise to give plaintiff a one-third share in the condominium "and his [allegations] . . . were [] inconsistent" (*Verrilli*, 172 AD2d at 992). Since "there is no [other] evidence in the record indicating that the defendants [or Martin], either expressly or impliedly, promised the plaintiff any interest in the premises as a consequence of the loan[,] . . . plaintiff is not entitled to impose a constructive trust upon [the] real property purchased [] with money the plaintiff [] loaned" Martin (*Liselli v Liselli*, 263 AD2d 468, 469 [2nd Dept 1999]; *Scivoletti v Marsala*, 61 NY2d 806, 808 [1984] ["The record does not contain evidence to support a finding of any promise, express or implied, to convey the premises to plaintiff and, consequently, a constructive trust may not be imposed"]). Consequently, plaintiff's second cause of action for a declaratory judgement that plaintiff is a tenant in common of the condominium, and third cause of action for sale and partition of the condominium, also fail.

Finally, as plaintiff is not the prevailing party and does not identify any other source of entitlement to attorneys' fees and costs, such relief will not be granted (*Loughlin v Meghji*, 186 AD3d 1633, 1636 [2nd Dept 2020] ["plaintiff was not entitled to an award of attorneys' fees since he was not the prevailing party"]).

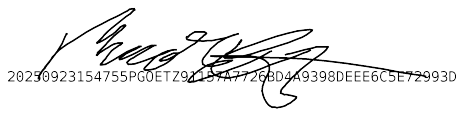
Based on the foregoing, it is

ORDERED that all four of plaintiff's causes of action are dismissed; and it is further

ORDERED that all three of defendants' counterclaims are permitted to be withdrawn; and it is further

ORDERED that the clerk is directed to enter judgment in favor of defendants on plaintiff's causes of action with costs and disbursements as taxed by the clerk to defendants; and it is further

ORDERED that the parties are directed to retrieve their exhibits from Part 47 (111 Centre St., Rm. 1021) within 30 days of this decision and order or the exhibits will be discarded



DATE: 9/23/2025 **PAUL A. GOETZ, JSC**

Check One: [X] **Case Disposed** [ ] **Non-Final Disposition**

Check if Appropriate: [ ] **Other (Specify _____)**