

Russo v 347 Bleecker St. Assoc. LLC

2025 NY Slip Op 34862(U)

December 15, 2025

Supreme Court, New York County

Docket Number: Index No. 151962/2024

Judge: Arthur F. Engoron

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON PART 37

Justice

INDEX NO. 151962/2024

BRITT L. RUSSO, MOTION DATE 05/30/2025

Plaintiff,

MOTION SEQ. NO. 003

- v -

347 BLEECKER STREET ASSOCIATES LLC,

DECISION + ORDER ON MOTION

Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97,

were read on this motion for SUMMARY JUDGMENT

Upon the foregoing documents, and after oral argument on October 21, 2025, the motion of plaintiff, pursuant to CPLR 3212, for summary judgment granting a partition and an equitable accounting of the premises located at 347 Bleecker Street, New York, New York 10014 (the "Property"), and, pursuant to CPLR 3211(d), to dismiss defendant's affirmative defenses, is granted.

Background

This action arises out of familial disputes over the subject Property, a four-story mixed-use building consisting of three floor-through residential units and a ground floor commercial space in the Greenwich Village Historic District, as designated by the Landmarks Preservation Commission. Plaintiff, Britt L. Russo, owns 5% of the Property as a tenant in common with defendant, 347 Bleecker Street Associates LLC, which owns the rest. The Property has been held by one family since at least 1900, most of the members of whom formed and transferred their rights to defendant LLC in 2012, pursuant to an operating agreement that was amended in July 2014. NYSCEF Doc. No. 36.

On November 23, 2022, defendant executed a lease extension, for a term of 20 years, with the daughter and daughter-in-law of defendant's managing member for Apartment 3, with a \$4,120 monthly rent, scheduled to increase annually from February 1, 2024, pursuant to the increases promulgated by New York City's Rent Guideline Board. NYSCEF Doc. No. 94. On December 5, 2022, defendant executed a lifetime lease with defendant's managing member, Olga Policastro, for Apartment 1, with a rent of \$0 per month.1 Id. The ground floor commercial space and Apartment 2 are both currently leased, for terms that are not clear from the record.

1 Ms. Policastro's free rent is, apparently, remuneration for her role as managing member.

On February 14, 2024, plaintiff was deeded her share of the Property via quitclaim deed from her father, Patrick Russo, who had never joined or transferred his interest into defendant. NYSCEF Doc. No. 57. On December 20, 2024, Mr. Russo died, with plaintiff as his sole heir. NYSCEF Doc. No. 56 ¶¶ 14-15.

On March 5, 2024, plaintiff commenced this action against defendant seeking: (1) a partition and sale, and (2) an accounting thereof. NYSCEF Doc. No. 1.

On April 24, 2024, defendant answered with four affirmative defenses: (1) failure to state a cause of action “for partition because partition would cause great prejudice” to defendant; (2) unclean hands; (3) that partition would frustrate the purpose of defendant; and (4) that plaintiff’s interest in the building, from her since-deceased father, was obtained through fraud, as he allegedly lacked mental capacity at the time of conveyance. NYSCEF Doc. No. 12.

Prior to the commencement of, and in parallel to, the instant action, members of defendant have engaged in commercial arbitration over defendant’s managing member’s management before the American Arbitration Association, Case No. 01-23-0004-0411.

Plaintiff now moves for summary judgment. NYSCEF Doc. No. 5.

Discussion

A court may grant summary judgment where there is no genuine issue of material fact, and the moving party has made a prima facie showing of entitlement to judgment as a matter of law. See Alvarez v Prospect Hosp., 68 NY2d 320, 324 (1986); see generally American Sav. Bank v Imperato, 159 AD2d 444, 444 (1st Dept 1990) (“The presentation of a shadowy semblance of an issue is insufficient to defeat summary judgment”). The moving party’s burden is to tender sufficient evidence to demonstrate the absence of any material issue of fact. See Ayotte v Gervasio, 81 NY2d 1062 (1993). Once this initial burden has been met, the burden shifts to the party opposing the motion to submit evidentiary proof sufficient to create material issues of fact requiring a trial; mere conclusions and unsubstantiated allegations are insufficient. See Zuckerman v City of New York, 49 NY2d 557, 562 (1980).

It is well-settled that,

Pursuant to both the common law and statute, a party, jointly owning property with another, may as a matter of right, seek physical partition of the property or partition and sale when he or she no longer wishes to jointly use or own the property. The right to seek partition however, is not absolute and may be precluded where the equities so demand, or where partition would result in prejudice.

Manganiello v Lipman, 74 AD3d 667, 668 (1st Dept 2010) (internal citations omitted).

Here, plaintiff has demonstrated that she is a tenant in common with defendant of the Property and that a partition “cannot be made without great prejudice to the owners.” RPAPL 901. Any

attempt to partition five percent of the Property for plaintiff would be futile, as it is a fully leased, four-story building occupying an entire 25.67' by 43.08' parcel of land in an historic district. In opposition, defendant fails to articulate any way in which the Property could be partitioned, with or without prejudice to the parties. The instant case is essentially on all fours with Ferguson v McLoughlin, 184 AD2d 294, 295 (1st Dept 1992), in which the Appellate Division, First Department, affirmed summary judgment granting "partition and sale," finding that physical partition would result in great prejudice to the owners because the subject premises was a

five-story building situated on a small parcel of land that was 18 feet 11 inches wide and 62 feet 6 inches deep, the building had one address, one Consolidated Edison electrical and gas service main, one sewer service, one roof, one basement, one fire escape, one main water supply, one real estate tax liability, one common hallway, one stairway, one boiler and heating system, and one hot water tank, one liability insurance policy and one fire and casualty insurance policy. A lateral or vertical bisection of this realty would destroy its marketability and render it virtually inalienable.

Id.

Accordingly, plaintiff has established entitlement to summary judgment of partition and sale.

Defendant's argument that, at a minimum, the equities favor denial of summary judgment are unconvincing. Defendant argues that the Court should consider "the longstanding familial ownership and legacy value of the Property"; however, defendant is not a family, it is an LLC, and members of LLCs have "no interest in specific property of the limited liability company." NY LLC § 601. In any event, "Defendants' desire to keep the premises in the family is also an insufficient basis to deny partition and sale." Hitech Homes, LLC v Burke, 159 AD3d 489, 490 (1st Dept 2018) (internal citations and quotation marks omitted).

Defendant also argues that significant economic harm could result from a forced sale at auction while the building is fully leased; however, the longevity of half of the Property's residential leases (one for life and one for 20 years) mean the equities favor plaintiff, not defendant, which negotiated the leases. Defendant is correct that alternative remedies, like a buyout, would be in everyone's financial best interest, but, in the final analysis, the equities do not warrant denial of partition when the defense is nothing more than the economic adverse consequences. Manganiello, 74 AD3d at 669.

Defendant's affirmative defenses should also be dismissed. Defendant has failed to allege with personal knowledge any facts as to plaintiff's father's mental state at the time of the quitclaim deed and, therefore, defendant's arguments that plaintiff lacked standing when she commenced the instant action fail and defendant's fourth affirmative defense of fraud should be dismissed. Buckley v Ritchie Knop, Inc., 40 AD3d 794, 795 (2d Dept 2007) ("As a general rule, a party's competence is presumed, and in order to set aside a transfer of property on the ground of lack of capacity, it must be established that the party did not understand the nature of the transaction at the time of the conveyance as a result of his or her mental disability."). The defense that a

partition would frustrate the purpose of defendant should also be dismissed, as plaintiff is not a member of defendant. Defendant’s affirmative defense of unclean hands should also be dismissed, as that doctrine “is only available where plaintiff is guilty of immoral or unconscionable conduct directly related to the subject matter.” Frymer v Bell, 99 AD2d 91, 96 (1st Dept 1984). Defendant has failed to allege any immoral or unconscionable conduct by plaintiff. Further, as plaintiff has stated a cause of action for partition, defendant’s first affirmative defense should be dismissed.

The Court has considered defendant’s remaining arguments, including that plaintiff is unfairly leveraging her 5% stake and is acting in bad faith, and finds them to be unavailing and/or non-dispositive.

Clearly an accounting is necessary to determine the division of the profits of the sale. RPAPL 945 (“The court may adjust the rights of a party as against any other party by reason of the receipt by the latter of more than his proper proportion of the rents or profits of a share”).

Conclusion

The motion of plaintiff, Britt L. Russo, is granted, and, accordingly, it is hereby

ORDERED that plaintiff’s motion for summary judgment against defendant, 347 Bleecker Street Associates LLC, is granted. The parties are directed to settle an interlocutory judgment of partition and sale on notice; and it is further

ORDERED that, a long-form accounting being necessary to determine whether either party is entitled to reimbursement for maintenance, rent, upkeep, and other costs of the premises, the remainder of the action is severed and shall continue; and it is further

ORDERED that counsel are directed to appear for a preliminary conference on February 5, 2026, at 10:00 AM.

(Of course, all of the above orders will be unnecessary if defendant buys out plaintiff for a reasonable sum, which is what should happen here).

HON. ARTHUR F. ENGORON
ARTHUR F. ENGORON, J.S.C.

<u>12/15/2025</u> DATE				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE