

Memorandum

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: **HONORABLE MARGUERITE A. GRAYS** IAS PART 4
Justice

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BARUCH MEYROV and ANGELA MEYROV,
EDWARD MEIROV.

Index
No.: 709714/2018

Motion
Dated: July 9, 2019

Plaintiff(s),

-against-

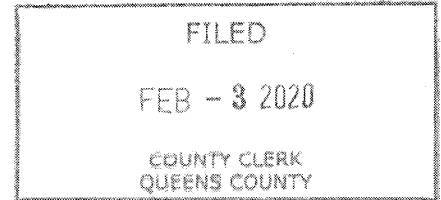
Motion
Cal. No.: 13

EDWARD MEIROV and EDWARD MEIROV AS
THE GUARDIAN FOR THE PERSONAL NEED
AND PROPERTY MANAGEMENT OF
SIMCHA MEIROV.

Motion
Seq. No.: 3

Defendant(s).

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Hon. Marguerite A. Grays



Plaintiffs move this Court for an Order granting summary judgment in favor of plaintiffs for partition and sale of the real property located at 112-07 75th Avenue, Unit 12, Forest Hills, New York, 11375, pursuant to CPLR §3212, §3212(e)(1), and RPAPL §901(1).

Plaintiff Baruch Meyrov (Baruch) and defendants Edward Meirov (Edward) and Simcha Meirov (Simcha) are brothers who own a residential condominium unit located at 112-07 75th Avenue, Unit 12, Forest Hills, New York, as joint tenants with rights of the survivorship. Simcha resides in the subject premises.

Plaintiffs move herein for partition and sale of the subject real property. Plaintiffs argue that as a joint tenant of the subject property, Baruch has a right to partition and sale of the premises since the property is so situated that a physical partition cannot be had without prejudice to joint tenants. In opposition to plaintiffs' motion, defendants claim that prior to their father's (Eliezer Meirov) death, and in defendant Simcha's presence, Baruch promised his father that he would "never kick Simcha out" of the subject property and would protect Simcha's ownership interest in the property until the day Simcha died in exchange for their father changing his Beit Din Will to remove the parties' sister Rina Meirov-Gilkarov and her husband Avner Gilkarov from the Will. Defendants further contend that on December 4, 2017, their father signed a revision to his Beit Din Will removing their sister and her husband therefrom. Defendants argue that a binding contract was made between Eliezer and Baruch,

and since Eliezer fully performed his obligations under the contract, the contract falls outside the scope of the statute of frauds.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law by tendering evidence sufficient to demonstrate the absence of any material issues of fact (*Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]; *Viviane Etienne Medical Care, P.C. v. Country-Wide Insurance Co.*, 25 NY3d 498 [2015]). Once the movant has demonstrated a prima facie showing of entitlement to judgment, the burden shifts to the party opposing the motion to produce admissible evidentiary proof sufficient to establish the existence of a material issue of fact which requires a trial of the action (*see, Zuckerman v. City of New York*, 49 NY2d 557 [1980]; *Alvarez v. Prospect Hosp.*, *supra*; *Leto v. Feld*, 131 AD3d 590 [2015]).

Upon review of the moving papers, plaintiffs have sustained their initial burden.

“A person holding and in possess of real property as joint tenant or tenant in common, in which he has an estate of inheritance, or for life, or for years, may maintain an action for the partition of the property, and for a sale if it appears that a partition cannot be made without great prejudice to the owners” (RPAPL §901(1)). Here, plaintiffs have demonstrated that he owns the subject real property, a single condominium unit, as a tenant in common (*Graffeo v. Paciello*, 46 AD3d 613 [2007]; *Donlon v. Diamico*, 33 AD3d 841 [2006]; *Dalmacy v. Joseph*, 297 AD2d 329 [2002]). Further, the plaintiffs have demonstrated that the property is “so circumstanced that a partition thereof cannot be made without great prejudice to the owners” (*Graffeo v. Paciello*, 46 AD3d 613 [2007]).

In opposition, the defendants have failed to raise an issue of fact warranting denial of the motion. Defendants opposing argument regarding Baruch’s alleged *quid pro quo* promise to Eliezer that Baruch would keep Simcha in the subject property until Simcha’s death if Eliezer removed Rina and Avner from his Will, is unsubstantiated and belied by the plain language of Eliezer’s revised Beit Din Will, which states “I also order in my will that Avner Gilkarov and Rina Meirov-Gilkarov will not have any party in my inheritance, *because I gave Avner Gilkarov and Rina Meirov-Gilkarov an apartment in Eretz Yisrael*” (emphasis added). Furthermore, defendants’ Affirmation in Opposition fails to cite any statute or case law in support of defendants’ conclusory legal contentions.

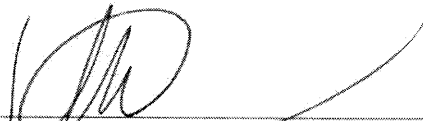
Accordingly, plaintiffs’ motion is granted, solely to the extent of appointing a Referee to conduct an accounting and to ascertain the rights, shares and interests of the parties in the subject property. Further, the Referee shall determine whether there is any creditor not a party, who has a lien on the undivided share or interest of any party (RPAPL §913).

The Referee appointed herein shall be set forth in the Order to be entered.

Settle Order.

Date:

JAN 30 2020



MARGUERITE A. GRAYS
J.S.C

FILED
FEB - 3 2020
COUNTY CLERK
QUEENS COUNTY