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Partition and Sale of Jointly-Owned Real Property: A Remedy for Joint Owners Who Cannot Get Along

What happens when joint owners of real property cannot get along and no longer wish to own the property together? Can one owner simply draw a line down the middle of an apartment or a building and have his or her interest sold?

Section 901(1) of the New York Real Property Actions and Proceedings Law (RPAPL) provides a remedy, whereby feuding joint owners of real property may seek the partition and sale of the property. That section provides that “[a] person holding and in possession of real property as joint tenant or tenant in common,¹ in which he has an estate or 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.”

Courts in New York have long held that, “[p]ursuant to both 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.”² Indeed, New York courts have gone so far as to hold that the right to partition is “absolute in the absence of countervailing conditions.”³

The standard for obtaining summary judgment in an action for the partition and sale of jointly-owned property is relatively easy to satisfy. The movant (the plaintiff in the action) establishes *prima facie* entitlement to summary judgment merely by demonstrating joint ownership of the property, and that physical partition alone cannot be made without great prejudice to the parties.⁴ Courts will only direct a sale of the property where physical partition of the property would destroy the property’s marketability and render it virtually inalienable.⁵

Where there are no disputed issues of fact, the movant is entitled to summary judgment as a matter of law (i.e., without a costly and expensive trial).⁶ Indeed, courts have granted summary judgment for the partition and sale of apartments,⁷ buildings⁸ and even vacant lots.⁹

In a recent case in which our firm represented the plaintiff, the Supreme Court, New York County granted summary judgment in an action involving a mixed-use building in the East Village of Manhattan.¹⁰ The building was owned by three siblings who inherited the property. Two of the siblings unilaterally and without the consent of the third one (the plaintiff), took over the control and operation of the property, effectively ousting the plaintiff. They also paid themselves distributions from the property (but did not pay the plaintiff), withdrew monies from the property and used funds generated by the property to pay for their own purely personal expenses unrelated to the maintenance and upkeep of the property. Plaintiff commenced an action for the partition and sale of the property, because he no longer wanted to own the property with his siblings who were dishonest and treated him unfairly. Defendants neither disputed that plaintiff was a co-owner of the building, nor that physical partition of the building could not be made without causing prejudice to the owners. The Court granted summary judgment in favor of plaintiff on his claim for the partition and sale of the property, and also summarily dismissed all of defendants' affirmative defenses and counterclaims.¹¹

An action for the partition and sale of real property offers joint owners of property a potent remedy if they no longer wish to jointly use or own the property together. In addition to selling the property, plaintiff also may seek an "accounting," which courts have held is a necessary incident of a partition action.¹² Prior to the entry of a judgment directing the sale of the subject property to a third party, the court may appoint a referee to make an accounting of the income and expenses of the property.¹³ The same referee then can proceed to have the property sold at a public auction. The proceeds of the auction sale (less expenses of the sale and the referee's fees) will be distributed to the owners, and any creditors who have a lien on the property, pursuant to the accounting made by the referee.

If you have any questions concerning actions for partition or any other real estate-related litigation matters, please contact the following members of our real estate litigation department or your regular attorney at Warshaw Burstein:

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¹ A joint tenancy exists where a property is owned by two or more persons with equal rights to share in its use and enjoyment and with the right of survivorship (which is the automatic right of inheritance upon the death of one joint tenant). A tenancy in common exists where two or more persons each own and possess an undivided interest in the property, but with no right of survivorship.

² Manganiello v. Lipman, 74 A.D.3d 667, 905 N.Y.S.2d 153 (1st Dep’t 2010); Rosen v. Rosen, 78 A.D.2d 911, 432 N.Y.S.2d 921 (3d Dep’t 1980) (holding that partition among tenants in common of real property is a matter of right were the tenants no longer desire to hold the property in common).

³ See Bentley v. Dox, 12 A.D.3d 1187, 785 N.Y.S.2d 253 (4th Dep’t 2004); Manganiello, supra (noting that partition may be precluded where the “equities so demand” or where partition would result in “prejudice”).

⁴ See Manganiello, supra (summary judgment granted); Graffeo v. Paciello, 46 A.D.3d 613, 848 N.Y.S.2d 264 (2d Dep’t 2007), lv. to appeal denied, 10 N.Y.3d 891, 861 N.Y.S.2d 263 (2008), lv. to reargue denied, 11 N.Y.S.3d 749 (2008).

⁵ Ferguson v. McLoughlin, 184 A.D.2d 294, 295, 584 N.Y.S.2d 816, 817 (1st Dep’t 1992) (court properly ordered the partition and sale of a five-story building where a “lateral or vertical bisection” of the property “would destroy its marketability and render it virtually inalienable”).

⁶ Donlon v. Diamico, 33 A.D.3d 841, 823 N.Y.S.2d 483 (2d Dep’t 2006).

⁷ Lane v. Tyson, 133 A.D.3d 530, 21 N.Y.S.3d 35(1st Dep’t 2015) (holding that plaintiff was entitled to partition and sale of an apartment as a matter of law), leave to appeal denied, 27 N.Y.3d 1033 (2016); Gellenbeck v. Whitton, 2015 NY Slip Op 30289(U) (Sup. Ct., N.Y. Co.) (March 2, 2015) (Egoron, J.) (Court granting summary judgment in an action for the partition and sale of shares to a studio co-operative apartment).

⁸ Perreta v. Perreta, 143 A.D.3d 878, 39 N.Y.S.3d 495 (2d Dep’t 2016) (granting summary judgment in an action for the partition and sale of a 4-family brownstone building).

⁹ Stadelman v. Coleman, 2017 NY Slip Op 3007(U) (Sup. Ct., Suffolk Co.) (Index No. 13693/10) (April 12, 2017) (Whelan, J.).

¹⁰ See Kobyleckyj v. Kobyleckyj, 2016 NY Slip Op 31827(U) (Sup. Ct., N.Y. Co.) (Index No. 153740/2015) (Sep’t 28, 2016) (Kern, J.).

¹¹ See Kobyleckyj v. Kobyleckyj, 2016 NY Slip Op 31827(U) (Sup. Ct., N.Y. Co.) (Index No. 153740/2015) (Sep’t 28, 2016) (Kern, J.); Kobyleckyj v. Kobyleckyj, 2017 WL 128918, 2017 NY Slip Op 30063(U) (Sup. Ct., N.Y. Co.) (Index No. 153740/2015) (Jan. 11, 2017) (Kern, J.).

¹² See Manganiello, supra.

¹³ See Donlon, supra.