

Jerome v Pace

2017 NY Slip Op 32048(U)

September 28, 2017

Supreme Court, Kings County

Docket Number: 512235/16

Judge: Debra Silber

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : PART 9**

-----X
KEVIN JEROME,

Plaintiff,

-against-

**DAVID PACE, EKWAMBU GAYLE a/k/a
EKWAMBU GALE, BASHIR MANLEY and
BELQUIS MANLEY,**

Defendants.
-----X

**AMENDED
DECISION / ORDER**

Index No. 512235/16

Motion Seq. #2

Recitation, as required by CPLR 2219(a) of the papers considered in the review of plaintiff's motion for the appointment of a referee and related relief

Papers	Numbered
Notice of Motion and Affidavit Annexed.....	<u>1-9</u>
Answering Affidavits.....	<u>10</u>
Reply Affidavits.....	<u>11</u>

Upon the foregoing cited papers, the Decision/Order on this application is as follows:

Plaintiff moves, in this partition action regarding a four-family multiple dwelling in Brooklyn, for an order appointing a referee to ascertain the parties' rights prior to an application for an interlocutory judgment to sell, for a determination of whether there are any liens or judgments on the property or against the parties, for an accounting of the rents and profits collected by defendants and directing the allocation of the counsel fees and expenses among the parties, is granted to the extent set forth below.

Upon the foregoing papers, and as none of the defendants have appeared, except defendant David Pace, who consents to the relief requested in the affirmation in support submitted, and as none of the other defendants have answered or otherwise moved as to the complaint although the time in which to do so has expired for all defendants, and as none of the defendants is an infant, absentee or unknown, and on motion of McGarry & Simon, attorneys for plaintiff, which came on to be heard on April 6, 2017, and nobody appeared in opposition to the motion, it is ordered that:

1. Plaintiff is granted a default judgment as against the defaulting defendants on his claim for partition. Plaintiff's request for an accounting and for counsel fees is denied at this point, with leave to renew this request in conjunction with his motion to confirm the Referee's report or at a subsequent time.

2. Richard Klass, Esq., with offices at 16 Court Street, 28th Floor, Brooklyn, NY 11241, (718) 643-6063, RICHKLASS@COURTSTREETLAW.COM is appointed referee in this action to ascertain and report the rights, shares and interests of the parties to this action in the property described in the complaint and of which partition is sought, and to take proof of plaintiff's title and interest in the premises and of the matters set forth in the complaint, and to report whether the property, or any part of the property, is so circumstanced that a partition of the property cannot be made without great prejudice to the owners.

3. If the referee concludes that a sale of the property, or any part of the property, is necessary, then the referee shall secure a lien search and ascertain whether there is any creditor, not a party to the action, who has a lien on the subject

property or the undivided share or interest of any party in the property previously described.

4. The referee, in accordance with RPAPL §913, shall cause a notice to be published once a week for four successive weeks in Our Time Press, a newspaper published in Kings County, which is the county in which the place of trial is designated and also the county in which the property is situated, requiring each person not a party to the action, who, at the date of the order, had a lien upon any undivided share or interest in the property, to appear before the referee at his law office on or before November 13, 2017, to prove his (or her) lien and the amount due or to become due to him (or her) on the lien.

5. The referee shall report to the court as soon as possible the name of each creditor whose lien is satisfactorily proved before him (or her), the nature and extent of the lien, the date of the lien and the amount due or to become due on the lien.

6. The Referee shall make his/her report no later than 120 days from the date of this order and except for good cause shown, the Plaintiff shall move for an interlocutory judgment to sell no later than 90 days from the date of the Referee's report.

7. With the submission of the Referee's Report, the Referee shall include an affirmation of services rendered so the court may award the Referee compensation for his/her services, which sum may be recouped by plaintiff as a cost of litigation.

8. The Referee appointed herein is subject to the requirements of Rule 36.2(c) of the Chief Judge, and, if the Referee is disqualified from receiving an appointment

pursuant to the provisions of that Rule, the Referee shall notify the Appointing Judge forthwith.

9. By accepting this appointment the Referee certifies that he/she is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCCR Part 36), including but not limited to, Section 36.2(e) ("Disqualifications from appointment"), and Section 36.2(d) ("Limitations on appointments based upon compensation").

10. This order amends the order issued on June 13, 2017 solely with regard to the date in paragraph 4 above, as the date in the prior order did not give any prospective lienors sufficient time to respond to the notice the referee appointed herein is required to publish. As a result of the change in this date however, the date the referee must complete his report by, and the other time limits provided in the prior order, are, as a result, similarly extended.

This shall constitute the decision and order of the court.

Dated: September 28, 2017

ENTER :



Hon. Debra Silber, J.S.C.

**Hon. Debra Silber
Justice Supreme Court**