

<b>Forest Kings Corp. v Jackson</b>
2021 NY Slip Op 32706(U)
December 6, 2021
Supreme Court, Kings County
Docket Number: Index No. 505923/2019
Judge: Ingrid Joseph
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At an IAS Part 83 of the Supreme Court Of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 6th day of December, 2021.

P R E S E N T: HON. INGRID JOSEPH, J.S.C  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----X  
FOREST KINGS CORP.,

Index No.: 505923/2019

Plaintiff,

-against-

DECISION/ORDER

CRAIG JACKSON, individually and as the  
ADMINISTRATOR OF THE ESTATE OF  
MARY FONTAINE A/K/A MARY A.  
FONTAINE,

Defendants.

-----X  
Recitation, as required by CPLR §2219(a), of the papers considered in the review of plaintiff's motion

2021 DEC 16 AM 9:13  
KINGS COUNTY CLERK  
FILED

Papers

NYSCEF Nos.

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In the matter for partition of the property known as 259 Rutland Road, Brooklyn, New York (Block 5036, Lot 65), plaintiff, Forest Kings Corp. ("Forest Kings"), moves by notice of motion (Mot. Seq. 4) for a protective order and an order quashing the First Demand for Discovery and Inspection, served by defendant, Craig Jackson, individually and as the Administrator of the Estate of Mary Fontaine a/k/a Mary A. Fontaine ("Mr. Jackson").

Forest Kings commenced this matter by the filing of a Summons and Complaint on March 19, 2019, for "[p]artition and division of the aforementioned real property according to the rights of said parties; or, if partition cannot be had without material injury to the parties interested, for the appointment of a referee for the sale of Property and a division of the proceeds among the parties according to their respective rights, after reimbursement to Forest King of all

costs and expenses associated with bringing the instant action. Forest Kings further requested an accounting of financial matters involving the property. Mr. Jackson moved pre-answer to dismiss the Forest Kings's complaint, and Forest Kings cross moved for *inter alia* an order declaring that it owned an undivided fifty (50) percent ownership interest in the premises, or, alternatively, if the issue of its ownership interest is disputed, that the matter be referred to a referee to hear testimony and/or determine the equities between the parties.

The issue of whether Forest Kings owns an undivided fifty (50) percent ownership interest in the premises has been determined; however, the issue of Forest Kings's entitlement, or lack thereof, to the equitable remedy of partition remains outstanding. In addressing the parties' ownership interest, the court held that Forest Kings owns an "undivided fifty (50%) percent of the subject real property ... and ... [Mr. Jackson] owns the other undivided fifty (50%) percent ... and ... any proceeds of same shall be divided equally between them, subject to outstanding liens and the equities of the parties as may be set forth in the report of the Referee and/or as otherwise determined by the Court" (NYSCEF No. 62). The court appointed Gregory LaSpina, Esq. ("Referee LaSpina") as Referee and directed Referee LaSpina to determine the interests of the parties to the extent not already determined, to hear testimony, and/or determine the equities of the parties, if same are in any way disputed, and further, to report on whether the subject premises is so circumstanced that a partition cannot be made without great prejudice to the owners. The court also directed Referee LaSpina to ascertain the existence of any creditors, not a party to the action with a lien on the parties undivided interest in the property and the amount of such interest (NYSCEF No. 62).

Mr. Jackson interposed a Verified Answer to Forest Kings's complaint on January 21, 2020, wherein he asserted among other defenses, the affirmative defense of unclean hands. On

or about August 5, 2020, Mr. Jackson served upon Forest Kings a First Demand For Discovery & Inspection. The issue presented in the instant motion is whether Forest Kings has satisfied the criteria for a protective order, based upon its contention that the documents and information requested by Mr. Jackson are overly broad, ambiguous, irrelevant, and not material and necessary to defend against the Forest Kings's requests for relief in this case.

It is understood that Forest Kings, as a tenant in common with Mr. Jackson, may seek physical partition of the property or partition and sale if it no longer wishes to jointly use or own the property with Mr. Jackson (RPAPL § 901). This court has the discretion to determine whether partition is an appropriate remedy and in so doing, must consider the equities between the parties, as well as whether a physical partition would cause prejudice (*Lauriello v Gallotta*, 70 AD3d 1009, 1010 [2 Dept 2010]). As previously discussed, Referee LaSpina has been appointed to provide a report to assist in that determination. However, any assessment of the equities between the parties will necessarily include Mr. Jackson's defense of unclean hands, because Forest Kings may not avail itself of the equitable remedy of partition, unless it comes with clean hands (*National Distillers & Chemical Corp. v Seyopp Corp.*, 17 NY2d 12, 15 [1966]; *Vazquez v Zambrano*, 196 AD2d 840[2d Dept 1993]).

Regarding discovery, it is a fundamental principle in civil litigation that “[t]here shall be full disclosure of all matters material and necessary in the prosecution or defense of an action (CPLR § 3101[a]; and see *Allen v. Crowell–Collier Publ. Co.*, 21 NY2d 403, 405–407 [1968]). Unlimited disclosure is not mandated; however, the “words ‘material and necessary’ are ... to be interpreted liberally to require disclosure ... of any fact bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity” (*id.*). The circumstances under which Forest Kings came to own fifty (50) percent interest in the premises

is material and necessary to Mr. Jackson’s defense, and the court finds that Forest Kings has failed to set forth a factual basis that militates in favor of limiting disclosure based on the thirty-five (35) questions presented in Mr. Jackson’s First Demand for Discovery and Inspection. The mere fact that requested documents, or portions thereof, may be in the public domain, is not a basis for limiting disclosure under CPLR § 3103 [a]. There is no showing of unreasonable annoyance, expense, embarrassment, disadvantage or other prejudice that would warrant the issuance of a protective order that denies, limits, conditions or regulates the information requested in the subject discovery device.

Accordingly, the motion of Forest Kings Corp. for a protective order and to quash the Defendant’s First Demand for Discovery and Inspection is denied.

This constitutes the Decision and Order of the Court.

ENTER,



HON. INGRID JOSEPH, J.S.C.

**Hon. Ingrid Joseph  
Supreme Court Justice**

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