

## You Can Get Anything You Want at Alice's Restaurant -- A Thanksgiving Tradition -- Best Wishes to All

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### Heir and Square



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The Uniform Partition of Heirs Property Act (the Heirs Act) was originally enacted in New York in December 2019 to protect heirs of real property from being forced to sell their property at auction. The Act was most recently amended in July 2024 to include additional protections for tenants-in-common by (1) prohibiting a purchaser from an heir protected by the Act from commencing a partition action and (2) establishing a hierarchical right of first refusal against any purchase offer, giving heirs in possession first right.<sup>[1]</sup> A recent decision in a case of first impression before the Supreme Court of the State of New York for Bronx County (the Court) demonstrates the circumstances that the Heirs Act is designed to resolve.

The Court heard an issue on motion regarding whether an action for partition was governed by the traditional legal principles of partition or if such action was subject to the special protections and procedures of the Heirs Act. Whether an action is subject to the traditional rules of partition or the mandates of the Heirs Act depends on the source of title ownership. Where a proceeding includes an owner that obtained title through inheritance, the property must be partitioned subject to the procedures of the Heirs Act.

The defendant in the case before the Court, Jacqueline Hayes (Hayes), acquired a property located at 1453 Teller Avenue (the Residential Property) in 1969 with her partner as joint tenants, each owning a 50% interest.<sup>[2]</sup> Although same sex couples could not marry in New York State before Hayes' partner passed away in 2005, the couple lived together in the Residential Property for over 35 years. After the passing of Hayes' partner, Hayes remained in the Residential Property and continues to live there today at over 80 years old.<sup>[3]</sup> In June 2018, Hayes filed a petition seeking appointment as administrator of her partner's estate. Hayes ultimately withdrew such petition, but not before learning that her partner had two heirs at law: a niece and a nephew, who, by operation of law, each inherited a 25% interest in the Residential Property.<sup>[4]</sup>

In May 2020, the plaintiff, Gelinas LLC (Gelinas), bought the nephew's 25% share of the Residential Property for \$15,000. Gelinas, which is in the business of property development, commenced an action in January 2021 for the partition and sale of the Residential Property. On the date such action was filed, Gelinas owned a 25% interest, Hayes owned a 50% interest, and the niece owned a 25% interest (which she acquired through inheritance) in the Residential Property, respectively.<sup>[5]</sup> Gelinas sought the forced sale of the Residential Property and did not reference the Heirs Act in its pleadings, although at the time of commencement of the action, the niece was an owner of the Residential Property through inheritance, and therefore an heir as defined under the Heirs Act.<sup>[6]</sup>

Hayes was formerly represented by counsel who filed an answer to Gelinas original petition, but failed to respond to Gelinas' motion for summary judgment (the Motion for Summary Judgment of Partition) filed thereafter in April 2021. The Motion for Summary Judgment of Partition sought appointment of a referee pursuant to New York Real Property Actions and Proceedings Law §911 to determine the rights and interests of the parties in the Residential Property.<sup>[7]</sup> As of the date that the Motion for Summary Judgment of Partition was filed, the niece was a named defendant and still an owner of the Residential Property through inheritance. However, Gelinas acquired the niece's share of the Residential Property for \$60,000 in May 2021.<sup>[8]</sup>

In September 2021, Gelinás' Motion for Summary Judgment of Partition was denied because Gelinás failed to submit proof of service of the motion upon Hayes and the judge directed that Surrogate's Court proceedings be taken to identify the lawful heirs of Hayes' partner.<sup>[9]</sup> Gelinás did not proceed to Surrogate's Court as directed, but moved to renew and reargue the denial of the Motion for Summary Judgment of Partition (the Renew and Reargue Motion) in October 2021 and discontinued the action against the niece after having acquired her share of the Residential Property.<sup>[10]</sup> Gelinás submitted new evidence opining that Hayes was not an heir of her partner and Hayes' former counsel again did not oppose the Renew and Reargue Motion.<sup>[11]</sup>

Hayes acquired new counsel and in March of 2022, the Court issued a notice for a partition settlement conference mandated by the Heirs Act (the Partition of Heirs Property Settlement Conference) scheduled for May of that year. However, in April 2022, Gelinás' Renew and Reargue Motion was granted on default because Hayes' former counsel had not opposed the motion. The judge determined that because Hayes' was not the heir of her partner, the Heirs Act was inapplicable and the scheduled Partition of Heirs Property Settlement Conference was cancelled.<sup>[12]</sup>

Thereafter, a traditional partition report was issued finding that Gelinás and Hayes each owned 50% of the property and directing that the Residential Property be sold as a whole unit (the Referee's Partition Report). While Gelinás moved for an order to confirm the Referee's Partition Report, Hayes' new counsel cross-moved to vacate, arguing that Hayes' former counsel was ineffective as a matter of law by failing to respond to the prior motions or raise the applicability of the Heirs Act.<sup>[13]</sup> In the months that followed, the Residential Property was to be partitioned and sold pursuant to the Referee's Partition Report, but the justice directing that order retired and the action was assigned to the Court in April 2023; however, Gelinás filed a notice of sale two months later.<sup>[14]</sup> Days before the Residential Property was to be sold at auction, Hayes brought a motion seeking to stay the sale and vacate the judgment of partition because a Partition of Heirs Property Settlement Conference was required by law.<sup>[15]</sup>

Ultimately, the Court found that the failure of Hayes' former attorney to oppose two significant motions deprived Hayes of significant real property rights and the case involved "unique or [un]usual" facts that warranted vacating the default judgment in the interest of justice.<sup>[16]</sup> The Court reasoned that the Heirs Act was intended to prevent predatory real estate developers like Gelinás from leveraging minority interests in a property to force a partition sale because the Heirs Act permits partition by sale only after all of the heirs have an opportunity to purchase the interests of selling co-tenants.<sup>[17]</sup> The Heirs Act applies to a small subset of partition actions where, on the date that such action was commenced, a tenant-in-common has inherited his or her share of a property from a co-tenant. The Court determined that the Residential Property qualified as heirs property under the Heirs Act because at the time Gelinás commenced the original action, the niece was an heir to Hayes' partner.<sup>[18]</sup> Accordingly, the Court granted Hayes' motion to vacate because the partition of the Residential Property was required to follow the procedures of the Heirs Act.<sup>[19]</sup>

The purpose of the Heirs Act is to help families keep their homes and protect family wealth by preventing real estate developers from forcing a sale of heirs' property for pennies on the dollar. Throughout the course of litigation in this case Gelinás eventually purchased the interests of each of the heirs, but the Heirs Act specifically defines "heirs property" to be determined as of the filing of a partition action.<sup>[20]</sup> Although Hayes herself was not an heir to the Residential Property, the niece was an heir at the time Gelinás commenced the partition action. This decision seems to rectify an oversight of the previous courts and highlights the importance of recognizing legislative intent.

<sup>[1]</sup> *Gelinás LLC v. Hayes*, Docket No. 800450/2021E (Sup. Ct., Bronx County, 2024).

<sup>[2]</sup> *Gelinás LLC v. Hayes*, at 3.

<sup>[3]</sup> *Id.*

<sup>[4]</sup> *Id.* at 3-4.

<sup>[5]</sup> *Id.*, at 4.

<sup>[6]</sup> *Gelinás LLC v. Hayes*, at 4-5.

<sup>[7]</sup> *Id.* at 6.

<sup>[8]</sup> *Id.*

<sup>[9]</sup> *Id.*

<sup>[10]</sup> *Gelinás LLC v. Hayes*, at 7.

[11] *Id.*

[12] *Id.* at 8.

[13] *Gelinas LLC v. Hayes*, at 8.

[14] *Id.* at 9.

[15] *Id.*

[16] *Id.* at 12-13.

[17] *Gelinas LLC v. Hayes*, at 15-16.

[18] *Id.* at 17.

[19] *Id.* at 20.

[20] *Id.* at 17.