



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

November 22, 2024

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Heir and Square



By **Steven M. Herman**
Senior Counsel | Real Estate

The Uniform Partition of Heirs Property Act (the Heirs Act) was originally enacted in New York in December 2019 to protect heirs of real property from being forced to sell their property at auction.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.^[1] 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.^[2] 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.^[3] 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.^[4]

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.^[5] 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.^[6]

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.^[7] 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.^[8]

In September 2021, Gelinas' Motion for Summary Judgment of Partition was denied because Gelinas 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.^[9] Gelinas 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.^[10] Gelinas 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.^[11]

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.^[12]

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.^[13] 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.^[14] 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.^[15]

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.^[16] 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.^[17] 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.^[18] 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.^[19]

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.^[20] 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.

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

^[2] *Gelinás LLC v. Hayes*, at 3.

^[3] *Id.*

^[4] *Id.* at 3-4.

^[5] *Id.*, at 4.

^[6] *Gelinás LLC v. Hayes*, at 4-5.

^[7] *Id.* at 6.

^[8] *Id.*

^[9] *Id.*

^[10] *Gelinás LLC v. Hayes*, at 7.

^[11] *Id.*

^[12] *Id.* at 8.

^[13] *Gelinás 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.

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Sovereign Immunity and the New York Statute of Limitations



By **Steven M. Herman**
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Patricia Reid (Defendant) obtained a mortgage from BAC Home Loans Servicing, L.P. (BAC) for certain real property located in Queens, New York. In March, 2010, BAC accelerated the debt and initiated a foreclosure action. The New York Supreme Court dismissed the foreclosure action on June 4, 2015, because BAC had failed to comply with multiple court orders. On July 20, 2018, BAC's successor-in-interest, Bank of America, N.A. (Plaintiff), commenced an action to foreclose on Defendant's mortgage.

Defendant brought an affirmative defense that such action was time barred because the statute of limitations had passed. Plaintiff filed a summary judgment motion to strike Defendant's affirmative defense. In its motion, Plaintiff argued that it is an assignee of the United States Department of Housing and Urban Development (HUD) and Federal Housing Administration (FHA), and that because it is an assignee of federal agencies, it is immune from New York's statute of limitations. The New York Supreme Court rejected Plaintiff's motion, and Plaintiff appealed to the New York Appellate Division, Second Department (the Court).

The Court held that "where a loan was insured by a federal agency, but no federal agency had the right to foreclose on the mortgage, the federal government's immunity does not apply to a lender seeking to foreclose." Therefore, Plaintiff was subject to NY CPLR § 213(4)'s 6-year statute of limitations for foreclosure actions.

In reaching its decision, the Court first determined when the statute of limitations began. The Court referenced *Bank of N.Y. Mellon v. Mor*, 201 AD3d 691, which held that "even if a mortgage is payable in installments, once a mortgage debt is accelerated, the entire amount is due and the statute of limitations begins to run on the entire debt." Thus, the statute of limitations began in March 2010, when BAC commenced the initial foreclosure action, and in accordance with NY CPLR § 213(4), expired March 2016. Therefore, Plaintiff had brought the foreclosure action after the statute of limitations had expired.

Since the action was brought after the statute of limitations had passed, the Court analyzed whether Plaintiff was exempt from NY CPLR § 213(4)'s statute of limitations. The Court rejected Plaintiff's arguments that (1) it was an assignee of a federal agency, and (2) that as an assignee, it was immune from statute of limitations. The reasoning presented by the Court was two-fold. First, the "the United States is not bound by a statute of limitations unless Congress has explicitly expressed one" and in this case, there is no federal statute of limitations for mortgage foreclosures brought by federal agencies. Therefore, the federal government is not immune from New York's mortgage foreclosure statute of limitations. Second, the Court distinguished between a loan that is held by a federal agency and a loan that is insured by a federal agency. In this case, the loan was merely insured by a federal agency and therefore HUD or FHA never had the right to foreclose on the property. Since a federal agency had no rights under the mortgage, Plaintiff was not an assignee of a federal agency, and therefore, even if the federal government had immunity from the mortgage foreclosure statute of limitations, Plaintiff was not subject to the federal government's protection.

Overall, this case solidified that a loan insured by the federal government does not provide the loan holder with the same protections as the federal government.

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Cadwalader Once Again Shortlisted for 'Law Firm of the Year' Award

For the second year in a row, Cadwalader is among a select group of "Law Firm of the Year" finalists for the *Commercial Observer's* "Breakthrough Awards," which started in 2023. This award recognizes "the savvy innovators who demonstrated adept dealmaking skills and completed the largest real estate transactions in 2024."

Winners will be announced at a breakfast event on December 3.

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Recent Transactions

Recent transactional highlights include Cadwalader representing:

- An insurance company on the acquisition financing for a Courtyard Marriott located in Oxford, Mississippi.
- A private debt fund on the bidding on a \$1.099 billion seasoned loan portfolio of office and multifamily properties.
- The lender in a \$225 million mortgage financing secured by 10 retail properties located in California, Washington and Colorado, which was ultimately disposed of in a SASB securitization.
- The mortgage lenders in a \$205 million floating-rate loan to refinance a portfolio of three life science buildings located in Waltham, Massachusetts.