

Third District Court of Appeal
State of Florida

Opinion filed May 29, 2019.
Not final until disposition of timely filed motion for rehearing.

Nos. 3D18-1235 & 3D18-811
Lower Tribunal No. 05-18381

Ilana Rigwan f/k/a Ilana Rigwan-Neus f/k/a Ilana Neus,
Appellant,

vs.

Jordan Lee Neus a/k/a Jordan L. Neus,
Appellee.

Appeals from the Circuit Court for Miami-Dade County, Peter R. Lopez,
Judge.

Arthur J. Morburger, for appellant.

Shevlin & Atkins, and Barry T. Shevlin and Gal Betesh, for appellee.

Before LOGUE, SCALES, and HENDON, JJ.

PER CURIAM.

Affirmed.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JUNE 25, 2019

ILANA RIGWAN,
Appellant(s)/Petitioner(s),
vs.
JORDAN NEUS,
Appellee(s)/Respondent(s),

CASE NO.: 3D18-1235, 3D18-0811
L.T. NO.: 05-18381

Upon consideration, appellant's motion for rehearing or to certify
conflict is hereby denied. LOGUE, SCALES and HENDON, JJ., concur.

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ATTEST

CLERK

DISTRICT COURT OF APPEAL
THIRD DISTRICT

cc: Arthur J. Morburger Barry T. Shevlin Gal Betesh

la

Third District Court of Appeal

State of Florida

Opinion filed April 17, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-1642
Lower Tribunal No. 05-18381

Ilana Rigwan,
Appellant,

vs.

Jordan Lee Neus, etc., et al.,
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, Dennis J. Murphy,
Judge.

Arthur J. Morburger, for appellant.

Shevlin & Atkins, and Barry T. Shevlin and Gal Betesh, for appellees.

Before LOGUE, HENDON, and MILLER, JJ.

PER CURIAM.

Affirmed.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
MAY 22, 2019

ILANA RIGWAN,
Appellant(s)/Petitioner(s),
vs.
JORDAN LEE NEUS, etc., et al.,
Appellee(s)/Respondent(s),

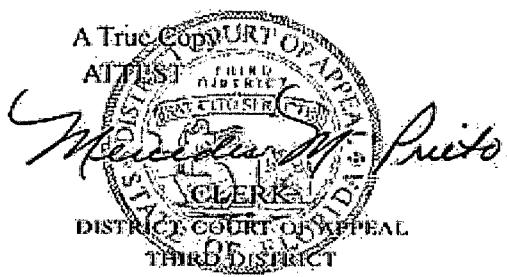
CASE NO.: **3D18-1642**
L.T. NO.: 05-18381

Upon consideration, appellees' motion to strike appellant's motion for rehearing and second reply brief is granted, and the second reply brief is hereby stricken.

Upon consideration, appellant's motion for rehearing or for a written opinion is hereby denied.

Upon consideration of the motion for appellate attorney's fees filed by appellees, it is ordered that said motion is granted in part and denied in part. The attorney's fees expended in preparing and filing the motion to strike the second reply brief, are granted and remanded to the trial court for a determination as to the amount. All other requested attorney's fees are denied.

LOGUE, HENDON and MILLER, JJ., concur.



cc: Arthur J. Morburger
Hon. Dennis J. Murphy

Barry T. Shevlin

Gal Betesh
Miami-Dade Clerk

la

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT

JUNE 25, 2019

ILANA RIGWAN,
Appellant(s)/Petitioner(s),
vs.
JORDAN LEE NEUS, etc., et al.,
Appellee(s)/Respondent(s),

CASE NO.: 3D18-1642
L.T. NO.: 05-18381

Upon consideration, appellant's amended motion for rehearing and rehearing en banc of sanctions order granting fees is hereby denied as moot.

LOGUE, HENDON and MILLER, JJ., concur.



cc: Arthur J. Morburger Barry T. Shevlin Gal Betesh

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APPENDIX B

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IN THE CIRCUIT COURT OF THE 11th
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO: 05-18381 CA 31

ILANA RIGWAN f/k/a ILANA
RIGWAN-NEUS f/k/a ILANA NEUS

PLAINTIFF/COUNTER DEFENDANT

vs

JORDAN LEE NEUS a/k/a JORDAN
L. NEUS A/K/A JORDAN L. NEUS

DEFENDANT/COUNTER PLAINTIFF

FINAL JUDGMENT

THIS MATTER came before the Court for non-jury trial on October 22, 2007, and the Court having received evidence in the form of testimony and documents, and having been otherwise fully advised in the premises it is

ADJUDGED as follows:

Plaintiff's action consisted of two counts seeking relief in the form of an equitable lien and to quiet title based thereon. Plaintiff and her former husband, defendant Jordan Neus, are record title owners of the real property at issue herein.

Defendant, Jordan Neus, counter-petitioned for partition of the real property at issue.

The facts in dispute herein were:

1. Whether defendant, Jordan Neus, holds a 25% or 50% interest in the real property.

2. The present fair market value of the property.

3. The amount, if any, Defendant owes Plaintiff which is directly related to the parties' ownership of the property; and vice versa.

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CERTIFICATION ON LAST PAGE
MICHAEY BROWN, CLERK OF COURT

APPENDIX B

The legal issues in dispute are whether the Plaintiff is entitled to an equitable lien, to have title quieted as a result, and whether defendant is entitled to partition of the property.

The evidence showed that on December 30, 1994, Plaintiff and her uncle Gershon Rijwan, purchased, as joint tenants with the right of survivorship, the condominium unit at issue i.e., South Beach Bayside Condo I, Unit 106 Undiv 1.99% Int in Common Elements Off Rec 16422-1258 OR 18953-1345 1199 4. The Warranty Deed was recorded on January 10, 1995.

That on November 5, 1999, by Quit Claim Deed, Gershon George Rijwan *conveyed his 50% interest in the property to Ilana Rigwan and Jordan Lee Neus, as joint tenants.* (Ex. B to Complaint).

That on November 5, 1999, Jordan Neus tendered payment in the amount of \$8,000 to Gershon Rijwan, and on December 5, 1999, tendered payment in the amount of \$7,838.78 to Ilana Rigwan. (DX-9).

Plaintiff, Ilana Rigwan, and Defendant, Jordan Neus, were married December 13, 1999, in Florida, subsequent to the execution of the Quit Claim Deed, but prior to recording thereof.

The Quit Claim Deed was recorded in the Official Record Book of Dade County on January 21, 2000.

The Defendant filed for divorce some eight (8) months after the marriage (2000) and the parties were ultimately divorced in New York State on August 22, 2003.

That the parties' separate pre-marital interests in the Florida real property were not addressed in the divorce decree.

That the evidence showed Defendant, Jordan Neus, filed for Chapter 7 Bankruptcy relief in the Eastern District of New York, Central Islip Division under Case No. 8-04-83698-sb. That Schedule A thereto (PX C to complaint) reflects Defendant has, under oath, stated his ownership

interest in the property as twenty five (25%) percent. See Griley v. Griley 43 So. 2d 350 (Fla. 1949) ('In such cases the law decrees that one may not eat his cake and yet have it. He cannot hold to a devise with one hand and shove it away with the other.' quoting Pournelle v. Baxter, 9 So. 2d 162, 164 (Fla. 1942)).

That Plaintiff testified that she lives in the condominium unit and claims homestead exemption on same. The evidence further showed that Jordan Neus has not contributed to the costs and expenses of ownership of the unit in question since at least April, 2003, when Plaintiff, Ilana Rigwan, began living in the unit.

Plaintiff's uncontested evidence proved that she has paid the entirety of the expenses of the property since 2001, with no contribution by Defendant.

Plaintiff further testified that prior to her moving into the property in April, 2003, she had not occupied same from January, 2000 until that time, and that the property had been rented to one Damian Pell. Plaintiff testified she received no share of the rental income. No other evidence was adduced as to the rental of the unit, or the amount received therefor by Defendant.

Based on the foregoing it is

ORDERED and ADJUDGED as follows:

1. The status of the parties' marital relationship is irrelevant to the instant action as they each owned their individual percentages prior to the marriage.
2. Plaintiff, Ilana Rigwan owns 75% of the property in question (consisting of her original 50% interest purchased in 1994 with Gershon Rijwan, and the subsequent 50% interest in Gershon Rijwan's 50% interest, which was purchased by Plaintiff in 1999 for a total interest of 75% for Ilana Rigwan). Defendant, Jordan Neus, owns 25% of the property in question (consisting of his 50% interest in Gershon Rijwan's 50% interest, purchased in 1999). The parties hold the same in

said percentages as undivided interests in indivisible condominium property. See Julia v Russo, ___ So. 2d ___, 2008 WL 1883905 (Fla. 4th DCA 2008) (The "equal share presumption" applied to tenancies in common may be rebutted by proof ...); See §718.107, Fla. Stat. (2005) (restraint upon separation and partition of common elements).

3. Plaintiff, Ilana Rigwan, has sought an equitable lien with regard to Jordan Neus' unreimbursed interest in the property, i.e., 25%, and Plaintiff is entitled to same based on and comprised of the following unrebutted, unreimbursed monies advanced by Ilana Rigwan on behalf of Jordan Neus' 25% interest in the property:

Real Property taxes 2003 (\$291.24)

2004 (none proven)

2005 (255.17)

2006 (\$179.91) = \$654.32

Condominium maintenance fee, April-Dec 2003 (9x\$267.10)= \$2403.90

2004 (12x\$267.86)= \$3214.32

2005 (12x\$267.86)= \$3214.32

2006 (12x\$266.97)= \$3203.64

2007 (October trial) (10x\$319.91)= \$3199.10

Special assessments - 2003 = \$1050.00

2004= (6x\$1160.83)= \$6964.99

2005= none proven

2006= (6x1160.83)= (\$6964.99)

2007= none proven.

Total all taxes, maintenance, and special assessments = \$30,869.58 - 25% = \$7,717.40.

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CERTIFICATION ON LAST PAGE
HARVEY RUMIN, CLERK OF COURT

Plaintiff is, therefore, entitled to an equitable lien in the amount of \$7,717.40 representing Jordan Neus' unreimbursed share of expenses proven.

Plaintiff has not proven what, if any, rents were received with regard to a tenancy of the unit by Damian Pell, and thus is not entitled to a percentage thereof. Plaintiff failed to prove fraud, tenant damage, or entitlement here to attorney fees incurred in the defendant's Bankruptcy proceeding, nor is she entitled, here, to impose a lien for unpaid alimony.

Based on the foregoing, Ilana Rigwan's request for an equitable lien against Jordan Neus' 25% interest in the property at issue is **GRANTED**.

4. Plaintiff Ilana Rigwan has sought to quiet title in her based on the requested equitable lien. Because this equitable lien will not directly affect title to the property, the request to quiet title in her is **DENIED**. Bucacci v Boutin, 933 So. 2d 580, 586 (Fla. 3d DCA 2006).

5. As to the counterclaim, Defendant/Counter-Plaintiff, Jordan Neus, adduced no evidence and failed to prove Plaintiff is indebted to him in any manner directly related to the parties' ownership of the property.

6. The Defendant/Counter-Plaintiff, proved through the evidence of expert witness appraiser John Rupner, that the fair market value of the real property at issue as of October 27, 2006, was \$170,000, based on comparable sales. It is noted that the assessment for the property is substantially and significantly lower.

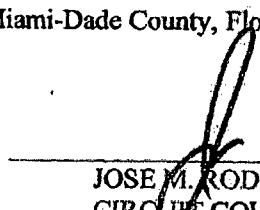
Jordan Neus, has proven his statutorily granted right to partition (§ 64.011-091, Fla. Stat. 2005) of the property and Plaintiff/Counter-Defendant, Ilana Rigwan, failed to present evidence sufficient for this Court to conclude that denial of this partition "was one of those extreme cases where manifest injustice, fraud or oppression will result if partition is granted." Condrey v. Condrey, 92 So. 2d 423, 427 Fla. 1957; Haddad v. Hester, 964 So. 2d 707 (Fla. 3d DCA 2007)

(Partition is a matter of right to those holding undivided interests in lands); Demorizi v. Demorizi, 851 So. 2d 243 (Fla. 3d DCA 2003). Nor was any evidence adduced that the parties, or either of them, waived their statutory partition right. See Bucacci v. Boutin, 933 So. 2d 580 (Fla. 3d DCA 2006) or that such sale was for the benefit of Defendant's creditors. Wescott v. Wescott, 487 So. 2d 1099 (Fla. 5th DCA 1986)(Homestead property not exempt from forced sale following a suit for partition by an owner in common).

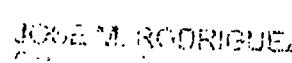
Because this matter is brought in equity, and §64.071 Fla. Stat. (2005) applies as the property at issue, condominium unit 106 and its appurtenant ownership interests in the common elements of the condominium, are indivisible, the property shall be sold by the Clerk of the Circuit Court at a public auction, pursuant to said section. §64.061(4) Fla. Stat. (2005); Rose v. Hansell, 929 So. 2d 22 (Fla. 3d DCA 2006).

Accordingly, Jordan Neus' counterclaim seeking partition is **GRANTED**. The Court reserves jurisdiction with regard to the issue of entitlement to, and the amount of any attorney fees and costs, as appropriate, upon proper notice and motion. See §64.081, Fla. Stat. (2005); Adler v. Schekter, 197 So. 2d 46 (Fla. 3d DCA 1967).

DONE AND ORDERED in Chambers, at Miami-Dade County, Florida, this 19 day of June, 2008.


JOSE M. RODRIGUEZ
CIRCUIT COURT JUDGE

COPIES TO:
COUNSEL/PARTIES OF RECORD


JOSE M. RODRIGUEZ

STATE OF FLORIDA, COUNTY OF DADE
I HEREBY CERTIFY that the foregoing is a true and correct copy of the
original on file in this office. AD. 20
HARVEY RUVIN, Clerk of Circuit and County Courts

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Deputy Clerk




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**Additional material
from this filing is
available in the
Clerk's Office.**