

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FOURTH JUDICIAL DEPARTMENT

CHRISTOPHER SMITH AND MICHAEL SMITH, AS TRUSTEES
OF THE JAY AND PATRICIA SMITH IRREVOCABLE TRUST v.
ANNA J. SMITH, AS TRUSTEE OF THE THEODORE P. SMITH
INCOME ONLY IRREVOCABLE TRUST, AND ANNA JANE
SMITH, AS EXECUTOR OF THE ESTATE OF THEODORE P.
SMITH, DECEASED

2023 NY Slip Op 03576 (N.Y. Ct. App. 2023) · No. 181 CA 21-01407 · Decided June 30, 2023

SUMMARY

The Appellate Division, Fourth Department, held that the Uniform Partition of Heirs Property Act did not apply because the property was not used for residential or agricultural purposes. The court also concluded that the plaintiffs failed to establish the requirements for a preliminary injunction, including likelihood of success, irreparable injury, and a favorable balance of equities. The order was modified to deny the preliminary injunction and was otherwise affirmed.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	SMITH, J.P.; PERADOTTO, J.; CURRAN, J.; BANNISTER, J.; MONTOUR, J.
JURISDICTION	New York
DECIDED	June 30, 2023
DOCKET	181 CA 21-01407
DISPOSITION	other
PROCEDURAL POSTURE	Defendant appealed from two orders of Supreme Court, Herkimer County. Appeal No. 1 concerned modification of a temporary restraining order; appeal No. 2 concerned denial of defendant's cross-motion under RPAPL 993 and the grant of a preliminary injunction halting commercial mining operations.

STANDARD OF REVIEW	A determination granting or denying a preliminary injunction is reviewed for abuse of discretion. Statutory interpretation is reviewed by applying the plain meaning of unambiguous statutory text.
PRECEDENTIAL VALUE	published
PARTIES	Anna J. Smith, as Trustee of the Theodore P. Smith Income Only Irrevocable Trust, and Anna Jane Smith, as Executor of the Estate of Theodore P. Smith, Deceased v. Christopher Smith and Michael Smith, as Trustees of the Jay and Patricia Smith Irrevocable Trust

TOPICS

partition real estate equitable relief statutory interpretation mootness

PRACTICE AREAS

real estate trusts probate civil procedure

QUESTIONS PRESENTED

1. Whether defendant's appeal from the order modifying the temporary restraining order was moot after the temporary restraining order was superseded by a preliminary injunction.
2. Whether the property qualified as heirs property subject to the Uniform Partition of Heirs Property Act under RPAPL 993.
3. Whether plaintiffs established the requirements for a preliminary injunction, including likelihood of success on the merits, irreparable injury, and a balance of equities in their favor.

HOLDINGS

1. The appeal from the temporary restraining order was dismissed as moot because the order expired by its nature and was superseded by the preliminary injunction.
2. The property did not qualify as heirs property under RPAPL 993 because the statute requires that the property be used for residential or agricultural purposes, and the property was used for commercial mining and a campground.
3. Supreme Court abused its discretion by granting plaintiffs a preliminary injunction because plaintiffs failed to establish likelihood of success on the merits, irreparable injury, or a balance of equities favoring injunctive relief.

KEY QUOTATIONS

"Heirs property" is defined as "real property held in tenancy in common which satisfies all of the following requirements as of the filing of a partition action," including, as relevant here, that "(i) there is no agreement in the record binding all of the co-tenants which governs partition of the property; (ii) any of the co-tenants

acquired title from a relative, whether living or deceased; [and] (iii) the property is used for residential or agricultural purposes”” ([*2])

“”[T]he party seeking the injunction must establish, by clear and convincing evidence . . . , three separate elements: (1) a likelihood of ultimate success on the merits; (2) the prospect of irreparable injury if the provisional relief is withheld; and (3) a balance of equities tipping in the moving party's favor”” ([*2])

“”In balancing the equities, a court must inquire into whether the irreparable injury to be sustained . . . is more burdensome [to the plaintiff] than the harm caused to [the] defendant through imposition of the injunction”” ([*3])

FACTUAL BACKGROUND

The Jay and Patricia Smith Irrevocable Trust and the Theodore P. Smith Income Only Irrevocable Trust owned real property as tenants in common. Under a verbal lease agreement, defendant operated a commercial and tourist mining enterprise extracting Herkimer Diamonds and operated a campground on the property. After the parties could not agree on continued operation of the mine, plaintiffs sought partition and sale of the property and an injunction halting mining operations. The mining business had operated on the property for decades, and the parties had previously agreed on compensation for operations from 2013 through 2020.

PROCEDURAL HISTORY

Plaintiffs commenced an action seeking, among other relief, an order directing sale of real property held by two trusts as tenants in common. They sought a temporary restraining order and preliminary injunction against defendant's mining operations. Supreme Court modified the temporary restraining order in appeal No. 1 and, in appeal No. 2, denied defendant's request for treatment under the Uniform Partition of Heirs Property Act while granting plaintiffs a preliminary injunction. The Appellate Division dismissed appeal No. 1 as moot, modified the order in appeal No. 2 by denying the preliminary injunction, and affirmed the order as modified.

DISPOSITION

other

CASES CITED

- Stubbart v County of Monroe, 58 AD2d 25, 29 [4th Dept 1977], lv denied 42 NY2d 808 [1977]
- Sysco Syracuse, LLC v Egan, 109 AD3d 1214, 1215 [4th Dept 2013]
- Board of Educ. of City School Dist. of City of Buffalo v Pisa, 55 AD2d 128, 135 [4th Dept 1976]
- Nadkos, Inc. v Preferred Contrs. Ins. Co. Risk Retention Group LLC, 34 NY3d 1, 7 [2019]
- Margolies v Encounter, Inc., 42 NY2d 475, 479 [1977]
- Destiny USA Holdings, LLC v Citigroup Global Mkts. Realty Corp., 69 AD3d 212, 216 [4th Dept 2009]
- Doe v Axelrod, 73 NY2d 748, 750 [1988]
- Perretta v Perretta, 143 AD3d 878, 879 [2d Dept 2016]
- Tuminno v Waite, 110 AD3d 1456, 1457 [4th Dept 2013]

- Lane v Tyson, 133 AD3d 530, 531 [1st Dept 2015], lv dismissed 27 NY3d 1033 [2016]
- Loughran v Cruickshank, 8 AD3d 799, 800 [3d Dept 2004]
- Eastview Mall, LLC v Grace Holmes, Inc., 182 AD3d 1057, 1058-1059 [4th Dept 2020]
- Mar v Liquid Mgt. Partners, LLC, 62 AD3d 762, 763 [2d Dept 2009]
- Price Paper & Twine Co. v Miller, 182 AD2d 748, 750 [2d Dept 1992]

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