

Third-Party Plaintiff,

-against-

MICHAEL HARTOFELIS,

Third-Party Defendant.

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Upon the following papers numbered 1 - 41 read on the Show Cause and supporting papers 1 - 15 ; ~~Notice of Cross Motion~~ supporting papers 16 - 27 & 28 - 37 ; Replying Affidavits and s ~~in support and opposed to the motion~~) it is,

In this action the plaintiff moves for an order of judicial sale of real property in lieu of a partition of the property in this action with *Michael LaVigna v Vincent H. Cortazar* number 19882/2004, and severing the third party action against Michael Hartofelis for legal malpractice. Defendants herein after referred to collectively as the “LaVigna defendants.” Defendant, James E. Cortazar, opposes this application.

49 NY2d 557, 427 NYS2d 595 [1980]). The opposing party must submit sufficient proof in order to establish that the matters set forth in the motion are not established (*Castro v Liberty Bus Co.*, 79 AD2d 101, 470 NYS2d 239 [4th Dept 1983]).

On a motion for summary judgment the court must find that there exists a factual issue (*see S.J. Capelin Associates v C*, 313 NE2d 776 [1974]). However, the court must also find that the issue is genuine or unsubstantiated (*Prunty v Keltie's Bum S*, 1990]). If the issue claimed to exist is not genuine but merely a legal issue, summary judgment should be granted (*Prunty v Keltie's Bum S*, 1990]).  
*Tri-Pac Export Corp.*, 22 NY2d 439, 293 NYS2d 93, 313 NE2d 282).  
*Campolo*, 110 AD2d 616, 487 NYS2d 105 [2d Dept 1990]).

The action relates to an 8 acre parcel of land on which the plaintiff claims that he owns the premises with defendant Cortazar. The plaintiff and defendant Cortazar took a purchase mortgage from the defendants, in the amount of \$500,000.00. The plaintiff used the proceeds to purchase the premises at his sole cost and expense. The plaintiff and defendant Cortazar were involved in litigation for several years in Supreme Court. The plaintiff and defendant Cortazar jointly held LLC and the sale of other real property.

*al.*, based upon the mortgage for the subject premises. appointed Francis P. Murphy, Esq., as referee. Francis Findings dated August 18, 2009. The parties did not moved to establish and direct payment of his fees. The order dated January 5, 2010, (Cohalan, J.). Michael motion and the Cortazars' cross-moved to confirm the was denied and the cross motion was granted by order personnel marked that decision as a "Final Disposition concluded. Michael LaVigna moved to renew and re 2013 decision and order. That motion to renew and re (Pitts, J.), to the limited extent that the matter was refe "to hear and report as to any additional damages which That decision was marked as a "Non-Final Disposition and to date there has not been a subsequent referee ap damages which may have accrued. Since the actions LaVigna joins in the request that the actions be conso of fact as to the disbursements of any sale, a joint trial

Accordingly it is,

**ORDERED** that this motion by plaintiff Vince action be consolidated with *Michael LaVigna v. Vinc* pending before this Court under Index No. 19882/200

**ORDERED** that a compliance conference in **Thursday, September 21, 2017 at 9:30 a.m.**, in the Supreme Court, One Court Street, Riverhead, New York. The parties in the joined action are directed to appear at that time prepared to discuss the proposed

*Motion to Sever*

CPLR 603 states: "In furtherance of convenience or to avoid severance of claims, or may order a separate trial of a claim or order the trial of any claim or issue prior to the trial of other claims or issues."

CPLR 1003 states, in pertinent part: "Parties may, by stipulation or on its own initiative, at any stage of the action and without prejudice, order any claim against a party severed and proceeded with separately."

The Court in *Barrett v NY City Health & Hospitals Corp.* [2017], held that

"Although it is within a trial court's discretion to order severance, discretion should be exercised sparingly." *NY2d 52, 57, 429 N.E.2d 104, 44*  
*Reciprocal v Milburn Sales Co., 1977*  
*New York Cent. Mut. Ins. Co. v M*

**ORDERED** that counsel for James E. Cortazar file a class mail upon all appearing parties in each severed action and file an affidavit(s) of service with the Suffolk County Clerk;

**ORDERED** that James E. Cortazar is directed to pay the RJI for the severed action against Michael Hartofelis,

**ORDERED** that each severed action shall have its costs be paid in each action, including those costs associated with Certificates of Readiness for Trial; and it is further

**ORDERED** that a compliance conference in the severed actions on **Thursday, September 21, 2017 at 9:30 a.m.**, in the Supreme Court, One Court Street, Riverhead, New York. All parties in each severed action are directed to appear at that time prepared to discuss the severed actions.

The foregoing constitutes the decision and Order of the Court.

Dated: July 31, 2017

\_\_\_\_\_ **FINAL DISPOSITION** \_\_\_\_\_