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CasePrepPlus

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In this issue, we are reprinting selected case summaries from the past several months addressing limits on plea bargaining, children's appellate rights, notice-of-claim requirements, litigation funding, disability-benefit liens, and heirs-property protections. Regular issues will resume next week.

COURT OF APPEALS

CRIMINAL LAW, WAIVER OF RIGHT TO HEARING UNDER DOMESTIC VIOLENCE SURVIVORS JUSTICE ACT

***People v N.H.*, 2026 NY Slip Op 02437 (Ct App April 23, 2026)**

Issue: May a defendant, as a condition of a negotiated plea agreement, waive a Penal Law § 60.12 hearing to determine their eligibility for an alternative sentence under the Domestic Violence Survivors Justice Act?

Facts: "Enacted in 2019, the DVSJA amended Penal Law § 60.12 to establish an alternative sentencing framework for certain defendants who are survivors of domestic violence. We recently explained that the Legislature enacted the DVSJA in recognition of the national epidemic of domestic violence and the failure of prior law to allow judges discretion to fully consider the impact of domestic violence in making sentencing determinations. To that end, the DVSJA expands judicial discretion at the initial sentencing stage by permitting courts to sentence defendants to an alternative, less severe sentence."

Here, after being charged "with, among other offenses, one count of attempted murder in the second degree and two counts of assault in the first degree, arising from an incident at a party outside N.H.'s home," defendant's counsel requested that the trial court sentence her "under the DVSJA to six months' incarceration followed by five years' probation, or grant a hearing pursuant to Penal Law § 60.12 to determine her eligibility for a reduced DVSJA sentence," supporting the request with evidence that defendant had been the repeated victim of domestic violence and that her actions at the party resulted as a response to that abuse.

"While N.H.'s DVSJA application was pending and before any Penal Law § 60.12 hearing, the prosecution offered, and N.H. accepted, a plea bargain in exchange for her waiver of the hearing and her right to appeal. Pursuant to the agreement, N.H. pleaded guilty to one count of first-degree reckless assault, in full satisfaction of the indictment, in exchange for a determinate sentence of five years' imprisonment followed by five years' post-release supervision. During the plea proceeding, defense counsel argued that N.H. was entitled to the hearing and that asking her to waive it went 'against the spirit of why the law was created.' The court, noting the absence of caselaw in this area, also expressed concern as to whether a defendant may waive a DVSJA hearing as a condition of a negotiated plea agreement, but ultimately concluded that such a hearing was waivable. The court accepted N.H.'s plea and imposed the promised sentence."

The Appellate Division, Second Department affirmed, holding that "section 60.12 hearings are waivable as part of a plea agreement, and that the five-year period of PRS imposed was not excessive in this case."

Holding: The Court of Appeals reversed, holding that "Penal Law § 60.12 hearings are nonwaivable and that [N.H.] is therefore entitled to such a hearing to determine her eligibility for DVSJA relief . . . The statutory framework and purpose of the DVSJA alternative reduced sentencing framework reveal the Legislature's intent to mitigate a systemic failure of the criminal legal system, which led to unduly harsh sentencing of domestic violence survivors." Although the Court recognized that many of a defendant's rights may be waived in a plea agreement, "some rights are too valuable, both to the defendant and to the community, to be sacrificed in plea bargaining . . . Thus, we have held that a defendant may only waive a guaranteed right when there is no constitutional or statutory mandate and no public policy prohibiting waiver."

Here, the Court held, "the statutory structure and the animating purpose of the DVSJA alternative sentencing framework establish that the Legislature did not intend for waiver of such a hearing to be a permissible condition of a plea . . . In enacting the DVSJA's alternative, reduced sentencing framework, the Legislature intended to address what it found was a systemic problem with existing sentences as applied to certain domestic violence survivors. The legislative history and statutory background reflect the Legislature's recognition of the national epidemic of domestic violence and goal of ameliorating the failure of prior law to allow judges discretion to fully consider the impact of domestic violence in making sentencing determinations. The Legislature reimagined the appropriate sentencing ranges, including alternative non-incarceratory sentences in certain cases, for this particular subgroup of defendants who were themselves victims of domestic abuse. The DVSJA is thus corrective action on a large scale, meant not merely to address excessive sentences on an individual level, but to recalibrate the criminal legal system to account for the trauma experienced by a class of defendants which led to their chargeable actions." Allowing a "waiver of a survivor's opportunity to make the case for an alternative sentence upsets this balance and undermines the Legislature's intent to correct a structural flaw in the criminal law as applied to this class of survivor defendants."

Moreover, the Court noted, "because our system is predominantly one of pleas rather than trials, allowing waiver of section 60.12 hearings would eviscerate this alternative sentencing pathway for the vast majority of domestic violence survivor defendants who plead guilty rather than proceeding to a trial. That would be inconsistent with the legislative history and an incongruous result given that the Legislature intended to expand, not contract or eliminate, remedial sentencing for survivors. As with certain other rights, a survivor's right to a section 60.12 hearing is too valuable, both to the survivor defendant and to the community, to be sacrificed in plea bargaining."

FAMILY LAW

***Matter of Abdoch v Abdoch*, 2026 NY Slip Op 03219 (Ct App May 21, 2026)**

Issue: **Does an attorney for the child have the authority to appeal a custody determination made pursuant to Family Court Act article 6, when neither parent has appealed?**

Facts: "Mother and father had an agreed-upon custody order providing that the children lived primarily with mother. Father petitioned to modify the custody order, and mother opposed in a competing petition. The attorney appointed to represent the four children opposed father's petition and advocated that the children wished to continue living primarily with mother. Family Court issued an order determining that modification was warranted and awarding the parents joint custody "with designated zones of influence" and shared residency. The AFC noticed an appeal from Family Court's order. Although mother did not file her own appeal, she appears to have filed a letter with the Appellate Division supporting the children's appeal. Father did not appear in connection with the appeal."

The Appellate Division, Fourth Department dismissed the AFC's appeal, "following Fourth Department precedent holding that children in custody matters cannot appeal independent of the parent-parties." Noting a conflict on that point amongst the Appellate Division departments, the Court of Appeals granted leave to appeal.

Holding: The Court of Appeals reversed, reinstated the AFC's appeal, remitted the appeal to the Appellate Division for determination. The Court held, "the Family Court Act authorizes an AFC to appeal on behalf of their client. Family Court Act § 1120 (b) provides that the AFC's appointment continues when 'the attorney on behalf of the child files a notice of appeal.' In turn, section 1115 provides that an appeal is taken by filing a notice of appeal, which begins the appellate process (see Family Ct Act § 1115). Reading these two sections in harmony, the Family Court Act clearly authorizes an AFC to appeal a Family Court decision on behalf of their client. To hold otherwise would render section 1120 (b)'s relevant language without practical effect."

Thus, resolving the conflict where the Fourth Department had long held that an AFC could not independently appeal but the First, Second, and Third Departments had held that they could, the Court of Appeals clarified that, so long as a child is aggrieved by the Family Court order—meaning that they had some portion of their requested relief denied—the child's AFC has the statutory authority to appeal the Family Court order on the child's behalf.

CIVIL PROCEDURE, NOTICE OF CLAIM

***Incorporated Vil. of Freeport v Freeport Plaza W., LLC*, 2026 NY Slip Op 03906 (Ct App June 18, 2026)**

Issue: **May a village be equitably estopped from asserting a CPLR 9802 defense for a party's failure to file a notice of claim prior to bringing a claim?**

Facts: Following a failed land sale transaction, the Village of Freeport sued Freeport Plaza West, LLC ("FPW") for breach of contract. FPW filed counterclaims for anticipatory breach, which the Village answered, asserting as an affirmative defense failure to satisfy condition precedents to suit. After 17 months of litigation, the Village moved to dismiss FPW's counterclaim for failure to comply with CPLR 9802's notice of claim requirements. FPW did not dispute that it failed to serve a notice of claim, but argued instead that the Village "should be equitably estopped from invoking the notice of claim requirement, contending that the Village had commenced the action and had actual knowledge of the contract dispute from which the counterclaim arose, but deliberately delayed raising the issue until the eve of trial, at which point the statutory limitation period on the counterclaim had expired."

Supreme Court denied the Village's motion, declining to enforce the notice of claim requirement because "the Village had failed to raise the notice of claim issue" throughout the litigation and "FPW's counterclaim arose out of the same occurrences asserted in the Village's complaint," so the Village "had every opportunity to investigate and defend that it would have been afforded if a notice of claim had been filed and was not prejudiced.

The Appellate Division, Second Department reversed and granted the Village's motion to dismiss FPW's counterclaim. "The Court determined that the Village had litigated to prosecute its own breach of contract claim, rather than attempting to lull the defendant to sleep on its rights; that its conduct was not calculated to, or negligently did, mislead or discourage FPW from serving a timely notice of claim; and that FPW had not justifiably relied upon the Village's actions." Therefore, application of equitable estoppel was improper.

Holding: The Court of Appeals affirmed. Explaining that CPLR 9802 is of one of the many notice of claim provisions applicable to claims against government entities, which "afford local governments the opportunity to fully investigate and, if regarded as appropriate, to settle claims without the expense and hazards of litigation," the Court held that application of equitable estoppel against a government agency's reliance on a notice of claim statute is rarely warranted. Indeed, the Court noted, "[w]here the text of a notice of claim statute" permits no exception, we have concluded that the Legislature intends its enforcement even if the government had actual knowledge of the claim or failed to demonstrate actual prejudice. And we have repeatedly rejected proposals to compromise the strict statutory notice of claim requirement to avoid uncertainty and vexatious disputes, even where such requirements yield harsh results." Thus, the Court explained, courts should not apply equitable estoppel against a municipality to foreclose a failure to file a notice of claim defense "absent a showing of wrongful or misleading conduct" by the municipality.

Here, the Court held, "the Village did not engage in wrongful or misleading conduct warranting the application of equitable estoppel. As the Appellate Division correctly determined, participation in litigation, without more, does not constitute action calculated to mislead or discourage a party from filing a notice of claim. That holds true here, where the Village was pressing its own breach of contract claim and therefore had every reason to participate in discovery and related court conferences, independent of FPW's counterclaim . . . Notice of claim statutes are longstanding procedural requirements in municipal litigation and compliance is not overly burdensome. We do not condone the Village's litigation conduct, but nothing prevented FPW, represented by experienced legal counsel, from filing a notice of claim. To the extent FPW relied on the Village's conduct to their detriment, such reliance was unreasonable.

FIRST DEPARTMENT

CONTRACT LAW, LITIGATION FUNDING, USURY

***Denemark v New Ch. Capital, Inc.*, 2026 NY Slip Op 04553 (1st Dept July 23, 2026)**

Issue: **Was a litigation funding agreement truly an investment contingent on plaintiff's successful recovery in his divorce action, or was the transaction, in reality, a loan to which the usury laws apply?**

Facts: The parties entered into a "Purchase and Sale Agreement" in which the "defendant agreed to advance approximately $200,000 to plaintiff to fund the legal costs of plaintiff's pending divorce action. In return, plaintiff agreed to assign to defendant his right to receive any proceeds from the divorce claim up to the amount owed to defendant under the PSA . . . The funds advanced to plaintiff accrued interest at a rate of 1.58% per month or 18.96% per year, with a six-month minimum . . . The PSA clarified that 'THIS IS NOT A LOAN' and was expressly contingent on plaintiff's 'successful' recovery on the Claim. It proclaimed that '[i]f there is no recovery on the Claim, nothing will be owed to [defendant].' Yet, several provisions of the PSA together with the Sweetheart Guaranty, entitled defendant to recoup the money it advanced plus interest even if 'there is no recovery on the Claim,' such as in the event of plaintiff's death or reconciliation with his wife."

During the divorce litigation, the defendant filed a UCC-1 financing statement on plaintiff's property in Walkill, and refused to remove it so the property could be sold without an escrow agreement that would essentially guarantee repayment. "Accordingly, the parties executed an Escrow Agreement dated March 17, 2021, whereby defendant agreed to file a UCC-3 financing statement to terminate the lien and in turn, plaintiff agreed to hold the sale proceeds in escrow pending final disposition of the divorce action. Once the divorce proceedings concluded, the escrow agent would be permitted to release *no more* than 50% of the sale proceeds to the wife, and upon defendant's demand, would pay the balance of the sale proceeds to defendant up to the amount owed under the PSA."

After the plaintiff and his wife settled the divorce action for more than was owed under the PSA, plaintiff, without paying defendant, commenced this action to declare the PSA invalid based on usury, duress, and undue influence. Plaintiff also alleged that defendant breached the PSA by interfering in the divorce action by filing the UCC-1 financing statement against Plaintiff's property. Defendant answered and counterclaimed to recover the total amount owed under the PSA, then $408,072. The parties eventually both moved for summary judgment.

Supreme Court denied both motions, holding that questions of fact existed "as to whether the repayment provisions of the PSA were truly contingent and whether the usury laws apply to this case. Further, it found that there were issues of fact as to whether defendant inappropriately played an active role in the underlying divorce action by, among other things, filing the UCC financing statement. It also found issues of fact as to plaintiff's economic duress claim because it was based on the UCC filing and 'it is unclear if defendant was entitled to file a UCC while the possibility of payment was still contingent.'"

Holding: The Appellate Division, First Department modified, holding that "the critical issue in this case is whether the parties' PSA was an investment or in fact a loan. A fundamental component of usury is the existence of a loan, and where there is no loan, there can be no usury." The court explained that litigation funding agreements are not typically considered loans where "repayment of principal is entirely contingent on the success of the underlying lawsuit and where the litigant received the advance with no guaranteed obligation to repay, except from the proceeds, if any, recovered in the lawsuit." In contrast, the court noted, a loan may be found in light of "[t]he nature of the underlying litigation, whether the agreement provides for recourse in the event the recipient files for bankruptcy, and whether there was a personal guaranty."

Here, viewing the agreement and the facts in totality, the court held, the PSA was almost indisputably a loan, rather than an investment. The court explained that the PSA authorized defendant to file a UCC financing statement against Plaintiff to protect its lien and did not limit that filing until after Plaintiff obtained a recovery in the divorce action. "The fact that defendant was permitted under the PSA to file a UCC-1 financing statement, a device used by lenders to secure collateral, presents the hallmark of a loan." In addition, the "Escrow Agreement's mandate that no more than 50% of the proceeds from the sale of the Property be distributed to plaintiff's then wife and that the balance be paid to defendant up to the amount owed under the PSA ensured that the sale proceeds would be used to repay defendant." Defendant continually throughout the UCC filings updating the amount "presently owed" under the PSA, even though Plaintiff had not at that point secured any recovery, also suggested that the PSA was a loan, the court reasoned.

Multiple other provisions of the PSA also showed that it was loan rather than an investment, the court held. For example, one provision guaranteed repayment of the obligation if plaintiff and his wife reconciled and the divorce action was dismissed. Thus, "if the matrimonial parties reconciled and their divorce matter was discontinued, defendant would have been entitled to repayment even though there was no recovery on the Claim. This potential outcome presents yet another indicator that the transaction was a loan and not contingent on the divorce award." "Finally, considering the nature of the underlying litigation, the substantial assets involved in the divorce litigation as reflected in the record, and the matrimonial parties' rights to equitable distribution in New York, the likelihood that the principal advanced would be 'put in hazard' was low if not nonexistent. This is not to mention any influence the existence of the PSA, Sweetheart Guaranty, UCC-1 financing statement, and Escrow Agreement may have had on the outcome of the matrimonial settlement agreement as plaintiff alleges. In short, it is difficult to imagine any scenario in this case where defendant would not be entitled to repayment of the full principal amount plus accrued interest." The PSA was therefore a loan.

As a loan, the court held, it was subject to New York's usury laws, which limit the legal interest rate that may be charged to 16% per annum. "It is undisputed that under the PSA, interest accrued at 18.96% annually, which exceeds the legal limit. Contrary to defendant's argument, the terms under paragraph 27 providing that "should any court or arbitrator declare this PSA to be a loan and not a purchase and sale of an interest in the Claim, then interest upon this PSA shall be due and payable to defendant at the highest rate of interest permitted by law,' does not make the subject instrument nonusurious." As a usurious instrument, the court held it was invalid and unenforceable.

SECOND DEPARTMENT

INSURANCE LAW, SUBROGATION, SHORT-TERM DISABILITY BENEFITS

***Trombetta v Eklecco Newco, LLC*, 2026 NY Slip Op 04222 (2d Dept July 1, 2026)**

Issue: Does General Obligations Law § 5-335 bar the recovery, in subrogation, of short-term disability benefits that an insurance company paid to the plaintiff?

Facts: After plaintiff was injured in a slip-and-fall in a parking lot owned by defendant, he sought short-term disability benefits from his employer because his injuries rendered him unable to work for a period of time. The employer paid the short-term disability benefits, which were underwritten by its insurer, ShelterPoint Life Insurance Company.

Plaintiff thereafter commenced this personal injury action against defendant, and ultimately agreed to settle the claim for $125,000. "ShelterPoint placed a lien on the proceeds of any recovery obtained by the plaintiff in the amount of $2,346, the amount of the short-term disability benefits it had paid to the plaintiff." Following the settlement, plaintiff moved to vacate ShelterPoint's lien, arguing that "the lien was invalid and unenforceable pursuant to General Obligations Law § 5-335," which generally bars subrogation liens against personal injury settlements, except for, as relevant here, workers' compensation benefits. "In opposition, ShelterPoint argued that Workers' Compensation Law § 227 specifically permitted the lien and that liens authorized by Workers' Compensation Law § 227 are exempt from the antisubrogation provisions of General Obligations Law § 5-335."

Supreme Court granted plaintiff's motion, holding that "General Obligations Law § 5-335 'clearly and unequivocally' prohibited short-term disability benefit liens. The court interpreted the phrase 'workers' compensation benefits' as set forth in General Obligations Law § 5-335(c) to be a generic phrase pertinent to Article 2 'compensation benefits only' and not 'disability benefits paid pursuant to Article 9, which are plainly not exempt from the antisubrogation provisions.' The court further noted that 'the clear legislative intent of the anti-subrogation provisions of General Obligations Law § 5-335 undeniably evidences that the Legislature intended to preclude liens for worker's compensation benefits, but not disability benefits.' The court held that if the Legislature intended the antisubrogation provision to 'apply to both worker's compensation and disability benefits,' the Legislature would have so stated in the statute."

Holding: The Appellate Division, Second Department affirmed. This case, the court noted, gave it "the opportunity to address, for the first time, the interaction between the Workers' Compensation Law provisions requiring companies to provide short-term disability benefits and the General Obligations Law provisions stating that insurance companies may not recover, through subrogation, the amounts an insurance company pays to an injured worker as short-term disability benefits." Distinguishing between the two different benefit schemes for workers' compensation benefits and short-term disability benefits, the court explained that while workers' compensation benefits are intended to provide benefits to employees injured within the course of their employment, short-term disability benefits have a much wider application. "As opposed to the Workers' Compensation Law, the Disability Benefits Law contains no requirement that the cause of a disability arise out of and in the course of employment. It contemplates a broad social coverage to protect the employee against the hazard of sickness and disability which interfere with and prevent his or her continuance in active employment which can occur and do occur both within and outside of working hours."

Addressing ShelterPoint's argument that "Workers' Compensation Law § 227, which is part of the section of the Workers' Compensation Law that sets forth the short-term disability law, specifically permits ShelterPoint to recover the short-term disability benefits it paid to the plaintiff," the court held that "while Workers' Compensation Law § 227 does provide insurers with the right to recover short-term disability benefits paid through subrogation, the insurer's right to recover is conditional, limited to circumstances where the injured worker's recovery can be deemed for the benefit of the insurer." And a recovery is for the benefit of the insurer, the court explained, when "a judgment or settlement compensates the plaintiff for lost income in order to prevent an injured worker from, in effect, receiving double compensation." "Given that the plaintiff neither sought nor received compensation for lost wages in connection with this action, the settlement funds cannot be deemed for the benefit of ShelterPoint within the meaning of Workers' Compensation Law § 227, and accordingly, the Supreme Court properly invalidated ShelterPoint's lien on that basis alone."

The court further held that "even assuming that Workers' Compensation Law § 227 applied to the instant recovery by plaintiff, General Obligations Law § 5-335 operates to bar the lien. We hold that Workers' Compensation Law § 227 and General Obligations Law § 5-335 can be read together in a way that harmonizes both statutes and gives effect to the intent of the Legislature in both instances." The court reasoned, "[t]he operative language of subdivision (a) [of General Obligations Law § 5-335] provides that 'it shall be conclusively presumed that the settlement does not include any compensation for the cost of health care services, loss of earnings or other economic loss to the extent those losses or expenses have been or are obligated to be paid or reimbursed by an insurer.' The language of this subdivision is simple, clear, direct, and unambiguous, stating that any settlement received by an injured person presumptively does not include payment for lost earnings. Here, there is no dispute that the benefits paid to the plaintiff by ShelterPoint were for lost earnings, and therefore, any recovery subrogation lien is barred by General Obligations Law § 5-335."

Additionally, the court explained, "[t]he operative language of subdivision (c) provides that 'this section shall not apply to a subrogation or reimbursement claim . . . pursuant to a policy of insurance or an insurance contract providing workers' compensation benefits.' As noted above, the short-term disability benefits ShelterPoint paid to the plaintiff are considered separate and distinct from workers' compensation benefits. Here, again, the language of this subdivision is clear, direct, and unambiguous, carving out an exception to the bar on insurers' ability to recover benefits paid in certain instances where statutes provide for subrogation rights, but not all such instances."

Thus, the court concluded that General Obligations Law § 5-335 does not "render Workers' Compensation Law § 227 a nullity. As noted, the right of an insurer to recover disability or workers' compensation benefits paid through subrogation is not absolute. It is contingent upon whether the benefits may be deemed for the benefit of the insurer. Here, General Obligations Law § 5-335 can be harmonized with Workers' Compensation Law § 227 by understanding that, by operation of General Obligations Law § 5-335, short-term disability benefits that are paid to an insured worker may not be deemed for the benefit of the insurer given the public policy determination of the Legislature that the cost of the benefits should ultimately be born [*sic*] by the insurer, not the injured party."

REAL PROPERTY, UNIFORM PARTITION OF HEIRS PROPERTY ACT

Flouret v Sagland, LLC, 2026 NY Slip Op 05009 (2d Dept Aug. 19, 2026)

Issue: **Are a trust and a limited liability company "individuals" within the meaning of RPAPL 993, such that property owned wholly by a trust and a limited liability company may constitute "heirs property" pursuant to the Uniform Partition of Heirs Property Act?**

Facts: Two brothers, Stephen and Mark, acquired a property in Suffolk County as tenants in common. They later subdivided the property into three parcels with Stephen owning one, Mark owning one, and them jointly owning the middle parcel as tenants in common. "By deed dated December 11, 2020, Stephen conveyed his 50% interest in the subject property to the defendant, Sagland, LLC, the manager of which happens to be Stephen's daughter. By quitclaim deed dated September 3, 2023, Mark conveyed his 50% interest in the subject property to a trust, namely, the Mark Perlbinder 2023 Irrevocable Trust, the trustee of which is Muffy Flouret. Flouret happens to be the daughter of Mark . . . Thus, as of September 2023, the subject property was wholly owned by a trust and a limited liability company, as tenants in common."

In January 2022, Mark commenced this action against the LLC for partition and sale of the middle parcel. The LLC answered and "asserted affirmative defenses, including, inter alia, that the subject property is heirs property and, as such, is subject to the protections of RPAPL 993 and that Mark failed to comply with the procedural requirements thereunder." After the transfer of Mark's half of the property to the Trust, the Trustee was substituted as the plaintiff, and moved for summary judgment, arguing that "the subject property does not qualify as heirs property within the meaning of RPAPL 993 because the subject property is wholly owned by a trust and a limited liability company. The plaintiff specifically argued that a trust and a limited liability company could not constitute an 'individual,' 'relative,' or 'co-tenant who acquired title from a relative,' as those entities did not have ascendants, descendants, or other relations by blood, marriage, adoption, or law, and such a finding would be in derogation of the spirit of the legislative intent of RPAPL 993." The LLC opposed, arguing that "the subject property satisfied all of the requirements of heirs property promulgated in RPAPL 993 and, thus, the defendant was entitled to the protections provided by the statute. The defendant further contended that the owners of the subject property, a trust and a limited liability company, were created for the benefit of the individuals who had immediately preceded in ownership of the subject property, the brothers, such that they should be treated as individuals covered by the statute."

Supreme Court denied summary judgment, holding that "the subject property is heirs property pursuant to RPAPL 993 and that, as a result, the procedures of RPAPL 993 are applicable."

Holding: The Second Department reversed, holding that "the specific language of the statute makes clear that RPAPL 993 was intended to protect humans from predatory entities seeking to deprive families of their ancestral homes and attempting to take advantage of those families in the hopes of a partition and sale creating a windfall in the entities' favor, necessitating the protections promulgated in the statute. This intention is reflected in the text of the statute itself, in which the Legislature took great care to choose appropriate descriptors such as 'individual,' 'relative,' 'ascendant,' 'descendant,' 'collateral,' and 'persons,' which did not include entities such as trusts and limited liability companies."

The court explained, "RPAPL 993 is a relatively new equitable statute that was enacted by the Legislature in December 2019, which supersedes the general partition statutes for those properties that so qualify as heirs property. RPAPL 993 was passed to protect individuals from predatory entities who purportedly own a fraction of the property and seek to divest those individuals from property they acquired or inherited from family members. Specifically, the statute was meant to shield 'family-held lands from speculators who acquire properties by leveraging minority interests to force a partition sale [and] to allow relatives holding fractional interests to acquire full ownership or receive full value of their interest in legacy real property.'" To qualify as "heirs property," the statute provides that the property must be held as tenants in common and satisfy *all* of the following:

(i) there is no agreement in a record binding all of the co-tenants which governs the partition of the property;

(ii) any of the co-tenants acquired title from a relative, whether living or deceased;

(iii) the property is used for residential or agricultural purposes; and

(iv) any of the following applies:

(A) twenty percent or more of the interests are held by co-tenants who are relatives;

(B) twenty percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased;

(C) twenty percent or more of the co-tenants are relatives of each other; or

(D) any co-tenant who acquired title from a relative resides in the property.

The Court noted, the Legislature defined the terms "relative," "ascendant," "descendant," and "collateral" in terms that can only apply to humans, rather than entities. Although the term "individual" was not statutorily defined, its dictionary definition too led to the conclusion that it could only apply to humans. "Simply put, a trust and a limited liability company are not, by definition, individuals, let alone relatives, ascendants, descendants, collaterals, or "individual[s] otherwise related to another individual by blood, marriage, adoption, or law of this state" (RPAPL 993[2][i]), as is required under RPAPL 993. Trusts and limited liability companies do not have relatives, cannot have children, cannot be married, cannot adopt, and so on. Thus, the defendant's invitation to construe RPAPL 993 as including limited liability companies and trusts as individuals is unpersuasive, as it is plainly unsupported by the language of the statute itself."

Further, the court held that "[t]o the extent that the defendant argues here that the subject property is heirs property because the representatives of the owners are related to each other and were related to Mark and Stephen, this Court finds that contention to be unpersuasive. The fact that the trust and the limited liability company are managed by people related to each other and to the brothers is entirely happenstance. Today, the owners are managed by individuals related to each other and to the brothers, but tomorrow they may not be. To adopt the defendant's argument would leave this Court with an unworkable rule that is too reliant on coincidence." Nor would construing entities to be individuals comport with the Legislature's purpose of protecting against deceptive schemes from predatory real estate speculators. "The brothers employed sophisticated means to transfer, and presumably to protect, their ownership interests in the subject property to a trust and a limited liability company, which, it is respectfully submitted, were not intended by the Legislature to be protected by RPAPL 993. As such, the owners presumably are not susceptible to deceptive schemes employed by predatory real estate speculators. The purpose behind RPAPL 993 was to protect families, who inherited or acquired their interests in property from their relatives, from deceptive schemes employed by predatory real estate speculators, and not to protect, as here, sophisticated entities. The statute's purpose further supports the plaintiff's position that the Legislature did not intend RPAPL 993 to apply to real property that was entirely held by trusts and limited liability companies."

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