

Sweeny, J.P., Richter, Kapnick, Oing, JJ.

9441-  
9442

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MurrayRayeDebbie, LLC, et al.,  
Plaintiffs-Respondents,

-against-

Rosenphil LLC,  
Defendant-Appellant.

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Spolzino Smith Buss & Jacobs LLP, Yonkers (Jeffrey D. Buss of  
counsel), for appellant.

Rivkin Radler LLP, Uniondale (Henry M. Mascia of counsel), for  
respondents.

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Judgment and order (one paper), Supreme Court, New York  
County (Barbara Jaffe, J.), entered September 19, 2018, directing  
the partition and sale of the subject building, and bringing up  
for review an order, same court and Justice, entered July 10,  
2018, which granted plaintiffs' motion for summary judgment,  
unanimously affirmed, without costs.

Plaintiffs established their prima facie case under RPAPL  
901(1) by establishing that 1) the parties own the building as  
tenants in common and 2) physical partition of the property would  
come at great prejudice to the owners (*Ferguson v McLoughlin*, 184  
AD2d 294 [1st Dept 1992]). In opposition, defendant failed to  
raise an issue of fact or a viable affirmative defense based on  
an alleged deal between plaintiffs and the tenant of the building

(*Estate of Steingart v Hoffman*, 33 AD3d 465, 466 [1st Dept 2006]).

We have considered the parties' remaining contentions and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MAY 28, 2019

  
CLERK