

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE JOHN A. MILANO IA Part 3
Justice

	x	Index Number <u>10037</u> 1993
CONRAD GREEN,		
Plaintiff,		Motion Date <u>September 24,</u> 2002
- against -		
LOUISE GREEN,		Motion Cal. Number <u>15</u>
Defendant.		
	x	

The following papers numbered 1 to 16 read on this motion by plaintiff Conrad Green for an order permitting him to further depose defendant Louise Haye Green and directing Louise Haye Green to grant plaintiff's licensed appraiser access to the subject properties. Defendant Louise Haye Green cross-moves in opposition and seeks an order dismissing the complaint on the grounds that it fails to state a cause of action.

	<u>PAPERS</u> <u>NUMBERED</u>
Notice of Motion-Affidavit-Exhibits (A-F).....	1 - 4
Notice of Cross-Motion-Affidavit-Exhibits.....	5 - 8
Opposing Affidavits-Exhibits (G-H).....	9 - 11
Reply Affidavit.....	12 - 14
Other Affidavit.....	15 - 16

Upon the foregoing papers it is ordered that these motions are decided as follows:

Plaintiff Conrad Green commenced an action against Louise Green under Index Number 10037/93 for a divorce and for other relief that was not related to the matrimonial action. The court in a judgment dated November 19, 1998 dismissed the matrimonial action and severed the remaining three non-matrimonial causes of action. Plaintiff Conrad Green also commenced an action against Louise Green and her daughters Marlene Haye and Andrea Haye under Index Number 3869/95. These actions involve an alleged oral joint

venture between Conrad Green and Louise Green concerning certain real properties, and the transfer of title between the defendants. This court, in an order dated June 12, 1996, directed Louise Green to appear at a deposition, and precluded Marlene Haye and Andrea Haye from introducing evidence at trial in defense of the action. Louise Green was deposed on September 11, 12 and December 19, 1996. This court in an order dated January 15, 2000 granted plaintiff's motion to renew, and consolidated the remaining non-matrimonial causes of action in action number one with action number two and restored the matter to the trial calendar. Plaintiff filed a note of issue on March 20, 2000, and the matter was placed on the calendar in the trial scheduling part, and was stayed pending the determination of the within motion and cross motion.

Defendant Louise Green's cross-motion to dismiss the complaint on the grounds that it fails to state a cause of action is denied. The court notes that although this defendant previously sought to dismiss the complaint on the same grounds and her moving papers were noted by the court in its order of January 15, 2000, that order did not address the merits of the prior cross motion. The within cross motion, however, was made more than two years after the filing of the note of issue, and therefore is untimely. (CPLR 3212[a].) Furthermore, even if the defendant was able to establish good cause for the delay, the court finds that the defendant's reliance on Domestic Relations Law §236B(3) is misplaced. Defendant asserts that the alleged oral agreement is nothing more than a pre or ante nuptial agreement and that it fails to comport with the requirements of Domestic Relations Law § 236B(3) and therefore is unenforceable. Domestic Relations Law § 236B(3) provides that "[a]n agreement by the parties, made before or during the marriage, shall be valid and enforceable in a matrimonial action if such agreement is in writing, subscribed by the parties, and acknowledged or proven in the manner required to entitle a deed to be recorded." (Emphasis added.) The within action is not a matrimonial action and therefore the plaintiff does not have to meet the standards of Domestic Relations Law § 236B(3) in order to establish the existence of a joint venture which is alleged to have been created four years prior to the parties' marriage, at a time when they were both married to other people, and is alleged to have continued after the parties married each other. The court finds that there is nothing in the provisions of Domestic Relations Law which prevents couples from entering into a business relationship with each other, and it is well settled that a joint venture may be evidenced by an oral agreement. (Chalmers v Eaton Corp., 71 AD2d 721.) Furthermore, to the extent that plaintiff seeks to impose a constructive trust on the subject real properties, these claims are not dependent upon the parties' marital status. (See generally, Lester v Zimmer, 147 AD2d 340;

Palazzo v Palazzo, 121 AD2d 261.)

Plaintiff's motion to further depose defendant Louise Haye Green is granted, in view of the fact that the trial of this action has been delayed and this defendant was last deposed in December 1996. Louise Haye Green is directed to appear at a deposition to be held and completed no later than 45 days after the date of service of this order together with notice of entry. This deposition shall be limited to matters pertaining to the subject real properties which arose after December 1996. Plaintiff's request for a new appraisal of the subject real properties is granted as these properties were last appraised in 1998. Defendant Louise Haye Green is directed to permit plaintiff's licensed appraiser access to the following properties in order to conduct an appraisal:

720 Chauncey Street, Brooklyn, New York
722 Chauncey Street, Brooklyn, New York
551 Knickerbocker Avenue, Brooklyn, New York
84 Eldert Street, Brooklyn, New York
743 MacDonough Street, Brooklyn, New York
746 MacDonough Street, Brooklyn, New York
803 Monroe Street, Brooklyn, New York
15-12 Eastern Parkway, Brooklyn, New York
2517 Healy Avenue, Far Rockaway, New York
2279 Mott Avenue, Far Rockaway, New York
1366 Dickens Street, Far Rockaway, New York
531 Beach 66 Street, Far Rockaway, New York
187 Beach 61 Street, Arverne, New York
69-57 Bayfield Avenue, Arverne, New York

All of the appraisals shall be conducted within 45 days of service of a copy of this order, together with notice of entry. The within action shall remain on the trial calendar.

Dated: October 23, 2002

Justice John A. Milano