

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT) Civil Action No. 2009-CP-07-04889

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Jun 30 2023

SC Court of Appeals

SADIE KING; The Heirs and/or)
Devises of SUSIE SIMMONS;)
QUEEN MARY DAVIS; SHIRLEY ALLEN,)
et al.)
)
Plaintiffs,)
)
-vs-)
The Heirs or Devises of DENNIS)
ALLEN, *et al.*)
)
Defendants.)

**ORDER APPROVING NEW BROKERAGE
AGREEMENT and MARKETING A PORTION
OF THE SUBJECT PROPERTY FOR SALE
(11.31 Acres)**

THIS MATTER came before the Court for a hybrid hearing via in-person and WebEx on April 24, 2023, on the motion of certain Defendants (the “*Movants*”) for an order authorizing a portion of the subject property consisting of 11.31 acres, more or less, to be marketed for sale pursuant to the terms of the “*Exclusive Right to Sell Agreement / Listing Agreement*” attached to the below-defined Listing Motion as EXHIBIT “A” (the “*Listing Agreement*”) and to authorize counsel for the *Movants* to execute the Listing Agreement on behalf of the heirs and/or devisees of Dennis Allen (the “*Listing Motion*”).

Present at the hearing were Tiffany Lumpkin, counsel for certain Plaintiffs; E. Richardson LaBruce and Mark Simpson, counsel for certain Defendants; and various Parties to this action including Ann King, Queen Mary Davis, Katrina Coleman, Arizona Brown, Lillian Mitchell, Thelma Sams, and many others.

After due, serious and careful consideration and review of the Motions, all pertinent documents, statements, information, testimony and argument, as well as all of the pleadings in this matter, the Court makes the following findings of fact and conclusions of law and grants the relief requested in the Listing Motion for the reasons set forth herein.

FINDINGS OF FACT & CONCLUSIONS OF LAW:

1. The underlying action was commenced pursuant to Title 15, Chapters 53 and 67, of the South Carolina Code of Laws, 1976, as amended, for the purpose of partitioning

and quieting title to certain real property located on Hilton Head Island, within Beaufort County, South Carolina, and more specifically identified as follows (the “*Tract*”):

ALL that tract, lot or piece of land located in the Town of Hilton Head Island, Beaufort County, South Carolina, consisting of approximately 31.60 acres, more or less, and described on that certain plat prepared for the Heirs of Dennis Allen, by David Gasque, SCRLS, Gasque & Associates, Inc., dated March 31, 2009, revised February 7, 2012.

Tax Map No. R500-011-000-0021-0000.

2. The portion of the Tract that is the subject of the Listing Motion is an 11.31-acre parcel created from the subdivision of the Tract. A copy of said subdivision plat for the Tract was recorded with the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 159 at Page 57. The 11.31-acre tract to be sold in accordance with prior orders of the Court is described as follows (the “*Property*”):

ALL that certain parcel of real property lying, situate, and being in the Town of Hilton Head Island, County of Beaufort, State of South Carolina containing approximately 11.31 acres, more or less, identified as “**Proposed Lot A**” on that certain plat entitled, “*Subdivision of a Portion of Gardner Plantation, Prepared for Heirs of Dennis Allen, Hilton Head Island, Beaufort County South Carolina*,” dated April 30, 2021, last revised March 14, 2022, prepared by David E. Gasque, SCRLS # 10506, Gasque & Associates, Inc., and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 159 at Page 57.

Tax Map No. R510-011-000-0401-0000

3. On January 21, 2022, the Court issued its “*Order Approving Award of Partial Attorneys’ Fees, Reimbursement of Court Reporter Costs, Acceptance of Appraisal, Acceptance of Brokerage Agreement and Approval of Subdivision*.” In this Order, this Court approved a proposed Brokerage Agreement with Commercial Specialty Group LLC (the “*Broker*”) to list the Property at an initial listing price of THREE MILLION, FOUR HUNDRED THOUSAND AND No/100 (\$3,400,000.00) DOLLARS and for an initial listing period of one hundred twenty (120) days.

4. Shortly thereafter, on February 15, 2022, a status conference was held in which the Broker recommended that the Property be listed at an initial listing price of THREE MILLION, EIGHT HUNDRED THOUSAND AND No/100 (\$3,800,000.00) DOLLARS and for an initial

listing period of ninety (90) days based on the amount of interest the Property had already generated. On March 10, 2022, the Court approved the revised Brokerage Agreement.

5. Following the expiration of the initial listing period and further negotiations with potentially qualified purchasers, an offer received from Madison Capital Group Management, LLC, (“*Madison*”) for a proposed purchase price of SEVEN MILLION, FIVE HUNDRED THOUSAND AND NO/100 (\$7,500,000.00) DOLLARS (the “*Purchase Price*”) was determined to be the most financially beneficial offer.

6. Despite approval from this Court, a final agreement with Madison for the purchase of the Property at the Purchase Price was never executed due to Madison rescinding their proposed offer.

7. The Broker continues to receive inquiries from parties interested in purchasing the Property.

8. The proposed Listing Agreement reflects a list price substantially less than the Purchase Price proposed by Madison.

9. Certain Plaintiffs have objected to the Listing Agreement and the use of Broker for a variety of reasons, including but not limited to (a) concerns with insuring that the Property is properly identified, (b) the proposed list price reflecting inadequate value for the Property, and (c) the Broker’s alleged failure to communicate with certain parties during the original listing period.

10. At the hearing, certain Plaintiffs presented the Court with a proposed “*Exclusive Agency Listing Agreement*” with Realty ONE Group Coastal for the listing of the Property at the list price of \$12,000,000.00.

11. Given the lengthy open listing and the numerous offers received in a highly competitive market during the original marketing period, this Court finds that the proposed Listing Agreement’s list price inadequately represents the “fair market value” of the Property. As such, the Court finds that the list price for the Property should be Seven Million and No/100 (\$7,000,000.00) Dollars.

12. The Court also finds that the proposed Listing Agreement be revised so as to adequately identify the Property to be sold as the real property more fully defined in Paragraph 2 of this Order.

13. In order to better keep all Parties apprised of the progress made on the sale of the Property, the Court finds that it is in the best interests of the Parties that Broker provide sufficient information regarding any offers on the Property to all Parties to this action that have requested, in writing, the same.

14. The Court finds that the remaining terms of the Listing Agreement are fair and reasonable and are consistent with requests made by the Parties as to the terms thereof.

15. The Court also finds that the Broker is qualified and capable of meeting the requirements of the List Agreement and that the Broker shall be permitted to continue to market the Property in accordance with the terms hereof.

16. The Court finds that the Listing Agreement, as amended and attached hereto as **EXHIBIT "A"** and fully incorporated herein by reference (the "*Amended Listing Agreement*"), is fair and reasonable.

17. The Court also finds that Counsel for the Movants should be permitted to execute the Amended Listing Agreement on behalf of the heirs and/or devisees in furtherance of and consistent with prior orders of this Court.

18. In accordance with prior instruction from this Court, the Amended Listing Agreement shall provide that the Property will be listed for One Hundred Twenty (120) calendar days from the date of its execution.

CONCLUSION

NOW, THEREFORE, IT IS HEREBY ORDERED, for the reasons set forth herein, that the *Exclusive Right to Sell Agreement / Listing Agreement* attached hereto as **EXHIBIT "A"** is hereby approved and accepted, and that counsel for the Movants (*i.e.*, LaBruce) is authorized and empowered to execute the Amended Listing Agreement and any other documents necessary for the listing of the Property for sale on behalf of the owners of the Property; and,

IT IS FURTHER ORDERED that all other terms of this Court's prior orders not clearly or impliedly amended herein shall remain in full force and effect.

AND IT IS SO ORDERED this _____ day of _____, 2023.

Marvin H. Dukes, III

Beaufort County Master-in-Equity

Beaufort, South Carolina
_____, 2023.

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Beaufort Common Pleas

Case Caption: Bruce King , plaintiff, et al VS Peggy Allen , defendant, et al

Case Number: 2009CP0704889

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069