

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
STACY L. BONNER,)
Plaintiff,)
)
vs.)
)
JOHN HENRY GERMAN, JR.,)
Et. al.,)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2020-CP10-01867
(Consolidated with 2021-CP10-02419)

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SC Court of Appeals

ORDER FOR PARTITION
AFTER HEARING ON NOVEMBER 29, 2023

*Note: I submitted and appeal to the
Master in Equity on April 25, 2024*

This matter came up for hearing on November 29, 2023, at 11:00 a.m. with the Honorable Mikell R. Scarborough, Charleston County Master in Equity presiding. The purpose of the hearing was to consider alternatives following this Court’s April 20, 2023 Order that the subject property (the “Property”) should be partitioned.

The matter was initiated as a quiet title action with partition by sale requested (the “Quiet Title Action”) and was later consolidated with a separate action titled TDS of Charleston, LLC vs. Bonner, Et. AL., Case 2021-CP10-02419 (the “Collection Action”), which sought specific performance of a real estate contract regarding the Property, all as more fully set out in the Order of April 20, 2023.

TDS of Charleston, LLC (“TDS”) appeared through its member, Tim Cook, and was joined by its Jamison Cox of Smith Cox & Associates, LLP of Charleston as its lawyer. Kenneth Edmondson, Richard L. Edmondson, Christopher German, and Sandra Gibson (hereafter collectively referred to as the “Heirs”) were present in court and proceeded on their own behalf (*pro se*).

At the commencement of the hearing, Mr. Kenneth Edmondson requested: (a) a continuance of the hearing, (b) a jury trial, and (c) answers to discovery propounded to legal counsel for TDS. The requests were denied for the reasons set forth below.

TDS then presented this Court with a copy of its August 31, 2023, letter (the "August 31, 2023 Letter") to the Heirs which set forth three partition alternatives. The letter included a description and sketch of the partition alternatives and was made a part of this Court's file and is attached as an exhibit to this Order. The alternatives were reviewed and discussed in open court and TDS then presented argument and evidence in support of its claims for damages, attorney's fees, and costs.

Findings of Fact

After considering the testimony, exhibits, and cross-examination presented, I make the following findings of fact:

1. Proper notice of hearing was given to the parties and such proof was made a part of this Court's file.

2. Mr. Kenneth Edmondson has been a party to these consolidated cases for more than one year and had three months advance notice of this hearing. Mr. Edmondson made his verbal motions at this hearing with no advance notice to this Court or to TDS. Additionally, Mr. Edmondson offered no factual, procedural, or legal justification for a postponement; therefore, his requests were not timely and not supported by any justification.

3. Ownership of the Property is presently held as follows:

Kenneth Edmondson	5%
Richard L. Edmondson	5%
Christopher German	5%
Sandra Gibson	5%
Shirlene Edwards Carpenter	10%
Rufus Harvey	5%
TDS of Charleston, LLC	<u>65%</u>
	100%

4. South Carolina law regarding heirs' property encourages retention of such property within the heirs' family if the heirs desire it and it is practical to accomplish.

5. Despite the foregoing encouragement by South Carolina law, I find neither the Heirs nor TDS desire to remain co-tenants of the Property and partition of the Property remains a proper disposition in this matter.

6. S.C. Code Section 15-61-370 (A) states that in an heirs' property case, the non-partitioning parties are entitled to purchase the ownership interest of the partitioning party.

7. Stacey Bonner initiated the partitioning of the Property by the filing of the Quiet Title Action complaint wherein such relief was specifically requested. By this Court's April 20, 2023 Order, Stacey Bonner's ownership in the Property was conveyed to TDS and this Court's deed of conveyance regarding that interest has been duly signed and recorded. TDS is, therefore, the successor to Stacey Bonner's position and ownership interest.

8. TDS incurred substantial attorney's fees and costs in this matter as presented at the hearing, as well as damages of carrying costs for the money it borrowed in 2014 to pay the Property's delinquent real property taxes, and in bringing about a quiet title and partition of the Property. I find these actions delivered a benefit to all parties by saving the Property from tax forfeiture, quieting title to the Property, and achieving a partition of the Property as desired by the parties.

9. TDS paid the 2023 real property taxes on the Property in the amount of \$102.26 and the Heirs have not reimbursed TDS for the Heirs' proportionate shares.

Conclusions of Law

Having made the foregoing Findings of Fact, I make the following Conclusions of Law:

10. Proper notice of this hearing was given.
11. Kenneth Edmondson's requests for continuance, jury trial, and discovery answers are denied as untimely and without sufficient justification.
12. South Carolina law applicable to heirs' property cases favors retention of heirs' property within the heirs' family if reasonably feasible and if desirable by the heirs.

13. Continued joint ownership of the Property by all the parties is not practical or desirable and a partition of the Property is an allowable, practical, just, and equitable remedy in this matter.

14. S.C. Code Section 15-61-370 (A) provides the non-partitioning party(ies) have the right to purchase the ownership interest of the partitioning party.

15. By reason of TDS receiving the Stacey Bonner ownership interest per this Court's Order After Hearing on April 20, 2023, TDS effectively stepped into the position of Stacey Bonner as the party seeking partition in this matter and, therefore, the Heirs have the right to purchase TDS's ownership interest.

16. The effort and expense put forth by TDS in saving the Property from tax forfeiture, obtaining the agricultural real property tax exemption, pushing forward the Quiet Title Action to conclusion through partition, and the attorney fees and court costs incurred in such pursuit totaled \$205,500 and were for the benefit of all parties pursuant to Rule 71 of the South Carolina Rules of Civil Procedure as shared expenses ("Shared Expenses"). I conclude TDS is entitled to reimbursement of these Shared Expenses from the Heirs on a proportionate basis according to the Heirs' respective ownership interests.

17. Each of the Heirs should reimburse TDS for their proportionate share of the Property's \$102.26 in 2023 real property taxes, as well as their proportionate share of the reasonable expenses incurred to prepare a Partition Plat ("Partition Plat") in addition to the Shared Expenses.

Order

Having made the foregoing Conclusions of Law, I hereby order as follows:

A. The Property shall be partitioned, and the Heirs shall have the choice of one of the following three options to effect such a partition:

Option One: The Heirs may partition the Property by purchasing all of the TDS interest in the Property for \$523,575.00. This \$523,575 is comprised of \$390,000, which is TDS's 65% of the Property's \$600,000 appraised value per the Court-ordered appraisal conducted by Michael Tawes which is part of

this Court's file; plus reimbursement to TDS of \$133,575, which is TDS's 65% of the \$205,500 in Shared Expenses. For the Heirs to exercise this option they must notify TDS not later than close of business on January 31, 2024, that they are exercising this Option One and they must consummate their purchase and reimbursement regarding the TDS interest by delivering certified funds in U.S. dollars to TDS or its legal counsel not later than 5:00 p.m. (Charleston, SC time) close of business on March 15, 2024, with time being of the essence regarding the deadlines stated above.

Option Two: The Heirs own a 35% undivided interest in the Property and may partition the Property by an allotment wherein the Heirs shall receive 35% of the Property as their separate divided ownership therein. If this Option is selected, the Heirs' collective 35% ownership in the Property will become a separate parcel of approximately four (4) acres of the Property as approximately depicted in the October 31, 2023 Letter as Partition Option #2. If one or more of the Heirs chooses to have an individual parcel belonging only to such Heir, then the 4 acres shall be further partitioned according to the particular Heir's ownership percentage as compared to the other Heirs. The exact acreage of the Heirs' separate parcel (or parcels if one or more Heirs chooses to have an individual parcel) shall be determined by the Partition Plat; provided, however, to exercise this option the Heirs must pay TDS the sum of \$62,000.00 as the Heirs' combined portion of the \$205,500 in Shared Expenses. The Heirs may exercise this option as a group, or an Heir may exercise it as an individual with respect to his or her individual ownership interest. If an Heir acts individually in exercising this option, the Heir shall receive his or her proportionate share of the Property and is responsible only for his or her proportionate share of the total Shared Expenses. For an Heir (or the Heirs as a group) to exercise this option, the Heir (acting individually or as a group) must notify TDS not later than 5:00 p.m. (Charleston SC time) on January 31, 2024, that he, she, or they are exercising this Option Two. Additionally, he, she or they must consummate their purchase and reimbursement regarding the TDS interest by delivering certified funds in U.S. dollars to TDS or its legal counsel not later than 5:00 p.m. (Charleston, SC time) close of business on March 15, 2024, with time being of the essence regarding the deadlines stated above. If an Heir does not provide the

written notice to TDS by 5:00 p.m. (Charleston, SC time) on January 31, 2024, or does not deliver his or her portion of the total Shared Expenses in certified U.S. funds to TDS or its legal counsel by 5 p.m. on March 15, 2024, the Heir shall be deemed to have chosen Option Three below.

Option Three: For each Heir who does not notify TDS of exercise of an option by January 31, 2024, or who provides an exercise notice by January 31, 2024 but does not deliver the payment by March 15, 2024, each such Heir shall be deemed to have chosen Option Three wherein TDS shall purchase all of such Heir's interest at \$30,000.00 per five percent (5%) share based on the table stated in Paragraph 3 of this Order, after deducting the Heir's respective shares of the 2023 real property taxes. TDS shall have until 5:00 p.m. (Charleston, SC time) on March 31, 2024 to deliver such payment(s) in certified U.S. funds or South Carolina-licensed attorney trust account check. Unless an Heir otherwise directs TDS in writing to deliver an Heir's funds to an alternate address, TDS shall deliver an Heir's funds to his or her notice address as used in these proceedings or make the funds available for pick up at the office of TDS's legal counsel during normal weekday business hours.

B. If one or more Heirs choose Option Two, TDS shall cause a Partition Plat to be prepared and submitted to the Charleston County Planning and Zoning Department. Upon receipt, and notwithstanding zoning and subdivision ordinances to the contrary, except for minimal lot size and DHEC health standards (perk test), the Charleston County Planning and Zoning Department shall approve such Partition Plat for recording with the Charleston County Register of Deeds and the Register shall forthwith record such plat in the Charleston County public records. In such a case, the Heirs shall reimburse TDS their respective proportionate shares for the cost of preparing the Partition Plat and submitting it to the Charleston County Planning and Zoning Department for review and recording the Partition Plat. The Heirs' proportionate shares of such costs shall be added to, or subtracted from, the payments to or from TDS in completing the recordation of the Partition Plat. Any objection or challenge by the Charleston County Planning and Zoning Department or the Charleston County Register of Deeds to recordation of the Partition Plat shall be submitted directly to this Court.

C. Depending on the option exercised by the Heirs and consummated by the parties, upon consummation of the option's full exercise, this Court shall issue its Master's Deed(s) confirming title as appropriate.

D. This Court retains jurisdiction of these consolidated matters for other questions as may arise.

AND IT IS SO ORDERED!

Dated: January ____, 2024
At Charleston, S.C.

Mikell R. Scarborough
Charleston County Master in Equity



Charleston Common Pleas

Case Caption: Stacy L Bonner VS John Henry German Jr , defendant, et al

Case Number: 2020CP1001867

Type: Master/Order/Partition and Form 4

So Ordered

s/Mikell R. Scarborough 3062

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