

STATE OF SOUTH CAROLINA)
)
 COUNTY OF OCONEE)
)
 Polly Thompson,)
)
 Petitioner,)
)
 v.)
)
 Cathy Swicegood,)
)
)
)
 Respondent)

IN THE COURT OF COMMON PLEAS
 THE TENTH JUDICIAL CIRCUIT

2014- CP-37-0143

ORDER OF PARTITION

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 SC Court of Appeals

Date of Hearing: March 16, 2015 and May 21, 2015
Presiding Judge: The Honorable Ellis B. Drew, Jr.
Attorney for Petitioner: Ms. Margaret A. Chamberlain
Attorney for Respondent: Mr. John G. Reckenbeil
Court Reporter: Ms. Karen Senn

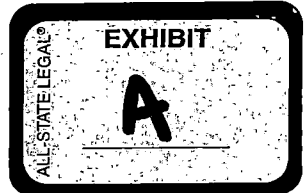
FILED OCONEE, SC
 BEVERLY H. WHITFIELD
 CLERK OF COURT
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This matter came before the Court pursuant to a Petition for Partition, Ouster, and Accounting filed by Petitioner, Polly Thompson’s (“Petitioner”), on March 11, 2014. Respondent, Cathy Swicegood (“Respondent”), filed an Answer in a timely fashion.¹ The parties were before the Court for the trial on March 16, 2015, and again for a final hearing to review the financial information and to issue a ruling on May 21, 2015.

Findings of Fact

1. There are two properties at issue in this case: 85 Folly Field Road, Unit 3203, Hilton Head, South Carolina 29928, in Beaufort County (“the Hilton Head Condo”); and 505 West Sheffield Drive, Westminster South Carolina 29693, which occupies lots 58 and 59 in Oconee County (“the Lake Hartwell Home”).
2. Although this action was filed in Oconee County, the parties consented to trying the case in Anderson County.
3. This Court has jurisdiction over the parties and the subject of this litigation.
4. The two properties referenced above are jointly titled in both parties’ names.

¹ Wells Fargo was initially named as a Respondent based upon its first mortgage lien on the real properties at issue. By Consent Order of Dismissal filed on May 14, 2014, Wells Fargo was dismissed as a party.



5. The parties stipulated that the values provided by Petitioner as to the fair-market value, equity, expenses, and mortgage amounts for both properties were correct and accurate.
6. At the commencement of the final hearing, the Petitioner made an offer to purchase the properties from Respondent. Her offer was:
 - a. Polly Thompson offers to purchase the Hilton Head property for the amount of \$275,100.57. The first \$269,100.57 of this offer should satisfy the mortgage. Because the note on the property is in Polly Thompson's name alone, there is no need for Ms. Thompson to pay off this debt. She will simply continue to make payments and shall be solely responsible for this debt. The remaining \$6,000.00 shall be divided between the parties in percentages the Court deems appropriate and equitable in light of the contributions of each party.
 - b. Polly Thompson offers to purchase the Lake Hartwell property for the amount of \$188,407.75. The first \$143,407.75 of this offer should satisfy the mortgage. Because the note on the property is in Polly Thompson's name alone, there is no need for Ms. Thompson to pay off this debt. She will simply continue to make payments and shall be solely responsible for this debt. The remaining \$45,000.00 shall be divided between the parties in percentages the Court deems appropriate and equitable in light of the contributions of each party.
7. The Respondent made an offer to transfer title of the Hilton Head Condo to Petitioner in exchange for Petitioner transferring title of the Lake Hartwell Home to her.
8. The Court finds that Petitioner made the greater offer to purchase.
9. The Court finds that although Respondent did commit ouster by excluding Petitioner from the Lake Hartwell Home, the Petitioner presented no evidence of resulting damages.

Hilton Head Condo

10. The Petitioner presented evidence without objection to the following:
 - a. Petitioner paid the entire down payment of \$102,361.55 for the Hilton Head Condo when it was purchased in 2013.

- b. The Petitioner made every mortgage payment.
 - c. The Petitioner paid all of the regime fees.
 - d. The Petitioner made all of the homeowners' insurance payments and paid all of the taxes.
 - e. The Petitioner paid all of the fitness club dues and paid all of the cable fees, and these expenses had to be incurred in order to rent the condo.
11. The Respondent contributed "sweat equity" to the condo in the form of interior decorating, but the amount of work she performed was disputed. Furthermore, Petitioner presented evidence that she paid Respondent for her labor and materials.
 12. The Petitioner had contributed \$164,479.84 toward the Hilton Head Condo, and Respondent had not contributed anything financially.
 13. The equity in the Hilton Head Condo is \$120,325.00.
 14. This Court finds that Respondent has no right, title or interest in the Hilton Head Condo.
 15. Awarding Respondent any interest in this property would result in a grave inequity to Petitioner and an unjust enrichment to Respondent.

Lake Hartwell Home

16. The Lake Hartwell Home was built between 2010 and 2012.
17. The Petitioner presented evidence without objection to the following:
 - a. Petitioner paid \$45,679.21 for the two lots and paid \$6,678.43 of the down payment on the house. Respondent paid \$22,000.00 of the down payment.
 - b. The Petitioner made every mortgage payment.
 - c. The Petitioner paid all of the property owners' association dues.
 - d. The Petitioner made all of the homeowners' insurance payments and paid all of the taxes.
18. The Respondent contributed "sweat equity" to the Lake Hartwell Home in the form of interior decorating and design, but the amount of work she performed was disputed. Furthermore, Petitioner presented evidence that she paid Respondent for her labor and materials.

19. The Petitioner has contributed \$129,838.70 towards the Lake Hartwell home, and Respondent has contributed \$22,000.00.
20. The equity in the Lake Hartwell Home is \$67,742.25.
21. Petitioner's contributions far exceed both Respondent's contributions as well as the equity in the property.
22. There is a tremendous disparity between the contributions made to this property by the parties.
23. This Court finds that Respondent has no right, title or interest in the Lake Hartwell Home.
24. Awarding Respondent any interest in this property would result in a grave inequity to Petitioner and an unjust enrichment to Respondent.

Conclusion

To determine the parties' respective property interests, this Court must consider the individual contributions of the parties to the acquisition and maintenance of the jointly-titled property. The disparity between the parties' contribution to the acquisition and maintenance of the properties is in favor of the Petitioner. The evidence in the record clearly and unequivocally demonstrates that Petitioner's contributions far exceed both Respondent's contributions as well as exceed the equity in the properties. It would be unjust and inequitable to award any interest in either property to the Respondent.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. The Petitioner, Polly Thompson, is entitled to full right, title and ownership of 85 Folly Field Road, Unit 3203, Hilton Head, South Carolina 29928, in Beaufort County.
2. The Petitioner, Polly Thompson, is entitled to full right, title and ownership of 505 West Sheffield Drive, Westminster South Carolina 29693, which occupies lots 58 and 59 in Oconee County
3. The Petitioner shall promptly provide the Respondent with deeds transferring both properties in their entirety to Petitioner. The Respondent shall execute these deeds and return them to Petitioner within 15 days of the final hearing.
4. The Respondent, Cathy Swicegood, shall immediately vacate the Hilton Head Condo.

She may, within 30 days from the date of the final hearing, remove her clothes, tools and personal belongings from the Hilton Head Condo. She must be admitted to the property and escorted at all times by a member of the property management company, other than Ms. Linda Swinson. The Respondent may remain in the property for no more than one hour.

5. The Respondent, Cathy Swicegood, shall vacate the Lake Hartwell Home within 30 days of the final hearing.
6. At a mutually agreed upon date and time within 10 days of the final hearing, the Petitioner may access the Lake Hartwell Home to inspect the property. She shall have a third party present and may not remain longer than one hour.
7. The Petitioner's claim for ouster is denied.
8. The Petitioner's claim for attorney's fees and costs is granted. The Respondent, Cathy Swicegood, shall pay Petitioner, Polly Thompson, \$5,000.00 in legal fees and costs in the amount of \$250.00 for a total of \$5,250.00.

IT IS SO ORDERED.

/s/ Ellis B. Drew, Jr.
The Honorable Ellis B. Drew, Jr.
Masters-in-Equity Judge, Oconee County
Tenth Judicial Circuit

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Anderson, South Carolina

6-23, 2015

