

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CA # 2017-CP-10-4490

Patricia M. McGillan,)
Plaintiff,)

Partition Order for Sale of Property

Vs.)

James B. Cooley, Branch)
Banking & Trust Company)
Defendants.)

RECEIVED

AUG 30 2018

SC Court of Appeals

FILED
2018 AUG -2 PM 3:03
JULIE HARRIS
CLERK OF COURT

This case came on for trial on June 21, 2018 pursuant to notice that is on file with the clerk of court.


Present for the hearing was Plaintiff Patricia McGillan, Plaintiff's Attorney Susan M. Gaddy, Plaintiff's CPA and expert witness Marcus Hodge, Defendant James Cooley, and Defendant's GAL Glenn Churchill.

The court has considered all pleadings and court filings, prior Orders, and evidence presented at the trial prior to entering this Order.

Findings of Fact

1. The Summons and Complaint were filed on August 31, 2017. The Affidavits of Service on all named defendants were filed on September 25, 2017. The Lis Pendens was filed on July 31, 2018.
2. Defendant Cooley filed his Answer on October 23, 2017.
3. Plaintiff filed suit for a partition under S.C. Code of Laws § 15-61-10 and an accounting.
4. Plaintiff McGillan and Defendant Cooley purchased the property by deed of The Estate of Fred R. Calmes dated July 31, 2007. The deed is recorded in Book E 635 at Page 623 in the RMC Office for Charleston County.



5. McGillan and Cooley gave a mortgage to Defendant Branch Banking & Trust that is recorded in Book 0624 at page 626 on March 20, 2017 in the original amount of \$357,406.00 in the Charleston County public records. The parties have refinanced the loan with BB & T several times. Plaintiff is the sole obligor on the Note secured by the mortgage. She pays the mortgage which includes escrows for taxes and insurance.
6. BB & T received service of process of the Summons and Complaint, Lis Pendens, Notice of Hearing for all court hearings. BB & T did not enter an appearance and is in default, *but*
7. Cooley presently resides in this single-family residence located in the Oakhaven *REMAINS IN FIRST LIEN POSITION -*  subdivision of Mt. Pleasant. McGillan lives in Kentucky.
8. The property has the street address of 1508 Pine Island View, Mt. Pleasant, SC 29464.
9. This partition is compellable between joint tenants like McGillan and Cooley under § 15-61-10.
10. The court has jurisdiction of this action pursuant to a Consent Order of Reference dated October 30, 2017.
11. Cooley has not exercised a right of first refusal to buyout McGillan as provided for in the Standing Order dated December 20, 2007 based on SC Code § 15-61-25. The court established the deadline for notice of a potential Cooley buyout as June 11, 2018 which is 10 days prior to the trial. The court did not receive such notice. At trial, Cooley did not indicate that he wished to buy the property (allotment). At trial, Cooley indicated that he did not want the property to be sold at all.
12. Both parties submitted all of their records for financial contributions from 2007 through the present to Plaintiff's CPA and expert witness, Marcus Hodge, so that Mr. Hodge could prepare a proposed accounting.

13. McGillan produced a copy of her original source records to Cooley along with a copy of a proposed accounting and related items on June 8, 2018. These records included funds that Cooley has spent on the property, including acquisition costs.
14. The documents concerning expenses Cooley has paid towards the house were incorporated into a proposed accounting (Plaintiff's Exhibits 1-4). He presented a new item, marked as Defendant's Exhibit 1 for identification, for \$1500 at the trial for Andrus Tree Service by check dated June 12, 2018. This item was not entered into evidence but it does not affect the court's findings concerning the rights of the parties.
15. A partition in kind is not practicable or expedient.
16. The court qualified Mr. Hodge as an expert in forensic accounting with a background in division of property between parties in domestic actions.
17. Mr. Hodge testified how he prepared the accounting schedules (Plaintiff's Exhibits 1-4). Mr. Hodge's methodology is consistent with the AICPA statements for consulting services using the "direct method" based on their financial contributions.
18. Cooley has had exclusive use and possession of the property for the past two years. The parties used the residence as a second home until they separated in 2016 in Kentucky. In 2017, Cooley filed two storm damage insurance claims for hail damage to the roof and flooding damage.
19. The insurance claim record summary (Plaintiff's Exhibit 5) indicates the value for the repairs caused by the storms is the sum of \$23,163.81. The court has previously conducted two hearings on the insurance claims and the Cooley conversion of the insurance proceeds. On June 4, 2018, and again on June 21, 2018, Cooley admitted that he deposited the jointly payable 2017 insurance checks totaling \$18,014.12 into his

personal account. McGillan has received no benefit from the jointly payable insurance funds. The court credits Cooley with the sum of \$23,163.81.¹

20. The condition of the house has also been documented by the original builder - J.D. Smith Custom Homes (Plaintiff's Exhibit 7). The court does not use this information for a determination of the rights between the parties.

21. Cooley contracted with Craven Roofing to replace the roof in June 2018.

22. Craven Roofing completed its work and tendered an invoice dated June 12, 2018 in the amount of \$8900.00 (Plaintiff's Exhibit 7). Cooley finds fault with the work and has withheld payment. McGillan is satisfied with the J.D. Smith Custom Homes inspection for the quality of work by Craven Roofing. She has agreed to pay Craven Roofing the sum of \$8900.00 after the trial.

23. McGillan's payment for the roof replacement is included in the court's determination of the rights of the parties. The court also credits \$9500 for rental income to McGillan.²

24. The court reviewed the evidence and makes an independent finding:

Court's finding of McGillan contributions	\$327,024.00 ³
Court's finding of Cooley contributions	\$191,193.00
Total of court's finding of contributions by both parties	\$518,217.00

25. Based on the court's findings, Cooley is entitled to 37% and McGillan is entitled to 63% of any net proceeds after satisfaction of the mortgage and payment of all professional fees and court costs. This finding is an upward adjustment for Cooley by 15% and a

¹ This sum appears as a deduction from Cooley's expenditures on Plaintiff's Exhibits 1 and 3.

² This sum appears as a deduction from McGillan's expenditures on Plaintiff's Exhibits 2 and 3.

³ The court has excluded monthly mortgage payments of \$480,000 and calculated the amount of principal reduction from the original mortgage debt less the current balance. This reduction is about \$350,000 that McGillan has paid for interest, taxes, and insurance.

downward adjustment for McGillan by 15% compared to the accounting schedules (78% McGillan/22% Cooley).

26. In making this finding, the court recognizes prior customs between the parties to reach an equitable result that favors Cooley relative to total contributions that Cooley has made.
27. The court specifically orders a public sale because a private sale would take longer and require somebody to expend funds out of pocket to make repairs in order to get top dollar.
28. The property is not heirs' property as contemplated under § 15-61-10(B), as amended effective January 1, 2017 ("the Pinckney Amendments.")
29. During a June 4, 2018, hearing Defendant Cooley, who is Irish, indicated to the court that he had difficulty reading the legal documents in the English language. On June 11, 2018, the court appointed Charleston attorney Glenn Churchill Guardian Ad Litem for Defendant Cooley to assist with the proceedings and the written documents. The court used a Probate Court list of Guardians Ad Litem who are willing to serve in Charleston court matters. The Guardian Ad Litem filed an affidavit of attorney's fees with the court in the amount of \$1,100.00. This sum is reasonable.
30. The parties participated in a scheduled mediation on June 8, 2018 with attorney Dennis O'Neill and continued to attempt settlement until the mediator declared an impasse on June 20, 2018. The mediator's report is filed with the court. The mediator's invoice is in the amount of \$1950.00. This sum is reasonable.
31. In order to perform an accounting, the parties used one CPA, Marcus Hodge, that Plaintiff employed. The accounting schedules inform and assist the court to perform an accounting necessary to determine the rights of the parties. The CPA has filed his

invoice with the court. The CPA's invoice is in the amount of \$5550. This sum is reasonable.

32. Plaintiff also employed counsel, Susan M. Gaddy. Counsel has filed an affidavit of attorney's fees in the amount of \$42,075. Defendant appeared pro se after he discharged his attorney in January 2018. Defendant did not submit an affidavit of attorney's fees.
33. Having considered the nature, extent and difficulty of the services rendered, the time involved in reviewing the various documents, legal research, performing the title search, preparing the pleadings, attending hearings presenting arguments, the professional standing of counsel, the fee customarily charged for similar services where a personal relationship between the parties affects the time devoted to the matter, and the beneficial results obtained for Plaintiff, I find that the sum of \$42,075 is a reasonable fee pursuant to S.C. Code § 15-61-110 and Rule 71, SCRPC as fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the action, exclusive of costs advanced by Plaintiff or Plaintiff's attorney.
34. Plaintiff has incurred court costs for filing fees (\$360), service of process (\$75), court transcript (\$591.50), title abstractor (\$65), and advertising the property for public sale. These are reasonable sums. These sums are reimbursable to Plaintiff from the proceeds of the sale.

CONCLUSIONS OF LAW

1. The property is ordered to be sold on September 4, 2018 at 11:00 am by the Master in Equity at public auction at the Charleston County Judicial Center, 100 Broad Street, Charleston, South Carolina in Charleston County after due advertisement, on the following terms, that is to say:

- A. FOR CASH: The Master in Equity will require a deposit of Five (5%) percent on the amount of the bid (in cash or equivalent), as earnest money and as evidence of good faith, at the time of the sale, same to be applied on purchase price only upon compliance with the bid, but in case of non-compliance within Thirty (30) days same to be forfeited and applied to the costs.
- B. The sale shall be subject to the mortgage, taxes and assessments, existing easements, and easements and restrictions of record.
- C. The mortgage of McGillan and Cooley to BB & T constitutes a first mortgage lien and shall be paid first from the proceeds of the sale. Plaintiff shall furnish a payoff statement from BB & T prior to distribution of any proceeds from the sale.
- D. The purchaser is to pay for the deed preparation, for Deed Stamps and costs of recording the Deed.
- E. Should the person making the highest bid at the sale fail to comply with the terms of his bid by depositing the said five (5%) percent cash, then the property shall be sold at the risk of such bidder on the same sales date or some subsequent date as the selling officer may find convenient and advantageous. Should the last and highest bidder fail to comply with the terms of his bid within thirty (30) days of the final acceptance of this bid, then the selling officer shall re-advertise and resell the property on the same terms on a subsequent date at the risk of such bidder. ~~Persons submitting additional bids after the initial sale shall deposit five (5%) of the bids in cash as prescribed above. The Master in Equity shall return all deposits except the deposit securing the highest bid.~~

F. The Master in Equity, by advertising according to law, shall give notice of the time and place of such sale, and the terms thereof; that the Master in Equity shall convey to the purchaser(s), a deed to the property sold; and that the Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the purchaser(s), should fail to comply with the terms thereof, the Master in Equity may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the former highest bidder, and so from time to time thereafter until a compliance shall be secured.

G. The Master in Equity shall apply the proceeds of the sale as follows:

FIRST: To the payment of the mortgage, including interest and other charges as may appear on the BB & T payoff statement. Escrow account funds that appear on the BB & T statement shall be reimbursable or refunded by BB & T to McGillan.

NEXT: To payment of the amount of costs and expenses of this action, including the attorney's fees and costs of advertising the Notice of Sale.

- a) Mediator expense shall be divided on a 50/50 basis. Mediator's expense shall be paid to the mediator. This invoice is outstanding.
- b) Guardian ad Litem expense shall be paid 100% by Cooley charged against Cooley's interests. GAL expense shall be paid to the GAL. This invoice is outstanding.
- c) CPA expense shall be divided on a 50/50 basis. The CPA has been paid. McGillan's 50% shall be a reimbursement. Cooley's 50% shall be charged against Cooley's interests.

- d) Attorney's fees shall be divided in the same proportions as the court's determination of the rights of the parties (63% McGillan; 37% Cooley). Attorney's fees have been paid. McGillan's 63% shall be a reimbursement. Cooley's 37% shall be charged against Cooley's interests.
- e) Costs (\$1091.50), plus advertising expense, 100% reimbursed to McGillan.
- f) County Commission of 1% of the sales price shall be divided 63% McGillan; 37% Cooley.

NEXT: Any remaining funds shall be divided between the parties with McGillan receiving sixty-three (63%) percent and Cooley receiving thirty-seven (37%). Cooley shall furnish the court with a mailing address to send Cooley's net proceeds since he is pro se.

H. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the making of the sale of said property, as hereby ordered, and the execution and delivery to the purchaser of a deed to the premises, the said purchaser(s) be let into possession of the property on production of the deed; and the Sheriff of Charleston County shall put the holder of the deed into possession of the property.

I. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants and all persons or entitled whomsoever claiming under them, be forever barred and foreclosed of all right, title and equity of redemption in the property described below:

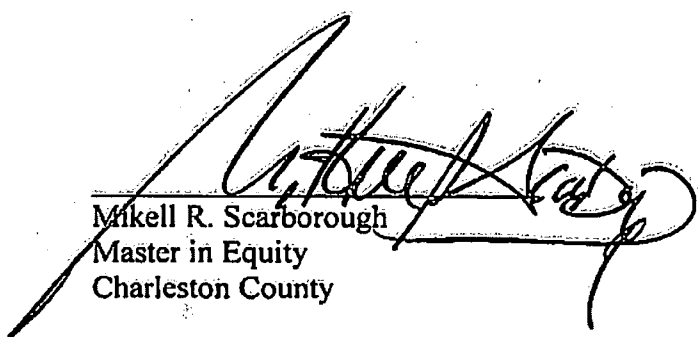
All that lot, piece or parcel of land, shown and designated as Lot 32, Section 2, on a plat entitled "Subdivision Plat of Oakhaven Plantation, Christ Church Parish, Charleston County, South Carolina, Owner: Harbour Creek Partnership, A South Carolina General Partnership" by Harold B. Nielson, Jr., P.E. and L.S., dated February 5, 1986, and recorded in the RMC Office for Charleston County on May 9, 1986 in Plat Book BH, Page 160-161.

TMS # 560-09-00-204

IT IS SO ORDERED.

Charleston, South Carolina

8/2, 2018


Mikell R. Scarborough
Master in Equity
Charleston County