

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Edgar Bruce Massey,

Plaintiff,

vs.

James Anthony Fanning; Danny Joseph Baker; Michael Kaminski, a/k/a Michael Kaminsky; Republic Finance, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
CASE NO. 2017-CP46-00004

ORDER

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SC Court of Appeals

This matter came before me pursuant to an Order of Reference for trial on December 4, 2018 regarding Plaintiff's claim for quiet title and partition of the subject properties. Present at the hearing: Plaintiff Edgar Bruce Massey, Plaintiff's attorney J. Martin Foster, Defendant James Anthony Fanning ("Fanning") and his attorney, James W. Boyd. Defendants, Danny Joseph Baker ("Baker"), Michael Kaminski ("Kaminski"), and Republic Finance, LLC ("Republic"), were not present or represented at the hearing. No information being provided as to the existence of any persons designated as John Doe or Richard Roe, and neither having been appointed a Guardian ad litem, all claims against those parties are dismissed.

FINDINGS OF FACT

Based on the record presented, including all testimony and exhibits, I make the following findings of fact. I have also considered and weighed the credibility of the witnesses and the documentary evidence in making these findings.

The properties subject of this action, herein referred to as "Parcel 1" and "Parcel 2", are described as follows:

Parcel 1:

All that certain piece, parcel or lot of land lying, being and situate on the eastern side of Saluda Road in the City of Rock Hill, York County, South Carolina and being more particularly shown and described on plat of property drawn by Leonard H. Patterson as follows: BEGINNING at a point on the eastern edge of Saluda Road joint front corner of within property and property of Massey and

Fanning and running thence N. 21-54 E. 137.2 feet to a point; thence in an easterly direction along the edge of Blackmon Street for a distance of 169 feet to a point; thence S. 20-44 W. 186.5 feet to an iron; thence N. 68-06 W. 170 feet to the point of beginning.

Tax Map No. 623-01-01-014.

Parcel 2:

All that certain piece, parcel or lot of land lying, being and situate in the on the eastern side of Saluda Street City of Rock Hill, County of York, State of South Carolina and being more particularly shown and described on plat of property drawn by Leonard H. Patterson, as follows: Beginning at a *point* on the eastern edge of Saluda Street, joint corner of within property and property now or formerly of W. R. Rast, Jr., said point being 137.2 feet from the southern edge of Blackman [*sic*, properly Blackmon] Street and *running* thence S. 68-06 E. 170 feet to a point; thence *turning* S. 77-00 E. 78.5 feet to a point; thence running S. 83-08 E. 82.5 feet to a *point*; thence running S. 86-45 E. 145 feet to an old iron; thence running N. 87-03 E. 113.2 feet to an old iron; thence running S. S. [*sic*] 43-23 W. 270 feet to an iron; thence running N. 53-03 W. 516.1 feet to an iron on the eastern edge of Saluda Street; running thence with said edge of said Street N. 21-54 B. 52.4 feet to the point of beginning; containing 2.03 acres more or less; together with the right and privilege to use a certain 20 foot alley having a depth of 150 feet and leading from the eastern portion of the tract herein described to Marshall Road.

Tax Map Nos. 623-01-01-003 and 623-01-01-008

The Plaintiff and Fanning are each the owners of a one-half interest in both Parcel 1 and Parcel 2, having received the first by Deed dated July 9, 1980 and recorded on July 14, 1980 in Deed Book 616, Page 430 in the Office of the Clerk of Court for York County, William Holman Rast and Marie M. Rast grantors; and the second by Deed dated June 15, 2006 and recorded on July 11, 2006 in Record Book 08193, Page 00017 in the Office of the Clerk of Court for York County, Bettye R. Thomas, grantor.

Parcel 1 consists of a single lot upon which is placed a building and thirteen mobile homes. The building is used by Fanning as a paint and body shop ("Shop"). The mobile homes are not a part of the realty and are owned and titled individually either to the Plaintiff or Fanning. They do not share rents, profits, losses or expenses to maintain these homes. They do not share in the control or management of their homes. The Plaintiff and Fanning share in the payment of the property taxes, and water and insurance for the Shop. There was no evidence presented that Plaintiff and Fanning share similar expenses or liabilities for the mobile homes.

Parcel 2 contains a home that has been divided into two apartments. Fanning also created another mobile home space, making an equal number of spaces at fourteen. Like the homes on Parcel 1, no rent, profits, expenses or liabilities are shared between the Plaintiff and Fanning. The Plaintiff and Fanning share payment of property taxes, and water and insurance for the apartment building.

Neither property is mortgaged or encumbered by any lien(s).

In October of 1979, Plaintiff and Fanning signed an agreement ("1979 Agreement" or "Agreement") regarding Parcel 1, a copy of which was entered into evidence without objection. (Plaintiff's exhibit 1). The parties concur that the Agreement is not applicable to Parcel 2.

On May 6, 2016, Fanning signed an agreement with Baker to rent the Shop and purchase his one-half interest in Parcel 1. (Plaintiff's exhibit 7). This agreement was amended by Fanning and Baker on October 21, 2016. (Plaintiff's exhibit 8). Baker paid Fanning \$10,000.00 (\$6000.00 deposit and \$4000.00 for one month of rent). Fanning did not receive Plaintiff's consent prior to initiating and/or signing these agreements. The Plaintiff did not receive any portion of these amounts paid to Fanning.

Baker then rented the Shop to Kaminski, without the consent of Fanning or the Plaintiff. Kaminski used and occupied the building for four months. The Plaintiff nor Fanning received any payments for Kaminski's use or possession.

Fanning also admitted he received rents from Doug's Auto for their use and possession of the Shop or part of the building for two months.

Defendants Baker and Republic Finance are in default. Thus, the allegations of the pleadings are deemed admitted.

CONCLUSIONS OF LAW

Based on the record presented and the findings of fact herein, I make the following conclusions of law.

A. Quiet Title

Plaintiff requests that title to Parcel 1 be quieted in his and Fanning's favor, forever barring any interests or claims by the remaining Defendants. A person in possession of real property may bring an action against any who could claim an adverse interest in the same, to determine the rights of the parties. S.C. Code Ann. § 15-67-10 (1976, as amended). Based upon the evidence, title to Parcel 1 has been proven to be held entirely by Plaintiff and Fanning, each

owning an undivided one-half interest. The remaining Defendants, Baker, Kaminski and Republic Finance have no interest or claim to Parcel 1.

B. Partnership and Partition

Plaintiff seeks dissolution of a partnership alleged to be created by the 1979 Agreement, and partition of both properties. Fanning denies a partnership was created, asserting that neither their joint ownership of the property, nor their conduct support such a finding. Also, Fanning points out that the Plaintiff expressly waived his right to partition in the 1979 Agreement.

A partnership was not created by the 1979 Agreement. "A 'partnership' is an association of two or more persons to carry on as co-owners a business for profit." S.C. Code Ann. § 33-41-210 (1976, as amended). "In determining whether a partnership exists, ... [j]oint tenancy, tenancy in common, tenancy by the entireties, joint property, common property or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profit made by the use of the property." S.C. Code Ann. § 33-41-220(2) (1976, as amended). The following factors are used to determine if a partnership exists: (1) the sharing of profits and losses; (2) community of interest in capital or property; and (3) community of interest in control and management. *Halsberg v. Berry*, 302 S.C. 97, 394 S.E.2d 7 (Ct. App. 1990) (citation omitted).

The 1979 Agreement contains some language to support Plaintiff's position. It states the parties' intention to continue their partnership in the real estate and trailer park. It provided for the sharing of profits and losses. It includes terms of how the real property or building thereon by will be controlled and managed by requiring mutual consent to sale, convey, partition, or make certain improvements.

However, it lacks details regarding the control and management of the business, namely the trailer park. Further, the parties' dealings with each other and the public do not align whatsoever with the terms of the Agreement. Each mobile home is owned individually by the parties. They have not and do not share the rents they collect, or the losses and expenses incurred to rent and maintain the homes. The liabilities they share in the payment of taxes on the real property, or utilities and insurance for the business building are not so different from other joint owners of property. They do not share in the control or management of their homes, and in the last few years have had little to no contact with each other. There was also no evidence they interacted with the public in a manner supporting a partnership. The parties simply divided the

existing spaces to rent, which at first was uneven thirteen. It was later that Fanning added a mobile home space to Parcel 2, making the total number of spaces between them an even fourteen. This conduct demonstrates they ignored the terms of the Agreement, setting up separate businesses, not a partnership.

The question now turns to whether the Plaintiff should be granted a partition despite his express waiver in the Agreement. Equity should not “lend its aid to one who has been guilty of inequitable conduct in the subject matter.” *Masonic Temple, Inc. v. Ebert*, 199 S.C. 5, 18 S.E.2d 584 (1942). Though neither party adhered to the terms of the Agreement, Fanning further ignored its terms by signing both contracts with Baker without Plaintiff’s consent, and by withholding rents.¹ It would be inequitable to prohibit Plaintiff from partition based upon the same terms Fanning disregarded.

As to the partition of Parcel 2, both the Plaintiff and Fanning agree that partition is proper. Also, both agree that neither property can be fairly and equitably partitioned in kind.

In accordance with §15-61-110 and Rule 71(d)(3) S.C.R.C.P., I conclude that the Plaintiff’s attorney’s fees and costs, as well as any further expenses of a sale should be paid from the proceeds of the sale of the property, whether paid by Fanning if he chooses to purchase the properties, or paid as a result of a sale.

C. Accounting

Plaintiff is entitled to an accounting by Fanning regarding payment of common expenses on the properties and for an accounting of all rents Fanning received from Baker. *See Screven v. Joyner*, 10 S.C. Eq. 252 (Ct.App.1833) (A cotenant is entitled to be compensated for any payments he made toward the common burdens of himself and the defendant), *see also Griffin v. Griffin*, 82 S.C. 256, 64 S.E. 160 (1909) (A tenant in common is liable for profits made or rents actually received).

At trial, Fanning admitted to owing a one-half portion of a water bill (no amount specified), and \$400.00 toward an insurance payment on the apartment house, however, Plaintiff failed to prove he is entitled to reimbursement. Nonetheless, any amounts still owing by either party regarding common expenses, may be accounted for at a later hearing and paid from the proceeds of a sale. Further, the evidence does not support appointment of a receiver at this time.

¹ According to the Agreement, the parties waived any right to “initiate and pursue” any action to sale or divide the property or make any change “of any form or manner whatsoever” without their mutual consent, and to equally share rents of the “business building”.

See Midlands Utility, Inc. v. South Carolina Dept. of Health and Environmental Control, 301 S.C. 224, 391 S.E.2d 535 (1989) (Appointment of a receiver is within the discretion of the Court and considered "... a drastic remedy, and should be granted only with reluctance and caution.").

D. Cross-Claims

Fanning is entitled to receive a full accounting of all rents received by Baker from Kaminski and to be compensated for the four months Baker allowed Kaminski use and possession of the Shop. The rental value of the property according to the agreement with Baker was \$4000.00 per month. Fanning also requested judgment against Kaminski for payment of the same amount of rent; however, no such claim against Kaminski could be found in the pleadings.

Having failed to appear at trial and offer any evidence, all claims alleged by Kaminski are dismissed with prejudice.

ORDER

Based on the findings and conclusions recited above, it is ordered as follows:

1. Title to both subject properties are quieted in favor of the Plaintiff and Fanning, each having an undivided one-half interest. Any and all interests or claims that Defendants Baker, Kaminski and Republic Finance, LLC may have as to Parcel 1 are extinguished.

2. Plaintiff's request for partition of the subject properties is granted; neither property to be partitioned in kind.

3. Fanning may request to partition by allotment, or the parties may agree to proceed by private or public sale. If neither is done within thirty (30) days from the date of this order, either may request a hearing for the Court to determine the manner of partition.

4. None of the mobile homes individually owned by the Plaintiff or Fanning are a part of the real property to be partitioned, and the parties are entitled to remove such personal property prior to partition. If either party wishes to include such personalty with a sale of the property, this will not change the parties' one-half interest in the sale proceeds.

5. Either party may request a hearing to determine any amounts owed for common expenses that should be paid out of the sale proceeds.

6. Fanning shall provide to Plaintiff a full accounting of all amounts received from Baker regarding the aforementioned agreements. Fanning shall also pay the Plaintiff \$5000.00, one-half of the payments Fanning received from Baker.

7. Fanning shall provide to Plaintiff a full accounting of all amounts received by Doug's

Auto for its rental of the Shop, and shall pay to the Plaintiff one-half of those amounts received.

8. Plaintiff's request for appointment of a receiver is denied at this time, without prejudice to the Plaintiff's right to seek appointment a later time.

9. Baker shall provide a full accounting to Fanning of all amounts received from Kaminski for rental and use of the Shop. Baker shall also pay Fanning \$16,000.00 (four months' rent at \$4000.00 per month). If any of these amounts are received, Fanning shall account for and pay the Plaintiff his one-half portion.

10. All claims by Kaminski are dismissed with prejudice.

11. All claims against John Doe or Richard Roe are dismissed.

12. Ruling on the amount of attorneys' fees and costs will be reserved until completion of this matter.

AND IT IS SO ORDERED.

Teasa K. Weaver
Master in Equity for York County
E-Signature Page to Follow

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP4600004

Edgar Bruce Massey,
PLAINTIFF(S)

James Anthony Fanning, et al.,
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC
(Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on _____.

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



York Common Pleas

Case Caption: Edgar Bruce Massey VS James Anthony Fanning , defendant, et al
Case Number: 2017CP4600004
Type: Master/Order/Partition and Form 4

So Ordered

s/ Teasa K. Weaver 3084