

Beattie v Johnson

2023 NY Slip Op 33308(U)

September 22, 2023

Supreme Court, Saratoga County

Docket Number: Index No. EF20222371

Judge: Richard A. Kupferman

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This opinion is uncorrected and not selected for official publication.

Christine E. Beattie,

Plaintiff,

-against-

David A. Johnson, Jr.,

Defendant.

**DECISION AFTER
TRIAL**

Index No.: EF20222371

Appearances:

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KUPFERMAN, J.,

The parties are the owners in fee simple of certain real property located at 87 Old Gick Road in the Town of Wilton (the “Property”). The plaintiff commenced this action, pursuant to RPAPL Article 9, seeking the partition or sale of the Property. The defendant served an answer requesting that the complaint be dismissed or, alternatively, that the Court direct an accounting and adjust the parties’ share of the sale proceeds based on their contributions for taxes, insurance, and maintenance.

In July 2023, the Court conducted a non-jury trial and heard testimony from the parties and a real estate broker. The Court received into evidence a real estate appraisal report and a written opinion from the broker, as well as copies of the subject deed and bill of sale.

Based upon the credible evidence, the Court now makes the following findings:

Equitable Adjustments

1. The parties jointly purchased the Property in November 2009. The Property includes a 1973 single wide mobile home (980 square feet) situated on 0.36 acres of land.
2. The subject deed to the land identifies the parties as joint tenants with a right of survivorship.
3. The original purchase price was \$50,000.00. The seller subsequently agreed to reduce the price to approximately \$40,000.00. The parties each contributed towards the down payment and the subsequent installment payments. In April 2015, the parties made the final payment due for the Property.
4. Both parties allege that they have paid at least 50% or more towards the purchase price.
5. While residing together at the Property, the parties each contributed towards paying the taxes and making repairs/improvements. The plaintiff's parents paid for some of the repairs/improvements as a gift.
6. Both parties allege that they paid at least 50% or more towards the taxes while they were residing together at the Property. The defendant has also sought, by way of a prior affidavit, an adjustment or credit for repairs/improvements that he allegedly made in 2019 and 2020 (estimated as \$8,830.00 for materials and his labor).¹

¹ The defendant alleges that he personally installed a new metal roof and ridge in 2020. He also alleges that he removed paint, installed well pump parts, and installed a new furnace in 2019. He alleges, without providing a date, that he installed a new water heater and a new distribution box for septic.

7. The defendant also testified that he has paid all the insurance premiums.
8. In or around March 2018, the plaintiff vacated the Property. The parties orally agreed at the time that the defendant could continue to reside at the Property, without paying rent, but that the defendant would be responsible for paying the taxes on the Property.
9. Neither side has provided sufficient receipts or other documentation to demonstrate their alleged contributions. Neither party has persuaded the Court that while residing together either party contributed more than the other towards the purchase price, taxes, or maintenance.
10. The defendant has also failed to demonstrate that his payment of insurance premiums while the parties resided together, or his maintenance contributions after March 2018, resulted in him contributing more than 50% of the total amounts paid/contributed by the parties for all the expenses associated with the Property.
11. As a result of a breakdown in the parties' relationship (including litigation in Family Court), they have been unable to co-occupy the Property since March 2018. Pursuant to the parties' agreement, the defendant has assumed responsibility for paying the taxes. There is therefore no basis to charge the plaintiff for any tax payments made by the defendant since March 2018.
12. Similarly, the defendant has benefitted from his continued use of the Property, without having to pay rent, while the plaintiff has not enjoyed this benefit. Considering the equities, the Court declines to charge the plaintiff for the maintenance contributions allegedly made by the defendant after March 2018.

13. Accordingly, no reason exists to adjust the parties' interests in the sales proceeds.

The parties each own a 50% interest in the Property and may share equally in the sale proceeds.

Insurance Proceeds

14. The defendant previously requested an accounting and an adjustment for, among other things, his payment of insurance premiums.

15. The defendant apparently insured the Property in only his name after the plaintiff vacated the Property in 2018, and he has paid all the premiums. In 2023, the defendant received insurance proceeds from damage to the garage (\$14,000.00).

16. Presumably, the defendant is no longer seeking this adjustment for the insurance expenses, as any adjustment for the insurance expenses would also require an adjustment for the insurance proceeds. This would result in a net credit in favor of the plaintiff.²

17. The plaintiff has not requested an adjustment for the defendant's receipt of insurance proceeds. Nor has the plaintiff attempted to provide any case law or evidence in support of such an adjustment.

18. Based on the evidence and legal arguments presented, the plaintiff is not liable for the insurance expenses, nor is she entitled to share in any of the insurance proceeds (see Furnace v Comins, 263 AD2d 856 [3d Dept 1999]; Bellnier v Bellnier, 158 AD2d 947 [4th Dept 1990]).

² The defendant previously estimated that he has paid approximately \$8,358.00 in insurance premiums over a period of 14 years. In contrast, the defendant has received approximately \$14,000.00 in insurance proceeds.

Valuation

19. The defendant's appraisal report (dated March 8, 2022) estimates the Property's value, as improved (and with a garage), as \$32,000.00. The plaintiff has failed to offer any evidence on value or otherwise impeach the defendant's appraisal. Based on the circumstances, the Court finds the defendant's appraisal report to be credible and adopts its conclusion of value for the Property.
20. The Court rejects the valuation from the Broker Price Opinion ("BPO") received into evidence. Two of the three comparable sales/properties in the BPO are located more than 20 miles from the Property. The third comparable is located 13 miles away. The BPO also does not make or explain any adjustments to account for the differences between the Property and the comparable sales/properties relied upon by the broker. The estimate discussed in the BPO to remove the trailer also appears to be significantly more than the actual cost estimate attached to it.

Analysis

A co-owner of real property "may maintain an action for the partition of the property, and for a sale if it appears that a partition cannot be made without great prejudice to the owners" (RPAPL § 901). RPAPL Article 9 sets forth the procedure for a trial and the granting of an interlocutory judgment (RPAPL §§ 907; 915). Where partition "cannot be made without great prejudice to the owners, the interlocutory judgment, except as otherwise expressly prescribed in [RPAPL Article 9], shall direct that the property ... be sold at public auction" (*id.* [emphasis added]; see RPAPL § 231 [directing that a sale of real property "shall be at public auction to the highest bidder"]; Lauriello v Gallotta, 70 AD3d 1009 [2d Dept 2010] [holding that the trial court erred in authorizing the property to be sold in the market]).

Although these provisions appear to be rather straightforward, the law is rarely clear. A party does not have an absolute right to relief in a partition action or to obtain an interlocutory judgment (see Ripp v Ripp, 38 AD2d 65, 68-69 [2d Dept 1971], affd 32 NY2d 755 [1973]; see also Stressler v Stressler, 193 AD2d 728 [2d Dept 1993]). A partition action is equitable in nature and therefore may be precluded by the equities presented (see Stressler, 193 AD2d at 728 [affirming the dismissal of a partition action based on the equities presented]; 24 NY Jur Cotenancy and Partition § 130 [NY Jur 2d, West Group 2023] [citing cases]). Moreover, even when relief is warranted, a court may still “adjust the rights of the parties so each receives his or her proper share of the property and its benefits” (Hunt v Hunt, 13 AD3d 1041, 1042 [3d Dept 2004] [holding that the trial court property set an amount to be paid by plaintiffs to purchase the defendants’ interest in a parcel of real property]).

Here, the plaintiff has established her ownership interest in the Property. In addition, she has demonstrated that physical partition is not feasible. The lot is only 0.36 acres. It would be highly unlikely, if not impossible, to obtain a subdivision or a variance from the minimum lot requirements necessary to create two separate lots. The size of the mobile home (980 square feet of living space) is also insufficient for the parties to split into two residential units. In addition, the parties’ relationship appears to have broken down to such a point where they can no longer live together. Under these circumstances, a sale at a public auction would generally be appropriate unless the parties were to agree to a different resolution (e.g., a buyout or market sale) (see RPAPL 231; 915; see also Hadash v Qatabi, 131 AD2d 433 [2d Dept 1987]).

In opposition, the defendant has raised several equitable considerations. In particular, the defendant has presented facts similar to those in the Stressler case. There, the Second Department affirmed the dismissal of a former husband’s action to partition the marital home. Considering

that the former wife and an unemancipated child under the age of 21 years continued to live in the home, the Second Department held that the equities favored dismissal.

As in the Stressler case, the public sale could displace the defendant, his two daughters, and their two dogs from the Property, which formerly served as the parties' family residence since 2009 (see Stressler, 193 AD2d at 728). In addition, a sale of the Property could cause the defendant to become homeless. The defendant testified that he cannot afford to purchase another residence or rent a different property in the area. As discussed below, the proceeds from a public auction would unlikely provide any meaningful change to his financial situation.

On the other hand, the Court must consider the plaintiff's right to obtain a return on her investment/contributions in the Property. The defendant should not be entitled to retain the Property's benefits, while the plaintiff receives nothing in return. Nonetheless, several reasons cause the Court to question whether a sale by public auction would be appropriate in this case.

The Property itself has been valued at only \$32,000.00, as improved. This valuation, moreover, is based on several conditions that do not exist with a public auction. Specifically, the appraisal valuation assumes a sale in the market at arm's length and a reasonable period of exposure time on the market. A public auction does not have either of these characteristics. The sales price at a public auction would therefore likely be much lower than the appraised value.

In addition, the condition of the Property will likely deter potential buyers from bidding on it. There is water damage on the ceilings, the floor is rotted out in some areas, the exterior door is damaged, and the interior has wear and tear. There is also damage to the garage; significant clutter/junk in the yard; alleged set back violations; and alleged health and safety violations regarding the proximity of the private well and private septic.

The mobile home also appears to be close to reaching its life expectancy. A reasonable bidder desiring to purchase the Property for its current use would have to consider the cost necessary to eventually remove the mobile home at the end of its useful life. The cost estimate attached to the BPO indicates that the trailer removal cost would be approximately \$16,750.00.

The Property could also have significant worth based on the value of the land itself. While neither side has credibly valued the property as vacant for potential development, the land assessment value is approximately \$30,000. Nonetheless, the land has a mobile home (which is classified as potentially hazardous based on the year it was built) and a substantial amount of clutter/junk that would have to be removed from the Property to build or place a new residence on the land. The total estimated cost of removing the trailer and the clutter/junk is \$28,745.00. This comprises of \$16,750.00 to demolish and dispose of the mobile home and \$11,995.00 to remove the clutter/junk in the yard. Accounting for these costs, this reduces the value of the Property (using the land assessment value) to a very small amount. When considering the referee fees and other costs associated with a judicial sale, the parties could each receive nothing for their interests from a public auction.

The Court recognizes that the parties themselves may be able to bid on the Property at a public auction. It is not entirely clear, however, whether the plaintiff has any legitimate interest in residing at or investing in the Property's redevelopment. The defendant, moreover, apparently has limited resources and lacks sufficient funds to invest in the Property's redevelopment. He has limited funds to purchase the plaintiff's interest in the Property, and every additional expense incurred with a public action will result in less funds available for the defendant to offer.

There are available options that could avoid the prejudice from a public auction. The defendant, for example, has expressed a desire to purchase the plaintiff's interest for \$16,000.00


(1/2 of the appraisal value). The Court considers such a proposal more than reasonable given the evidence received on the Property's value. If the plaintiff is unwilling to accept a buyout at this amount (\$16,000.00), the Court will have to consider whether the circumstances warrant the dismissal of this action or a sale by public auction. Assuming the defendant were to make a firm buyout offer, the Court may ultimately issue an Order dismissing the complaint unless the plaintiff agrees to accept a buyout at \$16,000.00 by a certain date. Any such dismissal would be without prejudice and contingent on the defendant agreeing to pay all the reasonable and necessary expenses for the Property moving forward, including taxes, maintenance, and the cost of insurance necessary to cover the plaintiff's interest in the Property and her potential exposure to liability.

Alternatively, the Court is willing to consider reasonable alternatives offered by the plaintiff, including any firm proposals by her to purchase the defendant's interest. If the plaintiff believes that the defendant is significantly undervaluing the Property, she could propose placing the Property on the market through a licensed broker at a listing price that the plaintiff considers reasonable. To the extent the plaintiff desires to proceed in this manner, the Court may be inclined to grant a sale by public auction unless the defendant consents to a market sale by a certain date.

The Court will conduct a final settlement conference at the courthouse (with clients and counsel directed to appear in person) on **October 27, 2023 at 9:30 a.m.** Prior to the conference, the parties' attorneys are directed to meet and confer regarding any firm settlement proposals, including any requests for a public auction. The Court is hereby uploading the original Decision After Trial into NYSCEF for filing and entry by the County Clerk.

So-Ordered.

Dated: September 22, 2023
at Ballston Spa, New York



HON. RICHARD A. KUPFERMAN
Justice Supreme Court