



In The Supreme Court Of Bermuda

CIVIL JURISDICTION

2021: No. 226

IN THE MATTER OF The Partition Acts, 1855 and 1914

AND IN THE MATTER OF properties becoming owned in fee simple following the death of the late David Francis Williams and located in the City of Hamilton, and in Smith's Parish, Berrauda

B E T W E E N:-

DWYER CHANDLER WILLIAMS (1)

FRANZ GOLDEN WILLIAMS (2)

TANYA VALERIE WILLIAMS (3)

Petitioners

-and-

ERICA YVELLE WILLIAMS

Respondent

Before: Jeffrey Elkinson (Assistant Justice)

Appearances: Mr. David Cooper, Cox Hallett Wilkinson for the Petitioners

The Respondent in Person

Date of Hearing: 23rd January 2023

Date of Judgment: 26th January 2023

JUDGMENT

ELKINSON AJ

1. This is an action commenced by the presentation of a Petition to the court on 28th July 2021. The Petitioners seek orders for the sale of residential and commercial properties in which Petitioners and Respondent together hold interests in varying degrees. The properties are 22 Union Street in which Respondent has an 8 $\frac{1}{3}$ % share, 31/33 Union Street a 33 $\frac{1}{3}$ % share, 29 Ewing Street a 25% share and 52 Angle Street where she has a 25% share. There are also other properties in which Respondent has an interest; Lot 7 and an arable lot, both in the Williams Estate in Smiths Parish. Petitioners did not seek to have these dealt with at this hearing. The interests in the property had devolved to Petitioners and Respondent as heirs of the late David Francis Williams who died intestate on 11th April 2012.
2. The Petition is supported by the evidence of the third named Petitioner, Tanya Williams, sister of the Respondent, Erica Williams. Her evidence was in respect of how the properties devolved to the various family members. She explained that there had been a previous property on Dundonald Street which had been sold with the consent of the Respondent but that this had not been an easy process. Subsequent to that sale, there had been a history of finding a buyer, preparation of a Sales Agreement and the difficulty in getting Respondent to sign off. In respect of 29 Ewing Street, it was only after the Respondent was aware that the intending purchaser had lost patience and walked away from the sale that she then agreed that the transaction should go through and signed the Sales Agreement. Too late. As regards 22 Union Street, Petitioners have found a purchaser who has indicated that he is prepared to wait as he knows the family and had been given temporary occupancy pending a possible sale to him. The evidence is that even he is getting impatient as a result of the delay.
3. Valuations were provided to the court, and I reference the one from Fulcrum Property Consultants Limited which showed a market valuation of \$300,000 despite the poor condition of the property. In the course of addressing the court, Respondent, having been

a real estate agent in her career, indicated that she thought this was high. She said that she had not been given access to the property to properly access its value. However, Respondent did manage the property for a lengthy period of time and she agreed she was well aware of the layout of the property but persisted in saying she did not know its condition. The Fulcrum property appraisal, prepared by Mr. James Redrobe, a Fellow of the Royal Institute of Chartered Surveyors and a registered valuer, values the property at \$300,000. Respondent's view was that \$300,000 was more than she would pay for the property.

4. As regards 29 Ewing Street, Petitioners have secured a Sales and Purchase Agreement with an intending purchaser for a price of \$205,000. No valuation was provided for that. Respondent said that this was a price which she considered high for the property.
5. While Respondent's position was that she refused to put in an offer for the properties as she could not get access to them, the court is satisfied, having been told by her that these were prices more than she would pay, that there is no reason why the court should not accept that these are appropriate sale prices. Mr. Cooper on behalf of the Petitioners submitted that as his clients had the greater percentage of ownership in these properties, they would be depriving themselves of a lot more than the Respondent and that these are the best prices to be obtained in all the circumstances.
6. I am conscious of the fact that the valuation in respect of 22 Union Street was completed in 2018 and that there is no valuation for 29 Ewing Street. However, given the Respondent's acknowledgment that she would not pay more than these prices, I am satisfied that the prices set out in the Sales and Purchase Agreements are an appropriate basis to work from in respect of this application for partition. Respondent has not suggested any exchange of her interests in any of the properties such that she could secure full ownership of any of the other properties.
7. The Partition Act 1914 provides that this court may, if it thinks fit, where it appears by reason of the nature of property to which the Petition relates, or the number of the parties interested in the property or of any other circumstances, direct a sale of the property and a distribution of the proceeds. This is in cases where it is more beneficial to the parties that there be a sale and distribution of proceeds rather than an actual division of the property

between them. If the court makes an Order for Sale, it may also give necessary and proper consequential directions. Order 31 of the Rules of the Supreme Court 1985 gives further power to the court in respect of the sale of the land and the manner of carrying out the sale.

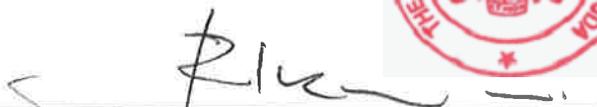
8. I am satisfied that it is appropriate to direct a sale of the properties at the prices which Petitioners have presented as it is clear from the evidence that the properties do not generate sufficient funds to allow them to be properly maintained or even in some cases if not all, to be insured. Most of the properties are unoccupied and in serious disrepair. It is clearly a source of distress to the family that this situation continues and Respondent has clearly found it difficult to relinquish her interest in the properties despite having written in July 2012 to her mother confirming that these properties could be sold. The purpose of the partition legislation is to bring about the end of such disputes and, having heard the parties, I am satisfied to make the orders sought.
9. In relation to the other properties referenced in the Petition, I adjourn the action to allow the Petitioners to obtain valuations for those and Respondent, if she considers it appropriate, may obtain her own independent valuations.
10. In relation to the orders for the sale in respect of 22 Union Street and 29 Ewing Street, I direct the attorneys for the Petitioners to receive the sale proceeds and from those sale proceeds there be deducted all costs attributed to the sale, payable by the parties in the proportion in which they hold their ownership interest in the property. The attorneys are then to distribute the balance of the proceeds to the owners in their allocated shares.
11. I direct that the Registrar of the Supreme Court execute the Sale and Purchase Agreement in respect of 22 Union Street, Hamilton on behalf of the Respondent and in so far as it proceeds to a sale, the Sale and Purchase Agreement of 29 Ewing Street and further that the Registrar execute, again on behalf of the Respondent, any other documents relating to the conveying of the interest in those two properties to the third party purchasers.
12. The court appoints the attorneys, Cox Hallett Wilkinson, to be the attorneys for the conveyances and to do all such matters as may secure the final transfer of the interests of

all parties in those properties to third-party purchasers and that the costs of their fees be paid for out of the sale price.

13. I order an accounting from Ms. Tanya Williams for the period in which she had control of the properties and received income and had expenditures and similarly I order that the Respondent, Ms. Erica Williams, provide an accounting of income and expenditure for the period in which she had managed the properties.
14. I give liberty to the parties to apply and that, as may be required, the matter may be relisted and application may be made to the court for the sale of the other properties referenced in the Petition.
15. As regards costs, these will be dealt with on the conclusion of these proceedings.

DATED this 26th day of January 2023





JEFFREY ELKINSON (ASSISTANT JUSTICE)
SUPREME COURT OF BERMUDA