

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

FILED

SUPERIOR COURT DIVISION

BEFORE THE CLERK OF COURT

COUNTY OF VANCE

2022 OCT 26 P 2: 20 FILE NO.: 22-SP-75

VANCE COUNTY, C.S.C.

Lawrence M. Sardes,

BY
Petitioner,

WJ

v.

CONSENT ORDER

Deborah Jansen,

Respondent.

THIS MATTER came on to be heard before the Clerk of Superior Court of the Superior Court of Vance County upon Petitioner's ("Petitioner") petition seeking to have the parcel of real property located at 2990 Stagecoach Road, Henderson, NC 27537, the subject property, partitioned by private sale pursuant to N.C. Gen. Stat. §§ 46A-1 *et seq.* The Petitioner was represented by Justin Eldreth of Eldreth Law Firm, PLLC. The respondent was represented by Daniel R. Flebotte. On review of the matter, the Clerk of Court makes the following findings of fact:

1. This Court has personal jurisdiction over the parties.
2. There are no necessary parties to this action who are not before this Court, and the parties are legally competent to execute this Consent Order.
3. The parties consent to the entry of this order.
4. An actual, physical partition of the Property is not feasible without substantial injury to the Parties' interests in the Property.
5. An actual, physical partition of the Property would dramatically reduce the value of the Parties' respective interests in the Property such that it would be materially less valuable

than if the Property were sold as a whole and the Parties were paid according to their respective and equitable shares.

WHEREFORE, based upon the foregoing FINDINGS OF FACT, the Court makes and enters the following:

CONCLUSIONS OF LAW

1. This court has subject matter jurisdiction over the Parties and the Property.
2. This Court has the statutory and equitable authority to adjust the equities between the parties including the appropriate distribution of any sale proceeds that remain before the Court.
3. The Commissioner shall sell the Property by private sale pursuant to Article 2 of Chapter 46A of the North Carolina General Statutes and to the terms of this Consent Judgment.

IT IS THEREFORE ORDERED THAT:

1. The attorneys shall be the Commissioner to conduct a private sale of the subject property pursuant to N.C. Gen. Stat. §§ 46A-76 and 1-339.33 *et seq.*
2. The Commissioners shall sell the Property by private sale pursuant to part 3 of Article 2 of Chapter 46A of the North Carolina General Statutes and to the terms of this Consent Judgment. The Commissioners' Deed shall convey all interests the Parties have in the Property.
3. The Commissioners shall list the Property at any price, in their discretion, in consideration of the value of an appraisal to be conducted. This provision, however, shall not bind the Commissioners to accept any offer to purchase the Property for less than the appraised amount so long as that offer is the most beneficial offer proposed given its terms and the circumstances then existing.

4. After application of the sale proceeds to the payment of the Commissioners and real estate agent fees, the Commissioners shall satisfy and pay any outstanding principal balances on any Deed of Trusts or liens or line of equity with per diem interest and additional fees continuing to accrue. Petitioner shall provide the Commissioners with pay-off statements for any outstanding liens.

5. The Commissioners shall cause the Property to be listed for sale on or soon as practical after receipt of the appraisal.

6. Commissioners shall provide not less than twenty (20) days' notice to the parties of a proposed sale of the Property prior to any sale of the Property, as set forth in N.C. Gen. Stat. § 46A-76 or otherwise provided by law, and the parties shall be entitled to object to the proposed sale of the Property for any reason, including, but not limited to, for insufficiency of the sale price.

7. Prior to the actual listing of the property, the parties will be notified of the appraised value and will be allowed to purchase the property for the appraised value. The Commissioners shall, in their discretion, select and hire a listing agent (the "Realtor") to conduct the private sale at a reasonable and customary rate.

8. The Commissioners shall, in their discretion, select and hire a listing agent (the "Realtor") to conduct the private sale at a reasonable and customary rate.

9. The Property shall be sold in its current condition and none of the Parties are required to make any repairs to the Property, but may if they choose to do so.

10. Both parties may promote and advertise the sale of the Property in any reasonable and customary manner which directs prospective buyers to the sale and does not disparage or obstruct the sale of the Property.

11. The Parties shall provide prospective purchasers of the Property and any real estate agent access to the Property during reasonable hours and with reasonable notice from the listing agent selected by the Commissioners.

12. The Parties shall not disparage, hinder, obstruct, delay or otherwise interfere with the sale of the Property.

13. The Parties shall not commit any waste upon or to the Property.

14. The Parties shall timely cooperate with the Commissioners in the discharge of their duties under this Consent Judgment and applicable law.

15. At the request of any party to this Consent Judgment, and after providing the parties with adequate notice and following an adequate hearing, and upon entering written findings after hearing, the Court may grant declaratory and all other relief necessary to enforce this Consent Judgment including civil contempt remedies. The prevailing party on any motion to enforce this Consent Judgment may, in the court's discretion, be awarded attorneys' fees incurred in connection with the enforcement of this Consent Judgment. The Parties shall provide written notice to the other Parties' counsel of record and a five (5) day cure period to negotiate in good faith any dispute relating to the interpretation of implementation of this Consent Judgment before bringing any matter to the Court's attention for resolution, including any claim that the other party has violated any term of this Consent Judgment.

16. This Consent Judgment embodies the full terms, agreement and understanding between the Parties relating to the subject matter before this Court and may be amended or modified with approval of all Parties, subject to approval by the undersigned Superior Court Judge Presiding.

17. This Court will retain jurisdiction over this action for the purpose of ensuring compliance and enforcing the provisions of this Consent Judgment and the discharge of the Commissioners' duties pursuant to Chapter 46A of the North Carolina General Statutes.

18. The court retains jurisdiction to determine the distribution of sale proceeds.

19. The Petitioner's attorney's fees shall be paid from the proceeds of the sale of the subject property.

20. By signing this Consent Judgment, respective counsel for the Parties acknowledge that they possessed the requisite authority to enter into this Consent Judgment.

SO ORDERED, this the 26th day of October, 2022.

Letitia W. Jackson, asst.

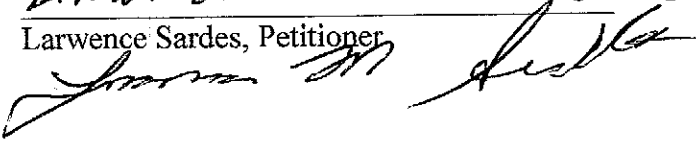
CLERK OF SUPERIOR COURT

ENTRY OF JUDGMENT CONSENTED TO BY:

By: Deborah Jansen
Deborah Jansen, Respondent

By: D. Flebotte
Daniel R. Flebotte
Attorney for Respondent
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ENTRY OF JUDGMENT CONSENTED TO BY:

By: LAWRENCE M SARDAS
Lawrence Sardes, Petitioner


By: A. Justin Eldreth
Eldreth Law Firm, PLLC
A. Justin Eldreth
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