

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

WILLIAM B. CHANDLER III
CHANCELLOR

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GEORGETOWN, DELAWARE 19947

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Decided: June 29, 2009

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Re: *Lynch v. Thompson*
C.M. No. 2488-K

Dear Counsel:

I have reviewed and considered the papers submitted by respondent Billie Thompson in support of her exceptions to the Master's Final Report of March 5, 2009, as well as petitioners' response. The standard of review for a Master's Final Report is *de novo* and a new trial is not necessary if this Court "can read the relevant portion of the factual record and draw its own conclusions."¹ Here, I rule on the exceptions based on a *de novo*, review of the record.² For the reasons briefly stated below, I conclude that the recommendations in the Master's Final Report are correct; accordingly, the exceptions to the Report are denied, and judgment is entered in accordance with the Report.

¹ *Cartanza v. DNREC*, 2009 WL 106554, at *1 (Del. Ch. Jan. 12, 2009) (citing *DiGiacobbe v. Sestak*, 743 A.2d 180, 184 (Del.1999)).

² See *Cartanza*, 2009 WL 106554, at *1.

The petition for partition was originally brought in November by petitioners against respondent Thompson. For the entire two-year litigation period, petitioners and respondent represented to the Court that they were co-tenants in a 193 acre tract of land east of Milford along the Mispillion River. The parties agreed to the appointment of a commission that recommended a division of the property in kind.³ Petitioners and respondent represented to the Court that each owns 50% of the parcel. Under *25 Del. C. § 724*, the commissioners were charged with the task, “according to the best of their skill and judgment, to go upon the premises and make a just and fair partition thereof amongst the parties in the proportions mentioned in the commission.” The commissioners met, inspected the property, and filed their report on August 28, 2007. The original property was divided by the commission into an eastern and a western parcel in such a way that two parcels of approximately equal value were created.

After the commission filed its report, respondent initially objected to the division of the property as unfair because she believed that the western parcel, with frontage along Route One, was more valuable. Thompson later withdrew her objection, however, and agreed to the partition specified in the commission’s report. Both parties, however, desired the western parcel and Thompson agreed to allow the Court determine who would receive that coveted tract of land. A briefing schedule in lieu of a hearing was ordered by the Master to enable Thompson to address the Court on why she felt the partition and division of the property were unfair. Briefing was completed on March 4, 2009, and the Master filed his Final Report on March 5, 2009, awarding the western parcel to petitioners. Thompson filed a Notice of Exception on March 11, 2009.

In her motion, respondent makes two exceptions to the Master’s Final Report: (1) that Thompson did not receive an adequate opportunity to rebut the Master’s finding that only petitioners desired to annex the western parcel into the City of Milford and immediately develop the property; and (2) that the underlying title to the property sought to be partitioned was vested in a dissolved partnership, Bowens Mill Landing, and that the status of the property being so owned by the partnership rendered the property unsusceptible to partition under *25 Del. C. § 721*.

Thompson takes exception to the Master’s factual findings that she might not annex and develop the western parcel. Thompson argues that her intentions to

³ On April 26, 2007, the Court signed an Order appointing the commissioners to partition the 193 acres pursuant to *25 Del. C. § 724*.

annex the western parcel were only addressed by petitioners' pleadings and correspondence to the Court and that Thompson's only statement regarding annexation was contained in her reply memorandum, wherein she agreed to annexation. Thompson asks this Court to review the record and to determine whether the Master correctly considered the record in factually determining Thompson's intentions.⁴ In his report, the Master found that Thompson's intentions were ambiguous. I agree. In reviewing the record, I conclude that the Master correctly interpreted Thompson's intended use of the western parcel. As conveyed in her briefing, Thompson's intentions were mixed and unclear. Throughout the entire proceedings, Thompson expressed uncertainty about her intended future use of the western parcel, and only in her reply memorandum did she briefly mention that she may seek to annex the western property into the City of Milford. In contrast, from the beginning petitioners clearly stated their intention to immediately seek to annex and develop the western parcel.

Petitioners found themselves in a difficult situation. If Thompson gained control of the western parcel, the only parcel having a boundary abutting the City of Milford, and failed to annex the property, then petitioners would be prevented from annexing the eastern parcel as well. This sequence of events could have resulted in the property not being put to its highest economic use. As the Master observed, "if the property is allocated as the respondent suggests, she would have the ability to decide the extent of development not only of her own parcel, but that of the petitioners' parcel as well."⁵ Thus, to prevent the possibility of an inequitable outcome, the Master correctly awarded the western parcel to petitioners.

This Court's role is one of *de novo* review and Thompson cannot now introduce new evidence or make new assertions that she will annex the property as a last ditch attempt to overturn the Master's Final Report. As the parties agreed, the Master based his conclusions on a stipulated record with fully briefed arguments submitted by both parties. Thompson had her opportunity to fully and completely make her arguments before the Court, and this Court independently reaches the conclusion that the Master correctly ruled based on all of the available information before him.

⁴ *Berglund v. Horgan*, 1997 WL 695568 (Del. Ch. Oct. 17, 1997).

⁵ *Lynch v. Thompson*, 2009 WL 707637, at *4 (Del. Ch. Mar. 5, 2009) (Master's Final Report).

I next turn to Thompson's first exception to the Master's Final Report. Thompson alleges that the Master erred in appointing and relying on the findings of the commission because the title to the underlying property was not held by tenants in common, but rather, title was held by a dissolved and not properly terminated Delaware general partnership—Bowens Mill Landing. Thus, respondent argues that the Court did not have subject matter jurisdiction to rely on 25 *Del. C.* § 721 to partition the land. Thompson insists that subject to Court of Chancery Rule 12(h)(3) “[w]henver it appears by suggestion by the parties or otherwise that the Court lacks jurisdiction of the subject matter, the Court shall dismiss the action.”

Thompson maintains that in 1985 George C. Chaney and William F. Dickerson formed Bowens Mill Landing, a Delaware General Partnership. Soon after the partnership was found, title to the 193 acres was transferred to the partnership. In 1990, George Chaney died and his 50% interest in the partnership transferred to his wife Dorothy Chaney. In 2004, Dorothy Chaney died and her economic interest in the partnership passed equally to petitioners. In 1995, the other partner, William Dickerson, died and his 50% interest in the partnership was passed to Thompson. Thompson argues that the partnership dissolved upon the death of the partners and its affairs should have been wound up.⁶ For some reason, not explained by respondent, the winding up of the affairs of the partnership never took place. Thus, Thompson contends, ownership of the 193 acres lies with the partnership and not the parties, depriving the parties of their ability to partition the property pursuant to § 271. Accordingly, Thompson argues that this Court should dismiss this current action, hold a hearing to dissolve the partnership, and properly dispose of the partnership's assets.

Respondent equivocates in her arguments for several reasons: (1) Thompson fails to take into account her complicity in the Master's understanding that the parties held title to the 193 acres as tenants in common; (2) Thompson fails to provide an explanation for why she, as the legal representative of Dickerson's

⁶ Respondent relies on 6 *Del. C.* § 1525(b)(4), which provides:

[O]n the death of a partner, the deceased partner's rights in specific partnership property vests in the surviving partner or partners, except where the deceased was the last surviving partner, when the deceased partner's right in such property vests in the deceased partner's legal representative. Such surviving partner or partners or the legal representative of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose.

estate with the responsibility to wind up the partnership's affairs, failed to complete her duty; and (3) Thompson fails to explain how dissolving the partnership would lead to a different and more equitable result without causing burdensome inefficiencies and wasting this Court's time and resources.

The two year record of litigation is devoid of any mention that the 193 acres were owned by the partnership. In fact, it was Thompson who suggested and agreed to the appointment of the commission to partition the property, and it was Thompson who agreed to the hearing that resulted in the Master's Final Report. Not until after the Master's Final Report was issued and Thompson discovered that she was not going to receive her desired outcome did she suddenly produce evidence that the partnership owned the property and that this fact allegedly produced a subject matter jurisdictional defect in the Master's adjudication of the case. Respondent may not now deny the concurrent interests of the parties after intentionally and deliberately acting consistent with that representation for the entirety of the proceeding before the Master's Final Report.

Thompson also fails to explain how formally dissolving the partnership would lead to a different and more equitable result without causing burdensome inefficiencies and wasting this Court's time and resources. As stated above, Thompson argues that this Court should dissolve the partnership and wind up its assets rather than continue with the recommendation of the commission. If the Court agreed with Thompson and ordered dissolution, such action would result in the parties being in the exact same position that they are in now—seeking partition of their common tenancy. Each party to this action collectively owns 50% of the partnership. In this case, the same dispute would exist where both parties desire the western parcel. It would be an incredible waste of resources to force this action, after two years, to start anew, in the same court, with the probability of the exact same outcome. What respondent truly desires is the opportunity to reargue her case. Unfortunately, that time has passed.

I conclude that respondent is judicially estopped from contradicting previous declarations and positions made during this same proceeding.

Judicial estoppel prevents a litigant from advancing an argument that contradicts a position previously taken by that same litigant, and that [a court] was persuaded to accept as the basis for its ruling. Judicial estoppel is an equitable doctrine designed to protect the integrity of

the judicial process by ‘prohibiting parties from deliberately changing positions according to the exigencies of the moment.’⁷

Thompson represented to this Court that she was a joint owner of the disputed property. She stipulated to the appointment of a commission to divide the property. For Thompson to now assert after two years of litigation, where she took the opposite position, that this Court may not partition the disputed property, is equivalent to committing a fraud on the Court.⁸

Accordingly, I conclude that the recommendations in the Master’s Final Report are correct. The exceptions to the Report are denied, and judgment is entered in accordance with the Report. I also direct Thompson to effectuate the dissolution of any partnership entity and, in accordance with 6 *Del. C.* § 1537, to wind up the business and affairs of any partnership so that the findings and rulings of the Master’s Final Report can be fully implemented.

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in cursive script that reads "William B. Chandler III". The signature is written in black ink and is positioned above the printed name.

William B. Chandler III

WBCIII:tet

⁷ *Julian v. E. States Constr. Serv., Inc.*, 2009 WL 1211642, at *6 (Del. Ch. May 5, 2009) (quoting *In re Silver Leaf LLC*, 2004 WL 1517127, at *2 (Del. Ch. June 29, 2004)).

⁸ If I were to agree with respondent and require this proceeding to start anew, I would be inclined to shift all of petitioners’ attorney fees and court costs to respondent. It is respondent’s own conduct that would have caused such an inefficient result, and it borders on vexatious conduct warranting a fee shift.