COURT OF CHANCERY
OF THE
STATE OF DELAWARE

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MASTER IN CHANCERY

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RE: ***Michael D. Chase, et al. v. Martha L. Chase et al.***,
C.A. No. 2019-0402-SEM

Dear Counsel:

This partition action remains at step one: the question of whether the property at issue should be partitioned in kind or by sale. The property is currently owned by a trust (50%) and five siblings (10% each). The co-owners cannot agree on a path forward: the three petitioners (two of whom also serve as co-trustees of the trust co-owner) want the property to be sold, an outstanding mortgage paid off, and the proceeds split; the two respondents want the property divided in kind and seek to retain ownership of approximately 40% of the property.

As recognized by then-Master Glasscock, "[i]t is always preferable, in cases of this nature involving family members and a family property, if all parties can agree on a procedure and avoid a forced trustees sale of the property" or division

along disagreeable lines.[1] But with the issue squarely presented for my recommendation, I endeavor to propose something fair and equitable.

I recommend that the main structure on the property be demolished and the property be subdivided into two equal-sized lots. This subdivision would work a partition in kind with one lot distributed to the trust owner and the second lot distributed to the siblings as equal co-owners. The trust owner would then be able to sell its lot, pay off the mortgage and any other debts and expenses, and distribute the trust assets to the beneficiaries as contemplated. The second lot would, however, continue to be co-owned. I recommend that further proceedings regarding partition of that lot (and the outstanding claims for waste, ouster, and fee and expense shifting) be stayed until the trust is wound down. I, again, encourage the parties to work together to amicably resolve the disputes not addressed in this final report and would gladly refer this matter to mediation upon request.

I. Background[2]

This is a family dispute regarding property Louise D. Chase and Nicholas J. Chase left to their five (5) children (Michael, Stephen, Mary Ann, Martha, and

[1] *Wingate v. Walker*, 2004 WL 74474, at *2 (Del. Ch. Jan. 12, 2004).

[2] The facts in this report reflect my findings based on the record developed at trial on May 20, 2021. *See* Docket Item ("D.I.") 33, 38. I grant the evidence the weight and credibility I find it deserves. Citations to the hearing transcript are in the form "Tr. #." Hearing exhibits are cited as "JX __." The pretrial order at D.I. 32 is cited at "PTO § __".

Clare).[3] The property is located at 42 Columbia Avenue, in Rehoboth Beach, Delaware (the "Property") and has been in the Chase family since 1957, when Louise and Nicholas purchased it as their summer vacation home.[4] Louise and Nicholas bought the Property "for their enjoyment and the enjoyment of their five children, and then eventually their grandchildren and in-laws and so forth."[5] While residing in Chevy Chase, Maryland, the Chase family would use the Property "as their home in the summer months."[6] Per Martha:

> We spent the whole summer there. We went when school got out in June, and we came back beginning of September. And we also went down in the winter on weekends, many times Easter vacation, and weekends in the spring.[7]

Clare, likewise, voiced a sentimental attachment to the Property.[8] She explained that the Property was but one aspect of the full and rich life her parents provided for her and her siblings.[9]

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[3] I use first names when referring to members of the Chase family for clarity; no disrespect is intended.

[4] PTO § 2.A; Tr. 78:2-9. The Property consists of two and a half lots and is on the second block from the Atlantic Ocean. PTO § 2.M. The Property is 100' deep, with 125' of frontage. PTO § 2.N.

[5] Tr. 168:13-15.

[6] Tr. 126:18-22. *See also* Tr. 78:2-9.

[7] Tr. 158:11-17.

[8] Tr. 196:12-15.

[9] Tr. 200:2-11.

In 1998, Louise and Nicholas moved from Chevy Chase, Maryland to Tennessee.[10] Louise and Nicholas were, at that time, getting older and the move to Tennessee provided them with additional support from Michael, Mary Ann, and other family members in that area.[11] Despite their move, Louise and Nicholas continued to own the Property, although they made little use of it as their health declined.[12]

On August 8, 2001, Nicholas and Louise decided to separate their interest in the Property from a joint tenancy to equal tenants in common.[13] A few years later, Nicholas established the Nicholas J. Chase Irrevocable Trust dated January 22, 2004 (the "Trust") to provide for their care needs.[14] Nicholas named his sons, Stephen and Michael, as trustees and deeded his share of the Property to the Trust.[15] During

[10] Tr. 78:23-79:1.

[11] Tr. 79:2-8.

[12] *See* Tr. 79:21-80:5. In her final years, Louise suffered from dementia and required fulltime care. Tr. 80:6-14. Michael played a large role in supporting his parents. *See* Tr. 79:9-20; 175:18-22.

[13] PTO § 2.B; JX8.

[14] PTO § 2.F-G; JX9. Michael testified that the "primary purpose" of the trust "was to pay all [Nicholas'] bills, pay all [Louise's] bills, and . . . not allow anybody to have access to their financial money. Protect them in their old age." Tr. 82:9-14. Steven had the same understanding, testifying: "my father wanted to make sure that if anything happened to him, my mother would be cared for. And of course, he wanted to make sure that he would be cared for himself." Tr. 130:8-13.

[15] PTO § 2.F-G; JX9-10.

Nicholas' lifetime, the Trust provided for payments, in the discretion of the trustees "for the care, support, health, and comfort of [Nicholas] and for the support and health of any person dependent upon him, including his wife, or for any other purpose the Trustees consider to be for the best interests of [Nicholas] or of [Nicholas's] Trust Estate . . . ."[16] When the trust ran out of money to provide for Nicholas and Louise, the trustees secured a revolving line of credit, encumbering the Trust's interest in the Property through a mortgage with First Tennessee Bank N.A.[17]

Louise and Nicholas lived their final days in Tennessee. Louise passed first at the age of 96.[18] Upon Louise's death on December 31, 2008, her 50% share of the Property passed under her will to her children in equal shares.[19] Thus, since December 31, 2008, Michael, Stephen, Mary Ann, Martha, and Clare have each owned 10% of the Property, with the Trust continuing to own 50%. Nicholas survived Louise by nearly eight (8) years, passing just shy of his 104th birthday, on

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[16] JX9.

[17] *See* Tr. 83:13-22; JX11. The mortgage includes a provision requiring "immediate payment in full" if the Property is sold or transferred without the lender's "prior written consent[.]" JX11 p.12. The maturity date of the note and mortgage has been extended numerous times. *See id.*; Tr. 97:3-10. Currently the debt secured by the mortgage is around $430,000.00. *See* PTO 2.L. The Trust's only asset is the 50% interest in the Property and its only debt is the mortgage. *See* Tr. 151:9-13, 92:9-13.

[18] PTO § 2.D.

[19] PTO § 2.E; JX5.

November 4, 2016.[20] Upon his passing, the Trust directed the "rest residue and remainder of the trust estate" to Nicholas's children, *per stirpes*.[21]

Michael and Stephen, individually and as co-trustees, together with Mary Ann (Michael, Stephen, and Mary Ann, together the "Petitioners"), petitioned the Court to partition the Property and order a partition sale of the Property, asserting a partition in kind would be detrimental to the interests of the co-owners, on May 29, 2019.[22]

Martha and Clare (together, the "Respondents") answered and counterclaimed on August 7, 2019 denying that a partition in kind would be detrimental to the co-owners' interests, seeking a declaration that the siblings are entitled to an immediate distribution of the Trust's assets, and seeking damages from Michael and Stephen, as trustees, for unlawful ouster and waste.[23] The counterclaim was dismissed in part by Master Griffin's December 13, 2019 Final Report, which was adopted by this Court.[24] Therein Master Griffin found it was not reasonably conceivable that the

[20] PTO § 2.I. He lived to be 103 years and 11.5 months old. *See* Tr. 131:12-15.

[21] JX9. In Master Griffin's December 13, 2019 Final Report, which was adopted by the Court, she determined that the Trust must first pay trust debts and expenses before distributing its assets. *See* PTO § 2.J.

[22] D.I. 1.

[23] D.I. 5.

[24] D.I. 14-15.

Trust could be interpreted to require immediate distribution of the Property under the circumstances.[25]

Remaining before this Court is Petitioners' request for partition by sale and Respondents' claims for ouster and waste. As is typical in partition proceedings, this action has been bifurcated to first determine if the Property should be partitioned by sale or in kind. That issue was tried on May 20, 2021. The expert testimony presented at trial was helpful.

The Petitioners called Stephen M. Timmons, a resident of Dagsboro, who is a Delaware certified residential appraiser and a Delaware real estate associate broker.[26] Mr. Timmons has thirty-five years of experience appraising real property in the State of Delaware.[27] In his opinion, the Property is worth $3,350,000.00 and "due to the obsolescence and the condition of the [P]roperty, the highest and best use of the [P]roperty would be to raze the [P]roperty or demolish it and subdivide the 125-foot frontage into two lots, 62 ½ feet wide."[28] As to the demolition, Mr. Timmons testified that the structures on the Property (a house and a boathouse) do

[25] D.I. 14; JX16.

[26] Tr. 14:7-15.

[27] Tr. 14:16-20.

[28] Tr. 15:21-22, 17:13-19. *See also* JX17.

not add any value to the Property.[29] Mr. Timmons confirmed, however, that the Property "could easily be divided 75 feet and 50 feet" but it was his opinion that "the 62.5 lots would be more marketable[.]"[30] He could not, however, say that a 75'/50' split would lead to a valuation or sale at less than his appraised value.[31]

The Petitioners presented Glenn T. Piper as their expert. Mr. Piper is also a Sussex county resident, Delaware certified residential appraiser, and licensed real estate broker.[32] Mr. Piper has been performing appraisal work for twenty-eight years, exclusively in Sussex County.[33] Mr. Piper testified that the Property is worth $3,150,000.00 as of February 19, 2021, at its highest and best use.[34] He agreed the Property's value is derived solely from the lot, not the structures on it, and that the highest and best use of the lot would be to divide the land in two after razing or

[29] Tr. 30:13-15.

[30] Tr. 21:14-18, 22:9-10.

[31] Tr. 25:2-20.

[32] Tr. 36:9-15.

[33] Tr. 37:10-15.

[34] Tr. 39:5-10. *See also* JX18. He testified that he believes the value may have gone up, but he has not conducted a second appraisal or updated his report. *See* Tr. 39:11-13. Mr. Piper defined "highest and best use" as "physically possible; legally possible; financially possible; and, most important, result in the maximum return on investment." Tr. 46:3-7.

demolishing the buildings thereon.[35] Mr. Piper testified, in his opinion, it would not make a material difference if the lots were split 62.5'/62.5' or 75'/50'.[36]

I also have the benefit of testimony from Matthew Janis, the chief building official for the City of Rehoboth Beach.[37] Mr. Janis explained that he "handle[s] the day-to-day permitting process, inspections on-site . . . [and] all the meetings with commissioners, planning commissions, et cetera."[38] Mr. Janis is also occasionally involved in applications to subdivide or partition property.[39] Mr. Janis testified about the process for separating lots that were previously consolidated and subdividing to create new lots.[40]

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[35] *See* Tr. 45:15-20, 55:13-18.

[36] Tr. 47:11-16, 52:3-4. Mr. Piper also explored a split of 88'/37' in his report but testified that his exploration illustrated that such a split would not work and was not the highest and best use. Tr. 61:16-22. *See* JX18. He went on to explain, in his opinion and based on his experience, the City of Rehoboth Beach would not approve a 37' lot; the minimum frontage is 50' and applications for smaller lots are not always approved. Tr. 44:19-23, 64:1-5. Mr. Piper explained that subdividing to create a 37' lot "made no sense." Tr. 70:11-19.

[37] Tr. 106:2-6.

[38] Tr. 106:9-12.

[39] Tr. 106:13-15.

[40] Mr. Janis explained that the administrative approval process could be used to go "back to the original deeding" or plot lines, if doing so would not create any nonconformities. *See* Tr. 110:7-114:21. But to establish new lines requires a lengthier process. *See* Tr. 115:2-116:14. He also discussed board of adjustment special exceptions which apply to, for example "a new owner that comes into the city, buys a piece of property that is conforming at the time. A commissioner then or the commission adopts some kind of ordinance that creates a nonconformity on that particular lot." Tr. 116:15-117:9. *See also* JX19. Mr. Janis further testified that a proposed subdivision to create a lot of 37' frontage "would not meet the ordinances today" and "[c]oming from the building inspector's

After trial, the parties were directed to file written closing statements. Therein, the Petitioners argue that the Property "cannot be divided based on ownership; that is, a division of 50% to [the Trust] and a division of 50% in five separate 10% shares to five individuals."[41] The Petitioners contend that "a private sale of two 6,250 square foot lots will maximize value to all owners" but appreciate that a private sale cannot be ordered without the consent of all parties.[42] Thus, the Petitioners argue, in the alternative, for a public sale and offer "[t]his Court may also require that the public sale be conditioned on the parties bearing the cost of demolition and division of the [P]roperty into two 6,250 square foot lots."[43]

The Respondents disagree. In their closing submission, they highlight the unique quality of land and state they "are certain in their intentions to retain a part of the [P]roperty that has been in their family since 1957."[44] Specifically, the Respondents seek a partition in kind through which they would retain Lot V, the lot closest to the Atlantic Ocean, with 50' frontage. The remaining lots (Lot U and half

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standpoint, it absolutely would never be approved from [his] office." Tr. 122:20-123:7. He added, however, that he did not know how the commissioners would vote on such a request. Tr. 123:7-8.

[41] D.I. 35.

[42] *Id.*

[43] *Id.*

[44] D.I. 34.

of Lot T) would go to the Petitioners. The Respondents argue that "re-establishing the prior lot line in order to separate Lot V for the Respondents produces an equitable result" because it would be a division of around 40% to the Respondents, reflecting their ultimate share of the Property once the Trust is distributed.[45]

II. Analysis

"Partition of land among tenants in common is an ancient part of the jurisdiction of Courts of Chancery, independent of statutes, and this is true in Delaware."[46] "The purpose of partition [is] to permit co-tenants to sever concurrent undivided interests in the same real property."[47] This common law remedy has been codified in Title 25, Chapter 7, of the Delaware Code. Because of the unique nature and quality of land, the Delaware partition statute contemplates "as the first and preferred option not the partition sale of land but partition in kind."[48] A partition in kind is made through a physical "division of the real property that makes 'a just and fair partition thereof amongst the parties.'"[49] This Court also applies the "equitable

[45] *See id.* (explaining the division is 39.81% to 61.19% under Mr. Timmons' valuation and 41.79% to 58.21% under Mr. Piper's).

[46] *Wilson v. Lank*, 107 A. 772, 773 (Del. Ch. 1919).

[47] *Peters v. Robinson*, 636 A.2d 926, 928 (Del. 1994).

[48] *In re Real Estate of Roth*, 1987 WL 9370, at *1 (Del. Ch. Mar. 16, 1987).

[49] *Peters v. Robinson*, 636 A.2d at 929 (citing 25 *Del. C.* § 724).

principle of fairness in approving an assignment of a particular parcel on in-kind partition of land."[50]

"The Delaware statutory scheme expressly provides that an order to sell the real property becomes appropriate *only after* the Court of Chancery determines that 'a partition of the premises would be detrimental to the interests of the parties entitled.'"[51] Whether a partition in kind would be detrimental depends on the property at issue. Partition may be detrimental if the co-owners would lose a substantial portion of their current market value if the property were divided in kind.[52] Partition in kind may also be detrimental if "the small size and nature of the property makes it physically impracticable to divide that property into portions."[53]

Although partition is often seen as presenting a binary choice—in kind or by sale—the statute "does contemplate a partition in kind and a sale in the same partition action."[54] And under the statutory partition scheme, this Court retains:

> general equity powers concerning the subject matter of this chapter and authority to make any order or decree not inconsistent with the provisions of this chapter relating to causes in partition, or matters

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[50] *In re Real Estate of Roth*, 1987 WL 9370, at *1.

[51] *Peters v. Robinson*, 636 A.2d at 929 (citing 25 *Del. C.* § 724) (emphasis in original).

[52] *See, e.g.*, *In re Real Estate of Wapniarek*, 1986 WL 9611, at *3-4 (Del. Ch. Sep. 2, 1986).

[53] *Oldham v. Taylor*, 2003 WL 21786217, at *6 (Del. Ch. Aug. 4, 2003).

[54] *In re Real Estate of Roth*, 1987 WL 9370, at *1.

> incidental or pertaining thereto, which the right or justice of the cause may demand.[55]

These equitable powers have been invoked to, for example, grant easements incidental to the partition.[56]

I find the highest and best use of the Property would be to subdivide the lot into two lots after demolishing any structures encroaching the lines that must be drawn. Trial highlighted two ways to split the Property: in half or to reinstate an earlier lot line to create a smaller 50' lot and a larger 75' lot. I find, at this juncture and on the record before me, equity compels an even split.

Louise and Nicholas decided to split their joint tenancy into equal 50/50 shares in 2001. Shortly thereafter, Nicholas deeded his share to the Trust. Since then, the Trust has owned 50% of the Property. The Respondent would have me ignore the Trust and its 50% interest and, instead, treat the siblings as owning 20% each. But that would not be appropriate. Master Griffin has already addressed and rejected the Respondents' argument that the siblings are entitled to immediate distribution from the Trust. Rather, the Trust must satisfy its debts and expenses before distributing to the beneficiaries. The Trust currently owns 50% of the Property and each sibling owns 10%.

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[55] 25 *Del. C.* § 751.

[56] *See, e.g., In re Real Estate of Marta*, 1995 WL 130758, at *4 (Del. Ch. Mar. 16, 1995).

But the Petitioners also fail to give due accord to the Respondents' clear and unwavering interest in retaining at least some portion of the Property. The Property has been in the Chase family since 1957 and I cannot discount the sentimental attachment the Respondents have to the Property. This is particularly true under a statutory scheme that reflects a preference for in kind division and permits this Court to use its equitable powers "to make any order or decree not inconsistent with the [Delaware partition statute] relating to causes in partition, or matters incidental or pertaining thereto, which the right or justice of the cause may demand."[57] It would be inequitable to ignore the Respondents' desire to retain, at least, a portion of their family's land.

Because all agree that the Property would be best utilized through subdivision into two lots and demolishing the structures necessary to redraw those lines, the co-owners should jointly accomplish that goal. Each co-owner should contribute their *pro rata* share of the costs of demolition and subdivision; the Trust would cover 50% and the siblings, 10% each.[58]

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[57] 25 *Del. C.* § 751.

[58] With an even split, it is my understanding that only the main structure would need to be demolished. *See* JX7 (showing a two story frame dwelling in the center). The boathouse could remain on the lot retained by the family or the parties could decide to move forward with razing the Property as a whole; I leave that decision in their hands.

The Property should then be subdivided into two equal lots.[59] After the Property is subdivided, the Trust would retain its 50% interest by acquiring sole ownership of one of the two lots.[60] This equal split would provide the Trust with an in-kind division of its entire interest in the Property; severing the co-ownership between the Trust and the siblings and allowing the Trust to sell its lot, pay off the mortgage and any other debts, and distribute and wind up the Trust.[61]

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[59] In ordering this division, I have considered, and decline to invoke, owelty. "Owelty is predicated on a division of real property, and has been employed when the value of the real property one co-tenant receives through partition exceeds the value of the other co-tenant's property and the court requires the payment of money, or owelty, to equalize the values." *Clarke v. Gatts*, 2020 WL 9264812, at *2 (Del. Ch. Sep. 21, 2020), *adopted*, (Del. Ch. 2020) (citations omitted). Owelty is within this Court's equitable powers but is not invoked unless it "is equitably necessary, the amount required is fair, the payment imposed is not unreasonably burdensome, and the time for payment is reasonable, considering the condition of the property and the parties. An owelty payment is not 'unreasonably burdensome' if 'a proportionately small sum is required to equalize the shares.'" *Id.* (citations omitted). I find owelty is not equitably necessary here. The Property is able to be divided into equal shares, which will sever the siblings' co-ownership with the Trust and allow the Trust to pay off its debts and wind down. Conversely, to grant the Respondents a lot representing 40% of the whole would disregard the Trust's—and double the Respondents'—present interests.

[60] Unless the parties agree otherwise, I find the lot farthest from the Atlantic Ocean should be retained by the Trust, because the Respondents indicated a preference for the other lot. *Cf. Lynch v. Thompson*, 2009 WL 707637, at *1 (Del. Ch. Mar. 5, 2009) (recognizing "that this Court has the equitable power to direct that a partition in kind result in the reservation of a parcel with special attributes specifically to one of the co-tenants, as equity dictates")

[61] I liken this resolution to the balancing that occurs with a sale of property to pay debts of a Delaware estate. Under Title 12, Chapter 27, a personal representative of a Delaware estate, can apply to this Court to sell real property to pay debts of the estate, dispossessing those who acquired the property upon death. *See* 12 *Del. C.* § 2701. But that claw back is limited and no more of the property should be sold than that necessary to pay the outstanding debts. 12 *Del. C.* § 2704. I apply the same principle here. The Trust needs the Property to be sold so that the Trust can pay its outstanding debts, but the Property is

The siblings would then co-own the remaining lot, 20% each. I recommend that further proceedings on partition of that lot be stayed until the first lot is sold and the Trust proceeds distributed to the beneficiaries.[62] During the stay, the co-owners should work together to resolve their disputes. Any fee shifting or sharing of expenses (in addition to the demolition and subdivision address herein) will be heard in those later proceedings, as will the Respondents' claims for ouster and waste.

To keep this matter moving, I recommend that the co-owners be required to file status reports every ninety (90) days and to advise on the demolition, subdivision, and their progress towards resolving their remaining disputes. I encourage the parties to consider mediation and would gladly made a referral under Court of Chancery Rule 174, if requested.

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worth over $3 million, much more than the outstanding debts. Thus, by partitioning in kind and providing the Trust with a single lot representing its 50% interest, the Trust can sell only a portion of the Property necessary to pay the outstanding debts. This is, however, an imperfect analogy, because the new lot should be more than sufficient to cover the Trust's debts. But I find the expert testimony supports a 50/50 division and there is no reason to deny the Trust a partition representing its full 50% share.

[62] *See Salzman v. Canaan Capital Partners, L.P.*, 1996 WL 422341, at *5 (Del. Ch. Jul. 23, 1996) ("To enable courts to manage their dockets, courts possess the inherent power to stay proceedings.").

III. Conclusion

For the foregoing reasons, I recommend that the Property be partitioned in kind, into two equal sized lots with 62.5' frontage. The parties should work together, and share all fees and expenses, to demolish any structures on the Property that would interfere with subdivision. One lot should be deeded to the Trust and the other should be deeded to the siblings, in equal 20% shares. Further proceedings should be stayed until the Trust is distributed. The parties should meet and confer as to a resolution of the remaining claims and issues, reporting to the Court every ninety (90) days.

This is my final report and exceptions may be filed under Court of Chancery Rule 144.

Respectfully,

/s/ Selena E. Molina

Master in Chancery