

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

PATRICIA W. GRIFFIN
MASTER IN CHANCERY

CHANCERY COURTHOUSE
34 The Circle
GEORGETOWN, DELAWARE 19947

Date Submitted: December 23, 2021
Final Report: December 28, 2021

Dean A. Campbell, Esquire
The Law Office of Dean A. Campbell, P.A.
P.O. Box 568
110 West Pine Street
Georgetown, Delaware 19947

Richard E. Berl, Jr., Esquire
Hudson, Jones, Jaywork & Fisher, LLC
34382 Carpenters Way, Suite 3
Lewes, Delaware 19958

Stephen A. Spence, Esquire
Baird Mandalas Brockstedt, LLC
1413 Savannah Road, Suite 1
Lewes, Delaware 19958

RE: *Vera Ann Libeau and the Estate of Elana Aurora Vargas v. Janet M. Fox*
C.A. No. 2020-0868 PWG

Dear Counsel:

Pending before me is Respondent Janet M. Fox (“Fox”)’s Motion to Distribute Undisputed Funds (“Motion”).¹ This Motion was joined in principle by Petitioner Vera Ann Libeau (“Libeau”).² I had, on December 20, 2021, indicated

¹ Docket Item (“D.I.”) 36.

² D.I. 37.

that it was unlikely that I would grant such a motion should Fox file a motion.³

Considering the Motion, I conclude that the Court cannot grant the Motion under the partition statute and applicable Court of Chancery Rules and that it would not serve judicial efficiency to grant the Motion. This is a final master's report.

I. Background

This is a partition matter that is nearing its final stages. On October 9, 2020, Libeau and Petitioner Elena Aurora Vargas (“Vargas”) filed a petition seeking partition of property known as 39578 Admiral Road, Bethany Beach, Delaware (“Property”) that they jointly owned with Fox.⁴ On November 17, 2020, a partition sale of the Property was ordered and a trustee appointed to conduct the sale.⁵ The partition auction occurred on February 21, 2021, and the trustee filed a return of sale on April 30, 2021.⁶

³ D.I. 35.

⁴ D.I. 1. The three parties took title to the Property on December 29, 1986, each holding a one-third interest as joint tenants with right of survivorship and subject to an agreement among the joint tenants. *See id.*, Ex. B; *Libeau v. Fox*, 892 A.2d 1068 (Del. 2006). In that agreement, the parties waived their right of partition by providing for an alternative exit mechanism if one party sought to leave the co-ownership. *See Libeau*, 892 A.2d at 1071-72. If two parties wished to sell their interests and the remaining party did not purchase the others' interests, they had “the right to insist that all interest in the property be sold.” D.I. 1, Ex. B, ¶ 7. Libeau and Vargas exercised this right by filing the partition petition.

⁵ D.I. 6.

⁶ D.I. 11.

Vargas died on April 29, 2021.⁷ This created a dispute between Libeau, Fox, and the Estate of Vargas (“Estate”) over whether the Estate is entitled to what would have been Vargas’ share of the sales proceeds under the joint tenancy agreement between the parties and/or under an alleged settlement agreement between the parties.⁸ At a November 10, 2021 status conference, I reserved decision on how the proceeds should be distributed and informed the parties that I would schedule an evidentiary hearing to determine the existence and scope of the alleged settlement agreement.⁹

On December 16, 2021, the parties filed a status report with a plan for the evidentiary hearing, and Fox indicated that she would file a motion to distribute her share of the proceeds.¹⁰ On December 20, 2021, I wrote to the parties to facilitate the scheduling of the status conference and advised that I would be unlikely to grant a motion to distribute any proceeds at this juncture because of

⁷ D.I. 12.

⁸ On May 14, 2021, Fox filed a limited objection to the return of sale, arguing that the property should be divided equally between her and Libeau as surviving joint tenants with right of survivorship, since the Court had not confirmed the Property’s sale at the time of Vargas’ death. *Id.* On July 19, 2021, the Estate responded that the sale proceeds should be divided equally among Fox, Libeau and it under the Agreement and the Auction Agreement from the partition sale, and because the entire purchase price on the Property had been paid before Vargas’ death. D.I. 24. The Estate further claims the parties had agreed to a three-way distribution of the proceeds before Vargas’ death. *Id.*

⁹ D.I. 33.

¹⁰ D.I. 34.

judicial economy concerns.¹¹ On December 22, 2021, Fox filed the Motion, arguing that my concerns of administering this matter were without merit and that she is entitled to her share of the proceeds at this time.¹² Libeau joined the Motion in principle.¹³

II. Analysis

Jointly held real property in Delaware is subject to sale through a partition proceeding in the Court of Chancery, unless co-owners have waived their partition rights by agreement.¹⁴ Although the parties in this action had waived their partition rights, they also had agreed that two co-owners could insist on the sale of the Property,¹⁵ which culminated in Libeau and Vargas petitioning the Court for partition of the Property, and the Court ordering partition of the Property.¹⁶ Partition rights and process are defined in Title 25, chapter 7 of the *Delaware Code* and Court of Chancery Rule 183.

¹¹ D.I. 35.

¹² D.I. 36.

¹³ D.I. 37. Libeau joined the Motion in principle but did not fully join all of the statements and factual assertions in the Motion. *Id.*

¹⁴ *See 25 Del. C. § 721 et seq.; Libeau v. Fox*, 892 A.2d 1068, 1071 (Del. 2006).

¹⁵ D.I. 1, Ex. B; *see Libeau*, 892 A.2d at 1071.

¹⁶ D.I. 1; D.I. 6.

Under the partition process, a co-owner of property may file a petition with the Court of Chancery for partition.¹⁷ Upon return of the partition summons, the Court may decree that partition be made, and may appoint commissioners to partition the land in kind and/or determine that partition in kind would be detrimental to the parties' interests, and order a partition sale at public vendue and appoint a trustee to conduct the sale.¹⁸

Under the Court of Chancery Rules, the Court directs the distribution of funds through a final decree of distribution.¹⁹ There are limited procedural mechanisms for an interim distribution of funds. Costs of the partition sale, and the payment of liens and taxes owed against the property, may be deducted from the proceeds through the return of sale.²⁰ But, the partition statute and the Court of Chancery Rules do not provide a procedural mechanism to allow an interim distribution as sought by the parties in this Motion, which is a distribution of funds that are "undisputed."²¹ Because the request falls outside the procedural

¹⁷ *See* 25 *Del. C.* § 721(a).

¹⁸ *See* 25 *Del. C.* §§ 721(b), 724, 729. The trustee appointed by the Court secures the sale proceeds in a manner specified by the Court. *See* 25 *Del. C.* §§ 729, 733; Ct. Ch. R. 183(c)(4).

¹⁹ *See* Ct. Ch. R. 183(c)(11).

²⁰ *See* 25 *Del. C.* § 733; 25 *Del. C.* § 735; *Oldham v. Taylor*, 2003 WL 21786217, at *6 (Del. Ch. Aug. 4, 2003).

²¹ *See* D.I. 36; 25 *Del. C.* § 721 *et seq.*; Ct. Ch. R. 183.

mechanisms set by the statutory partition process and the Court of Chancery Rules, I recommend the Court deny the Motion.

To support the Motion, Fox argues that this interim distribution is proper because no contributions have been sought.²² It appears to me that reaching that conclusion may improperly foreclose issues in advance of the evidentiary hearing. The trustee noted in the return of sale that the parties had reached an agreement related to the reimbursement of expenses.²³ In briefing the objection to the return of sale, the Estate indicated that the agreement was broader and resolved the whole decree for distribution.²⁴ As I outlined at the November 11, 2021 status conference, the focus of the evidentiary hearing will be this agreement—whether it is enforceable, an agreement on contribution, a settlement agreement on the whole decree for distribution, or had no effect. I reach no conclusions on this today, but granting the Motion would seem to foreclose some of the issues to be addressed at the evidentiary hearing, including the possibility of imposing contributions and

²² D.I. 36, at 4. Fox also argues that she and Libeau will be unduly prejudiced if funds are not released now because they cannot make productive use of the proceeds and will have to pay taxes on the income. *Id.*, at 3. I do not find sufficient evidence of prejudice, without specific evidence that shows the amount of taxes they will be required to pay, and the penalties and interest that will likely be incurred, before the litigation is completed (recognizing that it has not yet been determined what income they will receive from the sale of the Property). Further, the inability to access partition sale proceeds during the pendency of the partition proceedings occurs in all partition cases, and there is no evidence that this litigation places an undue burden on the parties.

²³ D.I. 11, ¶ 15; *see also id.*, Ex. N.

offsets that could affect the amount of each co-owner's share in the proceeds. Thus, I would decline to grant the Motion in the interests of preserving all issues for the evidentiary hearing, even if there were not procedural concerns.

III. Conclusion

For the reasons set forth above, I recommend that the Court deny the Motion, without prejudice. Fox and Libeau may raise any of the arguments in the Motion at the evidentiary hearing. In preparation for the evidentiary hearing, the Petitioners are directed to file either a joint or separate proposed decree of distribution pursuant to Court of Chancery Rule 183(c)(11), and Respondent Fox to respond. At the evidentiary hearing, all remaining issues will be addressed so that a final decree of distribution may be entered and the case resolved.

This is a final master's report, and in the interests of justice and judicial efficiency, exceptions are stayed under Court of Chancery Rule 144(f).

Sincerely,

/s/ Patricia W. Griffin

Master in Chancery

cc: Blake Carey, Esq.

²⁴ See D.I. 24; D.I. 25.