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Dav. Co. Chancery Court

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

KATHERINE MCGILL,)
)
Plaintiff,)
)
v.)
) Case No. 95-3015-1
RHONDA S. JOHNSTON, et. al.)
)
Defendants.)

FILED
31 OCT 3 AM 9 32
DAVIDSON CO. CHANCERY CT.
D.C. & M.

BOOK 10670 PG 438

ORDER

This matter came before the Court at its regularly scheduled motion docket on Friday, October 31, 1997 upon the Motion of the Defendant, Rhonda S. Johnston ["Ms. Johnston"], for an order compelling the sale of property and for the division of expenses. The Court has considered that Motion and the history of this case which is as follows:

The Plaintiff's Complaint requested that she be declared the legal and equitable owner of a one-half undivided fee simple interest in the property which is the subject of this lawsuit and which is located at 1468 Tyne Boulevard, Nashville, Tennessee ["the property"]. The property is more fully described in **Exhibit A** hereto. The Plaintiff requested that she also recover her attorney's fees pursuant to the discretionary provisions of Tennessee's Partition Statute, which is codified at T.C.A. § 29-27-121.

Ms. Johnston asserted certain counterclaims, the gravamen of which are based in tort. By earlier Order, the tort claims were transferred to Circuit Court.

Both parties seek to recover certain expenses associated with the maintenance of the property.

On April 25, 1997, this Court granted Plaintiff summary judgment, declaring her to be the owner of a one-half undivided fee simple interest in the property. The Court also ordered that the property be sold and that the proceeds be paid to the Clerk and Master pending further orders of this Court. Thereafter, the Court amended its Order granting summary judgment. Specifically, by

Order dated July 1, 1997, this Court held that the debt on the property which is secured by Ms. Johnston's deed of trust shall be paid at the closing of the sale of the property but from that portion of the proceeds representing Ms. Johnston's one-half undivided fee simple interest.

The parties have now entered a contract to sell the property. The sale is scheduled to close on Monday, November 3, 1997. Before this Court is the Motion of Ms. Johnston to compel the sale and to order that she be reimbursed, from closing, for certain expenses. Inasmuch as the property is scheduled to be sold, that portion of Ms. Johnston's Motion which seeks to compel a sale is rendered moot.

The Plaintiff has responded to that portion of Ms. Johnston's Motion which requests reimbursement for expenses at closing. The Court has considered that Motion and believes that it is not well taken.

The only remaining issues before this Court are the Plaintiff's claim for attorney's fees and the claims of both parties for expenses incurred in connection with the property. In light of these circumstances, the Court believes that the remaining issues between the parties should also be transferred to Circuit Court for adjudication at the trial which is already scheduled for April 21, 1998. Accordingly,

IT IS ORDERED, ADJUDGED AND DECREED that upon the closing of the sale of the property that the proceeds, net of usual and customary closing costs, shall be divided equally between the Plaintiff and Ms. Johnston. The property is currently encumbered by a deed of trust which is of record at Book 9119, Page 183, Register's Office for Davidson County, Tennessee. The debt which is secured by that deed of trust shall be paid at the closing of the sale of the property and shall be paid from that portion of the proceeds representing Ms. Johnston's one-half undivided fee simple interest.

The costs of this matter shall be taxed to Plaintiff and Ms. Johnston, equally. Finally, the Court has determined, pursuant to Rule 54.02, T.R.C.P., that this Order should be a final Order,

there being no just reason for delay. Accordingly, the Court directs that this Order be entered as a final judgment on all claims not transferred to Circuit Court.

The lien *lis pendens* which was recorded by Plaintiff is hereby released.

IT IS SO ORDERED.

Irvin H. Kilcrease, Jr.
Chancellor

I hereby certify that this is a true copy of original instrument filed in my office.
This 3rd day of November 1997
CLAUDIA C. BONNYMAN Clerk & Master
By _____ Deputy Clerk

Submitted for Approval:

Winston S. Evans (#6281)
Phillip B. Jones (#14125)
EVANS, JONES & REYNOLDS
A Professional Corporation
1810 First Union Tower
150 Fourth Avenue, North
Nashville, TN 37219-2424
(615) 259-4685

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ORDER has been served via **Facsimile Transmission** upon:

Mark C. Scruggs
Cavalier Bldg., Suite 119
95 White Bridge Road
Nashville, TN 37205

and via **U.S. Mail, Postage Prepaid** upon:

Jed P. Sonstroem
Vice President & Asst. General Counsel
Fleet Mortgage Group, Inc.
1333 Main St., Suite 700
Columbia, SC 29201

this 31st day of October, 1997.

Phillip B. Jones

331300lk.048

RECEIVED
1997 NOV -4 AM 11:02
DAVIDSON COUNTY, TN.
REGISTER'S OFFICE

0365995
IDENTIFICATION REFERENCE

EXHIBIT "A"

STATE OF TENNESSEE
COUNTY OF DAVIDSON

THE ACTUAL CONSIDERATION OR VALUE, WHICHEVER IS GREATER, FOR THIS TRANSFER IS $ 187,500.00

Affiant

SUBSCRIBED AND SWORN TO BEFORE ME, THIS THE 5th DAY OF October, 1993

Notary Public

MY COMMISSION EXPIRES 1-21-94

BOOK 9119 PAGE 180

BOOK 10670 PG 441

THIS INSTRUMENT WAS PREPARED BY *
LAWYERS TITLE INSURANCE CORPORATION
424 Church Street, Suite 200, Nashville, Tennessee 37219
* Suite 201, 104 Woodmont Blvd., Nashville, TN 37205

ADDRESS NEW OWNER(S) AS FOLLOWS	SEND TAX BILLS TO:	MAP-PARCEL NUMBER
Rhonda S. Johnston (NAME)	Chemical Bank N.A. (NAME)	Map 145-2
1468 Tyne Blvd. (STREET ADDRESS OR ROUTE NUMBER)	P.O. Box 341650 (STREET ADDRESS)	Par 64
Nashville, TN 37215 (CITY) (STATE) (P.O. ZIP)	Worthington, Ohio 43234-1650 (CITY) (STATE) (ZIP)	160A-37095

FOR AND IN CONSIDERATION OF THE SUM OF TEN DOLLARS, CASH IN HAND PAID BY THE HEREINAFTER NAMED GRANTEES, AND OTHER GOOD AND VALUABLE CONSIDERATIONS, THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, WE, Philip F. Ferrara and wife, Lynn Ferrara

HEREINAFTER CALLED THE GRANTORS, HAVE BARGAINED AND SOLD, AND BY THESE PRESENTS DO TRANSFER AND CONVEY UNTO Rhonda S. Johnston

HEREINAFTER CALLED THE GRANTEES, THEIR HEIRS AND ASSIGNS, A CERTAIN TRACT OR PARCEL OF LAND IN Davidson COUNTY, STATE OF TENNESSEE, DESCRIBED AS FOLLOWS TO-WIT

BEING Lot No. 2-A on the Plan of Zone Lot Division, Lot 2, a Re-subdivision of Lots 2 and 3 of the Resubdivision of Lot 29, Section Seven, Tyne Crest, of record in Book 5210, Page 340, as amended in Book 5800, Page 380, and as amended in Book 6250, Page 119, all in the Register's Office for said County, to which Plan and record thereof reference is herein made for a more detailed and complete description.

BEING the same property conveyed to Philip F. Ferrara and wife, Lynn Ferrara by deed of record in Book 6717, Page 19, Register's Office for Davidson County, Tennessee.

This conveyance is subject to Restrictive Covenants and all matters appearing on the Plan of record in Book 5210, Page 340, as amended in Book 5800, Page 380, and as amended in Book 6250, Page 119, all of record in the Register's Office for said County.

3436 10/19 0101 03CHECK 702.75

It is not the intention of the Grantors herein to reimpose said Restrictions.

1468 Tyne Blvd. (Street Address) Nashville, TN 37215 (City or Town)

TO HAVE AND TO HOLD the said tract or parcel of land with the appurtenances thereto belonging, to the said GRANTEES, their heirs and assigns, forever; and we do bind ourselves, our heirs and representatives, to warrant and forever defend the title to the said land to the said GRANTEES, their heirs and assigns, against the lawful claims of all persons whomsoever, except the taxes for the present year and the year of any proper deed the approximate to all parties.

Witness our hand(s) this 12TH day of October, 1993

Philip F. Ferrara

Lynn Ferrara

RECORDERS MEMO
LEGIBILITY OF WRITING, TYPING OR PRINTING IN THIS DOCUMENT UNSATISFACTORY WHEN RECEIVED

7550 11/04 0101 03CHECK

16.0