

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY DIVISION**

2020/CLE/gen/00169

IN THE MATTER of the provisions of the Partition Act, Chapter 153.

IN THE MATTER OF ALL THAT piece parcel or lot of land situated in the Subdivision called and known as “**BEL-AIR ESTATES**” situate on the Southern side of Carmichael Road approximately Seven thousand Nine hundred (7,900) feet West of Blue Hills Road in the Carmichael Constituency of the Island of New Providence, one of the Islands of the Commonwealth of The Bahamas being Lot Number Twenty-five (25) on the plan of the said Subdivision which said piece parcel or lot of land has such position boundaries marks shape and dimensions as are shown on the plan of the said Subdivision.

BETWEEN

MAGALIE HUMES

AND

KENESHA FRANCEKA HUMES

(A minor by **MAGALIE HUMES**, her mother and next friend)

Plaintiffs

AND

(1) PRESLEY HUMES

(2) CLARINA HUMES MCKENZIE

(3) ESTATE OF ANTOINETTE HUMES, DECEASED

(4) KEVIN HUMES

(5) STEVEN HUMES

Defendants

Before The Hon Mr. Justice Neil Brathwaite

Appearances: Attorneys Andrew McKenzie and Owen Wells for the Plaintiffs

Attorney Darrell Taylor for the Second Defendant

Date of Hearing: 3rd November 2021, 10th November 2021

DECISION

FACTUAL SUMMARY

1. This matter concerns the Court's power to order a sale under section 3 of the Partition Act, Ch. 153. The Plaintiff, Mrs. Magalie Humes married Mr. Francis Humes (deceased) in or about September 2000. Mr. Humes died intestate in 1999, leaving 9 children, 5 of whom are listed in this action as Defendants, and also the minor Plaintiff. The remaining 3 children of the deceased (Basil Humes, Leslie Humes and Shelton Humes) have transferred their beneficial interest in their deceased father's estate to the Second Defendant via Deeds of Release dated on various days in September 2010.
2. Before marrying the Plaintiff, Mr. Humes was wedded to Ethelyn Iona Humes (nee Brown) and they as joint tenants owned the property situated Lot #25 Faith Avenue ("the said property"). The couple raised their children of the marriage (the Defendants) in a dwelling structure erected on the property where they lived until the death of Mrs. Ethelyn Humes. A second structure located at the rear of the first structure was also in the initial stages of construction by the couple. Upon the death of Ethelyn Humes in or about 1999, Mr. Humes became the sole owner of the property under the doctrine of survivorship.
3. The Plaintiff and Mr. Humes married in 2000, and Mr. Humes completed the second dwelling structure, in which he and the Plaintiff cohabitated along with their child, the minor Plaintiff. This became the matrimonial home for the Plaintiff and Mr. Humes. Following the death of Mr. Humes in 2007, the Plaintiff remained resident in the second structure. The Second Defendant, who had relocated from the homestead for a brief period, had returned in 2009 to the first structure and made renovations to the same. Subsequently, the relationship between the Plaintiff and the Defendants, mostly the Second Defendant, broke down. This is evidenced by numerous police reports and complaints made and judicial actions to keep the peace between the parties.
4. On 8 April 2010, the Plaintiff was granted Letters of Administration in Mr. Humes' estate. Unfortunately, on 26 April 2019, the second structure in which the Plaintiff resided received extensive damage due to a fire. The Plaintiff has since engaged realtors to list the property for sale without the consent of the Defendants. The Second Defendant claims proprietary rights to the property and desires the property to remain with the Defendants (children of the first marriage).
5. The Plaintiff commenced this action pursuant to the Partition Act for the court to order a sale of the property so that the parties may receive their just share under the Inheritance Act, Ch. 116.

PROCEDURAL HISTORY

6. The Plaintiffs initiated this action via Originating Summons and Affidavit of Magalie Humes, both filed on 6 February 2020. The Plaintiffs sought an order for the sale of the property and also that the Defendants execute a conveyance to complete the said sale and that the net proceeds after due deductions be divided according to the intestacy rules. The Second Defendant was the only Defendant to enter a Notice and Memorandum of Appearance in the matter on 4 March 2020. The Second Defendant also filed a Defence on 4 September 2020, in which she sought an order dismissing the Plaintiffs' application, and an order to be granted a life interest in the subject property.
7. All Defendants were served in the matter, however Basil Humes, Leslie Humes and Shelton Humes expressed no interest in defending the matter, and as such transferred their rights to the Second Defendant. Additionally, Antoinette Humes predeceased this action in 2010 before obtaining a share in the estate. Thus, her son Jeremy Tynes was served on behalf of her estate.
8. The trial of this matter was conducted on 3 and 10 November 2021. The Plaintiff, Mrs. Magalie Humes was the only witness in the matter and was proffered for cross-examination.

THE PLAINTIFF'S CASE

9. It is the Plaintiff's position that by virtue of the conveyance dated 29 June 1982 between Mr. Humes and Mrs. Ethelyn Humes, on the one part and Budget Properties Limited on the other part, the Humes' owned the property as joint tenants. As a result of the death of Mrs. Ethelyn Humes, Mr. Humes became seized with the entire interest in the said property. The Plaintiff asserts that by virtue of intestacy rules, she as the widow of Mr. Humes, is entitled to one-half of his estate, and his children are equally entitled to the remaining half. The Plaintiff relies on section 4(1) of the Inheritance Act, Ch. 116.
10. The Plaintiff grounds her application for partition on sections 3 and 4 of the Partition Act, and submits that the Court may order the sale or division of the property. The Plaintiff accepts that partition usually requires either an agreement by all persons interested in the property, or an order of the Court. The Plaintiff further contends that by owning one half or more of the interest in the land, considering the minor Plaintiff's share also, the Court must accede to the application to order a sale of the property, unless there is good and sufficient reason for doing otherwise, pursuant to section 4 of the Partition Act. The Plaintiff contends that the parties are unable to coexist peacefully and that the property is too small to physically partition between 7 interested persons. The Plaintiff asserts that there are no good or sufficient reasons for the Court to not direct a sale of the property.
11. The Plaintiff asserts that once there is good title to the land, an interested party is entitled to some form of relief under the Partition Act and cited the authority of *Parker v Gerard (1754) Amb. 236* in this regard. The Plaintiff asserts that her husband, Mr. Humes was the one true owner of the

property despite assertions from the Defendants that one Luzemo Youte is the individual listed in the conveyance as the owner.

Evidence

12. The First Plaintiff was cross-examined in court on the evidence provided in her Affidavit. On cross-examination, the First Plaintiff indicated that she was married to Mr. Francis Humes and has no knowledge of Luzemo Youte. The Plaintiff expressed confusion about the appearance of Youte's name on the Conveyance which the Defendants say is the conveyance relating to the property.
13. The First Plaintiff denies having discussions with Clarina Humes, the Second Defendant, regarding the property, as their relationship is volatile. The Plaintiff admits to consulting with Real Estate agents in an attempt to sell the property, having been granted Letters of Administration for Mr. Humes' estate. The Plaintiff further recounted numerous incidents with the Second Defendant which resulted in police involvement and legal action being taken to keep the peace.
14. The First Plaintiff recounted that she lived along with Mr. Humes and her two children, Shelton and Presley Humes in the front house for more than one year after getting married, after which they moved into the back house once it was completed. The First Plaintiff also stated that following the death of Mr. Humes, she resided in the back house with her two children, her mother and Shelton Humes.
15. As it relates to the fire in 2019, the Plaintiff testified that the back house was not entirely burnt. She stated that only her bedroom and her mother's bedroom were burned. However, the kitchen, front room and the children's room were never burned. There was no re-examination of the witness.

THE SECOND DEFENDANT'S CASE

16. It is the Second Defendant's position that the court should not order a sale of the property in question. Being an interested party to the Partition of the property, the Second Defendant objects to the sale of the property for the reasons outlined in her Submissions at IV which provide:

“It is submitted that the Plaintiff's application should be dismissed on the following grounds –

- a. The Plaintiff did not obtain the wishes of [the] beneficiaries;
- b. The Plaintiff did not comply with her duties under the Probate and Administration of Estates Act by not disclosing to [the] court the entirety of [the] Estate;
- c. The hardship that would be caused to the interested parties;
- d. The partition of the property would best be served by a partition of the property rather than a sale;

e. The Second Defendant has a proprietary interest in the property”

17. The Second Defendant contends that she and the Plaintiffs are the interested parties to this action as they would be directly affected by the sale or partition of the property. The Second Defendant submits that the Plaintiff had not sought the wishes of the interested parties before making an application to have the property partitioned. It is further contended that the Plaintiff has not adhered to section 4 of the Partition Act and section 63 of the Probate and Administration of Estates Act before making the application. The Second Defendant accepts that the parties have at times not been able to co-exist peacefully, but highlights the fact that there have been times when they all lived peacefully. The Second Defendant takes as an example times shortly after the passing of her father, when the parties were able to co-exist peacefully on the property with the Plaintiffs dwelling in the back house and she in the front house.
18. Moreover, the Second Defendant claims that if the court were to order a sale of the property, that she and the Third Defendant who reside in the home would be directly affected and would suffer great hardship as they would be destitute. The Second Defendant contends that if the court orders a sale of the property, the proceeds of the sale after just expenses are paid would be less than \$100,000.00 to be divided amongst the beneficiaries as the property’s appraised value is \$250,000.00. The Second Defendant claims that this sum is insufficient to provide proper housing for herself.
19. The Second Defendant also submits that the property was not proven to form part of Mr. Humes’ estate. She contends that at the time when her late mother Mrs. Ethelyn Humes and Mr. Humes signed the conveyance to the property, that Mr. Humes’ real or birth name was actually Lexzemo Youte, who was a Haitian national. The Second Defendant stated that the effect of this is that the conveyance between Mrs. Ethelyn Humes and Mr. Humes would be void, and that Mr. Humes would only then be entitled to one-half of his wife’s estate. Thus, the Plaintiff would only be entitled to one-half of Mr. Humes’ half of the property inherited from his late wife. The Second Defendant acknowledged that no evidence was placed before the court in this regard other than the Plaintiff being cross-examined on the issue, which she denied. In any event, the Second Defendant asserts that the Plaintiff has not given an account of the estate of Mr. Humes in her role as Administrator.
20. The Second Defendant further raised the doctrine of proprietary estoppel to advance the argument that she relied on a representation made to her by her late father on his sick bed that the front house was left for the children of the first marriage. The Second Defendant contends that she relied on this representation to her detriment as she invested in the property by making renovations and improvements. The Second Defendant relies on *Dann v Spurrier (1802) Ves 231* to assert the point that she made renovations with the knowledge of the Plaintiff, who did not discourage but acquiesced in her renovations of the property, thus the court should recognize the Second Defendant’s proprietary interest and not allow the Plaintiff to sell the property to part with said interest. It is the Second Defendant’s position that the court can order a partition of the property

as there has already been an implicit partition with the parties living uninterrupted in the front and back houses.

LAW AND ANALYSIS

21. The question arises whether the demised property falls within the ambit of Mr. Humes' estate. It is useful for the purpose of this ruling to first address this issue before considering whether the court should accede to the application of the Plaintiffs. The Second Defendant submits that at the time her late mother Ethelyn Humes and Mr. Humes executed the conveyance, that Mr. Humes' real name was Lexzemo Youte and not Francis Humes as shown on the conveyance. She submits that as a result, the conveyance is void. There has been no evidence lodged before this court in respect of this contention. What is before me is a conveyance dated 29 June 1982 from Budget Properties Limited to Ethelyn Iona Brown and Francis Humes. One Ms. Elizabeth Sawyer, as a witness to the execution of the conveyance swore that she witnessed Ethelyn Brown and Francis Humes sign, seal, execute, and deliver the Indenture of Conveyance. As such, there is no factual basis for the Second Defendant's claim, which I find to be without merit. Further, the Second Defendant proposes that she is entitled to a share in the property and wishes for this court to grant her a life interest in the property and acknowledge her proclaimed proprietary interest on the one hand, but also claims that the conveyance is void on the other. The assertion that due to the conveyance being void Mr. Humes was only to benefit to the extent of one half of his former wife's share in the property is ill-reasoned. If it were the case that the conveyance was void due to Mr. Humes using an alias, the effect of this would be that Ethelyn Humes nor Mr. Humes would have any legal interest in the property, leaving nothing to devolve on their beneficiaries.
22. The Partition Act, Ch. 153 is a dated piece of legislation stemming from 1890. This Act, although infrequently used, endows the court on its equity side with the power, upon application, to divide or order a sale of a property in question for the benefit of the interested parties. This is pursuant to sections 3 and 4 of the Act which reads:

“3. In a suit for partition, where, if this Act had not been passed, a decree for partition might have been made, then if it appears to the court that by reason of the nature of the property to which the suit relates, or of the number of the parties interested or presumptively interested therein, or of the absence or disability of some of those parties, or of any other circumstance, a sale of the property and a distribution of the proceeds would be more beneficial for the parties interested than a division of the property between or among them the court may if it thinks fit, on the request of any of the parties interested and notwithstanding the dissent or disability of any others of them direct a sale of the property accordingly, and may give all necessary or proper consequential directions.

4. In a suit for partition where, if this Act had not been passed, a decree for partition might have been made, then if the party or parties interested

individually or collectively, to the extent of one moiety or upwards in the property to which the suit relates request the court to direct a sale of the property and a distribution of the proceeds instead of a division of the property between or among the parties interested, the court shall, unless it sees good reason to the contrary, direct a sale of the property accordingly, and give all necessary or proper consequential directions.”

23. The interplay of these sections has been considered in *Pemberton v Barnes [1861-73] All ER Rep Ext 1328* where the Court of Appeal of England said as follows:

“In the 3rd section it deals with the case which frequently happens where there is extreme inconvenience in partition. We are all familiar with the absurdities to which the partition of a single house has sometimes given rise, and there are many cases where a partition would be inconvenient in the extreme. The Legislature has in the 3rd section provided a complete remedy for this by empowering the court, in a case where there would be grievance and hardship in a partition, to sell, on the application of any party, notwithstanding dissent or disability on the part of any or all, it might be, of the other parties. The 4th section seems to me to be perfectly distinct from the 3rd, for whereas the 3rd section in terms applies only where the court is satisfied that a partition is inconvenient and not beneficial for the parties, there is no such condition inserted in the 4th section; and whereas under the 3rd section a discretionary power was given to the court to order a sale, if it thought a sale more beneficial than a partition, the 4th section makes it imperative on the court, in a certain state of circumstances, to order a sale, unless it sees good reason to the contrary, that is to say, the onus is thrown on the person who says that the court ought not to order a sale, to show some good reason why it should not do so; otherwise the court is bound to order it. The scope of the enactment appears to me to be this: there being, as I have said, reasons which may induce some of the part owners to wish for a partition, and others to wish for a sale and a division of the proceeds, the Legislature says that if the votes are equally divided, one-half of the persons interested in the property desiring a sale, and the other half a partition; then the half requiring the sale shall have the preponderating voice, and the court shall be bound to give them a sale wholly irrespective of the 3rd section. But still there is a certain discretion left to the court, so that the court can refuse a sale where it is manifestly asked for through vindictive feeling, or is on any other ground unreasonable.”

24. The parties to this action, both Plaintiffs and the Defendants, are all considered interested parties in this matter. This is due to the fact that they are all beneficiaries of Mr. Francis Humes’ estate being his spouse and children, as Letters of Administration were granted in 2010, entitling them to a share of the estate pursuant to section 4 of the Inheritance Act, Ch. 116. Further, at some point

in time, all parties resided at the demised property and consequently claimed a portion of the interest in the property.

25. As a partition affects the rights of all interested parties, it is generally ordered upon application where the parties all agree to the partition. The learned author Sampson Owusu of Commonwealth Caribbean Land Law stated at Chapter 9 of the text, pages 355-356 that:

“Under the common law it is permissible for all the co-owners of full age to partition the land if they all agree. The unity of possession will then be destroyed and each of them will own his allotted piece exclusively.”

26. This however does not bar a co-tenant from applying to the court to have a property partitioned or sold individually pursuant to the Act. As garnered from the evidence and submissions made in this matter, it is clear to the Court that the parties do not agree to the partition of the property. The Plaintiffs have made an application for the sale of the property and not partition for the reason that the parties cannot co-exist amicably. The Second Defendant on the other hand opposes that application and asks the court to grant partition, so as to ensure security for herself and her co-defendants. The Second Defendant is of the view that there is a possibility that the parties can co-exist peacefully as they did in the past.

27. To order a sale on the application of the Plaintiffs, Hatherley L.C in *Pemberton v Barnes* stated that:

“1. The Court is at liberty, at the request of a person holding one-tenth and against the wishes of the persons holding the other nine-tenths, to order a sale, if from the nature of the property, or from the number of the persons interested, the Court thinks it right and reasonable to do so.

2. If the Court finds that the parties entitled to a moiety or upwards desire a sale, the Court must order it, unless some good reason is shewn to the contrary, or

3. Unless the persons objecting to a sale offer to purchase the shares of the parties desiring it, in which case the Court has the discretion to authorize them to do so.”

28. Owusu summed up the legal position as it relates to ordering the sale of a property under the Partition Act. At page 359 of the text cited above, he states:

“The question then is, would the sale of the property be more beneficial, considering the nature of the property and the number of the parties. For a sale to be ordered, the court should be satisfied that it would be beneficial

to the parties in a pecuniary sense. The court should not go into questions of sentiment. It should only weigh the monetary results.

Where the petition for sale is brought by a co-tenant or tenants who own a half or greater share of the property the court has a very narrow discretion to refuse a sale. For in that situation the court is obliged to accede to the petition for sale. That is the only instance in the three circumstances outlined above that the word “shall” is used by the Partition Act in the U.K., which is the same as the partition statutes in the Caribbean. Unlike the situation where an order of sale is sought by a co-tenant with less than half a share in the property, there is no need for a co-tenant who has a half or greater share to prove that a sale would be more beneficial than physical division of the property. The court is enjoined to have the property sold “unless it sees good reason to the contrary.”

29. In the affidavit of Magalie Humes filed 6 February 2020, the Plaintiff recounts being harassed and verbally threatened by the Second Defendant. Exhibited at MH-5 are three police complaints made October 2008, August 2009 and October 2009 against Clarina Humes and Presley Humes. The Plaintiff reported vandalism of her vehicle, battery of her person and threats to use a weapon to inflict harm. These complaints are of a serious nature and resulted in the Plaintiff making an application to the Court to have the Second Defendant bound over to keep the peace toward the Plaintiff for one year. The Plaintiff states that there was a period in 2010 during which the parties came to a truce as she took up residence in the back house, and the Second Defendant in the front house. However, she averred that the truce did not last very long and the threats and harassment resumed, leading her to seek legal advice on selling the property. Following the fire in 2019, the Plaintiff avers that the Second Defendant seized control of the property and erected a fence to exclude her. She states that she is refused access to the back house and her possessions or even to resume occupation of the house.
30. In the Second Defendant’s affidavit, she admits that the relationship between herself and the Plaintiff became tumultuous after she relocated to the demised property following the death of her father. The Second Defendant recounts that she was harassed and verbally assaulted by the Plaintiff, who also made false complaints to the police regarding her. The Second Defendant also alluded to a recent police report filed on 15 February 2019 by the Plaintiff alleging harassment by the Second Defendant. That police report is not in evidence before this Court. The Second Defendant states that the Plaintiff lived in the back house on the property uninterrupted until the fire in 2019.
31. It is clear from the affidavits of the parties and the cross-examination of the Plaintiff that the Plaintiff, the First Defendant and the Second Defendant share a volatile relationship which I do not foresee would improve by ordering a partition. There has been an attempt by the parties to co-exist under an informal partition, however, that has proven to be futile. Although the Second Defendant claims that it is possible for her and the Plaintiff to co-exist on the property, so that the

Court would not order a sale, such a co-existence would be fraught with difficulties, given the nature of the relation.

32. I turn now to consider the nature of the property. Based on my understanding there are two homes situated on the property, referred to as the front house and the back house. As I have indicated above, there appeared to have been some informal partition of the property with the Second Defendant residing in the front house, and the Plaintiffs residing in the back house. Although there is a clear demarcation, even with the informal partition there was still a rift between the parties. To access the back house, the Plaintiffs would need to traverse the front area of the property as an easement. To my mind, this could create a breeding ground for future disputes to arise, and an easy way to restrict access, which the Plaintiff claims is the circumstance now.
33. In order to order a partition as opposed to a sale, the court would have to be satisfied that the division of the property would be more beneficial to the parties than a sale. I see no basis for me to be so satisfied. I also note that, pursuant to section 4 of the Partition Act, it is imperative on the court, unless good reason is shown to the contrary, that a sale be ordered. I do not consider potential hardship to the defendants to be a sufficient reason to refuse a sale, particularly in circumstances where the refusal would equally result in hardship to the Plaintiff.
34. Further, there cannot be a clear-cut split by partitioning off the front house to the Defendants and the back house to the Plaintiffs. As the wife of Mr. Humes who died intestate, the Plaintiff, is entitled to 50% of his estate pursuant to section 4 of the Inheritance Act. The other 50% of his estate, is to be equally divided between his 9 children, three of whom vested their interest in the Second Defendant. Thus, the minor Plaintiff would be entitled to 1 of 9 shares in the 50%, totaling 5.55%. Combined with her mother's shares, the Plaintiffs have a total of 55.5% shares in Mr. Humes' estate. In the appraisal report exhibited at "MH-8" to the Plaintiff's affidavit, reference is made to both houses, however, there was no alienation of the appraisal value for each house on the property, only the property as a whole. More significantly, the back house is described to be much smaller than the front house with only 2 bedrooms and 1 bathroom, as opposed to 4 bedrooms with 2 bathrooms. As such, this Court cannot determine that partitioning the property as prayed for by the Second Defendant would allot the Plaintiffs their just share of the property. I must also consider that of all the Defendants, the Second Defendant is the only person opposing the sale of the property. There have been no appearances entered by the other Defendants or any averments made on their part in opposition to the application, although I accept that several of them have ceded their interests to the Second Defendant.
35. The Second Defendant claims that the Plaintiff should be estopped from selling the property, placing reliance on *Thorner v Major [2009] UKHL 18*, to advance the point that a promise was made to her by her father that the front house was for the children of the first marriage, and that she relied on this promise to her detriment by expending funds to upgrade the house. Proprietary estoppel is an equitable doctrine that can be invoked to enforce the terms of a representation made. In *Thorner*, the court considered Hoffmann LJ's statement in *Walton v Walton (14 April 1994, unreported)* at paragraph 12, where he stated:

“equitable estoppel [by contrast with contract] ... does not look forward into the future [it] looks backwards from the moment when the promise falls due to be performed and asks whether, in the circumstances which have actually happened, it would be unconscionable for the promise not to be kept.”

36. The Second Defendant’s contention that there was an intention for Mr. Humes to leave the front house to the children of the first marriage is supported only by her affidavit, in which she says that the day before his passing, she along with her brother Shelton were summoned to the hospital, where her father apologized for his treatment of her, and said that she and her brother were “straight”, and that the house was for “Mammy’s children”. There is no evidence from Shelton. The court is therefore left to consider only the affidavit of the Second Defendant. In considering that evidence, I note also that the Second Defendant states that she moved back to the subject property two years after the death of her father, after which problems began to arise. Prior to that time, the Second Defendant also indicated that she contacted the Plaintiff about allegations of harboring illegal immigrants. The Second Defendant also states that the relationship became tumultuous whenever the Plaintiff was warned about the behavior and practice of ostensibly harboring illegal immigrants.
37. The Second Defendant has also claimed to have expended sums of money in conducting repairs after she moved back into the subject property operating on the said promise of her father. No evidence has been provided to substantiate these expenses.
38. In considering the issue of a proprietary estoppel, the court must first be satisfied that a promise was made. The claim is based solely on the evidence of the Second Defendant. In considering that evidence, in addition to the clearly acrimonious nature of the relationship after the Second Defendant re-occupied the premises, I also note that, in her affidavit, the Second Defendant states at paragraph 19 that “we all lived in harmony and uninterrupted on the subject Property with my siblings and immediate family residing in structure 1, and my father the late Francis Humes and the Plaintiff residing in structure 2, which also housed an apartment and was shared with my brother Shelton Humes until such time as my father’s passing on 7th July 2007.” This is at odds with the Second Defendant’s evidence that she did not live there for seven years when she was married, and moved back in 2009. It would therefore follow that she was not living there between 2002 and 2009, contrary to her assertion at paragraph 19 as quoted above.
39. In my view, the Second Defendant’s affidavit is self-serving and lacking in credibility. Given the nature of the relationship between the parties, and the lack of any evidential support, particularly from Shelton who, according to the Second Defendant, was present during the conversation in the hospital, I do not accept that any such promise was made. It therefore follows that no reliance could be placed on such a promise. Accordingly, I reject the claim of the Second Defendant for any proprietary interest, or for compensation for the unsubstantiated claim for sums expended by her on the property after she reoccupied the premises.

40. Additionally, the Second Defendant submits that she would be destitute if the court were to order a sale of the property. The Second Defendant claims that funds from the sale would not be sufficient, once divided, to provide her with alternative accommodation. I do not accept that this is the case. The Second Defendant has 4 of 9 shares of 50% of the estate which totals some 22%. The appraised value of the property in 2010 was \$216,000.00. This would then mean that at the least the Second Defendant would be entitled to some \$47,520.00 upon the sale of the property subject to reasonable fees. There is also nothing barring the Second Defendant and co-Defendants from applying their divided share of the sale proceeds to purchase the home once it is listed for sale. Upon consideration of all the grounds raised by the Second Defendant, I am not satisfied that any of these provided good reason for me not to order a sale of the property.

CONCLUSION

41. This is a very unfortunate case involving disputes between the initial children of a surviving spouse, who then moved on to establish a marital home with a new spouse. It is unfortunate that more attention is not paid to the organizing of affairs in circumstances where conflict may possibly arise. In all the circumstances of this case, I am not satisfied that there are any good reasons which would justify the refusal of a sale, and I am satisfied that to order the sale of the property would be more beneficial to the interested parties as opposed to a partition for the reasons given above. I therefore accede to the application of the Plaintiffs, and order that the property be sold, and the proceeds divided among the parties pursuant to their respective entitlements under the Inheritance Act. Costs are granted in favour of the Plaintiffs to be paid by the Second Defendant, and are to be taxed if not agreed.

Dated this 22nd day of March, A.D. 2024



Neil Brathwaite

Justice

