

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>PATRICIA A. REBUCK,</b>	:	
<b>Plaintiff</b>	:	
	:	
<b>v.</b>	:	<b>No. 06-01,216</b>
	:	<b>CIVIL ACTION</b>
<b>ELWOOD H. DEWALT,</b>	:	
<b>Defendant</b>	:	<b>NON-JURY TRIAL</b>

**OPINION AND ORDER**

This matter is before the Court for non-jury trial disposition. Trial in this matter was held on August 6, 2007. The Plaintiff is seeking one-half (1/2) the costs (i.e. taxes, insurance, and miscellaneous maintenance costs) associated with maintaining the property that she owns as tenants in common with the Defendant, her brother, that she has incurred since becoming a tenant in common with the Defendant in April 1999. The Plaintiff is also requesting that the Court enforce the March 2006 Stipulation whereby the Defendant agreed to buy out the Plaintiff's one-half (1/2) interest in the property at issue for a set price by a specific date. Conversely, the Defendant contends that the Plaintiff is solely responsible for the costs associated with maintaining the residence at issue by virtue of a lease agreement whereby she, as landlord, assumed said costs. The Defendant has also filed a counterclaim seeking a private sale of the property at issue and damages that he alleges are necessary to restore the property because, as he contends, the Plaintiff has, for the past eight years, allowed the property to severely deteriorate.

After a review of the evidence presented at the trial, the Court makes the following findings of fact.

### **Findings of Fact**

1. The Plaintiff and the Defendant are siblings.
2. On April 30, 1999, the parties acquired title to the property at issue, from their parents, as tenants in common.
3. On that same date, the Plaintiff entered into a lease agreement with the parties' parents whereby the parents, for the term of their natural lives, could use the property at issue as their personal residence. The Plaintiff and the parties' parents were the only signatories to the lease agreement.
4. Sometime in June/July 1999, the parties' parents relocated from the property at issue to the Plaintiff's residence where they remained until the parties' mother's death in August 2003 and the parties' father's death in May 2005. The property at issue has remained unoccupied since June/July 1999 through the present.
5. As early as 2000, the Plaintiff, on several occasions, both directly and through her counsel, contacted the Defendant and notified him of his responsibilities (e.g. payment of one-half (1/2) the taxes and insurance associated with the property at issue and maintenance of the property at issue) regarding the property at issue.
6. Despite the Plaintiff's aforementioned efforts and aside from a one-time reimbursement payment<sup>1</sup> in June 2000 and limited recent lawn care efforts,

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<sup>1</sup> On June 22, 2000, the Defendant reimbursed the Plaintiff \$211.92 for one-half (1/2) of the taxes she paid on the property at issue in the spring of 2000 and \$75.50 for one-half (1/2) the quarterly insurance payment she paid on the property at issue that year.

the Defendant has failed to contribute, assist, or initiate any effort to maintain the property at issue.

7. From April 1999 through the present, the Plaintiff has paid the taxes, insurance, and maintenance costs associated with the property at issue.
  - a. From 2000 through 2006, the Plaintiff has paid eight thousand nine hundred sixty-one dollars and forty-six cents (\$8,961.46) for taxes related to the property at issue.
  - b. From 2000 through 2006, the Plaintiff has paid three thousand five hundred thirty-four dollars (\$3,534.00) for insurance related to the property at issue.
  - c. From 2000 through 2006, the Plaintiff has expended three hundred twenty-eight dollars and eighty-one cents (\$328.81) for maintenance costs associated with the property at issue.
8. In November 2002, the Plaintiff obtained a judgment against the Defendant for one-half ( $\frac{1}{2}$ ) the insurance she paid for the property at issue in the amount of \$975.00.
9. On June 12, 2006, the Plaintiff filed the instant partition action.
10. On November 20, 2006, the Defendant paid the November 2002 judgment the Plaintiff obtained against him.
11. On December 19, 2006, this Court, pursuant to the consent of the parties, ordered a partition of the property at issue.
12. By further agreement of the parties, on March 6, 2007, this Court approved a Stipulation of the parties whereby the Defendant agreed to purchase the

Plaintiff's one-half (1/2) interest in the property at issue for thirty-five thousand (\$35,000.00) dollars no later than March 12, 2007.

13. On April 13, 2007, counsel for the Defendant notified this Court that his client was unable to raise the thirty-five thousand (\$35,000.00) dollars to purchase the Plaintiff's one-half (1/2) interest in the property at issue pursuant to the terms of the March 2007 Stipulation.
14. The Defendant's inability to raise the monies to fulfill his obligation under the Stipulation was addressed at the Pre-trial Conference before the Honorable Kenneth D. Brown on July 2, 2007. In his Pre-trial Conference Order, Judge Brown directed Defense counsel to notify the Court, no later than July 16, 2007, whether the Defendant was able to secure the monies to purchase the Plaintiff's one-half (1/2) interest in the property at issue pursuant to the terms of the March 2007 Stipulation and, based upon said notification, this Court would issue a decision on the Plaintiff's June 21, 2007 Petition to Compel Compliance with the March 2007 Stipulation.
15. On July 11, 2007, Defense counsel notified this Court that his client was still unable to secure the monies to purchase the Plaintiff's one-half (1/2) interest in the property at issue pursuant to the terms of the March 2007 Stipulation; this Court opted to address this issue prior to commencement of the August 6, 2007 non-jury trial in the instant matter.
16. Prior to commencement of the August 6, 2007 non-jury trial in the instant matter and after argument on the Plaintiff's June 21, 2007 Petition to Compel Compliance with the March 2007 Stipulation, this Court denied the Plaintiff's

Petition, but reserved a decision on the issue of costs associated with said Petition.

**Conclusions of Law**

1. As of April 30, 1999, the parties each own a one-half (1/2) interest in the property at issue.
2. The property at issue is valued, per stipulation of the parties, at seventy thousand dollars (\$70,000.00).
3. Upon consent of the parties, on December 19, 2006, this Court ordered a partition of the property at issue and scheduled a conference, pursuant to Pa.R.C.P. No. 1558, on the outstanding issues. In lieu of this conference, in March 2007, the parties entered into a valid and enforceable stipulation regarding the partition of the property at issue. Said stipulation called for the Defendant to buy-out the Plaintiff's one-half (1/2) interest in the property at issue; the Defendant, on more than one occasion, failed to remit this payment to the Plaintiff.
4. Based upon equitable considerations (i.e. the Defendant's good faith, yet unsuccessful, efforts to comply with the Stipulation) this Court will not hold the Defendant, as the Plaintiff has requested, in contempt for failure remit payment to the Plaintiff pursuant to the Stipulation, nor will the Court assess any costs upon the Defendant regarding said Contempt Petition.
5. The Plaintiff is entitled to at least one-half (1/2) the value, as stipulated to, of the property at issue either from the Defendant directly or some other buyer.

6. The lease entered into on April 30, 1999 between the Plaintiff and the parties' parents did not absolve the Defendant of his responsibilities (e.g. taxes, insurance, and maintenance) as related to the property at issue.<sup>2</sup>
7. Since April 30, 1999, the Defendant and the Plaintiff were each responsible for one-half (1/2) the costs necessary to maintain the residence.
8. From 2000 through 2006, the Plaintiff has expended a total of twelve thousand eight hundred twenty-four dollars and twenty-seven cents (\$12,824.27.00) on taxes, insurance, and maintenance costs associated with the property at issue.
9. The Defendant is responsible for one-half (1/2) of the above-quoted expenditures, less applicable credits, or five thousand one hundred forty-nine dollars and seventy-two cents (\$5,149.72).
10. The Defendant failed to present sufficient evidence at trial to support his counterclaim for alleged deterioration to the property at issue he claims to be the result of the Plaintiff's neglect of said property.

### **Discussion**

On December 19, 2006, this Court, pursuant to the consent of the parties, ordered a partition of the property at issue and found that the parties each owned a one-half (1/2) interest in said property. The Court reserved issuing a final decision and order, pursuant to Pa.R.C.P. No. 1570, pending a non-jury trial at which the parties would litigate the remaining contested issues (i.e. the Plaintiff's claim for reimbursement of one-half (1/2) the monies she expended on taxes,

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<sup>2</sup> Even if the lease between the Plaintiff and the parties' parents did obviate the Defendant's responsibilities as related to the property at issue, the lease became moot two months after it was entered into when the parties' parents ceased to use the property as their personal residence or at the latest, when the parties' parents died.

insurance and maintenance, less any credit applicable to the Defendant, since 1999, associated with the property at issue and the Defendant's counterclaim for damages he claims are the result of the Plaintiff neglecting the property at issue); the following discussion is in support of such a final order.

***The Plaintiff is entitled to one-half (1/2) the monies she has expended, less any credit(s), for taxes, insurance, and maintenance associated with the property she owns as a tenant in common with the Defendant***

Pennsylvania Rule of Civil Procedure 1570(a)(5) directs that, the Court's decision regarding a petition for partition shall include, *inter alia*, "the credit which should be allowed or the charge which should be made, in favor of or against any party because of . . . taxes . . . or other amounts paid, services rendered, liabilities incurred or benefits derived in connection therewith or therefrom". "[Co-tenants] are entitled to a credit for their respective share of the expenses related to the [r]esidence, including . . . property taxes, insurance, and maintenance costs." (citations omitted). *Swails v. Haberer*, 2004 U.S. Dist. LEXIS 17727, p. 21 (E.D. Pa. Aug. 30, 2004).

Instantly, it is not disputed that since acquiring the property at issue as a co-tenant with the Defendant in 1999, the Plaintiff has paid all the taxes, insurance and maintenance costs associated with said property. As such, it is clear to this Court that the Plaintiff is entitled to reimbursement for one-half (1/2) of those payments, from the Defendant, less any applicable credits for payments the Defendant may have already rendered.

***The Plaintiff is entitled to one-half (1/2) the value of the property (\$35,000.00) or one-half (1/2) the proceeds of a private sale of the property she owns as a tenant in common with the Defendant, whichever is more***

Normally, after the court enters an order of partition in any given matter, a preliminary conference is held, pursuant to Pa.R.C.P. No. 1558, at which the parties and the court consider,

*inter alia*, how to effectuate the partition or sale, and whether to appoint a master to assist in settling the matter. Here, the parties, in March 2007, without court interference or the aid of a master, entered into a Stipulation resolving the issue of partition. Specifically, the Stipulation directs that the Defendant would remit payment to the Plaintiff for thirty-five thousand dollars (\$35,000.00) (or one-half (1/2) the agreed upon value of the property at issue) by a particular date to buyout her interest in said property; the Defendant has continually failed to remit this payment despite requesting and receiving several extensions of time to do as much.

At the time of the August 6, 2007 non-jury trial in this matter, the Defendant again requested an extension of time in which to buyout the Plaintiff; however, the Defendant failed to offer any verification of his ability to obtain the monies to do as much. This Court does not believe that the Defendant will be able to obtain the monies necessary to comply with the parties March 2006 Stipulation; therefore, this Court believes that equity directs the establishment of a **final** deadline by which the Defendant shall remit said monies, or in the alternative, proceed with a sale of the property. The Court further believes that equity directs that no matter the choice the Defendant makes (i.e. buyout the Plaintiff or proceed with sale of the property), that the Plaintiff is entitled to at least thirty-five thousand dollars (\$35,000.00), the monies she agreed to accept for her one-half (1/2) interest in the property at issue when she entered into the March 2006 Stipulation with the Defendant.

***The Defendant is not entitled to receive any monies for alleged deterioration of the property he shares as a tenant in common with the Plaintiff***

The Defendant's counterclaim for damages is based on his assertion that the property at issue is severely deteriorated due to action or inaction of the Plaintiff and that by virtue of a lease agreement she entered into with the parties' parents in April 1999, she is solely responsible for



such alleged damages. First, the Court finds that the lease agreement, upon which the Defendant bases his counterclaim, ceased to exist after the parties' parents discontinued their use of the property at issue as their personal residence sometime around June/July 1999. At that point (June/July 1999), both parties, as tenants in common, became responsible for maintaining the property at issue; a responsibility that the Plaintiff undertook, without any assistance from the Defendant, despite repeated notice to him from herself and her counsel of his responsibilities associated with maintaining said property. The Court will not permit the Defendant to maintain a claim for alleged damages to the property at issue when he, as was his responsibility as a co-tenant, never took any steps himself to maintain, repair, and/or enhance said property. Even if the Defendant could maintain such a cause of action, the Court finds that the Defendant failed to present sufficient evidence to support his allegation that the property had deteriorated while under the Plaintiff's care (e.g. expert reports to that effect).

## VERDICT

**AND NOW**, this \_\_\_\_\_ day of August 2007, the Court hereby finds in favor of the Plaintiff and against the Defendant with respect to the Plaintiff's complaint and the Defendant's counterclaim. Accordingly, the Court hereby **ORDERS** and **DIRECTS** as follows:

1. The Defendant is liable to the Plaintiff for five thousand one hundred forty-nine dollars and seventy-two cents (\$5,149.72) to be paid within **thirty days (30)** of the date of this Verdict.
2. The Defendant is responsible for ensuring that the Plaintiff receives **at least** her one-half ( $\frac{1}{2}$ ) share of the value of the property at issue or thirty-five thousand dollars (\$35,000.00). To this end, the Court hereby **ORDERS** and **DIRECTS** the Defendant to, within **thirty days (30)** of the date of this Verdict, complete one of the following:
  - a. remit thirty-five thousand dollars (\$35,000.00) to the Plaintiff **OR**
  - b. procure a signed listing agreement or auctioneer agreement for the sale of the property whereby the Plaintiff is entitled to one-half ( $\frac{1}{2}$ ) of the proceeds of the sale or auction or thirty-five thousand dollars (\$35,000.00) whichever is greater.

3. Finally, the Defendant, if he elects to list the property for sale or auction, shall be solely responsible for the costs to effectuate said sale or auction.

By the Court,

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Nancy L. Butts, Judge

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