

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

BYRON D. STUART, III and	:	No. 20-0975
BONNIE S. STUART, his wife,	:	
Plaintiffs	:	
vs.	:	Action in Partition
	:	
BRUCE D. STUART and	:	
JENNIFER C. STUART,	:	
Defendants	:	

**OPINION AND ORDER**

AND NOW, following a conference in this matter on October 20, 2021, the Court issues the following OPINION and ORDER.

**Background**

Plaintiffs Byron D. Stuart, III and Bonnie S. Stuart (“Plaintiffs”) filed a Complaint in Partition on October 1, 2020 against Defendant Bruce D. Stuart (“Bruce Stuart”). Plaintiffs filed an Amended Complaint on August 24, 2021, against Bruce Stuart and Defendant Jennifer C. Stuart (“Jennifer Stuart”).<sup>1</sup> The Amended Complaint alleges that Plaintiffs and Defendants are co-owners of two parcels of land in Lycoming County (“the Premises”), with Plaintiffs owning an undivided six-sevenths (6/7) interest and Bruce Stuart owning an undivided one-seventh (1/7) interest in the Premises.<sup>2</sup> Plaintiffs allege Bruce Stuart is in possession of the Premises, depriving Plaintiffs of the use and enjoyment thereof, and Defendants have failed to pay rent, taxes, maintenance, utilities or insurance related to their use of the Premises. The Amended Complaint avers that the Premises is not capable of proportionate division, and requests the appointment of a Master in Partition and ultimately the private or public sale of the Premises.

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<sup>1</sup> Bruce Stuart and Jennifer Stuart are married but involved in ongoing divorce proceedings. On June 7, 2021, Plaintiffs’ counsel informed the Court that Plaintiffs needed to join Jennifer Stuart to the action because the partition would implicate her equitable distribution rights. By Order of June 10, 2021, this Court granted Plaintiffs leave to file an Amended Complaint naming Jennifer Stuart as a defendant.

<sup>2</sup> The Amended Complaint avers that Jennifer Stuart has claimed an equitable interest in Bruce Stuart’s one-seventh interest in the Premises.

On September 17, 2021, Bruce Stuart filed an Answer to Plaintiffs' Amended Complaint, essentially alleging he has maintained the Premises for many years, contending that Plaintiffs' possession of the Premises is interfering with his use and enjoyment thereof, and asserting his belief that the Premises is capable of proportionate division. Bruce Stuart also raised a New Matter/Counterclaim with two counts. The first count requests an accounting of certain property on the Premises. The second count, currently at issue, is an adverse possession claim concerning a 17.01-acre portion of the Premises ("the 17.01 Acres"). Bruce Stuart alleges that since 1995 he has improved and operated a business on the 17.01 Acres, possessing the 17.01 Acres openly and adversely in a continuous, notorious, and uninterrupted manner. Counterclaim Count 2 requests that the Court grant possession of the 17.01 Acres to Bruce Stuart.

On October 8, 2021, Plaintiffs filed an Answer to Bruce Stuart's Counterclaim, agreeing that he has operated a business on some portion of the Premises but disputing that his possession of any portion thereof was adverse, continuous, or otherwise sufficient to establish adverse possession.

On October 20, 2021, the Court held a conference to ascertain the status of the case, in light of Jennifer Stuart's failure to file an Answer to Plaintiffs' Amended Complaint. During this conference, counsel for Bruce Stuart raised the issue of whether this Court needed to resolve Bruce Stuart's adverse possession claim regarding the 17.01 Acres prior to proceeding with a partition of the Premises and appointing a Master in Partition. This Order addresses the proper procedure in a partition action when a defendant asserts a claim of disputed title.

### **Analysis**

Prior to the enactment of Rules of Civil Procedure governing partition actions in 1951, Pennsylvania courts consistently held that issues of disputed title must be addressed prior to, rather than as part of, the resolution of a partition action.<sup>3</sup> In *In re Sanders' Estate*, the Superior Court of Pennsylvania explained that when

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<sup>3</sup> See *In re Sanders' Estate*, 41 Pa. Super. 77 (1909); see also *Galbraith v. Bowen*, 5 Pa. D. 352 (Erie Cnty. C.C.P. 1896) (discussed in note 8, *infra*).

respondents in a partition action raise the issue of adverse possession, the court “has power to receive and look into testimony... to determine whether the claim of adverse and exclusive title and possession, in which is necessarily involved a claim that the respondent’s cotenants have been ousted or disseized, has any foundation in fact.”<sup>4</sup> The Court stated that such a claim “will not be sufficient to require a suspension of the proceeding, but the court may hear evidence upon the claim asserted and if it be insufficient to justify submission to a jury, may confirm the inquest and proceed with the partition.”<sup>5</sup>

Today, partitions of Real Property are governed by Rules 1551 through 1574 of the Pennsylvania Rules of Civil Procedure.<sup>6</sup> Recently, the Superior Court of Pennsylvania provided a comprehensive guide to the proper procedure in partition actions in *Kapcsos v. Benshoff*.<sup>7</sup> The current Rules, as explained in *Kapcsos*, are consistent with the historical cases.<sup>8</sup>

The Rules of Civil Procedure “split a partition action into two, distinct, chronological parts... [e]ach [of which] must produce its own, distinct, appealable

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<sup>4</sup> *In re Sanders’ Estate*, 41 Pa. Super. At 83.

<sup>5</sup> *Id.* at 84. The Superior Court in *In re Sanders’ Estate* approved of both the trial court’s decision to adjudicate the adverse possession claim first and its resolution of that issue in a manner analogous to a grant of summary judgment, because “it [was] quite clear, particularly when considered in connection with the undenied facts averred [in the pleadings] that [the facts alleged by the respondents]... would not [be] sufficient to raise such natural or legal presumption of ouster as [to defeat] the partition....” The trial court then proceeded with the partition action. *Id.* at 84-85.

<sup>6</sup> Pa. R.C.P. 1551-1574.

<sup>7</sup> *Kapcsos v. Benshoff*, 194 A.3d 139 (Pa. Super. 2018).

<sup>8</sup> Present practice as described in *Kapcsos* is in accord with the practice described in the 19<sup>th</sup> century case *Galbraith v. Bowen*, 5 Pa. D. 352 (Erie Cnty. C.C.P. 1896). In *Galbraith*, the court stated the main question as “[w]hether, when a portion of the land which is sought to be divided is in the exclusive possession of one of the parties under a claim of right and a denial of the tenancy in common as to it, his title can be determined in the partition proceedings, or must be first tried in an action of ejectment.” The court held that “[a]n adverse holding by one tenant in common for any length of time, however short, previous to the institution of an action in partition, will bar a recovery in such form of action, for ejectment, and not partition, is the proper remedy against a person holding adversely.” This was because “[p]artition is made of lands of tenants in common when their possession is common; ejectment is the remedy when the possession of one is adverse to the others.... The general rule is that partition cannot be made the means of trying a disputed title.” At the very least, *Galbraith* suggests that, historically, ownership disputes had to be resolved prior to, rather than as part of, a partition action.

order.”<sup>9</sup> In the first part of a partition action, governed by Rules 1551 through 1557, “the court must determine whether the property is partitionable under law” by answering two questions: “[d]o the parties jointly own the real estate in question” and, “[i]f so, what fractional legal interests in the property does each party hold?”<sup>10</sup> Although these issues are often admitted in the pleadings, an evidentiary hearing or even a jury trial may be necessary to resolve them.<sup>11</sup> “If the trial court answers both questions and finds that the plaintiff has established a right to partition,” then the court must enter an order directing partition pursuant to Rule 1557, concluding Part 1 of the partition action.<sup>12</sup>

Part 2 of a partition action, governed by Rules 1558 through 1574, “is purely an equitable proceeding where the trial judge or master balances the equities to decide what form the partitioning will take.”<sup>13</sup> Rule 1558 requires a preliminary conference to consider, among other things, “whether any issues or matters relating to the carrying out of the order of partition shall be referred to a master,” and grants the power to appoint a Master in Partition, whose duties are described in Rule 1559.<sup>14</sup>

As explained in *Kapcsos*, under the Rules of Civil Procedure governing partitions, a court may not proceed to Part 2 of a partition matter – including the appointment of a Master in Partition – until it has issued a Part 1 order finding that the plaintiff has established a right to partition. A court may not issue a Part 1 order until it has determined – by way of pleadings, evidentiary hearing, or trial – whether the parties jointly own the real estate in question and what fractional interest each party holds.

Bruce Stuart’s New Matter/Counterclaim avers that the 17.01 Acre portion of the Premises is not jointly owned by the parties, but rather that Plaintiffs have no title

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<sup>9</sup> *Kapcsos*, 194 A.3d at 141.

<sup>10</sup> *Id.* at 142.

<sup>11</sup> *See id.*

<sup>12</sup> *Id.* Notably, an order directing partition is an appealable order, and the court may only proceed to Part 2 of the partition action after the Part 1 order becomes final.

<sup>13</sup> *Id.* at 142-143.

<sup>14</sup> Pa. R.C.P. 1558, 1559.

to the 17.01 Acres due to Bruce Stuart's adverse possession of that portion of the Premises. Plaintiffs dispute this averment.

On the Pleadings, this Court cannot conclusively determine what fractional interest in the Premises each Party holds. As this determination is prerequisite to the appointment of a Master in Partition, further proceedings are required before the Court can determine if it is appropriate to appoint one. The Court will therefore hold a scheduling conference on December 21, 2021 at 1:30 p.m. in Courtroom 2 of the Lycoming County Courthouse to address the need for discovery, dispositive motion deadlines, the scheduling of any evidentiary hearings, and whether any party is requesting a jury trial.

**ORDER**

AND NOW, this 3<sup>rd</sup> day of December 2021, a conference is hereby scheduled for **December 21, 2021 at 1:30 p.m. in Courtroom 2** of the Lycoming County Courthouse. The purpose of this conference is to address the need for discovery, the scheduling of dispositive motion deadlines and any evidentiary hearings, and to determine whether any party is requesting a jury trial in relation to Defendant Bruce D. Stuart's second counterclaim. Counsel should be prepared to discuss whether a party is entitled, under current law, to a jury trial on a counterclaim of adverse possession arising in a partition action.

By the Court,

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Eric R. Linhardt, Judge

ERL/jcr

cc: Daniel K. Mathers, Esq.  
Robert A. Hoffa, Esq.  
Andrea P. Pulizzi, Esq.  
Gary Weber, Esq. (Lycoming Reporter)