



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION**

CAUSE G0214 OF 2022

BETWEEN

**(1)THELDA JULYNN HUBBELL
(2)CHELSEA KRISTYN HUBBELL**

PLAINTIFFS

AND:

**(1)TIMOTHY CHRISTOPHER HUBBELL
(2)JOSHUA THOMAS HUBBELL
(3)JULIUS CHRSTIOP0HER HUBBELL**

DEFENDANTS

IN CHAMBERS

CORAM: Hon. Justice Marlene I. Carter (Actg.)

**Appearances: Mr. James Kennedy for the Plaintiffs
1st Defendant Mr. Hubbell in person, unrepresented
2nd and 3rd Defendants unrepresented**

Heard: 29 June 2023

Judgment Delivered: 02 August 2023

Judgment Circulated: 08 August 2023

HEADNOTE

Civil Procedure – Partition Act - Application for Partition and Sale – Jointly owned property

JUDGMENT

The application

1. The Plaintiffs filed an Originating Summons seeking the following relief:

230802 - Thelda Hubbell et al v. Timothy Hubbell et al – Judgment

1. *A declaration that the plaintiffs and defendants are each beneficially entitled to a 1/5th share in the properties known as:*
 - 1.1 *South Sound 15B 211*
 - 1.2 *West Bay North West 4C Parcel 111*
 - 1.3 *East End 76B 32*
 - 1.4 *East End 76B 41*
 - 1.5 *Little Cayman 83A 121*
 - 1.6 *North Side 53A 6*
2. *An order for sale and distribution to the parties in accordance with their beneficial entitlement of the net proceeds of sale of the properties listed at paragraphs 1.3 – 1.6 above in accordance with directions given under GCR Order 31.*
3. *The first plaintiff and the first defendant shall sign all necessary paperwork in order to transfer a 1/5th share of title to the properties listed above to Joshua Thomas Hubbell.*
4. *Such other orders and relief as the court deems appropriate including as to costs.*

2. The Originating Summons was supported by the 1st Affidavit of Thelda Julynn Hubbell the 1st Plaintiff. The 1st Plaintiff was married to the 1st Defendant between 1991 – 2017. The marriage produced three children, the 2nd Plaintiff, and Defendants 2 and 3. These children are all now adults.
3. The parties acquired the properties noted above (hereinafter “the Properties”) during their marriage.
4. The Plaintiffs outlined the circumstances in which the various properties were acquired:

“South Sound 15B 211

20. This is the family home property at South Sound called Rowley Rise. This property was purchased during the marriage in 1995 in the name of Timothy alone and in 1996 we built a home on it and moved there in 1996. In 2001 he transferred it into our joint names. I recollect that the mortgage on the property was in joint names, and I asked him to add my name to the title since my name was on the mortgage. In 2009 we added Julius and Chelsea to the title for natural love and affection and they were added as joint proprietors. In 2017 Joshua was also added in the same manner.

...

West Bay Northwest 4C Parcel 111

25. This is the land upon which it was agreed in our divorce proceedings that I would be allowed to build a cottage on.
26. Until 2017 this land was owned solely by Timothy Hubbell after he bought it in 2014, which I made it known to him that I thought it to be unfair as I was the one to convince him to purchase the two parcels of land i.e. 4C111 and 4C308 (that was given to Joshua). His answer was its ok because the loan was in his name solely. This was around the time when he insisted to adding the children's name to all properties.
27. At the time of the consent order, it was agreed as part of the order that he would add my name and that of our three children to the title, this was carried out and we were added as joint proprietors

...

East End 76B 32

28. This land was original bought by Timothy Hubbell as to ½ share and Costanzo and Marsha Astarita as to ½ share. It was purchased in 2001.
29. In 2004 Timothy transferred his ½ share to Mary Lee Rowlandson, Mary Lee Rowlandson is the mother of Timothy Hubbell.
30. In 2011 Mary Rowlandson transferred her ½ share to the 5 of us to hold as joint proprietors. The share of Joshua was held in trust by Timothy and me, as he was a minor at the time.
31. In 2018 we purchased the ½ share of Costanzo and Marsha Astarita from them alongside their 1/2 share in 76B 41. I attach copies of the historic land transfers and the current land register for the property at pages 39-51.

...

East End 76B 41

34. This land was originally bought in the name of the 5 parties to this litigation in 2011 as to a ½ share also with Costanzo and Marsha Astarita as to the other ½ share.
35. In 2018 we purchased the ½ share of Costanzo and Marsha Astarita from them alongside their 1/2 share in 768 32. I attach copies of the historic land transfers and the current land register for the property at pages 42-59.

Little Cayman 83A 121

36. This parcel was bought in the name of Timothy Hubbell in 1996. In 2010 Timothy

placed the parcel into the names of the 5 family members (with Joshua's held on trust) to be held by us as joint proprietors. I attach copies of the historic land transfers and the current land register for the property at pages 60-66.

North Side 53A 6

37. In 2011 this land was transferred from Mary Lee Rowlandson, Timothy's mother to the 5 of us to hold as joint proprietors. I attach copies of the historic land transfers and the current land register for the property at pages 67-70."

5. Regarding the present application the 1st Plaintiff stated as follows:

"45. When we placed our children's names on the properties, I did not really understand what the thought process was with respect to the future and did not understand the different ways that land can be held i.e. as joint proprietors or as proprietors in common.

46. I sought legal advice over the issues that arise, and I have been informed that as the land title currently stands, we are unable to sell our interest in the parcels and also that the effect of holding land in this manner is that eventually the land will pass to the last remaining survivor of the 5 of us potentially leaving 2 of our 3 children without their inheritance.

...

Conclusion

51. Since the sale of the EE parcel 69A 33 on February 14th, 2020, the family relationship has deteriorated beyond repair to the extent of limited to no communication between various parties.

...

55, Therefore, it is for this number of reasons that I together with my daughter Chelsea seek relief for the sale and distribution of the named parcels in accordance with their declared interest. We also feel this outcome should also form part of the divorce settlement, as Chelsea and I would no longer be involved with the defendants and can move on with our individual lives,"

6. The Plaintiffs first sought the sale of only four of the Properties. The 2nd affidavit of the 1st Plaintiff filed six months after her initial affidavit in support of the Originating Summons now seeks the sale of

all of the properties in lieu of partition. The Plaintiffs have now applied for the Originating Summons to be amended to include the properties at 1.1 and 1.2. Given that the submissions from the Plaintiffs' attorney as well as those of the 1st defendant have addressed these properties and that the position of these properties has also been dealt with in the parties' affidavits, the application is allowed and I have proceeded to deal with this application regarding all of the properties.

7. The 1st Defendant submitted two affidavits in response to the Originating Summons. In his first affidavit the 1st Defendant stated:

"1. The first plaintiff, with help of the second, is attempting to re-litigate our 2017 divorce and insidiously attempting to broaden the scope of those long-concluded proceedings with a highly spurious and largely irrelevant affidavit.

Joint Family Property

2. The plaintiff was always fully aware of the difference in ownership options, indeed we both owned an apartment prior to our marriage, on the basis of 60/40 shares or Proprietors in Common.

3. The plaintiff insisted on Joint Proprietor ownership structure of the subject properties for a variety of reasons, including whereby a future spouse would not complicate matters of ownership; to provide protection in the event of a later dissolution of any of the children's marriages; and our intention was always that the properties should ultimately be inherited by the three children of the marriage.

4. The breakdown in the plaintiff's family relations is due to their constant scheming, harassment and attempts at intimidation in their relentless pursuit of dismantling the jointly held family property. The Plaintiffs made absolutely no financial contribution to the acquisition of any of the properties, indeed, there is still a loan on two parcels, to which neither contribute towards.

...

6. I respectfully submit that there are five (5) separate parties involved in the matter and there is absolutely no justification for the Court to order the sale of the family's long held jointly owned property. Further, there is nothing remotely requiring necessary or expedient orders in regards to the disposal of the family property.

Construction of West Bay Cottage

7. *The first plaintiff should now be directed to sensibly proceed with the construction of the West Bay cottage on block 4C parcel 111 as her residence, utilizing the available funds from the sale of East End Block 69A, Parcel 32 as agreed by the five (5) owners and as earlier directed by the court.*

...

11. *I urge the Court to give a reasonable but firm deadline for first plaintiff to vacate the Rowley Rise residence and I will agree to sign over the funds from the sale of East End parcel 69A/32 into the first plaintiffs sole name, with the understanding that the funds are to be used solely for the construction of the 2-bedroom cottage on West Bay 4C/111 as approved and previously by the Court.”*

8. The 2nd and 3rd Defendants do not support the application. In a joint affidavit filed in these proceedings the 2nd and 3rd Defendants stated as follows:

“3. We both reside in one of those jointly owned properties, namely South Sound 15B/211, the house on Rowley Rise. It is Ideally located on the outskirts of George Town from where we both work. Joshua plans to attend the nearby University College in September. Situated on a quiet no-through road this allows for the convenient overnight parking of the boat that Julius uses in his fishing charter business.

...

6. *Our sister, has indicated her interest in the Little Cayman lot 83N121, seeing that she now lives in Cayman Brac. This would be the most logical parcel to sell if additional funds are required. We support giving our sister first option to purchase this lot, should it be absolutely necessary, our father has previously written to Chelsea suggesting this as well.*

7. *We do not support the sale of any other jointly owned family property.*

8. *Our sister seems to be worried that her son will be disinherited, and we support her holding her joint ownership in the family property in Trust for him. Our father has indicated he supports this.”*

The Law

9. The Partition Act (hereinafter “the Act”) states as follows:

“2. (1) *In this Law — “action” includes a suit; “Judge” means a Judge of the Grand Court; “judgment” includes a decree or order; and “the Court” means the Grand Court.*

(2) For the purposes of this Law, an action for partition shall include an action for sale and distribution of the proceeds; and in an action for partition, it shall be sufficient to claim a sale and distribution of the proceeds, and it shall not be necessary to claim a partition.

...

4. *In a suit for partition, where, if this Law 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, requests 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.”*

Submissions by Counsel for the Plaintiffs

10. Counsel for the Plaintiffs submitted that the court’s jurisdiction to determine this application was settled in various cases in this jurisdiction. Counsel submitted that:

*“17. In *Ebanks v Ebanks*¹ (unreported) [HB/164] Justice Williams concluded as a preliminary issue that the Partition Act was not repealed by the Registered Land Act, and the Grand Court has power to direct a sale of property pursuant to section 4 of the Partition Act, where the parties were joint proprietors of property.*

*18. It can be noted that the decision of Williams J refers to a decision of the Eastern Caribbean Court of Appeal – *Eunice Edwards v Keith Edwards and Njardas AS*² [HB/157] which, similar to this case, involves post-divorce partition proceedings involving land that was ‘regrettably’ not dealt with during the ancillary relief proceedings.*

¹ Grand Court Civil Division, Unreported, Cause no. 214 of 2014, judgment dated 31 May 2018

² Eastern Caribbean Supreme Court, Civil Appeal no. 15 of 2005

19. *We say the decision of Williams J confirms that the Court has jurisdiction here to order a sale of the jointly owned land contrary to the belief of D1.*”

11. Referring to Section 4 of the Act, Counsel submitted that this section gives the Plaintiffs a statutory right to compel partition or a sale in lieu as in this case.

12. Counsel went further to state that the court should make the order sought unless there was **good reason to the contrary**. Counsel submitted further that the Defendants had not shown good reason:

“23. *Taking the arguments of D1 at set out at paragraph 10:*

(a) *Even if the factual dispute over the issue of whether P1 was aware of the different ownership options for land was resolved in favour of D1, this does not impact the current application. The right to a partition is an inalienable right of the plaintiffs and the only question is whether or not they should be granted the right to a sale in lieu.*

(b) *None of the evidence speaks to the issue of a good reason to order a partition in lieu of a sale. Therefore, the Court has no evidence before it to deny make a finding of good reason. This we say deals with the issue of the need for cross-examination as there is essence no issues of fact to be determined and thus no cross-examination is required.*

(c) *The common ownership of land is not a static one, unless placed in a structure inside which the parties have bound themselves into the future – for example ownership through a trust or company with a shareholders agreement. Thus, the parties are always at liberty to come before the Court and assert their rights at the present time.*

(d) *It is quite clear that the remedy of partition is not suitable, there are 5 parties and in the main the parcels are small and the cost and practicalities of partition make it entirely inappropriate.*

(e) *The sale of one parcel of land to alleviate the financial woes of P1 to allow her to build her own home is again nothing more than a sticking plaster on the wider problem here let alone that the proposal lacks all detail. The Partition Act allows, and the plaintiffs accept that if a defendant or some or all of them wish to retain certain parcels then they should be given the first right of refusal to purchase.*

(f) D1 wrongly attempts to reverse the burden by seeking Ps to justify the request for Partition and Sale.

(g) The affidavit of the sons D2 and D3 further demonstrate their lack of understanding of the issues of co-ownership when they suggest that their sister can place her share in trust for her son. We say this because: i. doing so unfairly fetters P2's use and ownership of the land; ii. it only entrenches the issue here, being that these children will never be free of this form of ownership which will prevent them from ever being able to pass a share of the land to their immediate family unless everyone else passes first (or as is likely at some later point, they come to the Court or back to their family seeking severance and sale)."

13. Counsel for the Plaintiffs submitted that where, as in this case, there was a clear breakdown in the relation between the parties, the current form of ownership was inappropriate to this family dynamic. He emphasized that the fact that upon the death of the parents the properties would pass to the three adult children was not a proper ground for not granting the relief sought and concluded that in the circumstances, the relief of sale in lieu of partition was clearly the only effective remedy.

Submissions by the 1st Defendant

14. The 1st Defendant, in his submissions to the court outlined the various reasons that he and the 1st Plaintiff had acquired and developed the Properties as joint tenants. The 1st Defendant related that it was envisioned that the 3 children of the marriage would be the ultimate inheritors of the properties. He submitted that the idea of land ownership, joint ownership of the Properties, was discussed as being for the benefit of the entire family. The 1st Defendant urged the court to consider that if the order sought was made two of the adult children may have nowhere to stay.

15. The 1st Defendant was passionate in his submissions to the court, emphasizing that the acquisition of these properties and having them held jointly by all the parties has been his life's work outside of taking care of his family.

16. The 1st Defendant maintained his opposition to the application and the ultimate liquidation of the interests in the Properties. He was adamant that the Properties needed to remain in joint names so that the children would retain a little bit of their heritage. He submitted further as stated in his first affidavit in these proceedings that the Plaintiffs had submitted nothing which

should justify the court making the orders sought for partition or sale in lieu thereof of the Properties.

Court's considerations

17. I accept Counsel for the Plaintiffs' submission that the court has the jurisdiction under the Partition Act to direct the sale of property owned by joint proprietors, in circumstances where an order for partition of such property could have been made, prior to the passing of that Act, upon application by an interested party.

18. In *Mums Incorporated et al v Cayman Capital Trust et al*,³ a case considered by Williams J. in *Ebanks v Ebanks* in determining whether a court has jurisdiction to order sale under the Partition Act even where one of the joint proprietors does not consent to such sale, Georges JA reasoned that:

"The RLL does contemplate that estates registered under the RLL may be sold by order made or issued under some Law, presumably by a court. The disposition ordered under any such Law must, however, be such as not to be inconsistent with the RLL."

19. The Partition Act is one of the laws contemplated by the Registered Land Act which allows for the sale of land upon order of a court. The Act confers a right on a joint owner of land to demand partition. The Act empowers a court to order a sale in lieu of partition. Indeed the language of the statute is mandatory in that regard:

*"... 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, requests 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."*

20. The right to seek partition is clear as is the Court's jurisdiction to order a sale in lieu of partition of land held by joint proprietors.

21. In *Ebanks v Ebanks*, the issue to be determined by Williams J. was solely the question of the jurisdiction of the court to make the order sought. Therefore, he did not have cause to consider in detail other

³ [2000] CILR 131 (CA)

English 19th Century authorities which, as he noted in his judgment, could shed further light on the interpretation and application of the Law in the Cayman Islands. These are pre-1925 authorities before the repeal of the Partition Law by the Law of Real Property Act 1925 in the UK.

22. These authorities support the position that a joint proprietor was entitled to seek partition as a matter of right.⁴ The authorities also support the position that difficulties in effecting a partition, inconvenience and pecuniary loss are all insufficient to bar a co-tenant's right to partition. In *Baring v Nash* one of the issues considered was whether a partition of an entire estate sought by an owner with an undivided interest could be compelled upon the other owners binding them all. The court found that:

“It is clear, the absolute Owner of a Tenth Part may compel the Owners of the other Nine to concur with him; and there would be no Objection from the Minuteness of this Interest, the Inconvenience, or the Reluctance of the other Tenants in Common, if no Objection could be taken to the Plaintiff's Title : Partition being Matter of Right : whatever may be the Inconvenience and Difficulty...”

23. The initial introduction of a provision to allow for a sale of lands in lieu of partition was to avoid results which were deemed to be absurd such as was the case where an application for partition was granted and resulted in a house being divided and one party being without a chimney or stairs.⁵ As Williams J. stated in *Ebanks*, quoting an authority from the Hong Kong High Court⁶, the primary intention of the Act is to “enable an unwilling co-owner to rid themselves of the shackles of co-ownership and have either, a physical division of the property into aliquot parts among the co-owners or a division of the proceeds of its sale.”
24. The 1st Defendant has submitted that there is “nothing remotely requiring necessary or expedient orders in regards to the disposal of the family property.” This submission fails to fully appreciate that the court does not need to find good reason to order a sale in lieu of partition. The court must instead consider whether there is good reason why such an order should **not** be made. Cases in which the court's discretion has been exercised to refuse partition or a sale in lieu thereof include a denial of such application where the property is subject to a trust or where such is contrary to public interest or in one

⁴ Parker v Gerard (1754) 27 E.R. 157; Baring v Nash (1813) 35 E.R. 214

⁵ Mayfair Property Company v Johnston, [1894] 1 Ch. 508

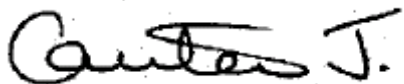
⁶ Pun Jong Sau & Ors. v Poon Wing Kong & Ors. [1977-1979] HKC 210

case where it was liable to shock the conscience of the court.⁷ No issue of a like kind has been advanced in this case.

25. The 1st Defendant has advanced in his affidavits that the one of the reasons that the Plaintiffs are seeking the order for sale in lieu of partition is the failure to complete the construction of a cottage on one of the jointly owned Properties. Upon the divorce of the parties in 2017 the consent ancillary order included a provision that the parties were to sell another jointly held piece of property to fund the building of a two-bedroom cottage on one of the parcels comprising the Properties. Although the sale was completed the cottage has still not been built.
26. The 1st Defendant expressed the view that if this outstanding issue between the parties was resolved this would bring an end to the instant application. The Plaintiffs refute this view, stating instead that it is their wish to receive their share of the Properties so that they can invest as they see fit, that has led to the present application.
27. The parties are agreed that Joshua Thomas Hubbel should be a joint owner of all the properties. The Originating Motion seeks the court's order for the first Plaintiff and the 1st Defendant to sign all necessary paperwork in order to transfer a 1/5th share of title in the Properties to him. As highlighted above, at the time when some of the properties were purchased Joshua Thomas Hubbell was a minor and therefore his share was held on trust for him for that reason. Joshua Thomas Hubbell is now an adult. There is no issue between the parties that he should now have an equal 1/5th share in the properties.
28. Having perused the authorities and considered the affidavits of the parties, I find that no good reason has been shown why the order for sale in lieu of partition should not be made. The Plaintiffs are entitled to the relief sought in the summons:

⁷ Brown v Lutheran Church, 1854 23 pa. St. R. 495. Two churches had previously united their interests and built a church and graveyard. When one side sought partition, the court found: *"The sentiment is sound, and has the sanction of mankind in all ages which regards the resting place of the dead as hallowed ground - not subject to the laws of ordinary property, nor liable to be devoted to common uses. We do but express the concurrence of this sentiment which we feel, when we hold that a church and burial ground situated as these now under consideration, and owned by distinct religious societies as tenants in common, are not within the spirit and meaning of the statutes of partition..."*

- (i) *Timothy Christopher Hubbell Thelda Julynn Hubbell, Chelsea Kristyn Hubbell, Joshua Thomas Hubbell, and Julius Christopher Hubbell are declared to each be beneficially entitled to a 1/5th share in the properties known as:*
- 1.1 South Sound 15B 211*
 - 1.2 West Bay North West 4C Parcel 111*
 - 1.3 East End 76B 32*
 - 1.4 East End 76B 41*
 - 1.5 Little Cayman 83A 121*
 - 1.6 North Side 53A 6*
- (ii) *The 1st Plaintiff and the 1st Defendant shall sign all necessary paperwork in order to transfer a 1/5th share of title to the properties listed above to Joshua Thomas Hubbell forthwith and absent signing such paperwork within 7 days of receipt thereof, the Clerk of Court is empowered to sign any such document without further order of the Court.*
- (iii) *The properties are to be valued and sold in accordance with directions given pursuant to GCR Order 31 r2, and the net proceeds of such sale are to be distributed to the persons named at (i) above in accordance with their beneficial entitlement.*
- (iv) *Costs to the Plaintiffs to be taxed on the standard basis if not agreed.*



HON. MRS. JUSTICE MARLENE I. CARTER
JUDGE OF THE GRAND COURT (ACTG.)