

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI**

FILED

OCT 11 2017

[REDACTED]
CIRCUIT CLERK, ST. LOUIS COUNTY

CIT BANK, N.A.)	October 11, 2017
)	
)	
Plaintiff,)	
)	
VS.)	
)	
A.E., et al.,)	Division 44
)	
)	
Defendants.)	

PARTIAL SUMMARY JUDGMENT

This matter came before the Court on August 24, 2017 for hearing on the Motion of Plaintiff CIT Bank, N.A. for Partial Summary Judgment, and the Motion of Defendants A.E., S.E., Jr., K.E., and V.R. for Summary Judgment. Plaintiff is represented by P.L., and Defendants are represented by T.N. Defendant V.R. is also represented by M.C.

The parties' Motions both concern and move the Court to determine the respective percentage of ownership interests of the M.E. Revocable Trust and Defendant A.E.'s Estate in property known and numbered as [REDACTED] in St. Louis County, Missouri (the "Property").

Facts

S.E. and M.E., a married couple, took title to the Property on June 22, 1964, which has the following legal description:

Lot 2 of [REDACTED], a subdivision in St. Louis County, Missouri, according to the plat thereof recorded in Plat Book [REDACTED] Page [REDACTED] of the St. Louis County Records.

On September 8, 1978, the Circuit Court of St. Louis County entered its Decree of Dissolution ("Decree") dissolving S.E. and M.E.'s marriage, and further gave M.E. the right to reside at the Property until she remarried, until A.E. (the parties' youngest child) attained age 21, or until A.E. failed to continue to reside in the Property on a permanent basis for any reason except being away at college, whichever event should occur first. The Court further ruled as follows with regard to the Property:

At such time as [M.E.] no longer has the right to live in [the Property] pursuant to the terms of this Decree, said family home shall be sold and

[M.E.] is awarded two-thirds of the net proceeds resulting therefrom and [S.E.] is awarded one-third of the net proceeds resulting therefrom.

S.E. died on or about January 7, 2002. His Last Will and Testament devised and bequeathed his interest in the property to A.E. M.E. never remarried. A.E. continued to reside at the Property, and it was never sold. In 2005, M.E. executed and recorded an affidavit declaring that the Property had been formerly owned by S.E. and her as tenants by the entireties, and that S.E. had died. M.E. also executed a beneficiary deed at that time transferring the Property to her revocable trust, effective on her death.

In 2006, M.E. executed a note secured by a deed of trust on the Property, which Plaintiff CIT Bank, N.A. now holds. M.E. died on February 22, 2015, and, as a result, a default has occurred under the terms of the note and deed of trust.

Plaintiff contends that the Decree of Dissolution created a tenancy in common wherein M.E.'s trust owns a 2/3 interest in the Property, and A.E.'s Estate owns a 1/3 interest. Defendants assert that the Decree divided the Property evenly between S.E. and M.E. resulting in M.E.'s trust holding a 1/2 interest.

Standard

“To be entitled to summary judgment under Rule 74.04, the movant must establish that

1) there is no genuine dispute as to the material facts on which he relies for summary judgment, and that

2) based on these undisputed facts, he is entitled to judgment as a matter of law.” *Mobley v. Baker*, 72 S.W.3d 251, 256 (Mo. App 2002), citing *ITT Commercial Finance v. Mid-American Marine Supply Corp.*, 854 S.W.2d 371, 380 (Mo. banc 1993).

The movant “may establish a right to judgment by showing (1) facts that negate any one of the claimant’s elements facts, (2) that the non-movant, after an adequate period of discovery, has not been able to produce, and will not be able to produce, evidence sufficient to allow the trier of fact to find the existence of any one of the claimant’s elements, or (3) that there is no genuine dispute as to the existence of each of the facts necessary to support the movant’s properly-pleaded affirmative defense.” *ITT Comm. Fin.*, 854 S.W.2d at 381. The movant is required to state with particularity all the undisputed material facts necessary to establish each and every element of its claim, with citation to support in the record for those statements. *Mobley*, 72 S.W.3d at 256, citing *ITT Comm. Fin.*, 854 S.W.2d at 381.

Analysis

There is no genuine issue of material fact with regard to the issue before the Court in the parties' respective motions. The parties correctly agree that the Decree of Dissolution, despite its provision for a deferred sale, effectively changed S.E. and M.E.'s interest in the Property from that of tenants by the entirety to tenants in common. The additional provisions, such as M.E.'s right to live in the property, added to the parties' rights and duties as tenants in common. This is the consistent position of the Eastern District of the Missouri Court of Appeals on similarly worded decrees. *Handshear v. Handshear*, 775 S.W.2d 544 (Mo.App. E.D. 1989), *Buchanan v. Graf*, 671 S.W.2d 379 (Mo.App.1984), *Cook v. Cook*, 759 S.W.2d 891, 893 (Mo.App.1988) and *Murray v. Murray*, 614 S.W.2d 554, 556 (Mo.App.1981). The Supreme Court of Missouri did not reject this holding in *Colabianchi v. Colabianchi*, 646 S.W.2d 61, 65 (Mo. banc 1983).

However, the parties obviously disagree on the effect of the provision in the Decree dividing the future net sale proceeds with 2/3 to M.E. and 1/3 to S.E. Plaintiff argues that the division of the net proceeds represents the divorce court's intention to divide the parties' ownership interest in the Property. Defendants argue that the provision is nothing more than a chose in action, which only directs the parties as to the distribution of net sale proceeds, should they choose to sell. Defendants contend that absent a sale, M.E. and S.E. each own a 1/2 interest in the property.

Plaintiff's position is the correct one. At the time of M.E. and S.E.'s divorce, the Court was required to divide all of their marital property in such proportions as the Court deems just. §452.330 RSMo. The Decree does not specifically state that M.E. and S.E. shall receive a 2/3 and 1/3 interest as tenants in common, respectively, pending a sale. However, the very language used in their Decree has been deemed sufficient to "effect a *final* disposition of property as required by §452.330 RSMo", and at the same time delay the parties' right to partition. *Cook* at 893 (emphasis added), see also *Handshear* at 547, *Buchanan* at 382.

This Court is unaware of any precedent addressing this fact pattern, where the divorced parties, who were to receive disproportionate sale proceeds, never sold their real property. The *Handshear* case, however, involved a 70/30 division of marital real property. The Court approved the form of the division as compliant with §452.330 RSMo (erroneously cited in the opinion as "§552.330 RSMo"). *Handshear* at 547. There is no precedent to support Defendant's position that all decrees that delay the partition of real property, as in this case, only divide the net proceeds upon sale, and, if not, the parties' interests default to a one-half interest as tenants in common. The cases that reach the one-half interest result, do so only *because* the courts divided the net sale proceeds 50/50, not in spite of that fact. To hold otherwise would thwart the divorce court's division of the entire marital estate.

CONCLUSION

For the foregoing reasons, the Court grants the Motion for Partial Summary Judgment filed by Plaintiff CIT Bank, N.A., and denies the Motion for Summary Judgment filed by

Defendants A.E., S.E., Jr., K.E., and V.R. S.E. and M.E.'s 1978 Divorce Decree divided their interests in the marital residence at [REDACTED] between M.E. as a 2/3 tenant in common, and S.E. as a 1/3 tenant in common. Therefore, CIT Bank, N.A.'s deed of trust is secured by a 2/3 tenant in common interest in the property.



/Richard M. Stewart
Associate Circuit Judge
Circuit Court of St. Louis County
State of Missouri

Date: 10/11/17