Record No. 082387

MARY VILLON DE BENVENISTE,

Appellant,

– v. –

AARON W. CHRISTENSEN FAMILY, LP, et al.,

Appellees.

ASSIGNMENTS OF ERROR

1. The Trial Court erred in charging a portion of the cost of the subdivision process for the Property to Mary because the "improvements" are not permanent. (AE 1)

2. The Trial Court erred in requiring Mary to pay a pro rata share of the subdivision costs because the Appellees do not have clean hands. (AE 2)

V I R G I N I A

IN THE CIRCUIT COURT FOR THE COUNTY OF LOUDOUN

AARON W. CHRISTENSEN FAMILY, L.P., et al.	
Plaintiffs,	
vs.	CASE NO. 44520
MARY VILLON DE BENVENISTE,	
Defendant.	

Leesburg, Virginia

Wednesday, June 4, 2008

Hearing before:

HONORABLE BURKE F. McCAHILL

pursuant to notice, at Loudoun County Circuit Court, 18 East Market Street, Courtroom 2D, Leesburg, Virginia, before Kinita D. Albertson, of Capital Reporting Company, a Notary Public in and for the Commonwealth of Virginia, beginning at 9:03 a.m., when were present on behalf of the respective parties:

edcd610f-f8c4-4442-9546-d6b7a239d4c4

1 On behalf of Plaintiffs:

2 THOMAS M. DUNLAP, ESQUIRE
Dunlap, Grubb and Weaver
3 199 Liberty Street, Southwest
Leesburg, Virginia 20175-2715
4 (703) 777-7319

5 On behalf of Defendant:

6 JOHN A.C. KEITH, ESQUIRE
Blankingship, Keith P.C.
7 4020 University Drive, Suite 300
Fairfax, Virginia 22030
8 (703) 691-1235

9 - and -

10 WILLIAM B. PORTER, ESQUIRE
Blankingship, Keith P.C.
11 4020 University Drive, Suite 300
Fairfax, Virginia 22030
12 (703) 691-1235

13

14 ALSO PRESENT:

15 Mary Villon De Benveniste
John Christensen

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1 Let me deal with this issue about the
2 Motion to Reconsider. I'm going the deny the
3 Motion to Reconsider. I did just review it.
4 You're not entitled automatically to a hearing as
5 you know, Mr. Keith. I'm not using this as an
6 opportunity to try to somehow vouch the record for
7 something that was not done in the past. But I
8 just want to address a couple points that were made
9 in there.
10 On the improvements, I believe there was
11 evidence of the value added in its present state.
12 There was evidence obviously from experts that
13 having this in place removes uncertainty and makes
14 it more attractive to prospective purchasers. And
15 I did credit that testimony.
16 With respect to this conduct of the
17 plaintiffs in applying for subdivision, I did
18 review that evidence. And I said from the
19 beginning in this case that I was concerned. And I
20 know it raised it in the beginning, and the
21 mid-point perhaps, and I know certainly at the end.
22 I raised the issue of whether or not I was really

1 going to be asked to rule on the legality, the
2 propriety of the subdivision process. And I was
3 told, no, that that's not part of the prayers for
4 relief. I felt that this was critical. And I had
5 to obviously take the case as I found it. That was
6 the concern for this judge throughout. And that's
7 why I specifically raised it. And I've listened
8 and I've tried to adhere to that, that that was not
9 a request that was really before the Court.
10 I did give consideration between
11 plaintiff's arguments in that regard. And I was
12 also aware of the evidence regarding conflicting
13 evidence regarding the level of content in
14 decision, mixed signals, that were given with
15 respect to the defendant. At least, that's the
16 status of the evidence.
17 And I tried to balance all that in
18 deciding that particular issue because I was really
19 concerned about that. I was not being called upon
20 to address this issue about the partnership using
21 the subdivision process. And yet it was in place
22 and that was the evidence before the Court, that it

* * *

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VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF LOUDOUN

AARON W. CHRISTENSEN FAMILY, LP, et al.,	)	
Plaintiffs,	)	
v.	)	Case No. 44520
MARY VILLON DE BENVENISTE,	)	
Defendant.	)	

ORDER

THIS ACTION CAME BEFORE THE COURT for a bench trial upon the First Amended Complaint filed by Plaintiffs Aaron W. Christensen Family, LP (the "Partnership"), Pohlman Family, LLC, John W. Christensen, Carol J. Bartholomew, Ed Bartholomew, John W. Christensen, LLC, Natalie Caprano, Sherrie Christensen, Aaron Christensen, and Steven Christensen (collectively, "Plaintiffs") and the Answer to First Amended Complaint and Amended Counterclaim filed by Defendant Mary Villon de Benveniste, with respect to a 350 acre farm located on Hogback Mountain Road that is more fully identified in the First Amended Complaint (the "Property").

UPON CONSIDERATION of the evidence presented on March 18-20, 2008, the argument of counsel, including closing arguments on April 2, 2008, and the rulings of the Court, including the Court's final decision announced from the bench on April 16, 2008, which is reflected in the transcript, incorporated herein by reference, and attached hereto as Exhibit A, the Court makes the following findings of fact:

1. The Partnership was dissolved at the death of Aaron W. Christensen pursuant to the terms of the limited partnership agreement, and the Partnership was not continued by the consent of the limited partners.

2. The Property may not be conveniently partitioned in-kind.

3. The fair market value of the Property is $8,995,000.00.

4. The interests of the parties will be promoted by an allotment of the Property to Plaintiffs.

5. If the Plaintiffs are not willing or able to exercise this award of allotment, then the interests of the parties will be promoted by a sale in whole and a division of the proceeds.

6. As a co-tenant, Defendant should be required to pay her share of the 2006 and 2007 taxes for the Property, which equals $4,071.59, and her 25% pro rata share of the costs associated with the Plaintiffs' efforts to improve the Property by obtaining the preliminary plat of subdivision, which equals $147,277.72.

WHEREFORE, based these findings of fact and the other findings of fact reflected in Exhibit A, and for the reasons stated in Exhibit A, it is hereby,

ORDERED as follows:

7. As to Plaintiffs' Count I (Partnership Affirmation Through Declaratory Judgment): judgment is hereby entered in favor of Defendant and against Plaintiffs.

8. As to Plaintiffs' Count II (Winding Up of the Partnership if it Dissolved or was Terminated): judgment is hereby entered, in part, in favor of Plaintiffs and, in part, against Defendant and, in part, in favor of Defendant and, in part, against Plaintiffs. More specifically, the Court orders the following:

a. The Partnership shall be wound up judicially and, in the interest of economy, the Court appoints John Christensen to wind up the affairs of the Partnership and to distribute the real estate held by the Partnership by delivering a deed to each of the limited partners consistent with the partner's Partnership interest as follows:

   i. To Pohlman Family LLC, a deed conveying an undivided .127800425 interest in the Property;

   ii. To Mary Villon de Benveniste, a deed conveying an undivided .127800425 interest in the Property;

   iii. To Natalie Caprano, a deed conveying an undivided .013632045 interest in the Property;

   iv. To Ed Bartholomew, a deed conveying an undivided .014040057 interest in the Property;

   v. To Carol Bartholomew, a deed conveying an undivided .097128323 interest in the Property;

   vi. To Aaron Christensen, a deed conveying an undivided .011360038 interest in the Property;

   vii. To Stephen Christensen, a deed conveying an undivided .011360038 interest in the Property;

   viii. To Sherrie Christensen, a deed conveying an undivided .014200047 interest in the Property; and

   ix. To John Christensen, a deed conveying an undivided .090880302 interest in the Property.

b. John Christensen shall distribute the interest in the Partnership to the partners by deed within thirty (30) days from the date this order is entered. The costs of the preparation of such deeds and other documents required shall be borne pro rata by the parties to this action.

c. The Court reserves jurisdiction to modify the appointment of the individual to supervise this process and to carry out the overall winding up of the affairs of the Partnership, if necessary.

9. As to Plaintiffs' Count III (Request that the Court Issue an Order that the Shares be Laid Off Pursuant to § 8.01-81 or be Allotted Pursuant to § 8.01-83): judgment is hereby entered in favor of Plaintiffs and against Defendants. More specifically, the Court orders the following:

a. The entire Property shall be allotted to the Plaintiffs, if they are willing and able to affect a purchase of the Defendant's interest in the Property within a commercially reasonable period of time, which the Court fixes as ninety (90) days from April 16, 2008. Plaintiffs and Defendant have declined to exercise this option.

b. The Court reserves jurisdiction and will allow additional evidence, if necessary, regarding what is a commercially reasonable period for such purchase.

c. Defendant's interest in the Property to be purchased by allotment is $2,097,400.69, which represents her 25% interest in the fair market value (as outlined in paragraph 3 of this Order) of the Property, less her 25% pro rata share of the costs associated with the Plaintiffs' efforts to improve the Property and her share of taxes owed on the Property (both of which are outlined in paragraph 6 of this Order).

10. As to Plaintiffs' Count IV (Request that the Court Issue an Order that the Property be Sold): judgment is hereby entered in favor of Plaintiffs and against Defendants. More specifically, the Court orders the following:

a. If the Plaintiffs are not willing or able to exercise the award of allotment provided by this Order and are not willing or able to purchase the interest of the Defendant outlined in paragraph 9(c) of this Order, then the Property shall be sold and the proceeds divided among the co-tenants in accordance with their ownership interests.

b. The Court reserves jurisdiction to supervise all aspects of the judicial sale, including the method of marketing the Property and the approval of any offers. ~~If the parties cannot agree on how to market the property, Thomas M. Dunlap and John A. C. Keith, shall be appointed as co-commissioners of sale.~~ William Atwill, Esq is appointed Commissioner of Sale. ~~Mr. Atwi~~ A sale of the Property should take place before December and Mr. Atwill shall have a reasonable opportunity to market the Property in the best interests of the parties cons with the Court's Ra in Exhibit A + B. Exhi B is the transcript hearing on June 4, 2

11. As to Plaintiffs' Count V (Partition): based on the Court's rulings as to Counts III and IV, the Court finds that partition in-kind cannot be conveniently made and, therefore, judgment is hereby entered against Plaintiffs as moot.

12. As to Defendant's Count I (Judicial Dissolution of Partnership and Winding Up Its Affairs): judgment is hereby entered in favor of Defendant and against Plaintiffs. More specifically, the Court orders that the Partnership shall be judicially wound up as outlined in paragraph 8 of this Order.

13. As to Defendant's Count II (Partition): the Court finds that partition in-kind cannot be conveniently made and, therefore, judgment is hereby entered in favor of Plaintiffs and against Defendant.

14. As to Defendant's Count III (Accounting under Va. Code § 8.01-31): this Count was not advanced at trial and, therefore, it is dismissed with prejudice.

14A. ~~PLAINTIFF~~ Defendant's Motion to Reconsider is denied.

15. The Clerk of Court is directed to send copies of this Order to all counsel of record.

THIS ORDER IS NOT FINAL.

ENTERED this 6th day of ~~April~~ June 2008

Burke F. McCahill
Circuit Court Judge

WE ASK FOR THIS:

DUNLAP GRUBB & WEAVER, PC
199 Liberty Street, S.W.
Leesburg, Virginia 20175
(703) 777-7319 (telephone)
(703) 777-3656 (facsimile)

A COPY-TESTE
Gary M. Clemons, Clerk
By _____ Deputy Clerk

By: _____
Thomas M. Dunlap, VSB 44016
Michael C. Whitticar, VSB 32968
Counsel for Plaintiffs

SEEN AND OBJECTED TO FOR THE REASONS STATED ON THE RECORD AND IN THE PAPERS:

BLANKINGSHIP & KEITH, P. C.
4020 University Drive, Suite 300
Fairfax, Virginia 22030
(703) 691-1235 (telephone)
(703) 691-3913 (facsimile)

By: _____
John A.C. Keith, VSB No. 14116
William B. Porter, VSB No. 41798
Counsel for Defendant Mary Villon De Benveniste

Stephen P. Robin, VSB 13854
LAW OFFICE of STEPHEN P. ROBIN
101-A South King Street
Leesburg, Virginia 20175
(703) 443-1001 telephone
(703) 443-6721 facsimile
Co-counsel for Defendant

SEP 12 2008

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF LOUDOUN

AARON W. CHRISTENSEN FAMILY, LP, et al.,	)	
Plaintiffs,	)	
v.	)	Case No. 44520
MARY VILLON DE BENVENISTE,	)	
Defendant.	)	

JUDGMENT AND ORDER

This cause having regularly matured, been set for hearing and docketed on August 1, 2008, and the court having considered the submissions of the plaintiffs and the arguments of counsel and the commissioner of sale on: (1) the Plaintiffs' July 25, 2008 Motion For Entry of Judgment or an Order Requiring Payment of $151,349.31 From Defendant to Plaintiffs, and Requiring that Defendant's Debt Be Paid Out of the Proceeds From Any Sale of the Subject Property, and (2) Plaintiffs' July 25, 2008 Motion To Permit Plaintiffs To Bid on Property While Getting Seventy Five Percent Ownership Credit Toward the Sales Price;

For good cause shown, the Court hereby GRANTS both of Plaintiffs' motions and hereby ORDERS as follows:

(1) Judgment is hereby entered in favor of Plaintiffs and against Defendant in the amount of $151,349.31, as set forth in paragraph 6 of the Court's Order of June 4, 2008, plus post-judgment interest at the rate of six percent from the date this order is entered, representing Defendant's 25% share of the 2006 and 2007 taxes for the Property known as Mountain Gap Farm and located at 19942 Hogback Mountain Road, Leesburg, VA 20175, and also representing

Defendant's 25% share of the costs and expenses associated with Plaintiffs' efforts to improve the Property through subdivision, engineering and development efforts through the date of trial. Defendant's debt shall be paid as an equitable offset in the first instance against her share of the proceeds from the sale of the Property but it does not preclude collection of this judgment if e.g. the proceeds are not sufficient or forthcoming in a timely fashion. Any execution on this judgment is hereby stayed until further order of the Court.

(2) In recognition of Plaintiffs' current seventy five percent ownership interest, Plaintiffs or any entity owned or controlled by them are entitled to receive a seventy five percent credit toward their bid price. The Court reserves jurisdiction to supervise the implementation and enforcement of this Judgment and Order.

SO ORDERED this 5th day of September, 2008

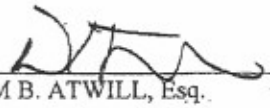
The Honorable Burke F. McCahill
Circuit Court Judge

~~WE ASK FOR THIS:~~ Seen and Objected to for the reasons stated on the record.

AARON W. CHRISTENSEN FAMILY, LP
POHLMAN FAMILY, LLC
JOHN W. CHRISTENSEN and
CAROL BARTHOLOMEW, et al.
By Counsel

Thomas M. Dunlap, VSB #44016
Michael C. Whitticar, VSB #32968
Dunlap, Grubb & Weaver, P.L.L.C.
199 Liberty St., S.W.
Leesburg, VA 20175-2175
703-777-7319 (Phone)
703-777-3656 (Facsimile)
mwhitticar@dglegal.com
Counsel for Plaintiffs

SEEN AND NOT OBJECTED TO:



WILLIAM B. ATWILL, Esq.
Special Commissioner of Sale
Atwill, Troxel & Leigh, P.C.
101 North King Street
Leesburg, VA 20176
(703) 777-4000

SEEN AND OBJECTED TO FOR THE REASONS STATED ON THE RECORD AND IN THE PAPERS PREVIOUSLY FILED WITH THE COURT:

MARY VILLON DE BENVENISTE
By Counsel

John A.C. Keith, VSB No. 14116
William B. Porter, VSB No. 41798
Blankingship & Keith, P.C.
4020 University Drive, Suite 300
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703-691-1235 (Phone)
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jkeith@bklawva.com

Stephen P. Robin, Esq.
101-A South King Street
Leesburg, Virginia 20175

Counsel for Defendant

NOV 20 2009

VIRGINIA:

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

AARON W. CHRISTENSEN FAMILY, LP, *et al.*	)	
Plaintiffs,	)	
v.	)	Case No. 44520
MARY VILLON DE BENVENISTE,	)	
Defendant.	)	

FINAL DECREE

This matter came before the Court on the Final Report of the Commissioner of Sale, William H. Atwill, Jr. ("Commissioner") with regard to the sale of the Property, and

IT APPEARING TO THE COURT that the proceeds of sale were distributed as directed by the Court in its Decree entered October 7, 2008, that the accounting stated in the Final Report ought to be approved; that Defendant Mary De Benveniste elected to have her share of the sales proceeds, less the escrowed amount of $147,277.72 per the Court's Order of October 3, 2008, paid to a Qualified Intermediary in connection with a Section 1031 Exchange; that Union Title and Escrow, Inc. is a Qualified Intermediary for purpose of a Section 1031 Exchange; and that the Commissioner should be relieved of further duties or obligations with regard to the Section 1031 Exchange transaction, all as evidenced by the endorsement of counsel hereto and the Settlement Agent; it is therefore

ORDERED, ADJUDGED and DECREED that the Final Report of the Commissioner, including the accounting stated therein, be and the same hereby is ACCEPTED and APPROVED; and it is further

ORDERED, ADJUDGED and DECREED that nothing herein or in the Decree of Distribution entered October 7, 2008 shall waive or foreclose any claim of ~~tax~~ PLAINTIFF Against THE DEFENDANT for any previously unpaid ~~taxes or other expenses~~ real estate taxes IN CONNECTION WITH THE Property; and it is further

ORDERED, ADJUDGED and DECREED that Union Title and Escrow, Inc. be and the same hereby is determined to be a Qualified Intermediary for purposes of the Court's Decree entered October 7, 2008; and it is further

ORDERED, ADJUDGED and DECREED that, having confirmed receipt by a Qualified Intermediary, *viz.*, Union Title and Escrow, Inc., of the proportionate share of sales proceeds of Defendant Mary De Benveniste, the Commissioner be and hereby is released of all further duties or obligations with respect to such Section 1031 Exchange transaction; and it is further

ORDERED, ADJUDGED and DECREED that the Clerk of the Court shall place these papers among the ended causes, properly indexed under each of the following names:

William H. ATWILL, JR., Special Commissioner; POHLMAN FAMILY LLC, a Virginia limited liability company; Mary Lois de BENVENISTE (also of record as Mary Villon de BENVENISTE); Carol Joyce BARTHOLOMEW; John William CHRISTENSEN (also of record as John W. CHRISTENSEN and John CHRISTENSEN); Natalie CAPRANO; Steven CHRISTENSEN; and Aaron CHRISTENSEN, and AARON W. CHRISTENSEN FAMILY LIMITED PARTNERSHIP, LP, a Virginia limited partnership, as its or its successors interests may appear; and NONSUCH 2, LLC, a Virginia limited liability company.

THIS DECREE IS FINAL.

Entered this 7th day of November 2008.

Honorable Burke F. McCahill
Loudoun County Circuit Court Judge

I ASK FOR THIS:

ATWILL, TROXELL & LEIGH, P.C.

William H. Atwill, Jr.; VA Bar No: 23543
101 North King Street
Leesburg, Virginia 20176
Telephone: (703) 777-4000
Facsimile: (703) 777-4001
Email: batwill@atandlpc.com
Special Commissioner of Sale

SEEN AND AGREED:

DUNLAP GRUBB & WEAVER, PC

Thomas M. Dunlap; VA Bar No: 44016
Michael C. Whitticar; VA Bar No: 32968
199 Liberty Street, S.W.
Leesburg, Virginia 20175
Telephone: (703) 777-7319
Facsimile: (703) 777-3656
Counsel for Plaintiffs

SEEN AND AGREED:

BLANKINGSHIP & KEITH, P.C.

_____

John A.C. Keith; VA Bar No: 14116
William B. Porter; VA Bar No: 41798
4020 University Drive, Suite 300
Fairfax, Virginia 22030
Telephone: (703) 691-1235
Facsimile: (703) 691-3913
Counsel for Defendant

SEEN AND JURISDICTION ACCEPTED FOR OBJECTS OF THIS DECREE:

UNION TITLE & ESCROW, INC.

_____

David Moyes, Esquire
21 N King Street
Leesburg, Virginia 20176
Telephone: (703) 777-6800
Facsimile: (703) 777-8429
E-Mail: moyeslevay@aol.com
Managing Member

SEEN AND ~~AGREED:~~ Objected to the underlying rulings at trial and thereafter as previously set forth in the papers and transcripts [The Commissioner and Mr. Whitticar telephoned Mr. Keith and discussed the handwritten modification and received his verbal approval]

BLANKINGSHIP & KEITH, P.C.

John A.C. Keith; VA Bar No: 14116
William B. Porter; VA Bar No: 41798
4020 University Drive, Suite 300
Fairfax, Virginia 22030
Telephone: (703) 691-1235
Facsimile: (703) 691-3913
Counsel for Defendant

SEEN AND JURISDICTION ACCEPTED FOR OBJECTS OF THIS DECREE:

UNION TITLE & ESCROW, INC.

David Moyes, Esquire
21 N King Street
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Telephone: (703) 777-6800
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E-Mail: moyeslevay@aol.com
Managing Member

A COPY TESTE
Gary M. Glemens, Clerk
BY Deputy Clerk