

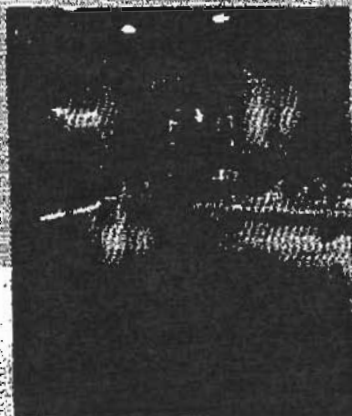
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REAL ESTATE

Common Pleas Court Rules On Partition Actions in Pa.

BY ALAN NOCHUMSON

Special to the Legal

In *Bernstein v. Sherman*, the Philadelphia Court of Common Pleas recently provided a glimpse into the esoteric world of litigating a partition action in Pennsylvania.

The procedures for a partition of real estate are dictated by the Pennsylvania Rules of Civil Procedure. The action must be commenced in the county in which the property is located. The action may be brought by any of the co-tenants. All the other co-tenants must be joined as defendants. The complaint must include a description of the property and a statement of the nature and extent of the interest of each party in the property.

If the court ultimately decides there are sufficient grounds to partition the property, the court must enter an order setting forth the nature and extent of the property interests of the respective parties.

APPOINTMENT OF MASTER

After issuance of the partition order, a preliminary conference is held for the parties to, among other things, consider whether they can agree upon a plan of partition or sale, simplification of any outstanding issues, and whether any issues or matters relating to the implementation of the order should be referred to a master.

A master may be appointed to hear the entire matter or to conduct any sale, or to act upon only specified issues or matters relating to the execution of the partition order. The master is empowered to hold hearings and



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employ appraisers and other experts. Afterward, the master is required to file a written report and issue a proposed order.

The written report must include the following findings of fact: "Whether the property is capable of division, without prejudice to or spoiling the whole, into purparts proportionate in value to the interests of the co-tenants; the number of purparts into which the property can be most advantageously divided, if partition proportionate in value to the interests of the parties cannot be made; the value of the entire property and of the purparts; the mortgages, liens, and other encumbrances or charges which affect the whole or any part of the property and the amount due thereon; the credit which should be allowed or the charge which should be made, in favor of or against any party because of use and occupancy of the property, taxes, rents or other amounts paid, services rendered, liabilities incurred or benefits

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derived in connection therewith and therefrom; whether the interests of persons who have not appeared in the action, or of defendants who have elected to retain their shares together shall remain undivided; whether the parties have accepted or rejected the allocation of the purparts or bid therefor at private sale confined to the parties; and whether a sale of the property or any purpart not confined to the parties is required and if so, whether a private or public sale will in its opinion yield the better price."

The proposed order issued by the master must include the following: "an appropriate award of the property or purparts to the parties subject to owelty where required; if owelty is required, the amount of the awards and charges which shall be necessary to preserve the respective interests of the parties, the purparts and parties for or against which the same shall be charged, the time of payment and the manner of securing the payments; the protection required for life tenants, unborn and unascertained remaindermen, persons whose whereabouts are unknown or other persons in interest with

respect to the receipt of any interest; and a public or private sale of the property or part thereof where required."

After receiving the master's written report and proposed order, any party may file exceptions "to rulings on evidence, to findings of fact, to conclusions of law, or to the proposed order." "The court may, with or without taking testimony, remand the report or enter an adjudication ... which may incorporate by reference the findings and conclusions of the master in whole or in part."

SALE OF PROPERTY

If the property is incapable of division without prejudice to or spoiling the whole, the property must be offered for private sale confined to the parties. If any defendant owns a majority in value of the property, he may object to any sale and instead request an award of the property at a price fixed by the court.

If division of the property can be made without prejudice to or spoiling the whole, the property may be divided in one of the following manners: proportionately in value to the interests of the parties; in as many purparts as there are parties entitled to the property; or in the most advantageous and convenient manner.

Unless the property may be divided pro-

portionately in value to the interests of the parties, notice of the proposed partition must be served on all parties. The notice in the case of inability to partition must state that the property will be sold unless objection is made by the defendant owning a majority in value of the property.

The notice must also include "a description of the property and the proposed partition, the valuation of the property as a whole and of the purparts, if any, into which it is proposed to be divided, the mortgages, liens, encumbrances or charges which affect the whole or any part of the property and the amounts due on account of the property. A plan or map of the proposed division of the property may be attached to the notice." In the alternative, the notice may specify a place where the proposed plan and information may be examined.

If any party rejects the proposed partition, the property must be offered for private sale by open bidding confined to the parties.

In any private sale confined to the parties, the property must be offered for sale both in purparts and as a whole to determine which will bring the greater price. No sale of the whole or purpart will be confirmed unless the amount bid equals or exceeds the valuation as fixed by the court.

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If the private sale of the property is not confirmed, the property will be sold at public sale or at private sale not confined to the parties. The sale is subject to the power of the court to order a resale because of inadequacy of price.

RECENT DECISION IN BERNSTEIN

In *Bernstein*, the defendant appealed the

trial court's ruling to grant exceptions filed by the plaintiff to the master's written report and proposed order. In the report, the master recommended that four properties be each conveyed to the plaintiff and defendant. The properties were assigned a value by the master. Since the cumulative values of the properties were uneven, the master ordered that the plaintiff, the party receiving the higher value, pay a sum of money to effect an even division. The master noted that his decree was subject to credits due to maintain the properties and refinancing of existing mortgages.

In his filed exceptions, the plaintiff in *Bernstein* contended that, due to the mixed nature and values of the properties, he did not believe it was not possible to divide the properties evenly.

In granting the exceptions, the trial court found that, "because the properties owned between the parties could not be divided without assignment of credit to equalize the value, this method of partition would not lead to an equal division of the property."

Further, the trial court "found that this method would require unnecessary court intervention (to ascertain the actual credits to

which the parties would be entitled) and would only foster continued litigation."

The trial court ultimately believed that, "[a]lthough the resolution the master proposed is not unreasonable, because one of the parties filed exceptions, ... [it] was required to order the properties be sold between the parties."

LESSONS LEARNED

As illustrated in *Bernstein*, a partition order just marks the beginning of the property dispute. The property must still be sold either by agreement or per court order.