

STATE OF VERMONT  
ORANGE COUNTY

FILED  
OCT 07 2008  
ORANGE SUPERIOR COURT

PATTI ESTELLE HARRILD )

Orange Superior Court  
Docket No. 10-1-06 Oecv

v. )

DOMINICK BAILEY )

ENTRY ORDER

Plaintiff's Motion to Approve Commissioners' Report and Order Sale, filed April 11, 2008  
Defendant's Response filed August 8, 2008

The Commissioner's Report was filed March 27, 2008. The Commissioners determined that the property that is the subject of this partition action, 3.8 acres at 2043 Parker Road in Vershire, cannot be divided in kind, and that it has a fair market value of \$50,000.00. Plaintiff seeks approval of the Commissioner's Report, and Defendant agrees that the court should approve these findings.

Plaintiff has moved the court to order sale of the premises, as she does not wish to accept assignment. Defendant opposes sale, as he wishes to preserve the opportunity to pay Plaintiff her share and take assignment of the premises. There has not yet been an evidentiary hearing to determine whether either party has made net contributions in excess of those made by the other party as a predicate to making a determination as to the amount Plaintiff would be entitled to in exchange for Defendant taking assignment of her interest in the property.

Defendant should have the opportunity to take assignment, paying Plaintiff for her interest in the property. However, if Defendant is not able to do so, there is no reason to delay proceeding to sale. 12 V.S.A. §§ 5174 and 5175. Based on the Commissioner's determination of value, the presumptive amount to be paid to Plaintiff is \$25,000.00, subject to adjustment as a result of the final evidentiary hearing.

Therefore, Defendant shall have 60 days to pay \$25,000.00 in cash or certified funds to the court, or alternatively to the parties' attorneys to be held in an escrow account for the benefit of Plaintiff, to be held pending final hearing and determination of the exact amount due to Plaintiff. Failure to submit such funds will result in a finding by the court that Defendant "will not take such assignment and pay such sum" under 12 V.S.A. § 5175, and the court will then order a sale of the premises.

In the meantime, a pre-trial status conference will be scheduled to determine the issues and the amount of time needed for the evidentiary hearing.

**ORDER**

Based on the foregoing,

1. The Commissioner's Report is approved;
2. Defendant has until December 8, 2008 to deposit \$25,000 in cash or certified funds with the court to preserve his opportunity to take assignment of the premises;
3. Failure by the Defendant to make such deposit (or, if the parties' attorneys agree in writing, a deposit of such funds to an escrow account established by the attorneys for the benefit of Plaintiff) will result in an order for sale of the premises; and
4. A pretrial status conference will be scheduled.

Dated at Chelsea, Vermont this 7<sup>th</sup> day of October, 2008.

*Mary Mjes Teachout*  
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Mary Mjes Teachout  
Superior Court Judge

