

COURT OF CHANCERY  
OF THE  
STATE OF DELAWARE

ABIGAIL M. LEGROW  
MASTER IN CHANCERY

NEW CASTLE COUNTY COURTHOUSE  
500 NORTH KING STREET, SUITE 11400  
WILMINGTON, DE 19801-3734

Final Report: January 3, 2013  
Date Submitted: December 28, 2012

**Via LexisNexisXpress**

Douglas A. Shachtman, Esquire, Trustee  
1200 Pennsylvania Avenue, Suite 302  
Wilmington, DE 19806

**Via U.S. Mail**

Ms. Connie Santora  
2813 Videre Drive  
Wilmington, DE 19808  
[littlec196@cs.com](mailto:littlec196@cs.com)

Ms. Sharon Duncan  
65 Notre Dame Avenue  
New Castle, DE 19720

Ms. Barbara Zerbe  
15 Darlington Road  
New Castle, DE 19720

Ms. Debbie Stiely  
106 Cherry Lane  
New Castle, DE 19720

Mr. William Rhodes  
803 Lisadell Drive  
Kennett Square, PA 19348  
[wkrhodes@verizon.net](mailto:wkrhodes@verizon.net)

Mr. John Rhodes  
701 South Street, Apt. 5  
New Castle, DE 19720  
[immars359@aol.com](mailto:immars359@aol.com)

Re: *Francis Patrick Cassidy Estate et al. v. William Paul Rhodes, III et al.*  
C. A. No. 6912-ML

Dear Parties:

This action for partition of property by sale was filed by Connie Santora as executrix of the estate of Francis Patrick Cassidy (the "Estate"). In August 2012 I entered an order appointing Douglas A. Shachtman, Esquire as trustee (the "Trustee") for the purpose of selling the property at public vendue pursuant to 25 *Del. C.* § 729. The property was sold at auction subject to confirmation of the sale by this Court. Ms. Santora, who filed this partition action and insisted on a partition sale despite entreaties by the parties and the Court to agree to a private sale of the property, now objects to the sales price because it is well below the value attributed to the

property in an appraisal obtained by the Estate in August 2010. For the reasons set forth below, Ms. Santora's objections are denied and the sale of the property is confirmed.

### **BACKGROUND**

Ms. Santora filed this action on behalf of the Estate in October 2011. At the time, the Estate was represented by Raymond E. Tomasetti, Jr., Esquire. The action concerned a parcel of real estate located at 34 Herbert Drive in New Castle, Delaware (the "Property"). The Property was conveyed to the current owners by Jane M. Rhodes ("Jane")<sup>1</sup> through her last will and testament, which granted a life estate to Francis Patrick Cassidy ("Mr. Cassidy") and devised the remainder interest to Jane's three sons, Mr. Cassidy, William Paul Rhodes III ("William"), and John Marshall Rhodes ("John").<sup>2</sup> Mr. Cassidy passed away on August 5, 2010. His 1/3 remainder interest in the Property was devised through Items III and IV of his last will and testament, which divided his interest into five parts: 40% to Ms. Santora, 15% to John, 15% to Debbie Stiely, 15% to Barbara Zebra, and 15% to Shannon Duncan.<sup>3</sup>

Mr. Cassidy's will named Ms. Santora as executrix.<sup>4</sup> In that capacity, she obtained an appraisal that valued the Property at \$186,000 as of August 5, 2010 (the "August 2010 Appraisal"). A copy of the August 2010 Appraisal was provided to John and William, in the hope that they would make an offer to purchase the Estate's interest in the Property.<sup>5</sup> It appears no such offer was made, however, and the Petition for Partition by Sale (the "Petition") therefore was filed.

---

<sup>1</sup> I use the Rhodes' first names to avoid confusion. No disrespect is intended.

<sup>2</sup> Petition for Partition by Sale, ¶ 10.

<sup>3</sup> *Id.* at ¶ 12 & Exhibit C.

<sup>4</sup> Petition for Partition, Exhibit C, Item VI.

<sup>5</sup> Petition for Partition, Exhibit G.

The Petition alleged that a partition in kind of the Property would be unfeasible and detrimental to the interests of the parties, and therefore sought partition by sale. A hearing on the Petition was held on May 21, 2012. John and William appeared at the hearing and did not oppose the sale of the Property, but argued that the parties should attempt to agree to market and sell the Property privately, rather than through public auction. At the conclusion of the hearing, I directed the parties to attempt to agree to a private sale, and held that an order for partition by sale would be entered if the parties could not agree. The parties were unable to reach an agreement for reasons that are not relevant to this report, and I entered an order on August 16, 2012 appointing the Trustee and directing that the Property should be sold at public vendue as provided in *25 Del. C. § 729*.

At that point, the train went off the rails. Approximately one month after the order for partition by sale was entered, Mr. Tomasetti filed a motion to withdraw as counsel, indicating that Ms. Santora no longer wanted him to represent the Estate. Ms. Santora filed a letter opposing the motion to withdraw and requesting a hearing. Shortly thereafter, the Trustee submitted a letter requesting instructions from the Court, because Ms. Santora appeared to be insisting that the Property should be sold at Sheriff's sale and because the Trustee was unsure of whether he should continue to take steps to clean out the Property and prepare it for public auction in light of Ms. Santora's objections. A hearing on these matters was held on October 26, 2012. At the conclusion of that hearing, I granted Mr. Tomasetti's motion to withdraw, instructed the Trustee to continue with his efforts to sell the Property at public auction, and advised Ms. Santora to consider retaining new counsel to assist the Estate.

The Property was sold at an auction conducted by Bellevue Realty Company ("Bellevue") on December 4, 2012 (the "Auction"). Before the Auction, the Trustee, with the

assistance of William and his family, cleared the Property of considerable amounts of clutter and debris that apparently filled a great deal of the living space.<sup>6</sup> The Property was cleaned by a professional service and the old carpets were removed.<sup>7</sup> An appraisal of the Property was obtained by the Trustee, which valued the Property at \$115,000 (the “November 2012 Appraisal”).<sup>8</sup> The Property was marketed by Bellevue before the Auction. The marketing included a color print ad that appeared once a week in the News Journal for three weeks, three e-mail “blasts” to residential realtors in New Castle County, and yard signage on the Property. Bellevue also conducted multiple pre-auction showings to allow interested parties to inspect the Property.<sup>9</sup>

Twenty-one people attended the Auction and eight bidders submitted the required \$10,000 certified check in order to participate in the bidding.<sup>10</sup> During the December 27, 2012 hearing in this matter, the Trustee explained that Bellevue initially opened the bidding for the Property at \$100,000, but no bids were submitted at that price. The opening price was lowered to \$75,000, and then to \$50,000, where bidding finally commenced. The Property ultimately was sold to the highest bidder at \$113,000, plus a three percent “Buyers [sic] Premium,” that will accrue to the Estate and William and John, for a total sales price of \$116,390.<sup>11</sup> The successful bidder was D. Marty Mellinger, who previously offered Ms. Santora \$125,000 to purchase the Property.<sup>12</sup>

The sale of the Property explicitly is contingent on the approval of this Court, and the contract for sale provides that “[i]n the event Court approval is not obtained by January 13,

---

<sup>6</sup> Trustee’s Report of Sale, ¶3.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at ¶ 4.

<sup>9</sup> Letter to the Court from Mr. Shactman, dated December 28, 2012, Ex. L.

<sup>10</sup> *Id.* See also Trustee’s Report of Sale ¶ 7.

<sup>11</sup> Trustee’s Report of Sale ¶¶7-8.

<sup>12</sup> Letter to the Court from Ms. Santora, dated September 26, 2012, Exhibit 1.

2013[,] said [a]greement may be declared null and void and all deposit money returned to Buyer.”<sup>13</sup> A hearing to consider the Trustee’s Report of Sale initially was scheduled for December 13, 2012, but was rescheduled for December 27, 2012 at Ms. Santora’s request. On December 19, 2012, Ms. Santora requested a further extension because she was “in the process” of retaining counsel to represent the Estate, and counsel was not available on December 27<sup>th</sup>.<sup>14</sup> In light of the January 13<sup>th</sup> deadline, I denied that request.

During the hearing on December 27<sup>th</sup>, the Trustee explained his report and provided additional information concerning a mortgage that had been recorded against the Property by Jane. The Trustee informed the Court that the mortgage had been satisfied by Jane’s estate and had been marked as such on the deed. Ms. Santora, John, and William were present for the hearing. William expressed his support for the sale and John did not lodge any objection. Ms. Santora, however, asked the Court not to approve the sale in light of the value given the Property in the August 2010 Appraisal. Because I did not have a copy of the August 2010 Appraisal during the hearing, and did not have a complete copy of the November 2012 Appraisal, I asked the Trustee and Ms. Santora to supplement the record with those appraisals. Having now reviewed and considered the two appraisals, along with additional information the Trustee provided regarding the marketing of the Property, I conclude that the sale of the Property should be confirmed.<sup>15</sup>

---

<sup>13</sup> Trustee’s Report of Sale, Ex. B.

<sup>14</sup> To date, no attorney has entered an appearance on behalf of the Estate or Ms. Santora in this matter, although they are certainly welcome to do so. In her letters dated December 19, 2012, December 24, 2012, and December 30, 2012, Ms. Santora repeatedly refers to her intent to retain an attorney, and requests time for that attorney to respond to the Trustee’s Report of Sale. In light of those representations and requests, it is unclear why no attorney has entered their appearance. The only conclusion I can draw is that Ms. Santora, for reasons not explained, has not yet retained an attorney. In light of the impending deadline, and the amount of time that has passed since Mr. Tomasetti withdrew as counsel for the Estate, I am not inclined to grant any additional extensions to the Estate.

<sup>15</sup> Although the Trustee provided certain additional exhibits through a letter dated December 28, 2012, including a May 2011 “Market Analysis” of the Property obtained by William, and a letter from Mr. Mellinger regarding his

## **ANALYSIS**

Ms. Santora opposes the sale because she contends, in essence, that the sales price is substantially below the Property's market value. As the party opposing the sale, Ms. Santora bears the burden of proof.<sup>16</sup> In support of her position, she relies upon the August 2010 Appraisal. Ms. Santora criticizes the more recent November 2012 Appraisal as unreliable and incomplete, and urges this Court to conclude that it is not evidence of the value of the Property, particularly where other homes in the neighborhood have sold for a substantially higher price and the successful bidder at the Auction offered \$125,000 to purchase the Property three months ago. In response, the Trustee and William contend that the August 2010 Appraisal does not reflect the current value of the Property, that the Auction was properly advertised and conducted, and that the auctioneer obtained the best possible price available in a sale by partition.

Ms. Santora's reliance on the August 2010 Appraisal is misplaced, and her argument that this Court should not approve the sale of the Property fails for two reasons. First, Ms. Santora's criticism of the November 2012 Appraisal is unpersuasive. That appraisal was conducted by a "Certified General Real Property Appraiser" who is licensed by this State. The appraisal considers the condition of the Property, including the fact that no recent improvements or updating had been made to the Property, the flooring was in poor condition, and some walls and at least one window were damaged.<sup>17</sup> The November 2012 Appraisal further indicates that "[t]he properties located in this marketing area have been declining for several years ... [i]t is a buyer's market with numerous properties listed for sale in the subject marketing area. There are a

---

various offers to purchase the Property, I need not and do not consider those documents in order to conclude that the sale should be confirmed.

<sup>16</sup> *Gray v. Gray*, 1977 WL 176257, at \*1 (Del. Ch. Sept. 23, 1977).

<sup>17</sup> November 23, 2012 Appraisal, attached as Exhibit H to Trustee's letter to the Court dated December 28, 2012 (hereinafter "November 2012 Appraisal"), p. 1.

number of bank owned properties for sale and some short sales in this marketing area.”<sup>18</sup> The appraisal utilizes a “Sales Comparison Approach” and considers the sale of three similar properties,<sup>19</sup> much like the August 2010 Appraisal. Indeed, the only notable differences between the August 2010 Appraisal and the November 2012 Appraisal are the comparable properties relied upon and the conclusion reached regarding the value of the Property. Given the passage of time and the continued deterioration of the real estate market, it is reasonable to conclude that the difference between the two appraisals is largely attributable to those two factors, rather than any mistakes or miscalculations on the part of either appraiser. I therefore find that the November 23, 2012 Appraisal is the more reliable indication of the value of the Property. The appraised value closely aligns with the sales price and supports confirmation of the sale.

Second, and perhaps more importantly, this Court’s approval of the sale does not hinge upon whether the price obtained at the Auction was the value that could have been achieved at a private sale of the Property. To the contrary, and as this Court tried to explain at several hearings in this matter, once the Estate sought and obtained an order for partition by sale, the Court was bound by statute to order sale at a “public vendue,” *i.e.* a public auction.<sup>20</sup> By proceeding in that manner, the Estate lost the opportunity to test the market or consider private offers to purchase the Property. Property sold at partition sale brings “whatever the bidders [are] willing to offer that day, which is not necessarily the same price that could be had by private sale.”<sup>21</sup>

---

<sup>18</sup> *Id.*

<sup>19</sup> In a letter dated December 30, 2012, Ms. Santora contends that the appraiser selected properties that “are not true comps” and offers unsubstantiated information about two other sales of homes near the Property for significantly higher prices. Because Ms. Santora has offered no documentation about the sale of these other homes, or any information from which the Court could conclude they were comparable in size or condition to the Property, I cannot consider this information.

<sup>20</sup> 25 *Del. C.* § 729; *see Real Estate of Warren v. Warren*, 1999 WL 183357, at \*8 (Del. Ch. Mar. 17, 1999); *Matter of Real Estate of Calverese*, 1992 WL 87328, at \*1 (Del. Ch. Apr. 27, 1992).

<sup>21</sup> *Real Estate of Warren*, 1999 WL 183357, at \*8. *See also Real Estate of Calverese*, 1992 WL 87328, at \*1 (“[I]t is generally understood that a greater price is likely to be realized in [a private sale, rather] than through a public sale,

Inadequacy of sales price is not, of itself, grounds for setting aside a partition sale. Unless the price inadequacy is so gross as to shock the conscience of the Court or amount to fraud, or unless the inadequate price is combined with irregularities in the sales process, the Court will not set aside the sale.<sup>22</sup> Ms. Santora has offered no criticism of the manner in which the sale was advertised or conducted,<sup>23</sup> and it appears from the record that the Auction was both well advertised and well attended. There were no outside events, such as unfavorable weather conditions or a similar event that would have prevented interested bidders from attending the Auction. Eight people submitted the necessary deposit to participate in the bidding, and there evidently was a healthy auction, because the ultimate sales price was \$63,000 above the opening bid. Accordingly, even if the August 2010 Appraisal reflects the current market value of the Property, the fact that the Property sold for approximately \$70,000 less is of no moment. Rather, it simply illustrates the eventuality that this Court warned was likely to occur if the Property was sold through partition. I am not convinced, or even slightly persuaded, that a second auction would result in a higher bid, particularly one that would offset the additional costs of reprising the process.

## **CONCLUSION**

For the foregoing reasons, the sale of the Property for \$113,000, plus a three percent “Buyers [sic] Premium” is confirmed. Because of the pending January 13, 2013 date for approval of the sale, I am waiving the filing of a draft report and designating this as my final

---

which is a notoriously poor way to get a good price.”); *Branca v. Branca*, 1981 WL 15472, at \*1 (Del. Ch. May 21, 1981) (“[N]eedless to say, a sale in accordance with 25 Del. C., Ch. 72 is an economically unfavorable way to sell property.”).

<sup>22</sup> See *Gray*, 1977 WL 176257, at \*1-2.

<sup>23</sup> Although Ms. Santora initially criticized the auctioneer’s decision to start the bidding at \$50,000, that criticism was based on her mistaken understanding of the events. As set forth above, the auctioneer started the bidding at \$50,000 only after his attempts to start the auction at \$100,000 and \$75,000 failed to draw any bids.

report pursuant to Court of Chancery Rule 144(a)(1). Any exceptions to this report should be taken in accordance with Rule 144.

/s/ Abigail M. LeGrow  
Master in Chancery