

**COURT OF CHANCERY  
OF THE  
STATE OF DELAWARE**

**SELENA E. MOLINA**  
MASTER IN CHANCERY

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RE: *Jeffrey Derr v. Ronald L. Derr and Shelly J. Sowers*,  
C.A. No. 2021-0416-SEM

Dear Counsel:

The plaintiff moved for a more definite statement arguing that the counterclaim asserted by the defendants is unclear. After reviewing the defendants' response, I agree. I find the plaintiff's motion should be granted and the defendants should be required to file an amended counterclaim, consistent with the directions herein, within ten (10) days of this final report becoming an order of the Court.

**I. Background<sup>1</sup>**

Jeffrey Derr, individually and as executor of the Estate of Jean Derr (the "Plaintiff") initiated this action for specific performance and instructions against

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<sup>1</sup> Given the dispute before me, this background focuses on the procedural posture of this action and the pleading at issue. See Docket Item ("D.I.") 4.

Ronald L. Derr and Shelly J. Sowers (the “Defendants”) on May 12, 2021.<sup>2</sup> Plaintiff avers that, before the death of Jean Derr (the “Decedent”), the Plaintiff made, and the Decedent accepted, an offer to purchase the Decedent’s property located at 19 West Atlantic Street, Fenwick Island, Delaware (the “Property”).<sup>3</sup> The offer was made in October 2020 and presumably accepted shortly thereafter.<sup>4</sup> But an agreement of sale was never executed, the sale never closed, and the Decedent passed on February 19, 2021.<sup>5</sup> The Plaintiff seeks specific performance of the sale, instructions from the Court authorizing the sale despite the conflict of interest between the Plaintiff’s claim to the Property and his role as the executor of the Decedent’s estate, and the Plaintiff pled an alternative claim against the Defendants for intentional interference with contract relations.<sup>6</sup>

The Defendants answered and counterclaimed on June 10, 2021.<sup>7</sup> The counterclaim has one count titled “Partition” (“Count I”).<sup>8</sup> Count I provides that the

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<sup>2</sup> D.I. 1.

<sup>3</sup> D.I. 1 ¶ 5.

<sup>4</sup> D.I. 1, Ex. C.

<sup>5</sup> D.I. 1 ¶ 2.

<sup>6</sup> D.I. 1 ¶¶ 19-36.

<sup>7</sup> D.I. 4. The Defendants also moved to expedite. *Id.* The motion to expedite was opposed, oral argument was heard on June 22, 2021, and I issued an oral final report recommending that it be denied. *See* D.I. 8. No exceptions were filed to my final report and as of July 7, 2021, it became an order of this Court. *See* Ct. Ch. R. 144.

<sup>8</sup> D.I. 4.

Property cannot be partitioned in kind because it would be detrimental to the interests of the intestate heirs (the co-owners of the Property, if the alleged agreement between the Plaintiff and the Decedent is not enforced).<sup>9</sup> Count I then requests that the Property be sold by a realtor and the proceeds divided among the intestate heirs in equal shares.<sup>10</sup> Count I further seeks interim relief for equal access to, and use of, the Property by the intestate heirs until it is sold.<sup>11</sup> Finally, Count I requests that a trust contemplated in the Decedent's will for maintenance of the Property be preserved for that stated purpose.<sup>12</sup>

Rather than answer the counterclaim, the Plaintiff moved for a more definite specific statement on June 21, 2021 (the "Motion").<sup>13</sup> The Motion questions whether Count I is for statutory partition under *25 Del. C. §721, et. seq.* The Defendants answer "no"—Count I is intended to be an equitable claim for injunctive relief through a sale of the Property. As the Defendants put it:

Defendants' counterclaim titled "Partition" is clearly a counterclaim for injunction, seeking, among other things, that real property be sold and not partitioned. It sets forth all of the elements for an injunction and seeks injunctive relief. The counterclaim is titled "Partition" because undersigned counsel understands that such a counterclaim, seeking that

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<sup>9</sup> D.I. 4 ¶ 10.

<sup>10</sup> D.I. 4 ¶ 11.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> D.I. 7.

real property be sold and not partitioned, must be titled “Partition” and include the statement that: “No partition has been made of the Property and partition of the Property would be detrimental to the interests of the parties involved. The Property cannot be subdivided into equal parts so as to produce a merchantable quantity of land or an equitable division of the real estate.” The counterclaim includes this statement, which statement also makes clear that Defendants are asking that the real property be sold and not partitioned.<sup>14</sup>

I find no further briefing or argument is necessary to provide my recommendation.

## **II. Analysis**

Under Court of Chancery Rule 12(e), “[i]f a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing the party’s responsive pleading.” “A [pleading] is sufficiently definite, and relief under Rule 12(e) will be denied, if the [pleading] ‘give[s] the opposing party fair notice of the nature of the claim.’”<sup>15</sup> And “[t]o withstand a Rule 12(e) motion, the [pleading] must be ‘sufficiently intelligible for the Court to discern one or more potentially viable legal theories on which the claimant might proceed.’”<sup>16</sup>

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<sup>14</sup> D.I. 10.

<sup>15</sup> *Stone & Paper Inv’rs, LLC v. Blanch*, 2020 WL 3496694, at \*14 (Del. Ch. June 29, 2020) (quoting *Balin v. Amerimar Realty Co.*, 1993 WL 542452, at \*5 (Del. Ch. Dec. 23, 1993)).

<sup>16</sup> *DuHadaway v. O’Connor*, 2013 WL 961129, at \*2 (Del. Ch. Mar. 11, 2013) (quoting *In re Estate of Cornelius*, 2002 WL 1732374, at \*3 (Del.Ch. July 11, 2002)).

I find Count I, as articulated by the Defendants, fails to give the Plaintiff fair notice of the nature of the claim and must be amended. Count I avers that the parties have irreconcilable differences and cannot agree on the use and enjoyment of the Property. Due to these differences, the Defendants seek to sever their joint interest in the Property. Severance of joint interests in real property is achieved through the equitable remedy of partition, which was codified in Title 25, Chapter 7, of the Delaware Code and subject to Court of Chancery Rule 183. Although the Delaware partition statute contemplates “as the first and preferred option not the partition sale of land but partition in kind[,]”<sup>17</sup> if an in-kind partition would be detrimental to the interests of the co-owners, the Court may order partition by sale.<sup>18</sup> A partition by sale is by public auction, unless all co-owners agree to a private sale.<sup>19</sup> But, despite the references to “partition” and a predicate that implies partition as the available equitable claim, the Defendants argue Count I is for injunctive relief and not partition. But “[i]njunctions are a form of relief, not a cause of action.”<sup>20</sup> I cannot

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<sup>17</sup> *In re Real Estate of Roth*, 1987 WL 9370, at \*1 (Del. Ch. Mar. 16, 1987).

<sup>18</sup> *Peters v. Robinson*, 636 A.2d at 929 (citing 25 *Del. C.* § 724) (emphasis in original).

<sup>19</sup> See 25 *Del. C.* § 729; *Collins v. Collins*, 2017 WL 2983080 (Del. Ch. July 13, 2017); *In re Real Estate of Calvarese*, 1992 WL 87328 (Del. Ch. Apr. 27, 1992).

<sup>20</sup> *Quadrant Structured Prods. Co. v. Vertin*, 102 A.3d 155, 203 (Del. Ch. 2014) (“As a technical matter, Counts III and VI are dismissed because they seek remedies rather than assert claims.”).

discern any cause of action in Count I—other than partition—which could support injunctive relief in the form of a mandated sale of the Property.

The Defendants cannot circumvent the limitations in the partition statute or the requirements of Court of Chancery Rule 183 by casting their claim as one for unspecified injunctive relief rather than partition. Count I needs to be amended and clarified to either (1) conform to the partition statute and Rule 183 or (2) plead a cause of action for which the requested injunctive relief would be an appropriate remedy. As it currently stands, Count I is vague and does not give fair notice of the claim such that the Plaintiff may respond and defend.

### **III. Conclusion**

For the foregoing reasons, I find the Motion should be granted and the Defendants should be required to amend their counterclaim within ten (10) days of this report becoming an order of the Court. The Defendants shall also file a response to the motion to amend the complaint, which was filed on July 30, 2021, within ten (10) days. This is a final report and exceptions may be filed under Court of Chancery Rule 144.

Respectfully,

*/s/ Selena E. Molina*

Master in Chancery