

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

GEORGE H. HODGE, JR. in his capacity as	)	
Guardian of JONATHAN RAMOS, the Ward,	)	CASE NO. ST-14-CV-481
	)	
Plaintiff,	)	
vs.	)	ACTION FOR
	)	PARTITION,
ANGELA RAMOS-MICHAEL,	)	ACCOUNTING AND
	)	EQUITABLE
Defendant.	)	DISTRIBUTION OF
	)	INCOME
	)	

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Angela Ramos-Michael's Renewed Motion to Dismiss Plaintiff's First Amended Complaint (filed on April 29, 2015). For the reasons set forth herein the Motion will be denied.

I. Background

Plaintiff George H. Hodge, Jr. (as guardian for Jonathan Ramos) asks the Court to partition Parcel No. 29A Estate Contant, No. 7A Southside Quarter, St. Thomas, Virgin Islands ("the Property").¹ Ramos is a tenant in common with his sister, Angela Ramos-Michael. Hodge asks for the partition because he alleges that Ramos-Michael has, inter alia, "collected and withheld all revenues from the Property without distributing [Jonathan Ramos's] equitable share," "taken possession of an apartment unit without paying just compensation," and "continues [to] control [the Property] over [Hodge's] objection."

¹ He also asks for an accounting and equitable distribution of income from the Property.

Ramos-Michael moves to dismiss the case under Fed. R. Civ. P. 12(b)(6) (as incorporated by Super. Ct. R. 7) on two grounds: that Hodge has not alleged facts demonstrating that the property can be partitioned without prejudice to Ramos-Michael and that Hodge has not alleged facts demonstrating that the partition is in the best interest of Jonathan Ramos. The Court will consider each objection in turn.

In considering the motion to dismiss, the Court first must accept Hodge's alleged facts as true and then compare them against the legal elements of a partition action to assess whether those allegations, if true, would plausibly lead to the conclusion that Hodge is entitled to a partition. *Joseph v. Bureau of Corrections*, 54 V.I. 644, 649-650 (V.I. 2011) (relying heavily on *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), *Robles v. HOVENSA, L.L.C.*, 49 V.I. 491 (V.I. 2008), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)).

II. Analysis

The right to a partition is codified in V.I. Code Ann. tit. 28, § 451, which reads in relevant part:

“When several persons hold . . . real property as tenants in common . . . any one of . . . them may maintain an action . . . for the partition of [the] property according to [their] respective rights . . . and for a sale of such property . . . if it appears that a partition cannot be had without great prejudice to the owners.”

The elements of a partition action are therefore simple: a plaintiff must show that he or she has a 1.) tenancy in common in 2.) real property. In this case, Hodge

easily meets these elements because he has alleged that his ward and the ward's sister own the Property as tenants in common, having inherited the Property together in January 2014 from the estate of their father.

Ramos-Michael would have the Court add two additional elements to this list (elements she believes Hodge has not pleaded). First, Ramos-Michael argues that Hodge must plead facts to show that she would not suffer prejudice from a partition. Although Ramos-Michael is correct in reading the Code to mean that a partition may not be realized if it would be prejudicial to her, it does not follow that an allegation of no prejudice is a necessary element of the cause of action. Section 451, on which Ramos-Michael relies, says that the consequence of a finding of prejudice is not dismissal of the action, but rather a change of remedy from partition to sale. Put another way, once tenancy in common in real property is established, Section 451 entitles Hodge and Ramos to seek either a partition or a sale, with the appropriate choice to be determined later. The pleadings in a partition action need not address the presence or absence of prejudice.² Section 458 reads in relevant part:

“If it is alleged in the complaint and established by evidence, or if it appears by the evidence, *without such allegation in the complaint*, to the satisfaction of the court, that the property . . . is so situated that partition cannot be made without great prejudice to the owners, the court may order a sale thereof” (emphasis added).

² The Court here considers only a situation where the pleadings ask for partition. A fair reading of Section 451 might lead to the conclusion that alleging prejudice is necessary when the pleadings ask for sale as the sole remedy.

Whether a partition would be prejudicial (and therefore whether the correct remedy is partition or sale) need not be raised at the pleadings stage, because the Legislature has expressly contemplated a valid complaint that contains no allegations concerning prejudice. Indeed, the most natural reading of Sections 451 and 458 is that prejudice from partition is less an element of the cause of action and more akin to a defense that Ramos-Michael may demonstrate during the evidentiary phase of the case if she wishes to convert the partition into a sale to protect the value of her property interest. Therefore, the Court will not dismiss the Amended Complaint for failure to plead facts tending to show that Ramos-Michael would not be prejudiced by a partition.³

The second basis for Ramos-Michael's Motion To Dismiss is Hodge's failure to allege facts showing that the partition is in the best interests of his ward, referencing Chapter 51 in Title 15 generally.⁴ The Court disagrees for two reasons. First, even if Hodge must comply with Chapter 51 (see below), it does not follow that a demonstration of the ward's best interest is an element of a partition action that is relevant to a motion under Fed. R. Civ. P 12(b)(6). Ramos-Michael has cited to no

³ Ramos-Michael's Reply (but not her Renewed Motion to Dismiss itself) also invokes Section 452 of Title 28, which requires the complaint to set forth "the interest of all persons in the property . . . specifically and particularly, as far as known to the plaintiff." It is not clear why Ramos-Michael thinks Hodge failed on this score; the Amended Complaint plainly alleges, and the attachments to the Complaint plainly show, that Ramos and Ramos-Michael are tenants in common holding equal interests.

⁴ The Renewed Motion to Dismiss does not indicate on which part of Chapter 51 Ramos-Michael relies. Section 913 indicates that a sale (with reinvestment of the proceeds) should only happen if it "appears . . . that it would be for the benefit of the ward." Section 915 allows for a sale if it is "necess[ary] or expedien[t]." Section 916 suggests the standard is "necessary or . . . beneficial."

authority showing that the extra responsibilities of guardians are elements that must be alleged to overcome a Rule 12(b)6 motion. Second, even if the best interest of the ward were an element, Hodge has sufficiently pleaded facts showing that the action is in his ward's interest, namely that Ramos-Michael is not distributing Ramos's share of the proceeds and is otherwise taking personal advantage of the property to Ramos's detriment.⁵ Therefore, the Court will deny Ramos-Michael's Motion to Dismiss.

However, despite this holding, the Court does agree with Ramos-Michael to the extent that Hodge must comply with Chapter 51, especially Section 915,⁶ even if it does not strictly affect his pleading requirements in this action. Although a partition is not a "sale" as such, it is, as discussed above, a legal action that may ultimately lead to a sale.⁷ Certainly a sale of the Property may not occur without the authorization of the Family Court. Therefore, although dismissal is not warranted under 12(b)(6), Hodge must nonetheless petition the Family Division under Section 915 as a procedural prerequisite to a sale. However, the parties may engage in discovery on all issues while Hodge seeks authority from the Family Court to sell the Ward's property pursuant to Section 915. Therefore, the Court will deny the Motion

⁵ Although these problems might be remedied by the other claims in Hodge's action, namely the accounting and distribution claims, the Court is satisfied the facts as alleged plausibly justify additional equitable relief too.

⁶ Which prohibits a guardian from selling his ward's real property without first petitioning the Superior Court for an order authorizing the sale.

⁷ A sale may even be likely in this case, since the Amended Complaint says the property is an apartment building with units of different sizes.

to Dismiss and advise Hodge to immediately petition the Family Court for approval of a (potential) sale.

III. Conclusion

The Court holds that it is not necessary that Hodge plead facts concerning prejudice in order to proceed with a partition action. It is sufficient that he has pleaded facts demonstrating his ward is a tenant in common of real estate, since Sections 451 and 458 plainly contemplate that the appropriate remedy will become clear during the course of the proceedings. Further, the Court holds that the requirements of Title 15, which oblige a guardian to obtain Court permission before disposing of his ward's property, are not elements of a cause of action for partition. The Court will therefore deny Ramos-Michael's Motion to Dismiss and urge Hodge to petition the Family Court for authority to sell the Ward's property.

An appropriate Order will accompany this Memorandum Opinion.

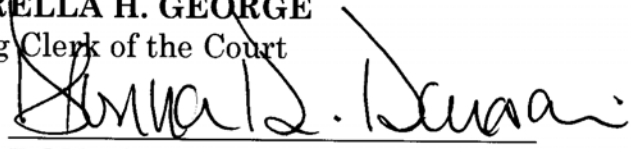
DATED: November 9, 2015


Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:

ESTRELLA H. GEORGE
Acting Clerk of the Court

BY:


DONNA DONOVAN

Court Clerk Supervisor 11/9/2015