

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

BUILDING AND PROPERTY LIST

VCAT REFERENCE NO. BP559/2018

CATCHWORDS

Co-ownership of land – application for order for sale – claims for adjustments – *Property Law Act 1958* Part IV especially s 228.

APPLICANT	Alex Andreadis
RESPONDENT	Natalie Lofthouse
WHERE HELD	Melbourne
BEFORE	Senior Member A. Vassie
HEARING TYPE	Hearing
DATE OF HEARING	13 September 2018
DATE OF ORDER	19 September 2018
DATE OF REASONS	19 September 2018
CITATION	Andreadis v Lofthouse (Building and Property) [2018] VCAT 1454

ORDER

1. In this order “the land” means the land, and improvements thereon, at and known as 9 Nathan Place, Windsor, the registered proprietors of which are Koula Andreadis (now deceased) and Natalie Lofthouse (nee Andreadis) as tenants in common in equal shares.
2. Pursuant to s 228 of the *Property Law Act 1958* the land must be sold on the following terms and conditions:
 - (a) Hocking Stuart of 835 High Street, Armadale (“the Agent”) is appointed as real estate agent to market the land and conduct the sale of the land in accordance with this order, the parties having agreed to the appointment of the Agent;
 - (b) the sale of the land be by way of public auction on a date, no later than 90 days from the date of this order, to be nominated by the Agent;

- (c) the Agent may, if the Agent thinks fit, engage a contractor to furnish temporarily the house on the land to assist in the marketing and sale of the land;
- (d) unless the parties agree on a reserve price for the sale of the land, the Agent may decide the reserve price;
- (e) if the Agent decides the reserve price the Agent must give each party written notice of the reserve price at least 21 days before the auction date and must not alter the reserve price without consent in writing by the parties or as otherwise directed by the parties;
- (f) each party may bid at the auction;
- (g) the sale must be on terms that stipulate a settlement date of 30 or 60 days, as decided by the Agent, from the date of the sale and that the purchaser is to pay a deposit of 10% of the purchase price on the day of the sale;
- (h) the parties must by 4 October 2018 jointly and irrevocably instruct solicitors (“the Solicitors”) to
 - (i) prepare a contract of sale for the land and the statement required by section 32 of the *Sale of Land Act 1962*;
 - (ii) execute on behalf of the parties or either of them, as if such authority to do so had been given in writing signed by the applicant and the respondent, a section 32 statement prepared by the Solicitors for the sale of the land, if the applicant or the respondent should refuse or fail to sign the section 32 statement within 7 days of the delivery of the section 32 statement to the applicant or the respondent;
 - (iii) act as solicitors for the parties in the transfer of the land upon its sale;
 - (iv) do all things reasonable and necessary and in the usual course of conveyancing practice to transfer the land to any purchaser;
 - (v) act as the solicitors for the parties in the settlement of the sale of the land; and
 - (vi) receive the deposit and the balance of purchase price pursuant to the contract of sale of the land and distribute such sums in accordance with this order.

3. Upon the applicant Alex Andreadis notifying the principal registrar in writing after 4 October 2018 that the parties have not agreed upon and instructed solicitors, the Solicitors shall be a person or firm appointed by the principal registrar, who may consider, but is not bound to accept, any solicitors or firms nominated in writing by a party by no later than 11 October 2018, and who may if she thinks fit appoint a solicitor or a firm not nominated by either party.
4. Each party must, immediately upon request by the Solicitors, do all things and sign all documents the Solicitors consider necessary or appropriate to sell or transfer the land from the parties to the purchaser.
5. If either of the parties does not sign a document pursuant to order 4 above within 14 days of a request being made pursuant to order 4 for them to do so, then the principal registrar is directed to sign such documents in the parties' name and on their behalf including executing a transfer of land from the parties to the purchaser; an affidavit by a solicitor that the Solicitors made that request and considered the signing of a document to be necessary or appropriate, and that the document has not been signed, shall be conclusive evidence of those facts.
6. As soon as practicable after receiving the balance of purchase money for the land the solicitors shall apply the proceeds of sale as follows:
 - (a) pay to the Agent any commission (which shall be 1.1%, including GST, of the purchase price, unless the Agent and the parties agree otherwise), advertising and marketing expenses, auctioneer's fees and other disbursements owing to the Agent for the marketing and sale of the land;
 - (b) retain a sum equivalent to the reasonable costs and disbursements of the Solicitors for anything done by Solicitors pursuant to this order;
 - (c) pay to the applicant Alex Andreadis a sum which is 5% of what is due to the Agent under sub-paragraph (a) of this order and of what is due to the Solicitors under sub-paragraph (b) of this order; and
 - (d) divide the balance of the sale proceeds as follows:
 - (i) pay 45% of that balance to the applicant Alex Andreadis, and
 - (ii) pay 55% of that balance to the respondent Natalie Lofthouse.

7. Liberty is reserved to both parties to apply with respect to the terms and conditions of sale of the land and any question that might arise in connection with the sale including variation of this order.

A Vassie
Senior Member

APPEARANCES:

For Applicant	In person
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For Respondent	In person
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REASONS

1. The applicant Alex Andreadis and the respondent Natalie Lofthouse are brother and sister. They are the joint executors of the will of their late mother, Koula Andreadis.
2. A house property at 9 Nathan Place, Windsor (“the land”) is registered in the names of the late Koula Andreadis and Ms Lofthouse as tenants in common in equal shares. Upon her death, the half share of Koula Andreadis became part of her estate. Both parties are beneficiaries under their mother’s will.
3. Mr Andreadis has made an application under Part IV of the *Property Law Act 1958* (“the Act”) for orders for sale of the land and division of the proceeds of sale. He has done so after he and Ms Lofthouse failed to agree upon a price at which Ms Lofthouse might buy out Mr Andreadis’s interest in the estate insofar as it consisted of the land.
4. Ms Lofthouse does not oppose the application for an order for sale and division of proceeds of sale. While she and Mr Andreadis are in dispute about various matters to do with the estate, the only relevant difference between them about this proceeding is that she does not agree to some of the adjustments in the division of proceeds of sale that he seeks.
5. The hearing of the proceeding before me on 13 September 2018 occurred under difficult circumstances. Mr Andreadis lives interstate. He appeared at the hearing, and gave his evidence, by Skype transmission and by conference telephone. While he has filed numerous documents he was not in a position to produce documents at the hearing. Ms Lofthouse appeared in person, but was not able to show me a copy of the certificate of title for the land or a title search or a copy of her mother’s will. Mr Andreadis had filed a copy of the face of the probate parchment which showed that he and Ms Lofthouse were the joint executors, but there was no copy of the will in the Tribunal’s file.
6. Nevertheless, the parties agreed at the beginning of the hearing on certain facts, upon which I have acted without having been able to see the documents on which the facts appear. The agreed facts are:
 - (a) the title to the land is in the names of Koula Andreadis and Natalie Lofthouse (nee Andreadis) as tenants in common in equal shares;
 - (b) no instrument of transmission of their late mother’s half interest in the land into their names as executors has yet been registered;

- (c) the provisions in their late mother's will included a direction for the sale of her half interest in the land and for division of the proceeds of sale so that Mr Andreadis receives 90% and Ms Lofthouse receives 10%; and
 - (d) to give effect to that direction, and subject to any adjustments in Mr Andreadis's favour before division, the nett proceeds of sale of the land should be divided so that Mr Andreadis receives 45% and Ms Lofthouse receives 55%.
7. I accept that Mr Andreadis, being a co-executor of the will and entitled to register a transmission of his late mother's interest in the land to him, in that capacity (jointly with his sister), is a "co-owner" of the land within the meaning of Part IV of the Act and entitled to make the application for an order for sale and division. Of course, Ms Lofthouse, as a registered proprietor of an interest in the land, is the other "co-owner".
 8. I have made an order for sale of the land by auction, which Ms Lofthouse does not oppose and which s 228 of the Act empowers the Tribunal to make.
 9. Mr Andreadis has already appointed Hocking Stuart, real estate agents, to act as agents for the sale of the land. He did that without Ms Lofthouse's approval. Unfortunately the parties are not on good terms. It is understandable that he did not seek her approval. Sensibly, at the hearing Ms Lofthouse told me that she had no objection to the appointment of Hocking Stuart as selling agent I have made an order accordingly.
 10. Mr Andreadis has obtained two formal valuations of the land, from two different professional valuers. He did so for the purpose of trying to convince Ms Lofthouse that the value was more than \$1.1 million, as she was asserting, so the amount that she was offering to him to buy out his interest in the land was too small. He paid \$945.00 in total for the valuations.
 11. In a statement of contributions filed on 3 September 2018 Mr Andreadis sought "adjusted amounts" in his favour from distribution of the nett proceeds of sale, as follows:
 1. 45% of property sale price.
 2. Agent selling & marketing fees for auction campaign to be applied @ applicant 45% respondent 55%.

3. \$519.75 @ 55% of \$945.00 reimbursed for payment already made by the applicant for two sworn independent valuations, undertaken for the purposes of forming a fair market price for sale and/or buyout.
 4. \$4,000.00 for cost of monument @ 50% each of total cost \$8,000.00, accounted for from the estate, prior to disbursements.
 5. \$1,754.50 for cost of styling services @ 55% of \$3,190.00.
 6. \$145.20 for cost of cleaning services @ 55% of \$264.00.
 7. 363.00 for cost of conveyancing for selling @ 55% of \$660.00.
 8. \$363.00 for cost of transfer of title @ 55% of \$660.00.
12. As for items 2, 7 and 8 in the statement, it is right that Ms Lofthouse should bear 55% of the estate agent's costs and expenses and of legal costs connected with the sale, but for the sake of simplicity I have ordered that the whole of those costs and expenses be deducted from the proceeds of sale (so that the parties bear 50% each) but that there should be an adjustment in favour of Mr Andreadis of 5% of those costs, by way of a payment to him of the amount that represents that 5%, before the nett balance is distributed so that Mr Andreadis receives 45% and Ms Lofthouse receives 55%.
 13. The figures in items 7 and 8 are estimates that a conveyancing company has given to Mr Andreadis. In my order I am requiring the parties to engage a solicitor, not a conveyancer. One reason for making that order is that, in the event of a refusal or failure of a party to sign a document that needs to be signed for the purposes of the sale, the principal registrar of the Tribunal is being empowered to sign on behalf of the parties instead, once the principal registrar has received a solicitor's affidavit as to the facts which give rise to the exercise of the power.
 14. Item 3 is the cost of the valuations. I am not allowing any adjustment in favour of Mr Andreadis for a proportion of that cost. He obtained the valuations for his own purposes, to strengthen his argument that Ms Lofthouse should increase her offer to buy him out. While it is true that the valuations might assist the parties or the estate agent to arrive at a reserve price, they were not necessary for the purposes of the sale.
 15. Item 4 is the cost, quoted to Mr Andreadis, for the preparation and erection of a monument for the late Koula Andreadis. The cost of a monument is not a matter relevant to the making of adjustments or the payment of compensation under Part IV of the Act in connection with the land that is to be sold. Mr Andreadis and Ms Lofthouse are in dispute over this item. It is

a dispute concerning their late mother's estate generally, not a dispute concerning the sale of the land or the division of the proceeds of sale of the land. They must go elsewhere for a resolution of that dispute, if they are unable to resolve it themselves.

16. Item 6 in the statement relates to a quotation Mr Andreadis sought and received for the hire of furniture temporarily so that the appearance of the house is enhanced for the purposes of the auction. In the order I have allowed the real estate agent a discretion as to whether he arranges for the house to be furnished temporarily. If the agent decides to make that arrangement, the cost of it will be included in the agent's costs and expenses which are to be deducted from the proceeds of sale before the balance of the proceeds are divided.
17. Ms Lofthouse has not claimed any adjustments or compensation.
18. I have reserved liberty to apply generally. Unusually in a case like the present, the parties were not able to give me title particulars for the land so I have described it only by its street number, not by its volume and folio number on the certificate of title. If for any reason those title particulars need to be included, the parties or one of them may exercise the liberty to apply.

A. Vassie
Senior Member

19 September 2018