

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

*** FILED ***
04/04/2002

04/01/2002

CLERK OF THE COURT
FORM V000A

HON. GARY E. DONAHOE

S. Yoder
Deputy

CV 2001-018200

FILED: _____

JENNY L RODRIGUEZ

GAIL M LEDWARD

v.

RAMON G SAINZ

RAMON G SAINZ
6424 S 9TH ST
PHOENIX AZ 85040-0000

TRIAL MINUTE ENTRY
DAY ONE

Prior to commencement of trial, Plaintiff's exhibits 1 through 15, inclusive, are marked for identification.

FILED: Plaintiff's Request for Findings of Fact and Conclusions of Law.

10:00 a.m. This is the time set for trial to the Court. Plaintiff Jenny L. Rodriguez is present with counsel, Gail M. Ledward. Defendant Ramon G. Sainz appears on his own behalf.

The proceedings are electronically recorded in lieu of a court reporter.

Opening statements are waived.

Plaintiff's case:

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Jenny L. Rodriguez is sworn and testifies.

Plaintiff's exhibit 1 is received in evidence.

Plaintiff's exhibit 2 is received in evidence over
Defendant's objection.

Plaintiff's exhibit 3 is received in evidence.

Plaintiff's exhibit 4 is received in evidence.

Plaintiff's exhibit 5 is received in evidence.

Plaintiff's exhibit 6 is received in evidence.

Plaintiff's exhibit 8 is received in evidence.

Plaintiff's exhibit 7 is received in evidence.

Plaintiff's exhibit 9 is received in evidence.

Plaintiff's exhibit 10 is received in evidence.

Plaintiff's exhibit 11 is received in evidence.

Plaintiff's exhibit 12 is received in evidence.

Plaintiff's exhibit 13 and 14 are received in evidence.

The witness steps down.

John Saggio is sworn and testifies.

Plaintiff's exhibit 15 is received in evidence.

The witness is excused.

Plaintiff rests.

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Defendant's case:

Ramon G. Sainz is sworn and testifies.

Defendant rests. Both sides rest.

Discussion is held regarding a real estate agent and the listing price of the house.

Ms. Ledward is directed to submit her proposed form of Judgment to the Court on a floppy disk.

IT IS HEREBY ORDERED taking this matter under advisement.

10:50 a.m. Trial concludes.

FILED: Exhibit Worksheet; Trial Worksheet

Later - April 2, 2002

This matter was taken under advisement following the trial on April 1, 2002. Although the facts are not in dispute, Plaintiff requested findings of fact and conclusions of law. Having considered the evidence, the Court finds and concludes as follows:

FINDINGS OF FACT:

1. Plaintiff Rodriguez and Defendant Sainz are co-owners, each owning an undivided ½ interest, in real property located at 546 North Lewis Street, Mesa, Arizona, legally described as:

LOT 46, EXCEPT the North 20 feet thereof, and
LOT 47, EXCEPT the South 10 feet thereof, of
TUSKEGEE PLACE, according to Book 10 of Maps,
page 11, records of Maricopa County, Arizona.

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NOTE: A plat of MESA recorded in Book 23 of Maps, page 18, records of Maricopa County, Arizona, purports to show the within described property as lots 46 and 47 except the South 10 feet of lot 47 and except the North 20 feet of Lot 46, Block 109, Mesa.

(Hereafter, the Property).

2. Plaintiff, Jenny Rodriguez, resides at the above-described property. Defendant, Ramon Sainz, resides at 6424 S. 9th Street, Phoenix, Arizona.

3. The parties purchased the Property jointly in August 1990 for \$50,000, and are jointly obligated on a promissory note secured by a deed of trust against the Property in favor of Northern Trust Bank of Arizona, N.A. recorded August 31, 1990.

4. The parties jointly occupied the Property from the date of purchase until April 10, 1995 at which time Defendant moved out. Since January 1996 Plaintiff has made all mortgage payments, and has paid all insurance, taxes and costs of maintenance and upkeep on the property. Plaintiff has improved the property with the installation of new air-conditioning and carpet as well as other incidental improvements. In addition to the monthly mortgage payments, Plaintiff has advanced the following costs toward the purchase or upkeep of the property:

a. Advance on purchase price	550.00
b. New air-conditioning	2,000.00
c. New carpeting	2,000.00
d. Insurance	1,859.03
e. Taxes	<u>2,906.32</u>
Total	\$9,315.35

5. The estimated market value of the Property, based on an appraisal dated March 27, 2002 admitted in evidence, is \$101,500.

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6. Plaintiff purchased an abstract of title for the Property at a cost of \$275.

The abstract, admitted in evidence, shows that judgments against the defendant Ramon Sainz appear of record against the property as follows:

- a. Entered 10/26/96, recorded 1/28/97, in favor of the State of Arizona, Department of Economic Security, in the principal amount of \$12,800 to secure payment of child support arrearages owed by Defendant.
- b. Entered 2/2/00, recorded 2/1/02, in favor of Jenny Lynn Sainz (plaintiff herein), in the principal amount of \$5,200 to secure payment of child support arrearages owed by Defendant.
- c. Entered 6/20/00, recorded 2/1/02, in favor of Jenny Lynn Sainz (plaintiff herein) in the principal amount of \$918.89 to secure payment of child support arrearages owed by Defendant.
- d. Modification of the 2/2/00 Judgment entered 12/19/01, recorded 2/1/02, in favor of Jenny Lynn Sainz (plaintiff herein), in the principal amount of \$1,363.90 to secure payment of defendant's share of uninsured medical expenses for the children of the parties.

7. Given the nature of the Property, a fair partition or division of the Property cannot be made without depreciating its value, and a sale of the property would be more beneficial to the parties.

CONCLUSIONS OF LAW

1. The right of a co-owner of property to partition the property is authorized and governed by statute. A.R.S. § 12-1211 *et seq.*

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2. In the absence of an agreement between co-owners of real property for the voluntary disposition of the property, the court may order the sale of property, as opposed to a partition, without the aid of commissioners, where the evidence establishes that a sale would be more beneficial to the parties, or that the property could not be fairly divided without depreciating its value. A.R.S. §12-1218; *Bledsoe v. Hood*, 44 Ariz. 292, 36 P.2d 564 (1934); *McCready v. McCready*, 168 Ariz. 1, 810 P.2d 624 (App. 1991).

3. In a partition action, the court is to determine the share or interest in the property of each of the owners, and all questions affecting title thereto. A.R.S. §12-1213. In such actions, the court has jurisdiction to order an accounting for advances made by one co-owner for the benefit of the common property. See generally the discussion at 68 C.J.S §§117-118 Partition and Accounting for Advances.

4. Plaintiff is entitled to reimbursement from Defendant for one-half of the amount Plaintiff advanced toward the purchase price and for one-half the expenses incurred in maintaining and improving the property from April 10, 1995 in the amount of \$4,657.50.

5. Pursuant to A.R.S. § 12-1214(B) Plaintiff is entitled to recover from Defendant the cost of the abstract of title in the amount of \$275.

6. The judgments against Defendant which appear of record against the Property are his sole and separate debt (A.R.S. §25-215; *Hines v. Hines*, 146 Ariz. 565, 707 P.2d 969 (App. 1985)), and therefore the judgment liens attach only to Defendant's interest in the Property. *Graham v. Allen*, 11 Ariz. App. 207, 463 P.2d 102 (App. 1970) (An individual interest of one joint tenant of property is subject to levy and sale on execution); *Cooley v. Veling*, 19 Ariz. App. 208, 505 P.2d 1381 (App. 1973)

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(The interest of one joint tenant may be foreclosed without affecting the interest of the other).

7. Upon sale of the property, the proceeds are to be distributed:

- a. First, to the costs of the sale, including the compensation of the commissioner, and listing and selling brokerage fees;
- b. Second, satisfaction of the existing deed of trust in favor of Northern Trust Bank or other such holder of the promissory note secured by deed of trust recorded August 31, 1990;
- c. Third, one-half of the balance (after the costs of sale and satisfaction of the Northern Trust obligation) to Plaintiff;
- d. Fourth, satisfaction of all judgments against Defendant shall be made out of defendant's one-half interest in the proceeds of sale, in the order of the judgment's priority;
- e. Fifth, reimbursement to Plaintiff of \$4,932.50 out of Defendant's one-half interest in the proceeds of sale;
- f. Sixth, the balance of the sale proceeds, if any, to Defendant.

8. To the extent the proceeds of sale are insufficient to satisfy defendant's obligation to reimburse Plaintiff as set forth in paragraph 7(e) above, plaintiff shall have a deficiency judgment against defendant for the amount of the deficiency. Accordingly,

IT IS HEREBY ORDERED appointing a commissioner to sell the property and apportioning the shares of the parties, all in accordance with the Judgment signed by the Court and entered (filed) by the clerk on April 2, 2002.