

VIRGINIA:

In the Supreme Court of Virginia held at
the Supreme Court Building in the City of
Richmond on Friday the 12th day of
November, 2021.

Peter Paul Mitrano,
Appellant,

against

Record No. 210029
Circuit Court No. CL-
2019-0005404

Marcia Mitrano, et al.,
Appellees.

From the Circuit Court of Fairfax County

Upon review of the record in this case
and consideration of the argument submitted
in support of and in opposition to the granting
of an appeal, the Court is of the opinion there
is no reversible error in the judgment
complained of. Accordingly, the Court refuses
the petition for appeal.

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Teste:

Muriel-Theresa Pitney, Clerk

By:

Deputy Clerk

IN THE CIRCUIT COURT FOR
FAIRFAX COUNTY, VIRGINIA

MARCIA MITRANO, *et al.*)
 Plaintiffs)
)
 v.) CL-2019-
) 0005404
PETER PAUL MITRANO, *et al.*)
 Defendants)

JUDGEMENT ORDER

(Sale of real Property in Lieu of Partition
pursuant to Va. Code § 8.01-83)

This matter was before the Court for trial on October 7, 2020 on the Amended Complaint filed on July 9, 2019, in which Plaintiffs requested, inter alia, an Order of Sale of Real Property in Lieu of Partition. Defendant Peter Mitrano did not appear. Upon consideration of Plaintiffs' amended complaint and trial proffer, the Court finds that the real property at 10825 Fieldwood Drive in Fairfax, Virginia cannot be conveniently partitioned, and that its sale is in the best interests of the parties. Thus, it is this 7th day of October 2020:

ORDERED, that the Judgment is granted in favor of Plaintiffs; and it is further

ORDERED, that Cary Cucinelli, a Member of the Bar of this Court, is appointed commissioner of sale for the following purposes:

- (a) to sell the house and lot at 10825 Fieldwood Drive in Fairfax, Virginia at fair market value;
- (b) to take action to eject or evict Defendant Peter Mitrano and all other occupants from 10825 Fieldwood Drive;
- (c) to settle the tax arrearage from the proceeds of sale;
- (d) to compensate Patrick T. Hand, Esq. and Lisa Campo for their attorney fees for services in bringing this partition suit pursuant to Va. Code § 8.01-92 from the proceeds of sale and to make appropriate adjustments;
- (e) to ascertain the fair market rental value of 10825 Fieldwood Drive in Fairfax, Virginia from October 18, 2014 (the date of Peter Paul Mitrano, Senior's death), to the date Defendant Peter Paul Mitrano vacates the premises, using a present rental value of \$3,600.00 per month, with appropriate retrospective adjustments using available statistics;
- (f) to inspect the premises and lot at 10825 Fieldwood Drive, with or without the parties' experts, to

- ascertain the condition of 10825 Fieldwood Drive in Fairfax;
- (g) if desired by Plaintiffs, to receive other evidence bearing on any possible wasting of the Property as a consequence of Defendant Peter Paul Mitrano's occupancy;
 - (h) to ascertain Plaintiffs' pro-rated share of rents and profits incurred during Defendant Peter Paul Mitrano's occupancy of 10825 Fieldwood Drive and to make appropriate adjustments to the parties' respective final distributions;
 - (i) if the commissioner deems it advisable, to employ experts at the expense of the parties to aid the commissioner's duties as set forth by the Court;
 - (j) to prepare a Report for the Court detailing the commissioner's actions, including a proposal for distribution to the parties; and
 - (k) upon approval by this Court, to issue to the parties the net proceeds from the sale after deducting costs, the adjustments described herein, including the fees and costs of the commissioner.

The parties have 30 days of receipt of the commissioner's report to file exceptions and to

request a hearing.

_____/s/____

JUDGE

Fairfax County Circuit Court

IN THE CIRCUIT COURT FOR
FAIRFAX COUNTY, VIRGINIA

MARCIA MITRANO, <i>et al.</i>)	
Plaintiffs)	
)	
v.)	CL-2019-
)	0005404
PETER PAUL MITRANO, <i>et al.</i>)	
Defendants)	

ORDER

Upon consideration of the Defendant Peter Paul Mitrano's "Motion to Vacate and/or Set Aside this Court's Order and/or Judgment Entered on or About October 7" and the Opposition thereto, and the arguments of Defendant and counsel for Plaintiffs Marcia Mitrano and Dennis Mitrano at the October 23, 2020 hearing, the Court finds and rules as follows:

Defendant had notice of the hearing held on October 7 but did not appear. Although the Court is concerned that he may not have had technology that would have allowed him access to the hearing (which was held via WebEx), the Court need not address that issue in more detail

as the result would not change even if he had appeared.

At the October 23 hearing on Defendant's motion, the Court heard ample argument from Defendant on the merits of his position that the Court does not have authority to order the sale of the real property at 10825 Fieldwood Drive in Fairfax, Virginia. The relevant facts are not in dispute. The six parties in this action are the children of the late Peter Paul Mitrano, Senior. His October 9, 2009 Last Will and Testament leaves his real estate to his six children 'to be divided among and between them as they decide.' However, the Will does not contain a power of sale. Thus, his son, the Defendant Peter Paul Mitrano, who was appointed executor under the terms of the Will, did not have the power to transfer the real property at 10825 Fieldwood Drive.

Accordingly, the real property did not become part of the decedent's estate. Instead, upon his death, title to the property immediately vested in his six children, the parties to this action. *Broaddus v. Broaddus*, 144 Va. 794, 798-99 (1925). As such, any one of them could seek sale of the property in lieu of partition, as the Fieldwood Drive property cannot be conveniently partitioned (it is a single house on a lot measuring about half an acre). Va. Code § 8.01-83. Four of the six—the Plaintiffs—wish for the property to be sold.

Only the Defendant objects to such sale, and sale is in the best interest of the parties.

Assuming for purposes of argument that the Will of Peter Paul Mitrano, Senior controls disposition of the property, the result would not change. The phrase 'to be divided among and between them as they decide' does not, as Defendant argues, require unanimity. Here, four of the six Mitrano children have decided that the property be sold—a majority. That is all that is required.

Thus, it is this 23rd day of October, 2020
ORDERED, that the Motion is denied.

_____/s/_____
JUDGE

Fairfax County Circuit Court

VIRGINIA:

In the Supreme Court of Virginia held at
the Supreme Court Building in the City of
Richmond on Monday the 29th day of
November, 2021.

Peter Paul Mitrano,
Appellant,

against

Record No. 210029
Circuit Court No. CL-

2019-0005404

Marcia Mitrano, et al.,
Appellees.

From the Circuit Court of Fairfax County

On November 12, 2021 came the
appellant, in proper person, and filed a motion
for extension of time to file a petition for
rehearing in this case.

Upon consideration whereof, the Court
grants the motion and the appellant shall have
until December 29, 2021 to file the petition for
rehearing with the clerk of this Court.

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Teste:

Clerk

VIRGINIA:

In the Supreme Court of Virginia held at
the Supreme Court Building in the City of
Richmond on Friday the 4th day of February,
2022.

Peter Paul Mitrano,
Appellant,

against

Record No. 210029
Circuit Court No. CL-

2019-0005404

Marcia Mitrano, et al.,
Appellees.

Upon a Petition for Rehearing

On consideration of the petition of the
appellant to set aside the judgment rendered
herein on November 29, 2021 and grant a
rehearing thereof, the prayer of the said
petition is denied.

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Teste:

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Muriel-Theresa Pitney, Clerk

By:

Deputy Clerk