

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

KETAN PATEL,

Appellant,

v.

Case No. 5D18-2926

RAMANLAL PATEL,

Appellee.

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Opinion filed August 23, 2019

Appeal from the Circuit Court  
for Citrus County,  
Patricia V. Thomas, Judge.

Kevin K. Dixon, of Kevin K. Dixon, P.A.,  
Inverness, for Appellant.

Russell W. LaPeer, of Landt, Wiechens,  
LaPeer & Ayres, LLP, Ocala, for  
Appellee.

CHASE, M., Associate Judge.

Appellant Ketan Patel appeals the trial court's order disbursing the proceeds from the sale of property, which was the subject of an action for partition, without first holding an evidentiary hearing. We agree with Appellant that he is entitled to an evidentiary hearing to determine the appropriate liabilities and credits due each party, and therefore reverse for further proceedings.

## BACKGROUND

The parties were joint owners of commercial real property that was mortgaged to secure a note on which they were jointly and severally liable. In 2014, Appellee Ramanlal Patel filed an action for partition of real property by sale, reimbursement of attorney's fees and costs, reimbursement for rental value during Appellant's tenancy, and equitable distribution of sale proceeds between the parties. Appellant filed a confession of judgment of partition and arrangements were made for the sale of the property.

The parties first attempted a private sale but when that failed, Appellee moved the court for entry of summary judgment and an order that the property be sold at public auction. The parties eventually reached an agreement on the language to be included in the Second Amended Final Judgment ("Judgment"). The trial court entered the agreed upon Judgment and set the sale at public auction.

The property was sold at auction to Appellant, as the highest bidder, and the proceeds were placed into the registry of the court. Appellant then moved for the proceeds to be disbursed to satisfy the outstanding mortgage.<sup>1</sup> On the other hand, Appellee moved for the proceeds to be disbursed equally to the parties. The court granted Appellee's motion and ordered the proceeds disbursed equally between the two parties without having held an evidentiary hearing to determine any appropriate credits or set-offs due either side.

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<sup>1</sup> Appellant, without awaiting any disbursement order by the court, individually paid the outstanding mortgage which left the property now owned by him clear of any encumbrance.

## ANALYSIS

Because partition is a subject of equitable jurisdiction, a trial court will be affirmed unless it is shown that the trial court abused its discretion in determining whether credits or set-offs are appropriate. *Wood v. Friedman*, 388 So. 2d 1355, 1358 (Fla. 5th DCA 1980). Partition principles are applied in a flexible manner “in order to arrive at a fair, equitable, and just decree.” *Fernandez v. Gonzalez*, 758 So. 2d 1192, 1193 (Fla. 3d DCA 2000) (citation omitted).

Appellee argues that the following language in paragraph 4 of the Judgment supports the court’s order of disbursement:

The Clerk of this Court . . . shall sell the real property . . . free and discharged of any and all claims, liens, encumbrances, rights, equity and interest of the parties. The mortgage and any and all claims, liens, encumbrances, rights, equity and interest of any person or entity not a party to this action shall be unaffected by this order and the sale . . . .

Appellee contends that this language extinguished all of the parties’ pre-sale expenses or claims. However, the remaining language of the Judgment supports Appellant’s argument that the parties intended the court to make an equitable distribution rather than defaulting to an equal distribution. Specifically, paragraph 3 of the Judgment states, “[t]he proceeds of the sale shall be deposited into the court to be divided among the parties as later determined by this Court.” Paragraph 7 includes language that “any surplus [will be] deposited into the court, to be divided among the parties as later determined by this Court.” Paragraph 9 provides that the trial court retained jurisdiction to “enter further orders that are proper including, but not limited to the entry of orders apportioning the proceeds of the sale and directing the payment of costs and attorney[’s] fees, as

appropriate.” Because of this language, it cannot be said that the parties intended to waive any and all post-sale review by the court.

Despite the equitable nature of partition proceedings, the record here lacks sufficient support for the trial court’s equal distribution of proceeds. For that reason, we reverse and remand for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

ORFINGER and COHEN, JJ., concur.