

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 19-80476-CIV-SMITH

DAVID M. CHASE,

Plaintiff,

vs.

BRUCE H. FOLZ, *et al.*,

Defendants.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW FOLLOWING NON-JURY
TRIAL**

I. INTRODUCTION

This matter is before the Court on a non-jury trial held on January 25, 2021, via Zoom. On April 8, 2019, Plaintiff filed this action against Defendants Bruce H. Folz (“Folz”) and John A. Nobile (“Nobile” or “Defendant”)¹, asserting claims for: (i) for the partition sale of a vessel pursuant to Rule D of the Supplemental Rules for Admiralty or Maritime Claims; (ii) partnership accounting; and (iii) conversion of negotiable instrument. (DE 1.) Ultimately, the subject vessel was sold. The issue remaining before the Court is a determination of how the remaining sale proceeds should be equitably divided between the parties. Prior to the bench trial, the parties exchanged and submitted joint exhibits and Proposed Findings of Fact and Conclusions of Law. Plaintiff and Defendant presented live testimony during the bench trial.

¹ Defendant Bruce H. Folz resolved this matter with Plaintiff. Thus, the only remaining Defendant in this matter is John A. Nobile.

II. PROCEDURAL HISTORY

On April 8, 2019, Plaintiff initiated this action against Defendants, for the partition sale of the parties' vessel, a 1995 Privileged 42 sailboat named Que Sera Sera ("QSS"); for an accounting of partnership assets; and for conversion of a negotiable instrument. (DE 1.) On March 3, 2020, the matter was stayed, and the parties agreed to attend arbitration. (DE 45.) On May 22, 2020, the parties accepted an offer in the amount of \$45,000 for the sale of the QSS. On June 18, 2020, an arbitrator entered an Order granting Defendants' Motion for Partial Summary Judgment and Denying Plaintiff's Motion for Partial Summary Judgment on the limited issue of whether a partnership was formed with respect to the ownership of the QSS. (DE 53.) The arbitrator also recommended that the parties be directed to participate in a second mediation for the purpose of resolving any remaining claims. (DE 53 at 14.) On June 18, 2020, Plaintiff settled his dispute with Folz for \$15,000, dismissing Folz from the action. (DE 54.) On June 23, 2020, the Court instructed the parties to file a status report discussing the remaining claims, the likelihood of settlement and the arbitrator's recommendation for the parties to engage in a second mediation to avoid trial. (DE 55.)

On July 7, 2020, the Court entered an Order [DE 58] requiring the parties to proceed to trial before an arbitrator. The Court also ordered the parties to file a status report regarding the progress of the matter by August 7, 2020. (DE 58.) After several months, and due to the parties' failure to complete arbitration, the Court entered an Order Setting Bench Trial [DE 75] on October 23, 2020. Trial was set to commence on November 16, 2020, but was continued until January 25, 2021 by Court Order. [DE 91].

The remaining issue before the Court is a determination of how the remaining sales proceeds in the amount of \$30,000 should be equally divided between the parties. Plaintiff asserts

that the parties had a partnership, whereby they each acquired a one-third ownership interest in the QSS. The parties also agreed that unanimous owners' approval would be required for all decision-making and expenditures for the QSS. After Plaintiff suffered an injury, he advised Folz and Nobile that he no longer wished to be an owner of the QSS. Plaintiff actively sought a third-party buyer but ultimately, no one bought his interest in the QSS. Around September 2018, Plaintiff sought to terminate his participation as an owner of the QSS and stopped contributing to the common expenses incurred for the use and maintenance of the QSS. Plaintiff contends that Folz and Nobile incurred unnecessary expenditures, seeking reimbursement for same. Plaintiff also contends that Folz and Nobile intermingled insurance proceeds received for damages to the QSS for expensive and unnecessary repairs to the vessel. Plaintiff seeks recovery of his one-third share of the insurance proceeds received.

Defendant claims that the parties owned the QSS as tenants in common and that the parties never formed a partnership. Defendant also contends that Plaintiff was required to pay his one-third share of the common expenses incurred. Instead, Plaintiff unilaterally terminated his obligation of contributing towards the joint expenses arising from the ownership of the vessel. Thus, Defendant seeks reimbursement for expenses incurred from October 2018 through May 2020, when the QSS was sold.

In accordance with Federal Rule of Civil Procedure 52(a), the Court now makes the following findings of fact and conclusions of law:

III. FINDINGS OF FACT

1. On April 28, 2017, Plaintiff, Nobile and Folz (collectively the "Owners") jointly purchased the vessel more particularly described as follows:

Year Built: 1995
Type of Vessel: Privilege—Catamaran

Length: 42 feet
Name: *Que Sera Sera*

2. Prior to purchase, the Owners agreed to jointly acquire and use the QSS.
3. Plaintiff, Nobile and Folz each acquired a one-third interest ownership in the QSS as tenants in common.
4. There was never a written partnership agreement entered into by the parties with respect to their ownership of the QSS.
5. No partnership was established pertaining to the parties' ownership of the vessel pursuant to New York or Florida law.
6. The vessel was never owned by a partnership between the owners.
7. The Owners agreed to split common expenses for maintaining the QSS, each bearing a one-third share of the expenses incurred.
8. The purchase price for the QSS was approximately \$153,000.
9. At the time of purchase, the QSS was located at the St. Augustine Marina in Florida.
10. At the time of purchase, the QSS required initial repairs.
11. The Owners also made repairs to the QSS dealing with navigation, navigational aids, air conditioning and heating systems.
12. The Owners were jointly responsible for the costs of these repairs.
13. The Owners agreed that when it came to major expenditures or major repairs, the parties would agree to the cost of those repairs and the repairs to be made.
14. Around fall of 2017, the Owners all agreed that safety repairs would receive the highest priority.
15. In January 2018, Nobile and Folz submitted two insurance claims to the QSS's insurer, GEICO, for the damage to the QSS' escape hatch and related docking expenses.

16. On February 2, 2018, Geico issued a check for insurance proceeds in the amount of \$7,720.53.

17. On February 22, 2018, Geico issued a second check for insurance proceeds in the amount of \$4,189.50.

18. Both checks were made payable to the order of “Bruce Folz & John Nobile & David Chase.”

19. Nobile and Folz forged Chase’s signature on both insurance checks.

20. Plaintiff is entitled to one-third of the monies received from each insurance check.

21. The funds from the insurance proceeds were placed into a business account.

22. Thereafter, the funds were used for the installation of a headliner replacement on the QSS.

23. Plaintiff did not agree with the installation of the headliner and believed that this was an expensive and unnecessary replacement.

24. By letter dated September 7, 2018, Plaintiff’s prior counsel, Susan E. Hauser, Esq. demanded that Nobile and Folz provide Plaintiff with an accounting of the parties’ bank account and QSS expenditures from September 2017 through September 2018.

25. Per the letter, Plaintiff indicated that he no longer wished to be an owner of the QSS.

26. Plaintiff also stopped contributing to the expenses associated with the QSS.

27. Plaintiff’s interest in the QSS was never bought out and Plaintiff remained an owner of the QSS until it was sold in June 2020.

28. Despite sharing a one-third interest in the QSS, Plaintiff did not contribute to the common expenses associated with the QSS from October 2018 through June 2020.

29. In December, 2018, the owners obtained a proposed listing agreement from a broker, Melanie Neil to broker the QSS at an agreed listing price of \$235,000.

30. The QSS was not listed for sale with Melanie Neil.

31. In February 2019, Nobile and Folz attempted to sail the vessel to the Bahamas.

32. While attempting to sail to the Bahamas, the QSS experienced engine difficulty.

33. The QSS was docked at the Halifax Marina in Daytona Beach, Florida due to the vessel being in distress.

34. The engine of the QSS was initially repaired and Nobile and Folz again attempted to go to Cape Carnival.

35. However, Nobile and Folz needed to turn back because of continued engine problems.

36. It was determined that the QSS required several additional repairs, including installation of a new engine, estimated to cost approximately \$30,000.

37. Folz and Plaintiff agreed to pay \$10,000 each towards the repairs, while Nobile only agreed to pay \$3,000.

38. As a result, no repairs to the engines were made and, instead the deteriorating engine was removed from the vessel and remained outside of the vessel until it was sold.

39. In June 2020, the QSS was sold in “as is” condition for \$45,000.

40. Pursuant to an agreement reached by the Owners, Folz received \$15,000 from the QSS’s sale proceeds in complete settlement of all claims arising by and between Folz and Plaintiff and Folz and Defendant.

41. The remaining portion of the sale proceeds to be divided amongst Plaintiff and Nobile is the sum of \$30,000.

42. Plaintiff owed Nobile and Folz a one-third share of expenses in the amount of \$20,080, incurred from October 2018 through May 2020.

IV. CONCLUSIONS OF LAW

In bench trials, the judge serves as the sole fact-finder and, thus, assumes the role of the jury. In this capacity, the judge's function includes weighing the evidence, evaluating the credibility of witnesses, and deciding questions of fact, as well as issues of law. *See Childrey v. Bennett*, 997 F.2d 830, 834 (11th Cir. 1993). Moreover, "a trial judge sitting without a jury is entitled to even greater latitude concerning the admission or exclusion of evidence." *Goodman v. Highlands Ins. Co.*, 607 F.2d 665, 668 (5th Cir. 1979).

Partition proceedings are actions in equity providing joint owners of property a way to sever their relationship. *Arnold v. Heritage Enters. of St. Lucie, LLC*, Case No. 13-14447-CIV-Martinez/Maynard, 2018 WL 1796265, at *5 n. 4 (S.D. Fla. Jan. 25, 2018). The fundamental objective in a partition proceeding is to divide the property fairly and equitably. *Id.* Because this is a partition action, the Court must determine how the remaining proceeds from the sale of the QSS should be fairly and equitably divided between the parties.

A. Tenancy In Common

The rule applicable to tenancies in common is that all owners contribute equally to the maintenance of the ownership interest in the property. *Kelly v. Kelly*, 583 So.2d 667, 668 (Fla. 4th DCA 1999). Absent an agreement, the parties' obligations arise from the tenancy itself. *McFall v. Trubey*, 992 So.2d 867, 869 (Fla. 2d DCA 2008). A tenant who pays his cotenant's proportionate share of expenses is entitled to credit for those payments against sale proceeds. *Id.*

In this case, the parties never entered into a written partnership agreement and thus, the Owners shared the QSS as joint tenants. As such, Plaintiff was obligated to contribute his proportionate share of the common expenses incurred from approximately October 2018 through May 2020 as an Owner of the QSS. Because Plaintiff failed to pay his share of the common

expenses incurred, Nobile and Folz incurred a total of approximately \$20,080 in expenses. A third of this amount is \$6,693.33, owed to Nobile.

B. Conversion of Instrument

The law applicable to conversion of personal property applies to instruments. Fla. Stat. § 673.4201(a). An instrument is also converted if it is taken by transfer, other than a negotiation, from a person not entitled to enforce the instrument. *Id.* The measure of liability for an action brought for conversion of an instrument is presumed to be the amount payable on the instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument. Fla. Stat. § 673.4201(b).

Here, Plaintiff contends that he is owed a proportion of the monies received from Geico because Defendant and Folz forged Plaintiff's endorsement on the checks and intermingled the funds into a business account. Thereafter, Nobile and Folz used the proceeds to make an expensive and unnecessary headliner repair to the QSS. The Court agrees and finds that the instrument was improperly converted. Under the principles of equity, Plaintiff is entitled to one-third of the amount issued, or \$3,970.01.

C. Attorneys' Fees

Typically, each party in an admiralty case bears its own attorneys' fees unless fees are otherwise authorized by statute or contract. *Misener Marine Constr., Inc. v. Norfolk Dredging Co.*, 594 F.3d 832, 838 (11th Cir. 2010). This is consistent with the traditional "American Rule," which provides the attorneys' fees are not recoverable in the absence of a statute or enforceable contract providing otherwise. *See Topalli v. Feliciano*, 267 So. 3d 513, 518 (Fla. 2d DCA 2019).

Defendant seeks to recover his attorneys' fees in the amount of approximately \$30,000. Because there is no contract or statute allowing for the recovery of attorneys' fees, each party shall bear their own attorneys' fees.

V. CONCLUSION

Having reviewed the testimony of the witnesses, the relevant evidence, the parties' written submissions, applicable law, and record, it is hereby


ORDERED that:

1. Under the principles of equity, Plaintiff is responsible for one-third of the expenses incurred from October 2018 through May 2020, in the amount of \$6,693.33. However, the Court will award \$3,970.01 to Plaintiff, because Nobile and Folz improperly forged Plaintiff's signature on the insurance checks received from Geico.

2. The Court finds that it is fair and equitable to award Nobile the amount of \$17,723.32 for his share of the remaining sale proceeds. The remaining proceeds shall be awarded to Plaintiff, in the amount of \$12,276.68.

3. A separate order will be entered pursuant to Federal Rule of Civil Procedure 58.

DONE and ORDERED, in Fort Lauderdale, Florida, on this 7th day of May, 2021.


RODNEY SMITH
UNITED STATES DISTRICT JUDGE

cc: Counsel of Record