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**IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR INDIAN RIVER COUNTY, FLORIDA**

DAVID LEE SMITH II,
Plaintiff,
v.

CASE NO. 312026CA000359
312026CA000359AXXXVB

KARINA ANN SCHWARZKOPF a/k/a KARINA
GLASSETT, and JOHN THOMAS GLASSETT,
Defendants.

_____ /

AMENDED FINAL JUDGMENT OF PARTITION

THIS CAUSE came before the Court on October 6, 2026 upon Plaintiff David Lee Smith II's Motion for Summary Final Judgment of Partition and Order of Immediate Sale, Defendants' Response in Opposition, and Plaintiff's Reply, and after reviewing the Motion, the Response, the Reply, the Affidavit of Karina Glassett, the record, hearing argument of the parties, and being otherwise fully advised in the premises, finds as follows:

1. This is an action for partition of real property under Chapter 64, Florida Statutes. Plaintiff David Lee Smith II and Defendant Karina Ann Schwarzkopf a/k/a Karina Glassett acquired title to the real property located at 1260 12th Court SW, Vero Beach, Florida 32962, by warranty deed on June 13, 2019, taking title as joint tenants with the right of survivorship. The property is a single-family residence legally described as Lot 8, Block Y, Oslo Park Unit No. 2, according to the plat thereof recorded in Plat Book 4, Page 13, of the Public Records of Indian River County, Florida (the "Property").

2. Plaintiff moves for summary final judgment of partition, an order of immediate sale, deposit of the sale proceeds into the Court Registry, reservation of jurisdiction for a post-sale accounting, and entry of a personal deficiency judgment

against Defendant if her share of the proceeds proves insufficient. Defendant Karina Glassett opposes, contending that material facts remain in dispute, that Plaintiff's supporting declaration and exhibits are not competent summary-judgment evidence, that Plaintiff seeks relief he never pleaded, and, alternatively, that the Court should defer ruling under Florida Rule of Civil Procedure 1.510(d) pending the completion of discovery.

3. Summary judgment is governed by Florida Rule of Civil Procedure 1.510, which the Florida Supreme Court amended to adopt the federal summary-judgment standard. The Court "shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law," and the standard is "construed and applied in accordance with the federal summary judgment standard." Fla. R. Civ. P. 1.510(a); *In re Amendments to Florida Rule of Civil Procedure 1.510*, 317 So. 3d 72, 75-77 (Fla. 2021). The inquiry mirrors the directed-verdict standard and asks whether "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* at 76.

I. The parties' equal ownership interests are undisputed, and partition is a matter of right.

4. The parties agree that Plaintiff and Defendant Karina Glassett each own an undivided fifty-percent (50%) interest in the Property. Plaintiff's Reply confirms that he "is not asking this Court to determine the parties' ownership percentages because there is no genuine dispute concerning that issue," and Defendant's own Affidavit confirms that the parties purchased the Property together in June 2019 as joint tenants with the right of survivorship. The quantum of each party's estate is therefore established and undisputed. See § 64.041, Fla. Stat.

5. Under Florida law, “the general rule is that partition is a matter of right.” *Condrey v. Condrey*, 92 So. 2d 423, 426 (Fla. 1957). The Fourth District Court of Appeal, whose decisions bind this Court, has reaffirmed that “where property is held in a tenancy in common, partition is practically a matter of right.” *Moraitis v. Galluzzo*, 487 So. 2d 1151, 1152 (Fla. 4th DCA 1986). The narrow equitable exception to that right — reserved for “extreme cases ... where manifest injustice, fraud or oppression will result if partition is granted,” *Condrey*, 92 So. 2d at 427 — is not implicated here, and no party has pleaded or established a waiver of the right to partition.

6. Section 64.051, Florida Statutes, provides that “[w]hen the rights and interests of plaintiffs are established or are undisputed, the court may order partition to be made,” “leaving for future adjustment in the same action” any remaining matters. Because the parties’ equal interests are undisputed, Plaintiff is entitled to a judgment of partition, and the Court may order partition while reserving the parties’ competing financial claims for later adjustment.

II. The Property cannot be divided in kind and shall be sold.

7. The Property is a single-family residence situated on a single platted lot. Such a residence cannot be partitioned in kind without great prejudice to the owners, and partition by sale is the appropriate remedy. § 64.071(1), Fla. Stat.

8. Defendant correctly observes that a sale by the clerk or a special magistrate is authorized under section 64.061(4) “[o]n an uncontested allegation in a pleading that the property ... is indivisible,” and that the allegation of indivisibility was denied in the Defendants’ answers. The uncontested-allegation prong is therefore unavailable. The same subsection, however, authorizes such a sale in the alternative where “a judgment

of partition is entered and the court is satisfied that the allegation is correct.” § 64.061(4), Fla. Stat. Having entered a judgment of partition, and the Property being a single-family dwelling on one lot that is incapable of division in kind without prejudice to the owners, the Court is independently satisfied that the Property is indivisible and shall be sold with the proceeds divided among the parties in proportion to their interests. § 64.071(1), Fla. Stat.

III. The accounting is bifurcated and reserved, and deferral under Rule 1.510(d) is not warranted as to partition.

9. The matters Defendant identifies as disputed — the amounts of credits, offsets, contributions toward the mortgage, taxes, insurance, and maintenance, and the value of any claimed use of the Property — are accounting matters that do not bear on the parties’ undisputed ownership or on the right to partition. The settled procedure is to order the sale first and conduct the accounting afterward against the proceeds. See *Bucacci v. Boutin*, 933 So. 2d 580, 586 (Fla. 3d DCA 2006) (directing that the property be sold under section 64.071, that “an accounting be had to properly allocate and adjust the contributions and expenses,” and that distribution then be made in proportion to the parties’ interests). A cotenant who has paid more than his proportionate share of the carrying charges does not thereby enlarge his ownership interest; he “is entitled to a credit from the proceeds of the sale for the other cotenant’s proportionate share of those expenses.” *Biondo v. Powers*, 743 So. 2d 161, 164 (Fla. 4th DCA 1999).

10. Because the parties’ ownership interests are undisputed, no additional discovery is required before the Court may adjudicate the right to partition and order the sale. The discovery and expert-disclosure deadlines Defendant invokes under Rule 1.510(d) are directed to the accounting, not to ownership, and they are preserved by the

reservation of jurisdiction set out below. Deferral of the partition and sale under Rule 1.510(d) is therefore unnecessary.

IV. Plaintiff's requests for rental damages for ouster and for a personal deficiency judgment are denied.

11. Plaintiff also seeks summary judgment awarding him fair-market rental value for an alleged ouster, one-half of rental income he contends Defendant collected from third parties, and a personal money judgment against Defendant. The Verified Complaint pleads partition and ancillary relief to preserve the Property; it does not plead a claim for ouster, for rent or rental value, for an accounting of third-party rents, or for a money judgment against Defendant. A court cannot grant summary judgment on relief that was never pleaded. *Built Green Corp. v. Environ Condominium II, Association, Inc.*, No. 4D2025-1055, 2026 WL 2854493, at *5-6 (Fla. 4th DCA Sept. 23, 2026) (a “summary judgment motion” does not “enlarge the pleadings” and “does not create a cause of action that the movant never pleaded”); accord *Florida Insurance Guaranty Association v. Feijoo*, 388 So. 3d 1059, 1060 (Fla. 3d DCA 2024).

12. These requests also fail on the merits on this record. A cotenant in sole possession who uses the property for her own benefit and receives no rents or profits is “not liable or accountable to the cotenant out of possession unless he or she holds adversely or as a result of ouster or its equivalent.” *Barrow v. Barrow*, 527 So. 2d 1373, 1376 (Fla. 1988). There can be no ouster “unless such holding is manifested or communicated to the other” cotenant, and “[m]ere possession by one co-tenant, even for a lengthy time, could not be considered an ouster ... without communication of exclusive possession.” *Barrow*, 527 So. 2d at 1375; *Atkinson v. Anderson*, 77 So. 3d 768, 770 (Fla. 4th DCA 2011); see *Coggan v. Coggan*, 239 So. 2d 17, 19 (Fla. 1970). Defendant’s

Affidavit states that she never rented the Property or received rental income and that no intention to possess the Property adversely to Plaintiff was ever communicated to him; Plaintiff's declaration, which swears to events said to have occurred at the Property while Plaintiff resided out of state, does not establish his personal knowledge of those matters and is not competent to create a genuine dispute. See Fla. R. Civ. P. 1.510(c)(4); *Savoy v. American Platinum Property & Casualty Insurance Co.*, 363 So. 3d 1102, 1106-07 (Fla. 4th DCA 2023). Reasonable rental value, if any, is available only as an offset against a cotenant's claim for contribution, and then only to the extent of that claim — a matter for the post-sale accounting. *Barrow*, 527 So. 2d at 1377.

13. Finally, Chapter 64 does not authorize a personal money judgment against a cotenant. The remedy for a cotenant who has overpaid is a credit against the sale proceeds, not an affirmative judgment against the other owner. *Biondo*, 743 So. 2d at 164. A personal deficiency judgment was neither pleaded nor is it an available remedy in this partition action. See *Built Green*, 2026 WL 2854493, at *5-6.

V. The recorded interests of the non-party mortgagees, Habitat for Humanity and Indian River County, are preserved and are not adjudicated by this Judgment.

14. The record includes two recorded mortgages encumbering the Property, neither of whose holders was named or joined as a party to this action. First, by Real Estate Mortgage dated June 3, 2019, and recorded in Official Records Book 3215, Page 2021, of the Public Records of Indian River County, the Property is encumbered by a purchase-money first mortgage held by Indian River County Habitat for Humanity, Inc. ("Habitat") securing a promissory note in the original principal amount of \$110,000.00. That mortgage grants Habitat a right of first refusal under which, upon the owner's receipt

of an offer to purchase the Property, the owner must give Habitat written notice of the offer, and Habitat then has a thirty (30) day option to purchase the Property on the same terms and conditions as the offer. The mortgage further provides that the Property may not be transferred without Habitat's prior written consent, in default of which Habitat may declare the entire remaining principal balance due. Second, by Subordinate Mortgage dated June 13, 2019, and recorded in Official Records Book 3215, Page 2029, the Property is encumbered by a mortgage held by the Board of County Commissioners of Indian River County ("the County") securing deferred-payment housing assistance in the original principal amount of \$26,037.00 under the State Housing Initiatives Partnership (SHIP) program; that mortgage is subordinate to the Habitat mortgage and, by its terms, becomes due and payable upon a sale of the Property. Habitat, upon learning of the proposed sale, communicated its claimed interest to the Court. Neither mortgage, nor Habitat's right of first refusal, has been pleaded or placed in issue by any party.

15. A judgment of partition and sale cannot adjudicate, divest, or destroy the interest of a person who is not a party to the action; as to such a person the decree is, at most, a cloud upon the interest, and the non-party remains free to assert it in a later proceeding. *Cline v. Cline*, 101 Fla. 488, 134 So. 546 (1931). Nor may a court, after a partition sale, order a lien satisfied out of the proceeds where the lienholder was never made a party and has not consented; the established course where a lienholder is not joined is to sell subject to the encumbrance rather than free of it. *McClanahan v. Mayne*, 103 Fla. 600, 138 So. 36 (1931). A partition judgment may not find property encumbered by, or order it sold subject to, a mortgage that has not been pleaded. *Hoemke v. Hoemke*, 355 So. 2d 828 (Fla. 2d DCA 1978). Where the rights of a mortgagee are to be

adjudicated, the mortgagee must be made a party and the partition adjudicated subject to the mortgagee's rights. *Miles v. Miles*, 117 Fla. 884, 158 So. 520 (1935). Because the Habitat and County mortgages and Habitat's right of first refusal are not before the Court, the Court makes no finding as to their validity, priority, amount, or terms, and nothing in this Judgment adjudicates, affects, or impairs them.

16. Habitat's right of first refusal, if valid and supported by consideration, is a contractual right that binds a purchaser who takes with notice, including notice from the public records. *Old Port Cove Holdings, Inc. v. Old Port Cove Condo. Ass'n One, Inc.*, 986 So. 2d 1279 (Fla. 2008); *Raj v. Sutherlin*, 427 So. 3d 530 (Fla. 4th DCA 2026); *Blind Monk, LLC v. Uso Norge Whitney, LLC*, 368 So. 3d 980 (Fla. 4th DCA 2023) (applying *Denco, Inc. v. Belk*, 97 So. 2d 261 (Fla. 1957)). Whether a court-supervised partition sale triggers such a right turns on the involuntary nature of the sale and the language of the instrument creating it, and a court-supervised sale is generally treated as more akin to a judicial sale that does not, of itself, trigger a right of first refusal. *Pecora v. Berlin*, 62 So. 3d 28 (Fla. 3d DCA 2011). Where the right is implicated, a court may fix the price and terms and afford the holder notice and an opportunity to exercise it, *Blind Monk*, 368 So. 3d at 985, and may order the sale conditioned upon or subject to the right of first refusal, *Acquisition Trust Co., LLC v. Laurel Pinebrook, LLC*, 301 So. 3d 397 (Fla. 2d DCA 2020). To preserve these non-party interests without adjudicating them, the Court directs notice to Habitat and the County and affords them an opportunity to appear, affords Habitat an opportunity to exercise its right of first refusal, orders that the sale and any resulting title be without prejudice to their interests, and reserves jurisdiction as set forth below.

VI. Plaintiff's Motion for Temporary Orders is granted in part, and the Judgment is amended to secure publication of the sale and to preserve the Property pending sale.

17. On October 9, 2026, Plaintiff moved for temporary orders governing publication, carrying costs, occupancy, and preservation of the Property pending the sale. The sale is to be conducted by the Clerk under Section 45.031, Florida Statutes. Where a judgment adopts that framework, its publication requirements are mandatory, and the Clerk may not issue a certificate of sale — and therefore no certificate of title — unless the notice of sale was published and the publisher's proof of publication is on file. §§ 45.031(2), (4)-(6), Fla. Stat.; *Castelo Development, LLC v. Aurora Loan Services LLC*, 85 So. 3d 515 (Fla. 4th DCA 2012); *Simonson v. Palm Beach Hotel Condominium Ass'n, Inc.*, 93 So. 3d 436 (Fla. 4th DCA 2012). The Court may direct Plaintiff to arrange and advance the cost of publication, reimbursable as a cost of sale from the proceeds, § 64.081, Fla. Stat., and, consistent with the direction given at the October 6, 2026 hearing, assigns that responsibility to Plaintiff.

18. Partition is an equitable proceeding. § 64.011, Fla. Stat.; *Cauble v. Kaczmariski*, 421 So. 3d 776 (Fla. 3d DCA 2025). The Court has inherent equitable authority to preserve the Property and prevent waste, including by appointing a receiver — a power reserved for cases of fraud, self-dealing, or waste. *Granada Lakes Villas Condominium Ass'n, Inc. v. Metro-Dade Investments Co.*, 125 So. 3d 756 (Fla. 2013). After a judgment of partition is entered, the concerns that counsel caution before appointing a receiver carry less weight, and where the sale is deferred a receiver may be appointed pending its execution to protect all parties and avoid waste or depreciation. *U.S. Bank National Ass'n v. Cramer*, 113 So. 3d 1020 (Fla. 2d DCA 2013). Because the

sale here is deferred by Habitat's thirty-day right of first refusal, these protections are warranted.

19. Cotenants have a mutual obligation to pay the carrying costs of the Property, and a cotenant who pays a disproportionate share is entitled to a credit in the post-sale accounting; such adjustments are compensatory, determined at their actual amounts, and are not enlarged by any punitive multiplier. *Barrow v. Barrow*, 527 So. 2d 1373 (Fla. 1988); *Cauble*, 421 So. 3d 776. A cotenant in possession retains the right to possession until the Certificate of Title issues, § 45.031(6), Fla. Stat., and ordinarily may not be dispossessed absent ouster or its equivalent, *Barrow*, 527 So. 2d 1373. The Court therefore declines to order automatic removal upon a single late payment, and declines to impose a two-to-one accounting adjustment, but reserves authority, on expedited motion and notice, to appoint a receiver and to order the occupants to vacate if waste, or a failure to maintain or to keep the carrying costs current, jeopardizes the Property.

IT IS THUS ORDERED and ADJUDGED:

A. Plaintiff's Motion for Summary Final Judgment of Partition and Order of Immediate Sale is **GRANTED IN PART and DENIED IN PART** as set forth below.

B. Plaintiff David Lee Smith II and Defendant Karina Ann Schwarzkopf a/k/a Karina Glassett each hold an undivided fifty-percent (50%) interest in the Property as cotenants. The Property shall be partitioned.

C. The Court finds the Property indivisible. Pursuant to Sections 64.061(4) and 64.071, Florida Statutes, the Clerk of the Circuit Court shall sell the Property at public sale to the highest and best bidder for cash, conducted online at www.indian-river.realforeclose.com in accordance with section 45.031, Florida Statutes, on

November 23, 2026, beginning at 10:00 a.m. Plaintiff shall arrange and pay for publication of the notice of sale once a week for two consecutive weeks in a newspaper of general circulation in Indian River County, Florida, with the second publication at least five days before the sale, and shall timely file the publisher's proof of publication with the Clerk. § 45.031(2), Fla. Stat. The reasonable cost of publication shall be taxed as a cost of sale and reimbursed to Plaintiff from the sale proceeds. § 64.081, Fla. Stat. The sale is subject to the recorded mortgages of Indian River County Habitat for Humanity, Inc. and the Board of County Commissioners of Indian River County, and to Habitat's right of first refusal, as set forth in the paragraphs entitled "Preservation of Non-Party Mortgagees' Interests" and "Notice to Habitat for Humanity and Indian River County" below.

D. The partition sale ordered herein, and any Certificate of Title issued pursuant to it, are without prejudice to, and shall not adjudicate, affect, or extinguish, (a) the purchase-money first mortgage and right of first refusal held of record by Indian River County Habitat for Humanity, Inc., or (b) the subordinate mortgage held of record by the Board of County Commissioners of Indian River County, in or to the Property. Any purchaser at the sale takes title subject to such interests as Habitat and the County validly hold of record. The Court makes no determination of the validity, priority, amount, or terms of those interests, all of which are expressly reserved.

E. Within five (5) days after entry of this Final Judgment, Plaintiff shall serve a copy of this Final Judgment, and promptly upon its issuance the Notice of Sale, upon Indian River County Habitat for Humanity, Inc. at 4568 North U.S. Highway 1, Vero Beach, Florida 32967, and upon the Board of County Commissioners of Indian River County at

1801 27th Street, Vero Beach, Florida 32960, by certified mail and by any other means reasonably calculated to give actual notice, and shall file proof of such service. Habitat and the County may each move to intervene in this action and to assert their respective interests. To preserve Habitat's right of first refusal, Habitat shall additionally be given written notice of the terms of the successful bid, and the Court reserves jurisdiction, consistent with the thirty (30) day option provided in Habitat's mortgage, to afford Habitat a reasonable opportunity to exercise that right by purchasing the Property on the same terms before a Certificate of Title issues. The Court further reserves jurisdiction to determine the validity, priority, amount, and terms of the Habitat and County mortgages and of Habitat's right of first refusal; to provide for satisfaction of those mortgages from the sale proceeds should the respective holders appear or consent; and to enter such further orders as may be necessary to protect these non-party interests and to preserve the integrity and value of the sale.

F. Pending the sale and the issuance of the Certificate of Title, the Defendants and any occupants shall maintain the Property in its present condition, commit no waste, keep the dwelling, its systems, the lawn, and the exterior in good and sightly order, keep the existing hazard insurance in force, and permit reasonable access to the Property, on reasonable advance notice, by prospective bidders, appraisers, and any inspector designated by the Court or agreed to by the parties.

G. The Defendants and any occupants shall timely pay, on or before the applicable due date, their proportionate share of the payments due on the Habitat for Humanity and Indian River County mortgages, the property taxes, the hazard insurance premiums, and the essential utilities, so as to avoid acceleration, penalty, or lien

enforcement against the Property. Any shortfall, late charge, or sum advanced by Plaintiff to cure or prevent a default shall be determined at its actual amount and allocated as a credit or offset in the post-sale accounting under section 64.081, Florida Statutes, and *Barrow v. Barrow*, 527 So. 2d 1373 (Fla. 1988). No personal money judgment shall enter on account of such sums, and no punitive or multiplied adjustment shall apply.

H. Upon an expedited motion, notice, and a showing that the Defendants or any occupants have committed or permitted waste, failed to maintain the Property, or failed to keep the carrying costs current such that the Property or its value is jeopardized, the Court may appoint a receiver to take charge of and preserve the Property, and may order the Defendants and any occupants to vacate and surrender possession so that the Property may be secured, notwithstanding that possession would otherwise continue until the Certificate of Title issues. This paragraph does not authorize removal of any occupant without such motion, notice, and showing.

I. The net proceeds of sale, after payment of statutory Clerk's fees and the costs of sale, shall be deposited into the Court Registry and held subject to further order of this Court.

J. Upon the Clerk's filing of the Certificate of Title, the purchaser shall be entitled to possession of the Property, and the Clerk shall issue a writ of possession upon request in accordance with section 45.031(9), Florida Statutes. The Certificate of Title shall vest title in the purchaser upon compliance with Chapter 45, Florida Statutes, and the expiration of the time for filing objections to the sale, and shall recite that title is taken subject to the interests of Habitat for Humanity and Indian River County preserved by this Judgment. The Certificate of Title shall not issue before the opportunity afforded to Habitat

to exercise its right of first refusal, as provided above, has expired or been resolved by further order of this Court.

K. The determination of partition and sale is bifurcated from the parties' competing financial claims. The Court reserves jurisdiction to conduct a post-sale evidentiary accounting, upon motion of either party, to determine and allocate against the proceeds all credits, offsets, and contributions the parties may establish — including contributions toward the mortgage, taxes, insurance, and maintenance, and any reasonable rental value recoverable as an offset under *Barrow v. Barrow*, 527 So. 2d 1373 (Fla. 1988) — and to distribute the proceeds in proportion to the parties' interests after such adjustments. § 64.051, Fla. Stat.

L. Plaintiff's Motion for Temporary Orders Regarding Property Preservation, Occupancy Costs, and Clarification of Publication, filed October 9, 2026, is **GRANTED IN PART and DENIED IN PART**. It is GRANTED as to publication by Plaintiff and proof of publication (paragraph 3), property preservation and access (paragraph 6), and timely payment of carrying costs (paragraph 7). It is DENIED as to the request for automatic removal of the occupants upon a single late payment and the request for a two-to-one accounting adjustment; the Court's authority to order a receiver and removal is instead governed by paragraph 8, and carrying-cost adjustments shall be made at their actual amounts in the post-sale accounting.

M. Plaintiff's requests for an award of fair-market rental value for ouster, for one-half of any third-party rental income, and for a personal deficiency judgment against Defendant are **DENIED**, without prejudice to Plaintiff's right to assert any legally cognizable credit or offset in the post-sale accounting.

N. This Order constitutes a summary final judgment of partition and sale and is final and enforceable notwithstanding the reservations of jurisdiction herein. The Court reserves jurisdiction to enforce this Judgment, to conduct the post-sale accounting, to adjudicate and protect the interests of Habitat for Humanity and Indian River County as provided herein, to implement the preservation and enforcement provisions above, and to enter all further orders necessary to effectuate the sale and distribute the proceeds.

DONE AND ORDERED in Indian River County, Florida on October 10, 2026 *nunc pro tunc* October 7, 2026.

eSigned by Judge Cynthia L. Cox 10/10/2026 6:06 pm

CYNTHIA L. COX, Circuit Judge

Copies furnished via eportal service to:

David Lee Smith II, Plaintiff, pro se

LeRonnie M. Mason, Esq., Florida Rural Legal Services, Inc., Counsel for Defendant Karina Glassett

John Thomas Glassett, Defendant, pro se

Indian River County Habitat for Humanity, Inc., non-party mortgagee, 4568 North U.S. Highway 1, Vero Beach, FL 32967 (by certified mail and other means reasonably calculated to give actual notice, per the notice provision above) jfrancisco@irchabitat.org

Board of County Commissioners of Indian River County, non-party mortgagee, 1801 27th Street, Vero Beach, FL 32960 (by certified mail and other means reasonably calculated to give actual notice, per the notice provision above) jshuler@indianriver.gov