

Filed in Douglas District Court

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THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA**BARBARA J. HUMPHREY,****Plaintiff,****vs.****EDWARD J. SMITH,
DORA PROSOLOW, JOHN DOE and
JANE DOE,****Defendants.****NO. CI 18 -****COMPLAINT FOR PARTITION**

COMES NOW, the Plaintiff and for her cause of action against the Defendants, Edward J. Smith, Dora Prosolow, John Doe and Jane Doe, she alleges and states as follows:

1. Plaintiff is an adult and hereby subjects herself to the jurisdiction of this Court.
2. That Defendant, Edward J. Smith, is an adult and a resident of Douglas County, Nebraska and an owner of an undivided interest in real estate in said county and is therefore, under the jurisdiction of this Court.

3. That the real estate which is the subject of this action is described as follows:

Lot 16, Dillons 11th Addition, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska (7205 North Ridge Drive, Omaha, Nebraska 68112)

hereinafter referred to as ("the real estate").

4. That on or about November 10, 2015, the real estate was purchased by Donald W. Humphrey (hereinafter "Donald") and Edward J. Smith ("Edward") as tenants in common, using the Special Warranty Deed, a copy of which is attached hereto.

5. That the purchase price of the real estate was \$35,000.00, of which Donald paid \$25,000.00 (71.4285%) and Edward paid \$10,000.00 (28.5714%).

6. That soon after the real estate was purchased Donald and Edward entered into an oral agreement for Edward to reimburse Donald for his share, in monthly payments at 4% interest.

7. That on August 24, 2018, Donald W. Humphrey died.

8. That as of the date of Donald's death, Edward had paid \$8,873.89 toward Donald's \$25,000.00 interest in the real estate, leaving a balance owed of \$16,126.11 ($16,126.11/35,000.00$ or 46.0746%).

9. That plaintiff, Barbara J. Humphrey ("Barbara") is Donald's surviving widow.

10. That on September 26, 2018, Plaintiff transferred Donald's share to herself, by Affidavit of Transfer of Real Property without Probate pursuant to Nebraska Revised Stat. Section 28-915, a copy of which is attached hereto and incorporated by this reference.

11. That Edward has refused to make any further payments in the belief that the entire property belongs to him and has refused to acknowledge that Barbara holds title to any portion of the real estate.

12. That Defendant, Edward J. Smith, is believed to be residing at the above referenced real estate;

13. That Defendant, Edward J. Smith, is believed to be single;

14. That Defendant, Dora Prosolow, is believed by Plaintiff to be an occupant in the above described real estate;

15. That Defendant, Dora Prosolow, is believed to be single;

16. That Defendant, John Doe, may be an occupant of the premises or otherwise have some interest in the premises;

17. That Defendant, John Doe, is believed to be single;

18. That Defendant, Jane Doe, may be an occupant of the premises or otherwise have some interest in the premises; and

19. That Defendant, Jane Doe is believed to be single.

PARTITION ACTION

20. Plaintiff incorporates by this reference, as if fully set forth, the allegations contained in paragraphs 1 through 19 above.

21. That Plaintiff is entitled to a Partition of the real estate and the Court should order the property to be partitioned;

22. That the real estate is not susceptible to a division in kind, without material injury to the rights of the parties;

23. That the sale of the real estate along with a division of the proceeds among the owners according to their fractional ownership interests is necessary;

24. That the appointment of a Referee is necessary to fairly administer the sale of the real estate and the distribution of proceeds therefrom;

ATTORNEY FEES

25. Plaintiff incorporates by this reference, as if fully set forth, the allegations contained in paragraphs 1 through 24 above.

26. That Plaintiff should be awarded attorney fees and costs of this action as provided by Neb. Rev. Stat. §25-21,108.

INJUNCTIVE RELIEF

27. Plaintiff incorporates by this reference, as if fully set forth, the allegations contained in paragraphs 1 through 26 of her Complaint.

28. Defendants and all other occupants of the premises, if any, should be permanently enjoined and restrained from possession of the premises forthwith.

29. Plaintiff has no adequate remedy at law.

UNJUST ENRICHMENT

30. Plaintiff incorporates by this reference, as if fully set forth, the allegations contained in paragraphs 1 through 29 of her Complaint.

31. That to date, Defendants, without consent of Plaintiff, or any color of authority, has received the fair rental value in the form of unpaid rent in the amount of \$400.00, while residing in the property owned one-half by Plaintiff.

32. That in justice and fairness, Defendants should not be allowed to retain said rental income and Plaintiff should be awarded one-half of the rental income profited from the real property, in the amount of \$400.00, to date together with \$400.00 for each succeeding month.

DAMAGES

33. Plaintiff incorporates by this reference, as if fully set forth, the allegations contained in paragraphs 1 through 32 of her Complaint.

34. That as a result of Defendants' unlawful possession of the premises, Plaintiff will have incurred special damages of lost rents in the amount of \$400.00, together with future damages in the amount of not less than \$400.00 for each month thereafter she is denied possession of the premises, and other special and general damages, to be determined at trial.

WHEREFORE Plaintiff prays that the Court enter an Order of Judgment for the partition of the above described real estate, according to the respective rights and shares of the parties as aforesaid; for the appointment of a Referee; for the sale of the real estate and the division of the proceeds of the sale among the parties, according to their respective interests; for attorney fees and

18. That Defendant, Jane Doe, may be an occupant of the premises or otherwise have some interest in the premises; and

19. That Defendant, Jane Doe is believed to be single.

PARTITION ACTION

20. Plaintiff incorporates by this reference, as if fully set forth, the allegations contained in paragraphs 1 through 19 above.

21. That Plaintiff is entitled to a Partition of the real estate and the Court should order the property to be partitioned;

22. That the real estate is not susceptible to a division in kind, without material injury to the rights of the parties;

23. That the sale of the real estate along with a division of the proceeds among the owners according to their fractional ownership interests is necessary;

24. That the appointment of a Referee is necessary to fairly administer the sale of the real estate and the distribution of proceeds therefrom;

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25. Plaintiff incorporates by this reference, as if fully set forth, the allegations contained in paragraphs 1 through 24 above.

26. That Plaintiff should be awarded attorney fees and costs of this action as provided by Neb. Rev. Stat. §25-21,108.

INJUNCTIVE RELIEF

27. Plaintiff incorporates by this reference, as if fully set forth, the allegations contained in paragraphs 1 through 26 of her Complaint.

costs incurred herein; for Judgment against Plaintiff for unjust enrichment in the amount of \$400.00, together with \$400.00 for each succeeding month while Plaintiff resides in the premises; for Judgment awarding her damages in the amount of \$400.00, together with future damages in the amount of not less than \$400.00 for each month Plaintiff is denied possession of the premises; for Judgment enjoining and restraining Defendants and all other occupants of the premises, if any, from possession of the premises forthwith; and for such other and further relief as the Court may deem just and equitable in the premises.

Barbara J. Humphrey, Plaintiff,



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