

PARTIES: IN THE MATTER OF an application  
by SOFTWOOD PLANTATIONS PTY LTD

TITLE OF COURT: SUPREME COURT (NT)

JURISDICTION: DARWIN

FILE NO: NO. 202 OF 1994

DELIVERED: 24 MARCH 1995

HEARING DATES: 7 DECEMBER 1994

JUDGMENT OF: MARTIN CJ.

**CATCHWORDS:**

Partition - Sale in a partition action - Relevant considerations -

Partition Act 1881 (SA), s3.

Partition - Effect of sale - Monies to be paid to Trustee - Public Trustee appointed by Court -

Partition Act 1881 (SA), ss3 and 8.

Public Trustee Act 1989 (NT) ss21, 58, 60(1)(p) & 60(3).

**REPRESENTATION:**

*Counsel:*

Applicant: Ms Kelly  
Respondent: Mr Grant

*Solicitors:*

Applicant: Ms Miles  
Respondent: Mr Grant

Judgment category classification: B

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IN THE SUPREME COURT  
OF THE NORTHERN TERRITORY  
OF AUSTRALIA

No. 202 of 1994

IN THE MATTER OF an application  
by

SOFTWOOD PLANTATIONS PTY LTD

CORAM: MARTIN CJ.

REASONS FOR JUDGMENT

(Delivered 24 March 1995)

The applicant, Softwood Plantations Pty Ltd seeks an order, pursuant to s3 of the *Partition Act* (SA) 1881, that certain land near Darwin be sold to it, or alternatively, that there be a partition of the land between the co-owners thereof. If it is directed that the land be sold, it is sought to appoint the Public Trustee as manager of the proceeds of sale pursuant to s58 of the *Public Trustee Act*.

The application is supported by an affidavit of Graham Chrisp, a director of the applicant company. In January 1992, the applicant purchased in aggregate a 12/63 interest in the land.

The current Certificate of Title shows that the registered owners with interest in the land are:

- (a) The applicant 12/63.
- (b) William Pritchard 9/63.
- (c) John Edward Pritchard 12/63.
- (d) George Charles Pritchard 9/63.
- (e) Thomas Pritchard 12/63.
- (f) Emmaline Hales 9/63.

There was evidence to suggest that each of the co-owners, other than the applicant, acquired his or her interest in the property on or before 5 April 1918, and with the exception of the purchase of the interest by the applicant, there had been no registered dealings with it since that time.

Enquiries made at the office of the Registrar of Births, Deaths and Marriages in South Australia and in the Registry of the Supreme Court of that State, ascertained that:

- (a) William Pritchard died on 15 August 1923 and no probate had been issued in respect of his estate by the South Australian Supreme Court until 1949.
- (b) John Edward Pritchard died on 8 August 1935 and no probate has issued in respect of his estate by that date.

- (c) George Charles Pritchard died on 6 January 1910 and no probate had been issued in respect of his estate by that date.
- (d) Thomas Pritchard died on 3 June 1926 and no probate was issued in respect of his estate by that date.
- (e) Emmaline Pritchard Hales died on 8 November 1911 and her executor is the Public Trustee of South Australia.

Efforts were made by the plaintiff to trace descendants of the co-owners of the land other than the late Emmaline Hales. Notice has been given to the Public Trustee of South Australia of this application in respect of her interest. The Public Trustee of South Australia has agreed to sell to the applicant the 9/63 interest in the land held by it in the estate of Emmaline Hales. On settlement of that sale, the applicant will hold a 21/63 interest in the land.

The land has been independently valued by two valuers whose detailed reports are before the Court. They each estimate the market value of the property as of late last year to be \$110,000. The applicant is ready, willing and able to purchase the land for a price equal to the valuation or the other interests in it for a price based upon the valuation.

Since the applicant acquired an interest in the land it has paid all rates including arrears imposed upon it.

The applicant has obtained advice from Paul Graham, an engineer practising in Darwin, who has given advice in relation to a theoretical sub-division of the land into two portions representing approximately 1/3 for the applicant and 2/3 for the remaining co-owners. In Mr Graham's opinion, the cost of subdivision, including construction of a road and provision of electricity service together with professional fees, would be over \$315,000. Mr David Booth, a licensed real estate agent in Darwin, informs the Court that assuming a sale at \$110,000, if the land were to be sold by public auction, likely commission and expenses would amount to up to \$7,800, but perhaps around \$2,000 less depending on various factors. He has also noted that his employer was appointed the selling agent in respect of an adjoining property which had similar characteristics to the land in question, and it was on the market for two years before a willing buyer could be found.

As a result of advertising in newspapers and other enquiries made by those representing the applicant, I am satisfied that the descendants of the deceased proprietors of interest in the land, other than the late Emmaline Hales, are unable to be reasonably located. I am also satisfied on the whole of the evidence that given the number of parties interested, or presumptively interested in it, and the attitude of the Public

Trustee of South Australia, a sale of the property and distribution of the proceeds will be more beneficial for the parties interested than a division of the property between or among them. In coming to that opinion, I have taken into account the value of the property, the cost of subdivision into portions representing the respective interests of the applicant and the other parties (*Partition Act* s3), and the cost of sale by auction.

It is thus open to the Court to direct a sale of the property accordingly and to give all necessary or proper consequential directions. Section 8 of the *Act* provides that all monies to be received on any such sale be paid to any trustee of whom the Court shall approve. The Public Trustee of the Northern Territory has been served with a copy of the application and knows the purpose of it. The Public Trustee has also seen the draft orders submitted by the solicitors for the applicant and neither consents to, nor opposes, the making of them.

Given the complications in relation to title, the fact that the applicant holds a substantial interest in the property, that the Public Trustee of South Australia has negotiated to sell to the company the interest it holds on behalf of the estate of Emmaline Hales, that subdivision of the land is not a viable option, and in all the circumstances I am of the opinion that the appropriate course to follow is to make such orders and give such directions as will enable the company to purchase the outstanding interests. The proceeds of sale should be held by

a trustee on behalf of whomsoever may be found to be entitled to them. The Public Trustee may be appointed manager of any real property where it is not known who the owner of it is or where the owner of it is (s58 *Public Trustee Act*,) and in respect of such property the Public Trustee may exercise all other powers that may be conferred upon the Public Trustee by the Court (s60(1)(p)). It is provided in subs(3) of that section that all documents executed by Public Trustee as manager of property pursuant to such an appointment shall have effect and may be registered in all respects as if they were executed by the owner. Other powers may be given to the Public Trustee pursuant to the power to give necessary or proper consequential directions pursuant to s3 of the *Partition Act*. The Public Trustee has statutory powers for the investment of monies which is received on behalf of a person (s21 *Public Trustee Act*).

Order as follows:

1. Softwood Plantations Pty Ltd ("the applicant") have liberty to proceed ex parte in this proceeding.
2. Pursuant to s58 of the *Public Trustee Act*, the Public Trustee for the Northern Territory ("the Public Trustee") be appointed manager of the interests of William Pritchard, George Charles Pritchard, Thomas Pritchard and John Edward Pritchard in land described

as Section 376 Hundred of Strangways comprised in Certificate of Title Volume 5 Folio 36 ("the Land") being in aggregate an undivided two thirds share in the Land ("the Property");

3. Subject to this Order, pursuant to s60(1)(p) of the *Public Trustee Act* the Public Trustee be and is hereby authorised to sell the property to the applicant and to execute a memorandum of transfer of it to the applicant.
4. The Property be sold to the applicant for the sum of \$73,333.33 ("the Proceeds") being two thirds of the value of the Land as determined by two registered valuers in valuations annexed to the affidavit of Graham Maxwell Chrisp sworn on 14 November 1994 and filed herein, namely \$110,000.00, and the Proceeds be held by the Public Trustee subject to this Order.
5. Upon tender by the applicant of the Proceeds in cleared funds, the Public Trustee deliver to the applicant an executed memorandum of transfer of the Property.
6. The applicant's costs of and incidental to this application be taxed on an indemnity basis and two thirds of those costs be paid from the Proceeds.

7. From the Proceeds there be paid to the plaintiff the sum of \$864.00 being two thirds of the amount of rates in respect of the Land paid by or on behalf of the plaintiff and to the Litchfield Shire Council the sum of \$151.00 being two thirds of the rates outstanding with respect to the Land.
8. Pursuant to s108 of the *Real Property Act*, the Registrar General be authorised to register the memorandum of transfer of the Property without production of the duplicate certificate or other instrument of title.
9. The Public Trustee be authorised and directed to pay from the Proceeds the amounts referred to in orders 6 and 7.
10. The plaintiff serve upon the Public Trustee for South Australia a copy of this order and the Originating Motion, Summons on Originating Motion and affidavits filed in this proceeding and that the Public Trustee for South Australia have liberty to apply to the Court within 14 days from the date of such service to discharge or vary these orders.
11. The plaintiff place an advertisement in a form to be settled by the Registrar, once in a newspaper

circulating generally in Western Australia and once in a newspaper circulating generally in South Australia, to the effect that the Property has been sold and that any persons having any claim to an interest in the Property may apply to the Public Trustee for the Northern Territory.

12. That the Public Trustee be and is hereby appointed manager of the balance of the Proceeds remaining after the aforesaid payments.