STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC. **SUPERIOR COURT**

[FILED: July 30, 2013]

MICHAEL BRADLEY,	**:**	
Plaintiff,	**:**	
	:	
v.	**:**	**C.A. No. WC 2006-0036**
	:	
PAULA MORAN and	**:**	
ANNE MORAN,	**:**	
Defendants.	**:**	

DECISION

SAVAGE, J. This matter is before the Court for decision following a non-jury trial. Plaintiff Michael Bradley and Defendants Paula Moran and Anne Moran[1] owned waterfront property as tenants in common. Plaintiff filed an Amended Complaint seeking partition of the Property and an accounting. He seeks to recover from Defendants the share of a rental account connected with the rental of the Property held by his predecessor in interest. Defendants filed a Counterclaim for partition and compensatory damages. They seek to recover lost rental profits and monies from Plaintiff's use of the Property as well as reimbursement for expenses that they incurred as co-owners of the Property. The parties' partition claims were resolved through Defendants' purchase of the Property. For the reasons set forth in this Decision, this Court denies Plaintiff's claim for an accounting in his Amended Complaint and denies in part and grants in part Defendants' Counterclaim for compensatory damages.

[1] Anne Moran is identified by different names in the record, including "Ann Moran" and "Anne Rodriguez," but is identified as "Anne Moran" in Defendants' Answer to Plaintiff's Amended Complaint, ¶ 3.

I

FACTS AND TRAVEL

This dispute concerns property located at 4 Pirates Island Drive, Westerly, Rhode Island. Before November 2005, Joan Moran Kelly owned the Property with her sisters, Defendants Paula and Anne Moran, as tenants in common. The Property served as a family vacation home as well as rental property. (Exs. 1, 2.) In October 2005, Kelly contacted Plaintiff Michael Bradley (Plaintiff), her cousin, and indicated that she wished to sell her interest in the Property because she was facing financial hardship and had been unable to reach an agreement with her sisters to buy out her share. (Exs. 23, 27.) Kelly asked Plaintiff, who is an attorney, if he would represent her in a partition action. (Ex. 23.) Plaintiff declined to represent Kelly, but expressed interest in purchasing her share of the Property. (Exs. 23, 27.)

On November 9, 2005, Plaintiff purchased Kelly's interest in the Property for $320,000. (Exs. 3, 4.) Kelly was not represented by counsel in this transaction. (Ex. 23.) That same day, Plaintiff informed Defendants of his desire to purchase their interests in the Property. (Ex. B.) Soon thereafter, he contacted Defendants to obtain copies of insurance policies and an appraisal of the Property; he also requested "an accounting of the monies derived from the rentals[.]" (Exs. 6-8, 16-17.) The rental money to which Plaintiff referred was held in an account managed by Paula Moran.[2] (Exs. K, L, 31, O.) Proceeds from summer rentals of the Property were deposited into this account; taxes, utilities, and maintenance expenses for the Property were paid from these funds. (Exs. 22, E, F, K, L, M.)[3] Defendants declined an accounting, and offered to

[2] The parties refer to one rental account, but Defendants produced evidence of two accounts in the name of Paula Moran: a checking account at Liberty Bank and a savings account at Navy Federal Credit Union. (Exs. K, L.) The rental money at issue will be referred to throughout this Decision as the "rental account."

[3] Exhibit M is comprised of Exhibits E and F. Exhibit E is a spreadsheet summarizing the invoices and receipts contained in Exhibit F. Exhibit M contains a spreadsheet identical to Exhibit E—aside from an immaterial formatting change—as well as all of the underlying documents from Exhibit F, plus additional documents which support the expenses claimed in the spreadsheets. For clarity, only Exhibit M will be cited later in this Decision.

purchase Plaintiff's interest in the Property. (Exs. 11, 31, O.) Yet, Plaintiff and Defendants failed to reach an agreement for the purchase and sale of the Property.

On January 18, 2006, Plaintiff instituted a partition action, pro se, against Defendants. (Compl.) Plaintiff's inartful Complaint did not set forth distinct counts, but in his prayer for relief he sought a partition sale, reasonable attorney's fees, costs, and "[a]n accounting to be provided by defendants for any monies held by defendants derived from rentals of the subject property." (Compl., ¶ 10.) On February 6, 2006, Defendants filed an Answer and Counterclaim in which they sought partition, costs, and lost rental income.[4] (Answer and Counterclaim to Compl.)

On December 26, 2007, Plaintiff filed an Amended Complaint, pro se, seeking a partition sale (Count I) and an accounting pursuant to R.I. Gen. Laws § 10-2-1 (Count II). (Am. Compl., ¶¶ 1-12.) Plaintiff alleged that with his purchase of the Property, he also acquired Kelly's "interest in a fund that had accumulated with respect to the [P]roperty which derived from rentals of it." (Am. Compl., ¶¶ 7-12, Prayer for Relief.) Plaintiff also sought reasonable attorney's fees and costs. (Am. Compl., Prayer for Relief.) On March 28, 2007, Defendants filed an Answer and Counterclaim to Plaintiff's Amended Complaint. (Answer and Countercl. to Am. Compl.) Defendants asserted that Plaintiff "has refused to pay his one-third share of operating costs, including but not limited to, taxes or insurance" and "has littered, wasted and overused the premises to his co-owners [sic] detriment." (Countercl. to Am. Compl., ¶¶ 4-5.) Defendants

[4] In a separate action commenced on June 15, 2006, and consolidated with the instant action on August 1, 2006, Kelly brought suit against Bradley to rescind the sale of her interest in the Property. See Kelly v. Bradley, WC-2006-0035 (R.I. Super. 2006). Kelly sought to enjoin the partition sale and raised claims of undue influence, breach of fiduciary relationship, breach of contract, and unjust enrichment. Bradley filed counterclaims for breach of contract, defamation, intentional infliction of emotional distress, abuse of process, breach of the implied covenant of good faith and fair dealing, and breach of the covenant of quiet enjoyment. Kelly and Bradley agreed to dismiss their claims and counterclaims with prejudice on July 8, 2010, and this Court vacated the consolidation of the cases with the agreement of the parties on July 19, 2010.

sought compensatory damages and rental use in "an amount in excess of" $10,000 plus interest, costs, and reasonable attorney's fees. (Countercl. to Am. Compl., Prayer for Relief.)

On March 4, 2008, Defendants purchased the Property in a partition sale. The matter then proceeded to trial on Plaintiff's claim for accounting in Count II of his Amended Complaint and Defendants' Counterclaim for compensatory damages. Following trial, the parties submitted post-trial memoranda.

Plaintiff argues that he is entitled to an accounting of the rental account—i.e., one-third of $42,000 in the account at the time of his purchase of the Property, plus prejudgment interest—because he acquired an interest in the fund when he purchased Kelly's interest in the Property in 2005. (Pl.'s Mem.) Defendants counter that Plaintiff is not entitled to an accounting of the rental account because the account was not contemplated in the transfer executed by Plaintiff and Kelly and therefore, the doctrine of merger by deed precludes recovery by Plaintiff. (Defs.' Mem. at 1-3.) Defendants further claim, pursuant to their Counterclaim, that Plaintiff must compensate them for: 1) lost rental profit from the summers of 2006 and 2007; 2) rental fees for his use of the Property and storage fees for Defendants to protect their possessions during such time; 3) his share of maintenance expenses for the duration of his co-ownership; and 4) all expenses incurred to repair damage caused by Plaintiff. (Defs.' Mem.; Defs.' Reply Mem.) This Court has jurisdiction in this case pursuant to R.I. Gen. Laws §§ 8-2-13 and 10-2-1.

II

STANDARD OF REVIEW

Rule 52(a) of the Superior Court Rules of Civil Procedure requires a trial justice in a non-jury case "to make specific findings of fact upon which he [or she] bases his [or her] decision." Connor v. Schlemmer, 996 A.2d 98, 109 (R.I. 2010) (citing Nardone v. Ritacco, 936 A.2d 200,

206 (R.I. 2007)). In all actions tried upon the facts without a jury, the trial justice "sits as trier of fact as well as law," weighing and considering the evidence, determining the credibility of witnesses, and drawing inferences from the evidence presented. Hood v. Hawkins, 478 A.2d 181, 184 (R.I. 1984). "When rendering a decision in a non-jury trial[,] a trial justice 'need not engage in extensive analysis or discussion of the all of the evidence. Even brief findings and conclusions are sufficient if they address and resolve the controlling and essential factual issues in the case.'" Parella v. Montalbano, 899 A.2d 1226, 1239 (R.I. 2006) (quoting Donnelly v. Cowsill, 716 A.2d 742, 747 (R.I. 1998)).

III

ANALYSIS

Plaintiff and Defendants owned the Property as tenants in common for a little over two years, from November 9, 2005 to March 11, 2008. At trial, the parties produced considerable documentary and testimonial evidence with respect to their rights and liabilities that accrued during this brief period of common ownership. First, as set forth in Count II of his Amended Complaint for an accounting, Plaintiff argues that he is entitled to Kelly's share of the rental account. (Am. Compl., ¶¶ 7-12, Prayer for Relief; Pl.'s Mem.) Next, Defendants seek lost rental profit in proportion to their shares for the summers of 2006 and 2007 because "[t]he totality of the circumstances clearly precluded either party from agreeing on operating the premises as a summer rental business." (Defs.' Mem. at 3-5.) Defendants also seek to recover compensation from Plaintiff for his rental use and reimbursement for expenses incurred "for the necessary storage for protection of their furniture during Plaintiff's joint ownership" because he "for all practical purposes had exclusive use" and "dominated use and occupancy" of the Property. (Defs.' Mem. at 4-7; Defs.' Reply Mem. at 2; Countercl. to Am. Compl.; Exs. M, N.) In addition,

Plaintiff and Defendants seek reimbursement in proportion to their shares in the Property for expenses they incurred with respect to taxes, maintenance, and repairs. (Exs. 51, 52, M; Defs.' Mem. at 5-7.) Finally, Defendants seek reimbursement for expenses incurred to repair damage to the Property allegedly caused by Plaintiff. (Defs.' Mem. at 6-7.)

To resolve these competing claims, this Court must consult settled precepts applicable to Plaintiff's claim for an accounting and Defendants' claim for compensatory damages. When a tenant in common derives income or profit for more than his or her share in a property, he or she is liable to account for the excess. See R.I. Gen. Laws § 10–2–1;[5] Kahnovsky v. Kahnovsky, 67 R.I. 208, 211-12, 21 A.2d 569, 570-71 (1941) (citing Almy v. Daniels, 15 R.I. 312, 4 A. 753 (1886)). A cotenant is likewise liable to account for use and occupancy if he or she "has had the entire and exclusive occupation" of the property and the claimant cotenant proves ouster by the occupying cotenant. Silva v. Fitzpatrick, 913 A.2d 1060, 1064 (R.I. 2007) (quoting Kahnovsky, 67 R.I. at 212, 21 A.2d at 571) (internal quotations omitted). A cotenant also may receive credit for expenditures for taxes, water, insurance and repairs "of an ordinary nature" made to keep the property in reasonable condition, provided the cotenant claiming credit for such expenses meets his or her "burden [. . .] to prove the amount so spent with reasonable certainty." Kahnovsky, 67 R.I. at 215, 21 A.2d at 572-73.

[5] Section 10-2-1 provides:

> Whenever two (2) or more persons have and hold any estate, interest or property, whether real or personal, in common as joint tenants, tenants in common, co-parceners or joint owners and one or more of the owners of the common property shall take, receive, use or have benefit thereof, in greater proportion than his, her, or their interest therein, such owner or owners, his, her, or their executors and administrators shall be liable to render his, her, or their account of the use and profit of such common property to his, her or their fellow commoner or commoners, jointly or severally; and such of the fellow commoner or commoners or any or either of them, their executors or administrators, shall have his, her, or their action against such receiver or receivers or either of them, as his, her, or their bailiff or bailiffs, for receiving more than his, her, or their part or proportion as provided in this section.

"Compensatory damages are awarded to a person in satisfaction of or in response to a loss or injury sustained." Calise v. Hidden Valley Condo. Ass'n, Inc., 773 A.2d 834, 839 (R.I. 2001) (citing Murphy v. United Steelworkers of America Local No. 5705, AFL-CIO, 507 A.2d 1342, 1346 (R.I. 1986)); Black's Law Dictionary (9th ed. 2009), Damages (defining compensatory damages as "[d]amages sufficient in amount to indemnify the injured person for the loss suffered"). The parties must prove their respective claims by a preponderance of the evidence, meaning that this Court "'must believe that the facts asserted by the proponent are more probably true than false.'" Narragansett Elec. Co. v. Carbone, 898 A.2d 87, 99-100 (R.I. 2006) (quoting Parker v. Parker, 103 R.I. 435, 442, 238 A.2d 57, 61 (1968)); Pimental v. Postoian, 121 R.I. 6, 12-13, 393 A.2d 1097, 1101-02 (1978).

A

Plaintiff's Claim to Kelly's Share of the Rental Account

Prior to Plaintiff's acquisition of Kelly's interest, Defendant Paula Moran managed both the Property and the rental account; summer rental income was deposited into the rental account while expenses such as taxes and maintenance were debited from the rental account. (Exs. 22, 23, 31, K, L, O.) Plaintiff argues that when he purchased Kelly's one-third interest in the Property, he also assumed her one-third interest in the rental account, which amounts to $14,000. (Am. Compl., ¶¶ 7-12, Prayer for Relief; Pl.'s Mem.) Specifically, Plaintiff contends that he is entitled to an accounting because the Purchase and Sale Agreement "refers" to the rental account in terms "as concrete as [Plaintiff's counsel] could express [in] the agreement on the basis of the facts available to [counsel] at the time of the closing." (Pl.'s Mem.) Plaintiff further claims that he is entitled to an accounting because Kelly agreed to convey her interest in the rental account,

Kelly informed Defendants of Plaintiff's right to monies in the account, and Defendants' counsel acknowledged Plaintiff's right to the account. (Pl.'s Mem.)

Defendants respond that the doctrine of merger by deed bars Plaintiff's claim for one-third of the rental account because Plaintiff "failed to perform due diligence and expressly preserve a post[-]closing interest in the fund." (Defs.' Mem. at 2.) Defendants also assert that, even if Plaintiff were to succeed on his accounting claim, the amount to which he is entitled is no more than $7,458.35, which represents his share, minus outstanding taxes and maintenance expenses. (Defs.' Mem. at 3; Ex. K.)

"The doctrine of merger by deed provides that once a warranty deed is accepted it becomes the final statement of the agreement between the parties and nullifies all provisions of the purchase and sale agreement." Lizotte v. Mitchell, 771 A.2d 884, 887 (R.I. 2001); Deschane v. Greene, 495 A.2d 227, 229 (R.I. 1985). Absent fraud, misrepresentation, or mutual mistake, "the warranty deed is the final embodiment of the agreement and conveys full rights to the property." Deschane, 495 A.2d at 229 (citing Russo v. Cedrone, 118 R.I. 549, 557-58, 375 A.2d 906, 910 (1977)); Nunes v. Meadowbrook Dev. Co., Inc., 824 A.2d 421, 424-25 (R.I. 2003).

On October 31, 2005, shortly before the sale of her interest to Plaintiff, Kelly sent a letter to Plaintiff in which she indicated that she sought only money from the sale of her share of the home and was "not going to ask for any of [the rental account]. Let [Defendants] have it for repairs on the house." (Ex. C.) The Purchase and Sale Agreement that she and Plaintiff executed on November 9, 2005 contained no specific mention of the rental account; instead, it contained the following vague reference to unknown rent or income:

> If there are any unknown expenses, burdens, encumbrances, rent, income or other adjustments that would normally have been addressed and apportioned at closing but were unknown to the Purchaser, Seller agrees to be fully liable for such items and agrees

> to pay for its share of any said expenses, burdens or encumbrances and/or shall pay or remit anything owed to the Purchaser. This provision shall survive the closing.

(Ex. 3.) There is no reference of any kind to rent in the Warranty Deed, which was executed the same day as the Purchase and Sale Agreement. (Exs. 3, 4.)

In a letter to Defendants' counsel dated January 25, 2006, however, Kelly stated that she "transferred all of [her] right, title and interest in [the Property]—which included [her] one-third (1/3) share of the monies from rental income from the years 2003, 2004, and 2005" to Plaintiff and that her sisters were not entitled to any of the money. (Ex. 10.) The next day, Defendants' counsel informed Kelly that Defendants did not claim her share of the rental account and that after a final accounting of 2005 taxes, he would "advise" Defendants "pursuant to [Kelly's] request, to deliver the excess [rental] funds, if any," to Plaintiff. (Exs. 13, 32.) Such a delivery never occurred, but two $5,000 payments were made from the rental account to Kelly on June 3, 2006 and August 9, 2006. (Exs. K, L.) Defendants assert that these payments represented Kelly's share of the rental account. (Defs.' Mem. at 3.)

It is on the basis of this scant evidence that Plaintiff supports his claim for a one-third share of the remaining monies in the rental account and contends that Kelly evinced an intention to transfer her interest in the rental fund to Plaintiff. Plaintiff offers no claim of fraud, misrepresentation, or mutual mistake.[6] Thus, dispositive on this issue is the fact that the

[6] Plaintiff skirts the issue of mutual mistake. Without explicit mention of mistake, Plaintiff seems to argue that he is entitled to Kelly's share of the rental account on the basis of mutual mistake. A warranty deed is not the final embodiment of the agreement, and reformation of the warranty deed may be granted, where mutual mistake is proven by clear and convincing evidence; the parties' intent is a determinative factor. Nunes, 824 A.2d at 424-25 (citing Vanderford v. Kettelle, 75 R.I. 130, 139, 64 A.2d 483, 487 (1949)). Plaintiff appears to argue that the Purchase and Sale Agreement, construed in conjunction with the intent of Plaintiff and Kelly, entitles him to recovery. Specifically, Plaintiff claims: 1) his counsel attempted to insert "concrete" rental account language into the Purchase and Sale Agreement, and 2) Kelly evinced an intent to convey her interest in the account to Plaintiff. (Pl.'s Mem.; Exs. C, 10, 13, 32.) Even if Plaintiff had explicitly claimed mutual mistake, however, there is no evidence that he and Kelly "had come to a prior complete understanding respecting the essential terms of the agreement between them." See Vanderford v. Kettelle, 75 R.I. at 142, 64 A.2d at 488. Indeed, Kelly made an express statement

Warranty Deed is devoid of any reference to the rental account: the Deed is "the final statement of the agreement between the parties and nullifies all provisions of the purchase-and-sale agreement." Deschane, 495 A.2d at 229 (citing Russo, 118 R.I. at 557-58, 375 A.2d at 910).

Had Plaintiff wanted to secure Kelly's share of the rental account and had she agreed to convey it to him, as he claims, it was incumbent upon Plaintiff—an attorney himself—to address that issue at or before the closing. The language that he or his attorney inserted into the Purchase and Sale Agreement appears to acknowledge this fact by referencing "expenses, burdens, encumbrances, rent, income or other adjustments that would normally have been addressed and apportioned at closing." (Ex. 3) (emphasis added). By not addressing the issue before transfer of the Deed, Plaintiff failed to preserve his claim to the rental account as a matter of law.

Even assuming, arguendo, that Plaintiff's claim to a share of the rental account does not fail under the doctrine of merger by deed, and that this Court may consider the language of the Purchase and Sale Agreement, Plaintiff's claim to a share of the rental account is still unavailing. Though Plaintiff argues, through the language of the Purchase and Sale Agreement, that he sought to preserve this claim to the rental account for enforcement after the closing, that argument must fail as a matter of law. First, there is no evidence that Kelly intended—at the time of the closing—that her share in the rental account would go to Plaintiff. Indeed, her letter to Plaintiff that predates the Purchase and Sale Agreement suggests that she abandoned any claim to the rental account to allow those monies to be held by Defendants for repairs to the Property. In addition, the language that Plaintiff inserted into the Purchase and Sale Agreement covers expenses "unknown" as of the time of closing, and there is no evidence that the parties intended

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to the contrary, prior to the closing, when she wrote a letter to Plaintiff indicating her intent to relinquish her interest in the account to Defendants for the purpose of making repairs on the house. (Ex. C.) In addition, Plaintiff failed to call Kelly as a witness at trial to support his supposed claim of mutual mistake.

that language to capture the rental account at issue—the amount of which was known or ascertainable at the time of closing—as opposed to other unknown expenses.

While Kelly later wrote, in a letter to Defendants' counsel dated January 25, 2006, that she intended to convey her interest in the rental account to Plaintiff, that letter cannot establish her intent at the time of the closing. It likewise cannot alter the application of the doctrine of merger by deed that bars Plaintiff's post-closing claim for a share of the rental monies based on a Purchase and Sale Agreement that did not survive the closing. Similarly, Defendants' actions after the closing in agreeing to transfer a share of the rental account monies to Plaintiff at Kelly's request and their later transfer of two $5,000 payments to Kelly from the rental account cannot establish Kelly's intent to transfer those monies to Plaintiff at the time of the closing.

As Kelly initially indicated that Defendants could keep the rental account funds, later stated that she conveyed her interest to Plaintiff, and eventually accepted the funds herself, this Court cannot say with any degree of certainty what Kelly intended as to the rental account monies prior to or after closing. (Exs. 10, C, K, L; Defs.' Mem. at 3.) Significantly, Plaintiff did not call Kelly as a witness at trial on the issue of intent. Even if Kelly intended the monies to go to Plaintiff, the evidence shows that Defendants gave her $10,000 from the account, and there is no evidence to suggest that she deserved or requested more. As such, Plaintiff's claim, even if legally viable, should be against Kelly and not the Defendants.

The evidence thus demonstrates that Plaintiff failed to preserve an interest in the rental account or to prove, by a preponderance of the evidence, that he is entitled to a one-third share of the rental account monies held by Defendants.[7] "[T]he doctrine of caveat emptor applies to

[7] Plaintiff's failure to preserve an interest in the rental account is further evidenced by a draft of the Purchase and Sale Agreement in which a handwritten correction by Plaintiff provides that all fixtures and personal property attached to the Property would be included in the sale, "[i]ncluding any funds that may be being [sic] held by any person derived from income produced by rentals of the premises." (Ex. 15.) This document was faxed by Plaintiff to

contracts for the sale of land," and Plaintiff "cannot later complain about consequences [he] could have avoided." Lizotte, 771 A.2d at 888.

B

Defendants' Claims for Lost Rental Profit and Compensation for Plaintiff's Use of the Property

The Property reliably yielded summer rental income—at a rate of $2,500 per week—from repeat customers, but the rental business ceased during the parties' contentious period of common ownership. (Exs. 1, 2, J, K.) Defendants seek to recover compensation for "rental use" because Plaintiff "littered, wasted and overused the premises to his co-owners [sic] detriment." (Countercl. to Am. Compl., ¶¶ 4-5, Prayer for Relief; Exs. M, N.) Defendants also seek lost rental profit in proportion to their shares for the summers of 2006 and 2007—"conservatively estimated" at a total of $5,000 after expenses—because "[t]he totality of the circumstances clearly precluded either party from agreeing on operating the premises as a summer rental business."[8] (Defs.' Mem. at 3-5.) In particular, Defendants assert that Plaintiff did not intend to facilitate summer rentals, but rather to attain outright ownership of the Property. (Defs.' Mem. at 4-5; Defs.' Reply Mem. at 2.) They claim that "[d]ue to his physical proximity to the [P]roperty [. . . ,] for all practical purposes Plaintiff had exclusive use of it for storage, boat refinishing, cook-outs, family parties and the like." Id. Defendants also seek reimbursement for costs they incurred to store their property off-site during the cotenancy and contend that they are entitled to

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his counsel on the eve of his acquisition of Kelly's interest in the Property, but the final Purchase and Sale Agreement does not reflect the handwritten revision. Id.

[8] In discussing the amount owed by Plaintiff, Defendants seem to suggest that, if this Court finds Plaintiff and Defendants mutually responsible for the failure to rent the Property for the summers of 2006 and 2007, then the amount of lost rental profit owed to Defendants should be calculated by canceling out the judgment against Plaintiff and one Defendant. (Defs.' Mem. at 5.) Thus, Plaintiff would owe Defendants one-third of the overall lost rental profit award. Id. Although such a claim may be appropriate where parties assert accounting claims relating to different time periods, see Kahnovsky, 67 R.I. at 211-12, 21 A.2d at 570-71, Defendants make no such claim and offer no such evidence and, in any event, Defendants' claim for lost rental profit fails on other grounds.

the value of Plaintiff's use of the Property to store his boat and trailer.[9] (Exs. M, N.) Although Plaintiff fails specifically to address rental use and lost rental profit, he argues that the "economic waste" of non-rentals was caused by Defendants despite his efforts to cooperate.[10] See Pl.'s Mem.

Defendants must demonstrate, by a preponderance of the evidence, that they are entitled to compensatory damages "in satisfaction of or in response to a loss or injury sustained." Calise, 773 A.2d at 839. To recover lost profits, Defendants must establish their loss with "reasonable certainty." Long v. Atl. PBS, Inc., 681 A.2d 249, 252 (R.I. 1996) (citing Troutbrook Farm, Inc. v. DeWitt, 611 A.2d 820, 824 (R.I. 1992)). "Although mathematical precision is not required," Defendants should provide "some rational model of how the lost profits occurred and on what

[9] Defendants introduced pictures depicting Plaintiff's boat and trailer storage on the Property. (Ex. N.) Defendants, however, allege differing amounts to which they are entitled by virtue of Plaintiff's storage use of the Property. The amounts range from $6720 and $4710 for exterior and interior storage, respectively, Ex. N, to $4447.10 or $444.10 for storage of personal property, boats, and trailers, Ex. M; the latter amount appears to be a typographical error because a different column for the storage fees indicates $4447.10, and this larger amount is identical to the amount sought by Defendants for off-site storage of their own personal property. In their post-trial memorandum and summary of expenses, Defendants' total request for recovery reflects the $444.10 figure. (Defs.' Mem. at 7; Ex. M.)

[10] Indeed, Plaintiff asserts that he is "[t]he only party who has a claim pending before this [C]ourt," i.e., his request for an accounting of the rental account. (Pl.'s Mem.) This assertion is without merit because Defendants' Counterclaim for compensatory damages arising out of their cotenancy with Plaintiff also is outstanding. As the Counterclaim is one for compensatory damages arising out of Defendants' common ownership of the Property, and not a claim for an accounting under § 10-2-1, this Court will proceed to decide it as a damages claim under the same precepts of settled law applicable to accounting claims. The form of the Counterclaim matters not because the mere filing of an accounting claim by Plaintiff triggers a like claim by Defendants arising out of the cotenancy. See Caton v. Caton, 74 R.I. 208, 214, 59 A.2d 853, 856 (1948) (an action for an accounting "imports an offer on the part of complainant to pay any balance found against him") (quoting Downes v. Worch, 28 R.I. 99, 65 A. 603 (1906)) (internal quotations omitted). Defendants' Counterclaim, therefore, is coterminous with Plaintiff's claim for an accounting of the rental account.

Plaintiff apparently fails to recognize that he may be subject to liability to Defendants not only through their Counterclaim, but also through his own accounting claim. Plaintiff's apparent ignorance of Defendants' Counterclaim and the law governing his own claim are emblematic of Plaintiff's conduct throughout these proceedings. Plaintiff strained this Court's resources through the filing of inartful pleadings and other actions before and during trial that unnecessarily protracted this litigation—conduct unbecoming of a member of the Bar. Defendants compounded this problem by not filing a request for an accounting under § 10-2-1. As a result of Plaintiff not proving his accounting claim and Defendants not seeking such an accounting, the parties arguably deprived this Court of the statutory process of appointing an auditor(s) to take the account under § 10-2-2, rather than undertaking the accounting process itself. In any case, this Court engaged in the laborious task of computing compensatory damages rather than protract the litigation any further.

basis they have been computed." Long, 681 A.2d at 252 (citing Abbey Medical/Abbey Rents, Inc. v. Mignacca, 471 A.2d 189, 195 (R.I. 1984)).

Plaintiff acquired his interest in the Property from Kelly with the intent to attempt to acquire full ownership of the Property from Defendants, and he apprised Defendants of this intention soon after his purchase. (Exs. B, 6, 16.) Even at this early stage in the parties' cotenancy, Plaintiff acknowledged acrimony and lack of cooperation; he also threatened a partition action and expressed concern about the "viability of renting" out the Property for the summer because Defendant Paula Moran removed furniture from the Property. (Exs. 6, 7, 16, 17, B.) Although return customers were poised to rent the Property in the summer of 2006, the Property sat vacant; Defendants agreed to summer rentals only if Defendant Paula Moran remained in her managerial capacity, while Plaintiff proposed joint management. (Exs. 1, 2, 5, 30, 31, 33, O.) The parties' contentious relationship continued throughout the tenancy: the parties never reached an agreement with respect to summer rentals, and the Property remained vacant for the summer of 2007. (Exs. 19, 33; Pl.'s Mem.; Defs.' Mem.; Defs.' Reply Mem.)

Defendants vaguely argue that Plaintiff "for all practical purposes" had exclusive use of the Property. (Defs.' Mem. at 4-5; Defs.' Reply Mem. at 2.) To be sure, Plaintiff resided in close proximity and used the Property, whereas Defendants resided outside Rhode Island. (Am. Compl. ¶¶ 1-3.) These facts, however, do not support the conclusion that Defendants suffered a loss or injury as a result of either the failure to continue the rental business or Plaintiff's use of the Property. See Calise, 773 A.2d at 839. Instead, the evidence adduced at trial demonstrates that, although Plaintiff attempted to purchase the Property in its entirety, he also sought to arrange summer rentals and, ultimately, neither party was amenable to the management arrangement proposed by the other. (Exs. 5, 6, 7, 16, 17, 30, 31, 33, B, O.) The evidence likewise

provides no support for the conclusion that Plaintiff denied Defendants their use of the Property. Simply put, the parties' joint ownership was defined by a failure to cooperate and, notwithstanding Plaintiff's failure to address Defendants' claims in detail, it cannot be concluded that Defendants showed, by a preponderance of the evidence, that they are entitled to compensatory damages for Plaintiff's use of the Property, Defendants' storage costs, or the profits lost due to the parties' failure to rent it for the summers of 2006 and 2007.

C

Defendants' Claims for Reimbursement for Expenses Including Taxes, Maintenance, Repairs, and Damage

Defendants also seek reimbursement in proportion to their shares in the Property for expenses incurred with respect to taxes, insurance, utilities, and maintenance. Defendants detailed numerous expenses incurred and calculated Plaintiff's pro rata share to be $8990.40.[11] (Ex. M; Defs.' Mem. at 5-7.) Through invoices, receipts, and bank statements, Defendants demonstrated that they incurred these expenses during the parties' co-ownership, November 9, 2005 to March 11, 2008, and Plaintiff did not pay his one-third share. (Ex. M.) This Court is satisfied that these facts "are more probably true than false," Narragansett Elec. Co., 898 A.2d at 99-100, and that the reimbursement sought by Defendants is "in satisfaction of or in response to a loss or injury sustained." Calise, 773 A.2d at 839. Defendants therefore proved, by a preponderance of the evidence, that they are entitled to compensatory damages in the amount of one-third of the expenses they incurred during the parties' period of common ownership, i.e., $8740.62. (Ex. M.)

[11] This amount is incorrect because, for some expenses, it treats the two partial months of co-ownership—November 2005 and March 2008—resulting from Plaintiff's purchase and sale of his interest in the Property as two full months of co-ownership. The correct figure is $8720.62, which reflects Plaintiff's one-third share of expenses prorated according to days of co-ownership. In addition, there are several discrepancies between the summary of expenses and invoices in Exhibit M. The revised amount reflects expenses as documented by the invoices.

Defendants also seek approximately $6000 for expenses incurred to repair damage that they claim Plaintiff caused.[12] (Defs.' Mem. at 6-7, Ex. M.) These expenses include garage door replacement, window replacement, deck repair, interior and exterior painting, kitchen floor replacement, furnace service, home heating oil, and cleaning. (Exs. G, H, I, M.) Excluding a few unsubstantiated expenses,[13] Defendants demonstrated through invoices, receipts, and bank statements that these expenses were incurred during the parties' co-ownership and that Plaintiff did not contribute to payment of these expenses. (Ex. M.) This Court is likewise satisfied that these facts "are more probably true than false," Narragansett Elec. Co., 898 A.2d at 99-100, and that the reimbursement sought by Defendants is "in satisfaction of or in response to a loss or injury sustained." Calise, 773 A.2d at 839.

Yet, Defendants have failed to satisfy this Court, by a preponderance of the evidence, that Plaintiff bears full responsibility to pay for their repairs to the Property. While it is apparent that Defendants incurred expenses to repair this damage as well as to repair the furnace and replenish the home heating oil, see Ex. M, the cause of these expenses cannot be determined from the evidence adduced at trial. Indeed, the parties offered differing explanations for the need for these repairs. Both parties introduced photographic evidence to show the Property's interior and exterior disrepair, including the decks, floors, windows, garage, and kitchen, but neither party introduced definitive evidence as to causation. (Exs. 24-49, G, H, I, M.) While it is possible, therefore, that Plaintiff caused some of this damage, Defendants failed to present sufficient

[12] Defendants' summary of expenses in Exhibit M also includes their claims for reimbursement of their personal storage fees and Plaintiff's storage use of the Property, which fail for the reasons set forth in Part III-B of this Decision.

[13] Defendants seek reimbursement from Plaintiff in the amount of $37.59 for purchases of bolt cutters, "photos," "fax[ing] police report," and postage to mail a package to Paula Moran. (Ex. M.) Defendants fail to articulate how Plaintiff bears responsibility in whole or part for these expenses. In addition, Defendants seek reimbursement from Plaintiff in the amount of $175.00 for purchases to replace "security bolts" and "sliding doors." (Ex. M.) Defendants fail to demonstrate that they incurred these expenses and fail to articulate how Plaintiff bears responsibility in whole or part for these expenses.

evidence to prove, by a preponderance of the evidence, that Plaintiff bears sole responsibility for these repair expenses. Thus, with respect to these repair expenses for which Defendants' seek full reimbursement, Defendants are entitled to compensatory damages in the amount of one-third of the expenses they incurred during the parties' period of common ownership, i.e., $1883.62 (Ex. M.)

IV

CONCLUSION

For all of these reasons, this Court denies Plaintiff's claim for an accounting in Count II of Plaintiff's Amended Complaint, inclusive of Plaintiff's claim to Joan Moran Kelly's share of the rental account. This Court grants Defendants' Counterclaim in part and denies it in part as follows: Defendants' claim for lost rental profit and compensation for Plaintiff's use of the Property is denied; Defendants' claim for compensation for their storage fees is denied; Defendants' claim for pro rata reimbursement of expenses incurred for taxes, utilities, maintenance, and repairs is granted; and Defendants' claim for full reimbursement of repair expenses by Plaintiff is denied, as Defendants instead are entitled to pro rata reimbursement of such expenses. Defendants, therefore, are entitled to an award of compensatory damages with respect to their Counterclaim in the total amount of $10,624.24, plus statutory interest and costs. Both parties' requests for attorney's fees are denied, as there is no basis for an award of fees under Rhode Island law.

Counsel for Defendants, as the prevailing party, shall submit to this Court forthwith for entry a form of Order and Final Judgment that is consistent with this Decision.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Michael Bradley v. Paula Moran and Anne Moran
CASE NO:	WC 06-0036
COURT:	Washington County Superior Court
DATE DECISION FILED:	July 30, 2013
JUSTICE/MAGISTRATE:	Savage, J.
ATTORNEYS:	
For Plaintiff:	Charles M. Bradley, Esq.
For Defendant:	Heath S. Comley, Esq.