

IN THE CIRCUIT COURT FOR THE
EIGHTEENTH JUDICIAL CIRCUIT, IN AND
FOR BREVARD COUNTY, FLORIDA

CASE NO.: 05-2026-CA-014177-XXCA-BC

FRANCINE SWIFT,

Plaintiff(s),

v.

SHIRLEY WINN-ROY,

Defendant(s).

**ORDER GRANTING PARTITION PURSUANT TO §64.061(4) AND APPOINTMENT
OF SPECIAL MAGISTRATE**

THIS CAUSE came before the Court on Plaintiff's Motion for Order of Partition and Appointing Special Magistrate, and having been advised that the parties have reached an agreement on the relief requested, and after reviewing the Motion and the Court file, and being otherwise advised in the premises, it is hereby:

ORDERED AND ADJUDGED as follows:

1. Plaintiff's Motion for Order of Partition and Appointment of Special Magistrate is hereby **GRANTED**.
2. The Property located at 335 Fuller St. SE, Palm Bay, FL 32909, ("Property"), legally described below, is indivisible and not subject to partition without prejudice to the parties and therefore must be sold:

Legal Description: Lot 12, Block 2663, PORT MALABAR UNIT FIFTY, according to the Plat thereof, recorded in Plat Book 23, Page 4 through 21, inclusive, of the Public Records of Brevard County, Florida.

Parcel ID Number: 29-37-18-JR-2663-12

3. The Court hereby appoints the Special Magistrate below to conduct a private sale of the Property pursuant to § 64.061(4), Florida Statutes:

- a. Dennis Basile (“Special Magistrate”) of D. Basile Real Estate, LLC, 2330 North Wickham Road, Suite 8, Melbourne, Florida 32935 is appointed as Special Magistrate to effect the sale of the Property.
- b. The Special Magistrate is appointed to act as an agent of this Court to effect the partition ordered by this Court.

4. **COMPENSATION TO SPECIAL MAGISTRATE:**

- a. **Regular Compensation:** For services rendered consistent with this order, the Special Magistrate shall be treated as a “listing broker” for the sale of the Property, and shall receive a commission of six percent (6%) of the gross sale price at closing, subject to any buyer broker agreement or compensation arrangement with a cooperating broker, which shall be paid from the Special Magistrate’s commission at closing.
- b. **Extraordinary Services Compensation:** If and to the extent the Special Magistrate is required to perform services over and above those which would be performed by a listing broker, the Special Magistrate shall be entitled to receive additional compensation by motion, as determined by the Court after hearing.

5. **POWERS OF SPECIAL MAGISTRATE:** The Special Magistrate shall have the following powers:

- a. **Access to the Property:** The Special Magistrate shall have the right, power and authority to access the Property until the same is sold consistent with this Order,

which authority shall include, but not be limited to, the right to access the Property to facilitate its marketing and sale.

- b. **Execute a Listing Agreement:** The Special Magistrate shall have the right, power and authority to execute a standard Florida Exclusive Right of Sale Listing Agreement listing the Property for sale with D. Basile Real Estate, LLC in order to facilitate the marketing of the Property via the Multiple Listing Service.
- c. **Make Use of an Electronic “Lockbox”:** The Special Magistrate is authorized to make use of an Electronic “Lockbox” attached to the front door of the Property to facilitate entry to the Property for the Special Magistrate and co-brokers.
- d. **Set the Initial Listing Price:** The Special Magistrate shall determine the initial listing price of the Property based upon the Special Magistrate’s opinion of the Property’s Fair Market Value.
- e. **Alter the Listing Price:** If, after establishing the initial listing price for the Property, the Special Magistrate’s opinion of the price at which the Property should be listed for sale should change, the Special Magistrate shall have the power to effect such change.
- f. **Possession of Property.** The Special Magistrate is authorized to take such actions as are reasonably necessary to facilitate the marketing and sale of the property, including directing that the residence be vacated if occupancy interferes with the listing, showing, inspection, or sale of the property. If a party or occupant fails to comply with such directive, the Special Magistrate may seek further order of the Court to require the property be vacated in order to effectuate the sale.
- g. **Conduct Negotiations:** The Special Magistrate shall have the power to conduct

negotiations with potential purchasers for the purchase and sale of the Property as he deems appropriate, independent of the parties. While the Special Magistrate shall inform the parties of the progress of such negotiations, the parties' permission or assent shall not be required to effect the sale of the Property because the parties have no right to "veto" any proposed sale of the Property, as discussed in more detail below.

- h. **Retain Agents:** The Special Magistrate may retain such agents, including attorney(s), as he deems necessary or appropriate to accomplish the partition of the Property. The Special Magistrate shall be reimbursed for the reasonable expenses he incurs for any agents so retained.
- i. **Accept an Offer Deemed Acceptable:** On behalf of this Court, The Special Magistrate shall have the right, power and authority to accept an offer to purchase the Property which the Special Magistrate believes is in the best interest of the parties.
- j. **Transfer Title Consistent with an Accepted Offer:** To effect the partition ordered by this Court, the Special Magistrate is authorized to execute those documents of conveyance required to transfer title of the Property consistent with an accepted Offer.
- k. **Authority of Special Magistrate.** In the event any party fails or refuses to cooperate with the sale of the property or fails to execute any document reasonably required to list, market, contract for sale, or close on the property, the Special Magistrate is authorized to execute such documents on behalf of the non-complying party as may be necessary to effectuate the sale, subject to further

order of the Court if required.

1. **Seek Further Assistance and Direction from this Court:** Should circumstances arise which lead the Special Magistrate to believe it would be advantageous or appropriate to seek further direction from this Court, the Special Magistrate shall have the power to seek the same by Motion filed with the Court, duly noticed for hearing.
6. **DUTIES OF SPECIAL MAGISTRATE:** The Special Magistrate shall:
 - a. Determine and submit to the Court a fair and reasonable sale price for the property based upon current market conditions and submit to the Court for approval.
 - b. Diligently list and market the Property to effect its sale on behalf of the Court and the parties.
 - c. Complete the transaction to effect the partition sale of the Property.
 - d. Deposit the net proceeds from the sale of the Property to Goldman, Monaghan, Thakkar & Bettin, P.A. Trust Account after the transaction has closed to be distributed pursuant to further order of this Court.
 - e. Inform the parties of:
 - i. The initial listing price established for the Property;
 - ii. Any changes in the listing price of the Property thereafter;
 - iii. Contract offer(s) received for the sale and purchase of the Property; and
 - iv. The contract offer for the sale and purchase of the Property which has been accepted by an offeror or the Special Magistrate.
7. **DUTIES OF THE PARTIES:**

- a. **Non-Interference:** The parties shall not interfere with the Special Magistrate's performance of the duties set forth in this Order:

While the parties have a right to be informed of the Special Magistrate's activities, they have no "veto" over his decisions.

The Special Magistrate is acting as an Officer of the Court in serving as Special Magistrate. As such, the Special Magistrate has the authority to sell the Property at what the Special Magistrate deems is its "Fair Market Value," even if any / some / all of the parties disagree.

So long as the Special Magistrate acts in good faith, based upon the Special Magistrate's knowledge, training and experience, the Special Magistrate shall have full discretion in determining the listing and selling price of the Property, and in conducting negotiations for the same.

- b. **Access:** The parties shall provide the Special Magistrate access to the Property, to include, but not be limited to, providing such keys and other means of access as are required to obtain access to the Property and its appurtenances.
- c. **Cooperation:** The parties shall cooperate with the Special Magistrate and execute any documents reasonably necessary to list, market, contract for sale, and close on the subject property. If a party fails or refuses to execute any required document, the Special Magistrate may seek further order of the Court or is hereby authorized to execute such document on behalf of the non-complying party to effectuate the sale.

8. The Court reserves jurisdiction to enforce this Order, resolve any issues arising from the sale of the property, determine the distribution of proceeds, and address any remaining claims between the parties.

Done and Ordered in Chambers at the Moore Justice Center in Viera, Brevard County,
Florida on

Tuesday, March 24, 2026

05-2026-CA-014177 03/24/2026 05:38:35 PM



Samuel Bookhardt III, Judge
05-2026-CA-014177 03/24/2026 05:38:35 PM

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