

Tentative Rulings

Law & Motion and Family Law Calendar for May 27, 2015

May 21, 2015, 4:00p.m.

Department Two

To request a hearing on any matter on this calendar, you must call the Court at 530-283-6305 by 12:00 noon, May 22, 2015 notice of the intention to appear must also be given to all other parties. If the clerk is not notified of a party's intention to appear, there will be no hearing and the tentative ruling becomes the order of the court.

If you do appear and want the matter reported by a court reporter in unlimited civil, family law or probate, you must contract with and provide your own court reporter. The Court does not provide an official reporter for these calendars.

Probate – 9:00 a.m.

Case No. PR14-00020 – Conservatorship of Quinby

Tentative Ruling: **No appearance required.** The court continues this matter to June 22, 2015, at 9:00a.m., in order to receive the investigator's report.

Case No. PR15-00016 – Estate of Little

Tentative Ruling: **Granted.** The court finds that notice has been given as required by law. Petitioner's Petition for Probate is granted.

Civil – 9:30 a.m.

Case No. CV14-00093 – Hunt vs. Firestone

Tentative Ruling: **Granted.** Plaintiffs’ motion for summary judgment is granted, and an interlocutory decree, finding each party herein to have an undivided one-sixth (1/6th) fee interest in, and ordering the reference of this matter for purposes of selling, the property shall issue.

A co-owner of real property may bring an action for partition, which severs the unity of possession. (*LEG Investments v. Boxler* (2010) 183 Cal.App.4th 484, 493 (“*LEG*”).) “ ‘Partition is a remedy much favored by the law. The original purpose of partition was to permit cotenants to avoid the inconvenience and dissension arising from sharing joint possession of land.’ ” (*Ibid.*)

It has long been the rule that “. . . a cotenant is entitled to partition as a matter of absolute right; that he need not assign any reason for his demand; that it is sufficient if he demands a severance; and that when grounds for a sale are duly established it may be demanded as of right. To grant it is not a mere matter of grace. The only indispensable requirement to its award is that a clear title be shown, and in no event is a partition to be denied because it will result in financial loss to the cotenants. [Citations.]” (*De Roulet v. Mitchel* (1945) 70 Cal.App.2d 120, 124.)

Plaintiffs have produced evidence that (1) they and the defendant are cotenants, in equal shares, of the property; (2) there are no other interests in, or liens against, the property; and (3) the property cannot be divided physically. (Plaintiffs’ Separate Statement of Undisputed Material Facts, filed January 23, 2015, UMF Nos. 1-17.) The defendant does not dispute any of these material facts. (Defendant’s Separate Statement of Undisputed and Disputed Facts, filed April 21, 2015, UMF Nos. 1-17.) The plaintiffs’ right to partition by sale of the property is thus established. (*De Roulet v. Mitchel, supra*, 70 Cal.App.2d at 124.)

Partition may, however, be barred by waiver. (*Section 872.210(b)*.)¹ Such waiver arises “. . . by reason of an agreement, express or implied, between [cotenants] . . . permitting a variance from the ordinary incidents of such cotenancy.” (*Williams v. Williams* (1967) 255 Cal.App.2d 648, 651 (“*Williams*”); *see, Heber v. Yaeger* (1967) 251 Cal.App.2d 258, 262 (waiver implied where prior agreement “clearly indicate[s] an intention that the subject property should be restricted to a use foreclosing its partition”); *see, e.g., Pine v. Tiedt* (1965) 232 Cal.App.2d 733, 736-737) (partition barred for period of long-term lease of property).) A party may also be estopped from seeking partition, if it would conflict with a prior agreement amongst the co-owners. (*Heber v. Yaeger, supra*, 251 Cal.App.2d at 263.)²

¹ All statutory references are to the *Code of Civil Procedure* unless otherwise noted.

² The agreement should be in writing, or, if oral, substantially performed by the party seeking to enforce it. (*See, Woods v. Bradford* (1967) 254 Cal.App.2d 501, 505 (oral right of first refusal, falling within statute of frauds, would not bar partition); *Miranda v. Miranda* (1947) 81 Cal.App.2d 61, 65 (right to partition may be “altered by a written agreement”); *Prince v. Varona* (1956) 144 Cal.App.2d 673, 675-676 (full performance takes oral agreement out of statute of frauds); *Civil Code section 1624 (a)(1)* (contract cannot be performed within one year); *see, also, Civil Code section 1624(a)(3)* (transfer of interest in realty).)

Hence, to raise a triable issue as to her defenses of waiver or estoppel herein, the defendant must produce evidence from which one could reasonably infer that the parties entered into an agreement which expressly or impliedly modified or waived their right to partition. (*See, Di Loreto, Inc. v. O'Neill* (1991) 1 Cal.App.4th 149, 156 (material fact issues are determined by the law relating to the case).)

The defendant has proffered evidence of an oral “understanding,” discussions (oral and possibly through e-mail) regarding a formal agreement and e-mail messages regarding a proposed, but never executed, “Tenant in Common” agreement. (Declaration of J. Leigh Hunt Firestone (“Firestone Decl.”), paras. 6-9, 11, 13, 17, 19, Exhibits A, B.) This is insufficient to raise a triable issue as to whether the parties entered into an agreement of any kind regarding their right to partition. (*See, Williams, supra*, 255 Cal.App.2d 648, 652 (correspondence and unsigned long-term lease insufficient to establish estoppel or waiver).) Similarly, evidence that the defendant would have signed the proposed agreement if she had known all the facts (Firestone Decl., para. 18) does not support estoppel, in the absence of evidence that it, or some other agreement, included terms waiving the parties’ right to partition. (*See, Saldana v. Globe-Weis Systems Co.* (1991) 233 Cal.App.3d 1505, 1518-1519 (in ruling on motion for summary judgment, court must determine whether deducible inference from opposing party’s evidence, without more evidence, raises triable issue of material fact).)

Lastly, there is no evidence that the sale of the property through these proceedings will result in an unfair financial advantage to the plaintiffs. (*See, American Medical International v. Feller* (1976) 59 Cal.App.3d 1008, 1015-1016 (where forced sale results in unfair financial advantage, partition may be barred).) While the property may have sentimental value for the defendant, partition is, in the absence of an agreement, the only remedy available when disputes arise amongst cotenants. (*See, LEG, supra*, 183 Cal.App.4th at 497 (partition intended to “permanently end” disputes over jointly held property).)

This matter shall be referred for purposes of determining the manner, terms and conditions of sale of the property pursuant to *section 873.010(b)*; however, the appointment of a referee shall be deferred for 15 days from the date of the Court’s final ruling, to allow the parties an opportunity to identify a referee, and/or to establish terms of sale, acceptable to all, as provided in *sections 873.040(b) and 873.600*.

Plaintiffs’ Evidentiary Objections:

Sustained: 5 (second phrase), 20, 21, 23, 24, 27, 37, 43, 48-54.

Overruled: 1-4, 5 (first phrase), 6-19, 22, 25, 26, 28-36, 38-42, 44-47.

Case No. DV10-00225 – Quigley v. Aptol/LaSelva Fire Protection District, et al.

Tentative Ruling: **Granted, in part.** Plaintiff’s Motion to Tax Costs is granted, in part. After consideration of plaintiff’s motion to tax costs, defendants’ opposition and plaintiff’s reply, the Court finds that the following costs should be stricken or reduced: Filing and motion fees should be reduced by \$355. The Court reduces the costs for service of process for subpoenas by \$2,723.66. The ordinary witness fees of \$550 is stricken. The Court will not reduce defendants’ deposition costs. Defendants are to prepare an amended memorandum of costs reflecting the above reductions.

Family Law – 10:30 a.m.

Case No. FL14-00012 – Artaz vs. Gilbert

Tentative Ruling: **Appearance required.** The court will hear the results of mediation.

Case No. FL14-00066 – Mar. of Aswad

Tentative Ruling: **Appearance required.** The court will discuss a summer visitation schedule with the parties.

Case No. FL13-00083 – Mar. of Cardiel

Tentative Ruling: **Appearance required.** The court notes there is no proof of service in the file on the petitioner.

Case No. FL13-00063 – Mar. of Dooley

Tentative Ruling: **Appearance required.**

Case No. FL14-00080 – Gilliam vs. Chavez

Tentative Ruling: **Appearance required.**

Case No. FL06-27013 – Mar. of Pederson

Tentative Ruling: **Appearance required.** The court intends to grant the motion to change venue, noting that no opposition has been filed.

CASE MANAGEMENT CONFERENCE TENTATIVE RULINGS

Case No. CV15-00033 – Carlson vs. Mason

Tentative Ruling: **Appearance required.** The parties should be prepared to discuss ADR options and set a trial date.

Case No. LC14-00207 – Cavalry SPV 1, LLC vs. Haider

Tentative Ruling: **Appearance required.** The court notes that plaintiff has failed to file a case management conference statement. Should there be any further violations of Rule 3.725, this matter will be set for an order to show cause and sanctions may be imposed. The court also notes there is no proof of service on the defendant in the file, and no request for publication.

Case No. LC14-00205 – Portfolio Recovery Associates, LLC v. Defabrizio

Tentative Ruling: **Appearance required.** The court notes that plaintiff has failed to file a case management conference statement. Should there be any further violations of Rule 3.725, this matter will be set for an order to show cause and sanctions may be imposed. The court also notes there is no proof of service on the defendant in the file, and no request for publication

Case No. PR13-00049 – Snyder Family Third Party Special Needs Trust

Tentative Ruling: **Appearance required.**

Case No. CV09-000065 – Adams vs. Dept. of Fish and Game

Tentative Ruling: **Appearance required.**

Case No. PR13-00028 – Estate of McGushin

Tentative Ruling: **Appearance required.**

Case No. CV14-00093 – Hunt vs. Firestone

Tentative Ruling: **Appearance required.** The court will discuss the status of the case with the parties.

Case No. CV13-00202 – Nichols vs. Stark

Tentative Ruling: **Appearance required.** The court will discuss the status of the case with the parties.