TENTATIVE RULINGS: CIVIL LAW & MOTION

Friday, June 6, 2025 at 8:30 a.m.
Courtroom 18 – Hon. Kenneth G. English
Civil and Family Law Courthouse
3055 Cleveland Avenue
Santa Rosa, California 95403

The tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument, **YOU MUST NOTIFY** the Judge's Judicial Assistant by telephone at **(707) 521-6604**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

If the tentative ruling is accepted, no appearance is necessary unless otherwise indicated.

TO JOIN ZOOM ONLINE:

Department 18:
Meeting ID: **160—739—4368**
Password: **000169**
https://sonomacourtorg.zoomgov.com/j/1607394368?pwd=aW1JTWlIL3NBeE9LVHU2NVVpQlVRUT09

TO JOIN ZOOM BY PHONE:
By Phone (same meeting ID and password as listed for each calendar):
Call: +1 669 900 6833 US (San Jose)

Unless notification of an appearance has been given as provided above, the tentative ruling shall become the ruling of the Court the day of the hearing at the beginning of the calendar.

1. SCV-273531, Weston v. Weston: Plaintiff's Motion for Interlocutory Judgment

Plaintiff Lorraine Weston ("Plaintiff") unopposed motion for interlocutory judgment to partition Highland Acres, Healdsburg is **GRANTED** pursuant to C.C.P. section 872.720. The Court appoints partition referee Matthew Taylor C.C.P. section 873.010 for the purpose of selling the Property.

This action arises from the partition of Highland Acres in Healdsburg, California, a property consisting of about 1,100 acres ("the Property"). On June 16, 2023, Plaintiff filed her Complaint against Defendants Richard A. Weston (individually and as Trustee of the Helen L. Weston Trust) and Wallace E. Weston (together as "Defendants") for partition of the Property. On April 10, 2024, the Court granted Plaintiff's motion for interlocutory partition and her request to appoint a partition referee. (See Minute Order, dated April 10, 2024.) On April 19, 2024, the Parties signed a one-year broker agreement with Rob Schepergerdes for the sale of the Property. (Bentivegna Declaration, ¶ 5.) As a result, on May 1, 2024, the Court vacated the April 10, 2024, Order appointing Amy Harrington as the partition referee in this action pursuant to the Parties' stipulation. (See Stipulation and Order, filed May 1, 2024.) However, during this time, the Property was never listed for sale and

Mr. Schepergerdes issued a cancellation agreement on March 25, 2025, due to Richard Weston's obstructive behavior while Mr. Schepergerdes attempted to list the Property. (Bentivegna Declaration, ¶ 5 and Exhibit D.) Plaintiff now moves, again, for a partition sale with appointment of a partition referee.

"It is well settled that in the absence of a waiver a joint tenant is entitled as a matter of right to have his interest severed from that of his cotenant." (*Lazzarevich v. Lazzarevich* (1952) 39 Cal.2d 48, 50.) "A co-owner of property has an absolute right to partition unless barred by a valid waiver." (*LEG Investments v. Boxler* (2010) 183 Cal.App.4th 484, 493.) "If the court finds that the plaintiff is entitled to partition, it shall make an interlocutory judgment that determines the interests of the parties in the property and orders the partition of the property and, unless it is to be later determined, the manner of partition." (C.C.P. § 872.720(a).)

"The court shall order that the property be divided among the parties in accordance with their interests in the property as determined in the interlocutory judgment." (C.C.P. § 872.810.) "In lieu of dividing the property among the parties, the court shall order the property be sold and the proceeds divided among the parties in accordance with their interests in the property if the parties agree to such relief or the court determines sale and division of the proceeds would be more equitable than a division of the property." (*LEG Investments, supra,* 183 Cal.App.4th at 493; C.C.P. § 872.820.)

C.C.P. section 873.010 provides that "[t]he court shall appoint a referee to divide or sell the property as ordered by the court." While "shall" ordinarily denotes a mandatory directive, it does not in this case: "The word 'shall' as used in said section should be construed to require the appointment of a referee only where it is determined that a referee is necessary or would be desirable or helpful and . . . it should not be so strictly construed as to require the expense and time-consuming services of a referee where the court has adequate evidence before it to render its decision." (*Richmond v. Dofflemyer* (1980) 105 Cal.App.3d 745, 755.)

Analysis

Defendants were served with the motion but did not oppose. (See Proof of Service, filed April 16, 2025.) Here, Plaintiff has provided evidence that she and Defendants co-own the Property as follows:

- Undivided 54.1% interest owned by the Helen Luscomb Weston Trust;
- Undivided 15.3% interest owned by the Bruce H. Weston Trust with Plaintiff as Trustee;
- Undivided 15.3% interest owned by Wallace E. Weston; and
- Undivided 15.3% interest owned by Richard A. Weston.

(MPA in Support of Motion, 6:15–20; Exhibit B.) Therefore, Plaintiff is entitled to a partition by sale and the proceeds shall be distributed according to the co-owners' interests as stated above. (*LEG Investments, supra,* 183 Cal.App.4th at p. 493.) Given the evidence submitted by Plaintiff exhibiting Richard Weston's continued obstructions in the listing and sale of the Property, the Court finds that a partition referee is warranted in this case. The Court appoints Matthew Taylor as partition referee as he is qualified and charges a reasonable rate of $300 per hour. (Bentivegna Declaration, Exhibit A.) Matthew Taylor shall post a bond of $5,000 and file a final accounting and request for discharge upon conclusion of the sale of the Property.

Based on the foregoing, the motion is **GRANTED**. Unless oral argument is requested, the Court will sign the proposed order lodged with the motion.

2. SCV-270527, Jane Doe #1 v. Foppoli: Plaintiffs' Motion for Order Appointing Discovery Referee

Plaintiffs' motion to appoint a Discovery Referee is **GRANTED**. The Court appoints Tad S. Shapiro from Shapiro, Galvin, Shapiro & Moran as the Discovery Referee.

Plaintiffs' request for judicial notice of (1) Plaintiffs' pleadings regarding Motion to Compel filed March 4, 2025, (2) Defendant Foppoli's Motion for Protective Order, filed February 12, 2025, and (3) Defendant Foppoli's Motion for Sanctions filed February 12, 2025 in support of its motion for an order appoint a Discovery Referee is **GRANTED** pursuant to Evidence Code section 452(d).

On April 11, 2025, the Court expedited the hearing on Plaintiffs' motion for an order appointing a Discovery Referee from July 2, 2025, to June 6, 2025, and ordered the Parties to submit a joint stipulation report on May 2, 2025. (See Minute Order, dated April 11, 2025.) The Parties submitted their joint stipulation report requesting the Court to choose the Discovery Referee as the Parties could not agree. (See Parties' Joint Statement Following Meet and Confer re Discovery Referee, filed May 2, 2025.) Plaintiffs selected Tad S. Shapiro from Shapiro, Galvin, Shapiro & Moran at an hourly rate of $650. (*Ibid*.) Defendant Foppoli is concerned with Mr. Shapiro's possible bias by having experience practicing in the Santa Rosa area and alternatively chooses the Honorable Kevin McKenny, retired, from Santa Clara County with JAMS at an hourly rate of $800. (*Ibid.*) While the Court understands Defendant Foppoli's concern of possible bias, lawyers serving as Discovery Referees are subject to the canon 6D of the California Code of Judicial Ethics, which includes refraining from manifestations of any form of bias or prejudice, not allowing family or other relationships to influence judicial conduct, performing judicial duties without bias or prejudice, and discharging administrative responsibilities without bias and with competence and cooperatively. (Cal. Rules of Prof. Conduct, appen. A, Rule 2.4.1.; Cal. Code Jud. Ethics, canon 6D(1)–(2).) Furthermore, Defendant Foppoli fails to present any evidence that shows that Mr. Shapiro has any disqualifying bias. Therefore, the Court finds that Mr. Shapiro is a qualified Referee with over 30 years of experience and is a more cost-effective choice for the Parties.

Plaintiffs' counsel shall submit a written order on its motion to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

3. 24CV06857, Dietz v. Ford Motor Company: Plaintiff's Motion to Compel Further Responses to Request for Production from Defendant Ford

Plaintiff's motion to compel further responses is **CONTINUED** to Friday, August 8, 2025, at 8:30 a.m. in Department 18 pursuant to the recommendation of the discovery facilitator's report for this motion. The discovery facilitator's report stated that a motion for protective order or stipulated order would be filed before June 6, 2025. As the Court has not received this filing, the Court anticipates that the motion, or otherwise a stipulated order, will be filed by June 30, 2025.

4. <u>SCV-272228, Institute of Imaginal Studies v. Lyman</u>: Defendant Asher Lyman's Cross-Motion with Defendant Jim Garrison Anti-SLAPP Motion

Defendant Asher Lyman's Cross-Motion in support of Defendant Jim Garrison's Motion to Strike Plaintiff's Second Amended Complaint Pursuant to CCP § 425.16 is **DENIED**. Plaintiff's request for attorney's fees and costs incurred in opposing this motion is **GRANTED** in the amount of $2,340.00 pursuant to CCP § 425.16(c)(1).

Plaintiffs' counsel shall submit a written order consistent with this ruling and in compliance with Rule 3.1312.

Defendant Asher Lyman previously moved to strike Plaintiffs' First Amended Complaint pursuant to CCP § 425.16. The Court denied the motion. Defendant Lyman now files a second special motion to strike based on the Second Amended Complaint. However, there is no legal authority for Defendant Lyman to bring a second special motion to strike.

"An anti-SLAPP motion may be brought within 60 days of service of an amended complaint 'if the amended complaint pleads new causes of action that could not have been the target of a prior anti-SLAPP motion, or adds new allegations that make previously pleaded causes of action subject to an anti-SLAPP motion.'" (*Starview Prop., LLC v. Lee* (2019) 41 Cal.App.5th 203, 206.) "[A] defendant must move to strike a claim within 60 days of service of the *earliest* complaint that contains *that cause of action*." (Weil & Brown, *Cal. Prac. Guide Civ. Pro. Before Trial*, 7:952. Emphasis in original.) "Defendant cannot use the fact that plaintiff filed an amended complaint to attack claims that appeared in a prior complaint." (*Ibid*.)

"An anti-SLAPP motion is not a vehicle for a defendant to obtain a dismissal of claims in the middle of litigation; it is a procedural device to prevent costly, unmeritorious litigation at the initiation of the lawsuit." (*Newport Harbor Ventures, LLC v. Morris Cerullo World Evangelism* (2018) 4 Cal.5th 637, 645.) CCP § 425.126 "should be interpreted to permit an anti-SLAPP motion against an amended complaint if it could not have been brought earlier, but to prohibit belated motions that could have been brought earlier…" (*Ibid*.)

Here, the Second Amended Complaint does not allege any new causes of action against Defendant Lyman, nor does it raise any new allegations that would make the previously pleaded causes of action subject to an anti-SLAPP motion. The Second Amended Complaint simply adds James Garrison as a defendant. It does not allege any new facts or causes of action. Defendant Lyman could have, and did in fact, bring an earlier special motion to strike that was denied. Accordingly, he cannot now bring a second special motion to strike based on an amended pleading that asserts the exact same causes of action and factual allegations against him as the previous one.

In his reply, Defendant Lyman argues that this second special motion to strike is proper because new evidence has come to light supporting the public interest factor and a new federal court case has recognized the evidentiary validity of the materials cited in the record. This argument is unpersuasive. The determination of whether an Anti-SLAPP motion is permissible after an amended pleading has been filed is not made on an inspection of the evidence supporting the opposing sides. It is made based on the allegations made in the amended complaint and whether they differ at all from the previous allegations made against the party making the motion. As to Defendant Lyman, they do not.

CCP § 425.16(c)(1) provides, in pertinent part, "If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion…" This Court finds this motion to be frivolous. The Court already considered and denied the arguments made by this defendant regarding the very same causes of action and factual allegations previously alleged by Plaintiffs. This motion was brought without legal authority to do so. Accordingly, this Court must award Plaintiffs their costs and reasonable attorney's fees.

Defendant Lyman argues that the imposition of sanctions against him would be unjust because he is indigent. The Court is not imposing sanctions against him. CCP § 425.16 does not provide for sanctions. It provides for an award of attorney's fees and costs to Plaintiffs if the motion is frivolous. Contrary, to Defendant's argument, the statute does not give the Court discretion to not to award those fees upon consideration of the defendant's indigency. It states that the Court "*shall*" award the fees and costs if the motion is frivolous. (CCP § 425.16(c)(1).) "'Frivolous'" means totally and completely without merit or for the sole purpose of harassing an opposing party." (CCP § 128.5.) Defendant's motion is totally and completely without merit; therefore, this Court has no discretion not to award the fees and costs.

Plaintiffs request $3,861.00 in attorney's fees based on their counsel's discounted hourly rate of $990 per hour with 3.9 hours having been spent on their opposition. The Court finds the requested hourly rate to be excessive given the local market rates. The Court awards an hourly rate of $600 per hour, which is consistent with local market rates for attorneys with the level of experience of Plaintiffs' attorney. The number of hours requested is reasonable. Accordingly, attorney's fees are awarded in the amount of $2,340.00. Plaintiffs have not represented that any costs have been incurred in addition to the attorney's fees requested.

The Court notes that Defendant has attached several exhibits to his reply memorandum. However, Defendant has not submitted a declaration under the penalty of perjury providing evidentiary foundation for these exhibits. (CCP §§ 2009, 2015.5; Cal. Rules of Court, Rule 3.1306.) Therefore, they are inadmissible and the Court has not considered them.

*****This is the end of the Tentative Rulings*****