

**1. JOHNSON, ET AL. v. JOHNSON, SC20180141****Referee's Petition for Instructions No. 2**

This matter is on for the referee's petition for instructions, no. 2. Briefly, the referee has not been able to find a title company who will handle the sale of the subject property. As such, the referee seeks instructions from the court regarding the following: "How to proceed with the sale given the difficulty to date in finding a title company who will handle the transaction?"

As the referee knows, he is authorized by statute and the court's statement of decision and interlocutory judgment to enter into and execute contracts for services of real estate brokers and others as necessary to effect the sale of the property. (Code Civ. Proc., § 873.110.) With the exception of buying title insurance, it is possible to close a sale with the services of a real estate attorney and without using a title company for the transaction.

The petition does not indicate whether the referee already consulted with or considered retaining the services of a real estate attorney to handle the escrow and closing tasks of the sale. Depending upon the circumstances of the sale, it might be possible to complete the sale without the need for title insurance as a title insurance policy is not required in California. The referee should consult with a well-regarded real estate attorney to explore the options for completing the sale without the involvement of a title company. Absent a mechanism to close escrow with or without title insurance, the parties will otherwise have to wait until the Third Appellate District issues a decision on Kent Johnson's appeal and his appeal is final.

**TENTATIVE RULING # 1: THE PARTIES ARE REFERRED TO THE FULL TEXT OF THE TENTATIVE RULING. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO**

THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. PARTIES MAY APPEAR IN PERSON AT THE HEARING. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM.

**2. PEREZ v. HERNANDEZ, ET AL., SC20180192**

**Status of Bankruptcy**

This matter was continued from December 9, 2022. At the last hearing, defendants informed the court that their bankruptcy action is resolved. Defendants were directed to provide plaintiff's counsel with the bankruptcy settlement paperwork prior to this hearing.

**TENTATIVE RULING # 2: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, JANUARY 27, 2023, IN DEPARTMENT FOUR. APPEARANCES BY ZOOM ARE AUTHORIZED.**

**3. EL DORADO HILLS CMTY. SERVS. DIST. v. EL DORADO COUNTY, ET AL., 22CV1536****(1) Petitioner's Motion to Transfer Venue to a Neutral County****(2) Status Conference**

Pursuant to Code of Civil Procedure ("CCP") section 394, petitioner/plaintiff El Dorado Hills Community Services District moves to transfer venue of this action to a neutral county. On January 13, 2023, respondents/defendants El Dorado County, El Dorado County Office of Auditor-Controller, and Joe Harn, Auditor Controller in his official capacity, filed a Statement of Non-Opposition to the motion. All parties request, as their first preference, that the action be transferred to Placer County.

Having reviewed the moving papers, the court finds that CCP section 394 applies and venue must be transferred to a neutral county. (See *City of Alameda v. Superior Court* (1974) 42 Cal.App.3d 312, 316 [Section 394 compels transfer of action to a neutral county where both parties are either a city, county, or local agency within the same county].) "The trial court is permitted to exercise its discretion ... in choosing a neutral county in light of all factors, including the convenience of both sides ...." (*County of San Bernardino v. Superior Court* (1994) 30 Cal.App.4th 378, 389.) Having considered all the factors, the court finds that venue in Placer County is proper and the most convenient location for all parties.

Petitioner's motion is granted. This action is transferred to Placer County Superior Court.

**TENTATIVE RULING # 3: PETITIONER'S MOTION TO TRANSFER VENUE TO A NEUTRAL COUNTY IS GRANTED. THIS ACTION IS TRANSFERRED TO PLACER COUNTY SUPERIOR COURT. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO**

THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. PARTIES MAY APPEAR IN PERSON AT THE HEARING. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM.

**4. HITCHCOCK, ET AL. v. CITY OF S. LAKE TAHOE, ET AL., 22CV1691**

**Status Conference Re: Service, Response, Administrative Record, Briefing**

**TENTATIVE RULING # 4: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY,  
JANUARY 27, 2023, IN DEPARTMENT FOUR.**

**5. JOHNSON v. McCALL, 21CV0173****Plaintiff's Motion for Summary Interlocutory Judgment in Partition Action**

This is a partition action. Pending is plaintiff's Motion for Summary Interlocutory Judgment. The motion is not opposed.

Legal Principles Re: Partition Actions

"The superior court has jurisdiction of actions under this title." (Code Civ. Proc., § 872.110, subd. (a).) "At the trial, the court shall determine whether the plaintiff has the right to partition. [¶] ... Except as provided in Section 872.730, partition as to concurrent interests in the property shall be as of right unless barred by a valid waiver." (*Id.*, § 872.710, subds. (a)–(b).) "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." (*Id.*, § 872.720, subd. (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." (*Id.*, § 872.810.) "Notwithstanding Section 872.810, the court shall order that the property be sold and the proceeds be divided among the parties in accordance with their interests in the property as determined in the interlocutory judgment in the following situations: [¶] (a) The parties agree to such relief, by their pleadings or otherwise. [¶] (b) The court determines that, under the circumstances, sale and division of the proceeds would be more equitable than division of the property..." (*Id.*, § 872.820, subds. (a)–(b).)

Summary Judgment Standard

The moving party bears the initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact, and only if the moving party carries the initial burden does the burden shift to the opposing party to produce a prima facie showing of the existence of a triable issue of material fact. (*Aguilar v. Atl. Richfield Co.* (2001) 25 Cal.4th 826, 850.)

“The court focuses on issue finding; it does not resolve issues of fact. The court seeks to find contradictions in the evidence, or inferences reasonably deducible from the evidence, which raise a triable issue of material fact.” (*Raven H. v. Gamette* (2007) 157 Cal.App.4th 1017, 1024.) The evidence of the moving party is strictly construed and the evidence of the opposing party liberally construed. Doubts as to the propriety of granting the motion must be resolved in favor of the party opposing the motion. (*Stationers Corp. v. Dun & Bradstreet, Inc.* (1965) 62 Cal.2d 412, 417.)

### Discussion

In ruling on plaintiff’s motion, the court reviewed the following documents: (1) plaintiff’s First Amended Complaint (“FAC”); (2) defendant’s Verified Answer to the FAC; (3) plaintiff’s Notice of Motion and Motion for Interlocutory Summary Judgment in Partition Action; (4) Memorandum of Points and Authorities; (5) plaintiff’s Separate Statement of Undisputed Material Facts (“UMF”); and (6) Proof of Service of the moving papers.

To date, defendant has neither opposed the motion nor filed a response to the separate statement or lodged any evidentiary objections. Further, defendant has not requested a continuance of the hearing or permission to file a late opposition. The Proof of Service to the moving papers declares that defendant was served by U.S. Mail via her attorney of record on October 21, 2022. Defendant’s opposition was due no less than 14 days prior to the hearing. (Code Civ. Proc., § 437c, subd. (b)(2).)

Even when no opposition is filed, the moving party still bears the initial burden of establishing evidentiary facts demonstrating that party’s entitlement to summary judgment. (*Quintilliani v. Mannerino* (1998) 62 Cal.App.4th 54, 59–60.)

Here, after reviewing and considering plaintiff’s moving papers, the court finds that plaintiff has met her initial burden of establishing she is entitled to judgment as a matter of law. Defendant’s Verified Answer admits that plaintiff and defendant are co-owners of the subject project, each one possesses a one-half (1/2) undivided interest, and there are no



other owners. (Pl. UMF, ¶¶ 1, 5; Def. Ans., ¶¶ 1, 5.) The parties agree that the property should be sold, rather than physically divided. (Pl. UMF, ¶ 2; Def. Ans., ¶¶ 7, 8.) The parties further agree that the court should appoint a referee to sell the property. (Pl. UMF, Prayer, ¶ 10; Def. Ans., Prayer, ¶ 2.)

Based on the foregoing, the court finds that plaintiff met her initial burden of showing the nonexistence of a triable issue of material fact.

In turn, because defendant has not opposed the motion or submitted any type of response, evidence, or evidentiary objections, she has not met her burden of production of showing the existence of triable issues of material fact. Moreover, her Verified Answer admits the material facts relevant to plaintiff's right to partition and the right to partition by sale. In addition, there is no showing of any equitable defenses such as waiver or estoppel.

Accordingly, plaintiff's motion is granted as requested.

**TENTATIVE RULING # 5: PLAINTIFF'S MOTION FOR SUMMARY INTERLOCUTORY JUDGMENT IN PARTITION ACTION IS GRANTED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. PARTIES MAY APPEAR IN PERSON AT THE HEARING. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM.**

**6. WEILAND v. EL DORADO COUNTY ASSESSMENT APPEALS BD., 22CV0341**

**Petition for Writ of Mandate**

On the court's own motion, matter is continued to February 17, 2023. The court apologizes for any inconvenience to the parties.

**TENTATIVE RULING # 6: MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, FEBRUARY 17, 2023, IN DEPARTMENT FOUR.**

**7. MATTER OF DUNN, 22CV1640**

**OSC Re: Name Change**

To date, Proof of Publication is not in the court's file.

**TENTATIVE RULING # 7: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY,  
JANUARY 27, 2023, IN DEPARTMENT FOUR.**