# SUPERIOR COURT OF CALIFORNIA
# COUNTY OF MARIN

DATE: 02/20/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV2100342

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

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| PLAINTIFF: GREEN TREE HEADLANDS LLC, ET AL<br><br>vs.<br><br>DEFENDANT: BENJAMIN GRAVES, ET AL | |

NATURE OF PROCEEDINGS: MOTION – ENTRY OF JUDGMENT

RULING

Plaintiffs filed a complaint to quiet title on January 20, 2021, alleging two causes of action, for malicious prosecution and quiet title. The malicious prosecution cause of action has been resolved and is not at issue here. The quiet title cause of action seeks to quiet title to the driveway easement in order to confirm once and for all that Plaintiffs hold title to the easement, and that Defendant has no adverse interest in it.

After several appeals and approaching 5 years since the inception of the lawsuit, the case is close to resolution.

Plaintiffs report in the opposition that Plaintiff agreed to stipulate to entry of judgment on the quiet title action against her, but that Defendant has repeatedly refused to agree to the judgment styled by Plaintiffs. Defendant takes issue with nine of the twenty-seven recital paragraphs in Plaintiffs' proposed judgment, as well as language in the judgment itself.

Defendant Tara Crawford, Trustee of the Alan R. Patterson 2009 Revocable Trust dated November 4, 2009's ("Crawford") Motion for Entry of Judgment is DENIED.

The parties appear unable to agree on a form of judgment with the requisite easement descriptive language. Plaintiffs' proposal clears change of title for subsequent purchasers. The parties are close to resolution and if there is interest in resolution, should meet and confer on finalized language.

***Parties must comply with Marin County Superior Court Local Rules, Rule 7.12(B), (C), which provides that if a party wants to present oral argument, the party must contact the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing. Notice may be by telephone or in person to all other parties that argument is being requested (i.e., it***

*is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court. In the event no party requests oral argument in accordance with Rule 7.12(C), the tentative ruling shall become the order of the court.*

*IT IS ORDERED that evidentiary hearings shall be in-person in Department L. For routine appearances, the parties may access Department L for video conference via a link on the court website. Litigants in the virtual courtroom are required to leave the video screen on and wait for your case to be called.*

*FURTHER ORDERED that the parties are responsible for ensuring that they have a good connection and that they are available for the hearing. If the connection is inadequate, the Court may proceed with the hearing in the party's absence.*

# SUPERIOR COURT OF CALIFORNIA
# COUNTY OF MARIN

DATE: 02/20/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV2204259

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: G. MARTIN

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| PLAINTIFF: JENNIFER SWIFT<br><br>vs.<br><br>DEFENDANT: UNITED PARCEL SERVICE, INC., ET AL | |

NATURE OF PROCEEDINGS: MOTION – COMPEL - DISCOVERY FACILITATOR PROGRAM

RULING

Plaintiff filed a motion to compel document production and to seek further PMQ depositions. The motion was filed on October 13, 2025, and referred to the Discovery Facilitator Program on November 19, 2025, with the appointment of Phillip Diamond.

Mr. Diamond filed a Discovery Facilitator Report (Local Rule 2.13.H.3) advising the court that the parties have narrowed the issues remaining in the motion to production of documents by PMQ deponents, with Defendant objecting to the production of certain documents on the basis of attorney-client privilege and the attorney-work product doctrine (collectively "Privilege"). Defendant objected on privilege on the day of the deposition. Plaintiff claims that Defendant has waived the objection because it was not made three calendar days before the deposition.

Any matter that is relevant to the subject matter and not privileged is discoverable if it is itself admissible and appears reasonably calculated to lead to the discovery of admissible evidence. CCP §2013.010.

Boilerplate objections based on attorney-client privilege and work product are sufficient to preserve privilege protections. *Catalina Island Yacht Club v Superior Court*, (2015) 242 Cal.App.4th 1116. In *Catalina*, the court held that "if a party responding to an inspection demand timely serves a response asserting an objection based on the attorney-client privilege or work product doctrine, the trial court lacks authority to order the objection waived even if the responding party fails to serve a privilege log, serves an untimely privilege log, or serves a privilege log that fails either to adequately identify the documents.

A privilege objection to the production of documents generally must be asserted within the time limits established by applicable procedural rules, but the timing requirement is not necessarily tied to whether a deposition has occurred. California Code of Civil Procedure Section 2031.240 establishes specific requirements for how privilege objections must be supported. The statute requires that if an objection is based on privilege, "the response shall provide sufficient factual

information for other parties to evaluate the merits of that claim, including, if necessary, a privilege log".

California Code of Civil Procedure Section 2031.300(a) provides that if a party fails to serve a timely response to a demand for inspection, copying, testing, or sampling, "the party waives any objection to the demand, including one based on privilege or on the protection for work product". This waiver provision establishes that privilege objections must be included in the initial response to a document production demand.

Here, Defendants received proper notice of the PMQ depositions and associated document requests and asserted the privilege objection on the day of the deposition. The objections, while valid to preserve the objection for further review by the court, were untimely. The objection also appears overbroad and inappropriate.

Plaintiff's Motion to compel further deposition testimony of Defendant's PMQ(s) is GRANTED.

Plaintiff to provide an updated declaration to support the mandatory award of attorneys' fees.

***Parties must comply with Marin County Superior Court Local Rules, Rule 7.12(B), (C), which provides that if a party wants to present oral argument, the party must contact the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing. Notice may be by telephone or in person to all other parties that argument is being requested (i.e., it is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court. In the event no party requests oral argument in accordance with Rule 7.12(C), the tentative ruling shall become the order of the court.***

***IT IS ORDERED that evidentiary hearings shall be in-person in Department L. For routine appearances, the parties may access Department L for video conference via a link on the court website. Litigants in the virtual courtroom are required to leave the video screen on and wait for your case to be called.***

***FURTHER ORDERED that the parties are responsible for ensuring that they have a good connection and that they are available for the hearing. If the connection is inadequate, the Court may proceed with the hearing in the party's absence.***

# SUPERIOR COURT OF CALIFORNIA
# COUNTY OF MARIN

DATE: 02/20/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV2301658

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

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| PLAINTIFF: JEAN COYSTON, ET AL<br>vs.<br>DEFENDANT: BARBARA BOUCKE | |

NATURE OF PROCEEDINGS: 1) MOTION – TAX COSTS
2) MOTION – OTHER: FOR COST OF PROOF SANCTIONS

## RULING

Plaintiffs Jean, Thomas, Jack, and Charles Coyston's ("Plaintiffs") motion for cost of proof fees is GRANTED.

## BACKGROUND

This motion follows a trial on a wrongful death action. Plaintiffs are a mother and her three sons. The complaint alleged that on April 1, 2023, their husband and father, Richard Coyston, was killed when Defendant Barbara Boucke struck him with her car as he rode his motorcycle. The case was tried before a jury in September 2025, resulting in a verdict in favor of Plaintiffs and against Defendant's estate. Defendant passed away during the pendency of this lawsuit. Ms. Coyston was awarded $3,850,000, and each of her three sons $500,000.

Plaintiffs now seek attorneys' fees and recovery of expert costs in the amount of $285,323.23. Plaintiffs' motion and supporting declarations were filed on October 28, 2025. Defendant's opposition was timely filed on February 5, 2026. Plaintiffs' reply brief was filed on February 11.

## LEGAL STANDARD

Plaintiffs seek recovery of avoidable costs pursuant to California Code of Civil Procedure ("CCP") § 2033.420(a), which provides:

> If a party fails to admit the genuineness of any document or the truth of any matter when requested to do so under this chapter, and if the party requesting that admission thereafter proves the genuineness of that document or the truth of that matter, *the party requesting the admission may move the court for an order requiring the party to whom the request was directed to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees.* (Emphasis, the court.)

See also *Grace v. Mansourian* (2015) 240 Cal.App.4th 523, 529 [party seeking costs of proof bears the burden of proving these threshold requirements are met].) The court "shall" make such

an order "unless it finds" that a statutory exception applies. (Code Civ. Proc., § 2033.420, subd. (b).) The party seeking to benefit from one of the exceptions carries the burden of establishing that the exception applies. (*Spahn v. Richards* (2021) 72 Cal.App.5th 208, 216.)

DISCUSSION

The requests for admission ("RFA") at issue here are RFA Nos. 6-10 in Plaintiffs' Requests for Admission, Set One, served on June 13, 2025. They asked Defendant to admit the following: (1) that she was 100% at fault for the crash; (2) that she was at least 75% at fault for the crash; (3) that she was at least 50% at fault for the crash; and (4) that Richard Coyston was not at fault for the crash. (Montgomery Dec., Ex. B.)

A party seeking costs of proof under Section 2033.420 must offer evidence sufficient to demonstrate that he in fact proved the truth of the matters his opponent failed to admit in the RFA responses "That an issue be proved is an express statutory prerequisite to recovery" under the statute. (*Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 865.; see also *Grace*, *supra*, 240 Cal.App.4th 523, 529 ["Costs of proof are recoverable only where the moving party actually proves the matters that are the subject of the requests."]; Code Civ. Proc., § 2033.420, subd. (a).)

Plaintiffs state that they proved the truth of the matters in RFA Nos. 6-10 because "[t]he jury found that Richard Coyston was not at fault for the crash and [Defendant] was 100% at fault." (Memorandum, p. 3.) The jury found that Defendant was negligent and that her negligence was "a substantial factor in causing harm" to Plaintiffs. (Montgomery Dec., Ex. B, Items 1-2.) The jury found that Richard Coyston was also negligent; however his determination of negligence was not a substantial factor in causing the death. (*Id.* at Items 7-8.)

CCP § 2033.420(a) requires that the propounding party "thereafter proves ... the truth of that matter," not that the RFA documents be admitted as exhibits. Defendant acknowledges the jury made the relevant liability and causation determinations after hearing the evidence. The jury's verdict, based on trial proof, satisfies the statutory requirement that Plaintiffs proved the denied matters.

Defendant concedes in its opposition that the jury credited Plaintiffs' case on causation as against Defendant's comparative fault theory. The verdict was based on Plaintiffs' successful expert based proof of causation. The Defendant's denials of liability in its responses forced Plaintiffs' counsel to incur significant proof expenses at trial. Defendant's opposition confirms that its denials of RFAs 6, 7, 8, and 10 required Plaintiffs to prepare and present extensive proof on liability and causation, after which the jury returned a verdict in favor of Plaintiffs.

Plaintiffs succeeded at trial after hard fought litigation. An expert was retained and paid to address and rebut Defendant's denials and discovery responses. Expensive demonstrative evidence was used to prove causation. As the prevailing party as to proof of the allegations in the complaint, Plaintiffs' motion is GRANTED.

I. Attorneys' Fees

Plaintiff's counsel, Scott Montgomery, seeks recovery of fees.

Regarding the requested hourly rate, the court will scrutinize the reasonableness of the fee requested under the "lodestar" method by determining the lodestar, which consists of the number of hours reasonably spent by the reasonable hourly rates for that work on a non-contingency basis. The lodestar method requires the trial court to determine a lodestar figure based on careful examination of reasonable hourly compensation of each attorney and consideration of the time spent to perform each task. (*Vo v. Las Virgenes Water District*, (2000) 79 Cal.App.4th 440, 445-

446.). "The experienced trial judge is the best judge of the value of professional services rendered in his court." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095, citing *Serrano v. Priest (Serrano III)* (1977) 20. Cal.3d 25, 49.) Finding no objection in Defendant's Opposition brief to the hourly rate requested by Mr. Montgomery, the court finds the requested hourly rate of $800.00 to be eminently reasonable.

A party who seeks attorney's fees has the initial burden of "documenting the appropriate hours expended." (*ComputerXpress Inc. v. Jackson*, (2001) Cal.App.4th 993, 1020.) Once a documented hour total has been submitted, the opposing party may make objections to the hours claimed. General objections that work is "excessive" or "unreasonable" are insufficient. The objections should be specific. (*Premier Med. Mgmt. v California Ins. Guarantee Ass'n*, (2008) 163 Cal.App. 4th 550, 563.)

The basis for calculating the lodestar "must be the actual hours counsel devoted to the case, less those resulting from ineffective or duplicative use of time." (*Horsford v. Board of Trustees of Cal. State*, (2005) 132 Cal.App. 4th 359, 395.) The court also recognizes these billing records of counsel constitute "verified time statements of the attorneys, as officers of the court, and are entitled to credence in the absence of a clear indication that the records are erroneous." *Id.* at 394.

Mr. Montgomery submitted detailed billing statements attached to his request as Exhibit E to the declaration filed on October 28, 2025, with billing for compensable time equal to 261.5 hours, or a lodestar of $209.500 (hours x rate). The court has reviewed the billing statements provided by counsel attached as Exhibit E to the Decl. of Scott Montgomery in Support of Attorney's Fees and awards, and finds the records to be credible, reasonable and contemporaneously created. The court notes that Defendant is not being charged for administrative time, nor are the Plaintiffs charging for additional associate time worked on this trial.

The court will apply an across the board billing correction of 15% to account for possible billing errors and duplicative work, which adjusts down the attorney hours worked to 222.78 hours.

Counsel is awarded $178,224 in reasonable fees.

With the merits resolved at trial and before an order is entered regarding the award of discovery fees, Defendant may request to pursue discovery on the reasonableness of the hours worked by counsel with these hours committed necessary for Plaintiffs to prevail at trial. Defendant may further examine what time was devoted to liability for negligence as alleged against the Defendant. Should fee discovery be necessary, the parties should begin to meet and confer on the mutual exchange of billing records to check the reasonableness of time worked by the Plaintiff.

II. Expert Fees

Plaintiffs' expert witness Kurt Weiss testified regarding liability. Plaintiffs paid Mr. Weiss $36,148.23 in connection with his work. This includes travel, trial testimony and preparation, and deposition testimony. The cost request to cover expert fees is GRANTED.

III. Demonstrative Evidence

Plaintiffs used accident reconstruction technology created by High Impact, along with expert Mr. Weiss, to create a demonstrative exhibit for the jury regarding the crash. Plaintiffs request cost recovery for these services of $39,655, of which the court awards $30,000.

Total awarded by the post-verdict motion at bar is $244,372.23.

Plaintiff to prepare the order.

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***IT IS ORDERED that evidentiary hearings shall be in-person in Department L. For routine appearances, the parties may access Department L for video conference via a link on the court website. Litigants in the virtual courtroom are required to leave the video screen on and wait for your case to be called.***

***FURTHER ORDERED that the parties are responsible for ensuring that they have a good connection and that they are available for the hearing. If the connection is inadequate, the Court may proceed with the hearing in the party's absence.***

# SUPERIOR COURT OF CALIFORNIA
# COUNTY OF MARIN

DATE: 02/20/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0006626

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

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| PLAINTIFF: RON CUPP<br><br>vs.<br><br>DEFENDANT: BASIL PLASTIRAS, ET AL | |

NATURE OF PROCEEDINGS: DEMURRER

RULING

Defendants' demurrer to the First Amended Complaint is sustained without leave to amend.

***Allegations in Plaintiff's First Amended Complaint***

Plaintiff Ron Cupp's First Amended Complaint alleges that in 2007, Defendant Parkway Properties 12 LLC ("Parkway Properties"), through its counsel Defendants Basil Plastiras and Plastiras & Terrizzi ("Plastiras"), filed an action against Plaintiff. In 2013, Parkway Properties obtained and recorded a $163,576.43 judgment against Plaintiff in Sonoma County. The judgment was discharged in 2014 after Plaintiff filed for bankruptcy. Defendants were served with notice of the discharge, which warned Defendants not to attempt to collect on the discharged debt. However, in May 2022, Defendants filed an application to renew the discharged judgment, without notifying the court of the discharge and without notifying Plaintiff of the application or subsequent renewal of the judgment in the amount of $363,192.33. Plaintiff was over the age of 65 at the time. The renewed judgment was recorded against Plaintiff's property, with no notice to Plaintiff. Plaintiff discovered the lien when he was attempting to sell his property in 2024. In 2024, Plastiras became the judgment creditor of the $363,192.33 renewed judgment. In 2025, Defendants recorded a Satisfaction of Judgment. Cupp asserts a single cause of action for "malicious prosecution based upon attorney deceit intentionally and legally causing financial abuse of a California elder."

***Standard***

"The function of a demurrer is to test the sufficiency of the complaint as a matter of law, and it raises only a question of law." (*Holiday Matinee, Inc. v. Rambus, Inc.* (2004) 118 Cal.App.4th 1413, 1420.) A complaint "ordinarily is sufficient if it alleges ultimate rather than evidentiary facts" (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550), but the plaintiff must set forth the essential facts of his or her case "with reasonable precision and with particularity sufficient to acquaint [the] defendant with the nature, source and extent" of the plaintiff's claim. (*Doheny Park Terrace Homeowners Assn., Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076,

1099 [citation and internal quotations omitted].) Legal conclusions are insufficient. (*Id.* at 1098–1099; *Doe,* 42 Cal.4th at 551, fn. 5.) The court "assume[s] the truth of the allegations in the complaint, but do[es] not assume the truth of contentions, deductions, or conclusions of law." (*California Logistics, Inc. v. State of California* (2008) 161 Cal.App.4th 242, 247.)

***Request for Judicial Notice***

Defendants' request for judicial notice of the original Complaint (Exhibit A), the Court's Order dated October 17, 2025 (Exhibit B), and the First Amended Complaint (Exhibit C), is granted. (Evid. Code §§ 452, 453.)

***Discussion***

On October 17, 2025, the Court sustained Defendants' demurrer to the original Complaint, which also alleged a single cause of action for malicious prosecution, on the ground that Plaintiff failed to allege the requisite element that a lawsuit was commenced against him.

To state a cause of action for malicious prosecution, the plaintiff must allege: (1) the commencement or continuation of a prior lawsuit by or at the direction of the defendant that was pursued to a legal termination favorable to the plaintiff; (2) the prior lawsuit was brought or maintained without probable cause; and (3) the lawsuit was initiated with malice. (*Zamos v. Stroud* (2004) 32 Cal.4th 958, 970; *Nunez v. Pennisi* (2015) 241 Cal.App.4th 861, 872.)

Here, the Plaintiff continues to not allege the first element of a malicious prosecution claim. Plaintiff does not allege the 2013 action, which resulted in a judgment against him. was brought without probable cause. The basis for Plaintiff's claim is the renewal of that judgment in 2022, which he alleges was done without probable cause. However, the renewal is not sufficient to satisfy the first element. "[S]ubsidiary procedural actions . . . cannot be the basis for malicious prosecution claims . . . courts have refused to permit malicious prosecution claims when they are based on a prior proceeding that is . . . a continuation of an existing proceeding." (*Merlet v. Rizzo* (1998) 64 Cal.App.4th 53, 59-60.) In *Merlet*, the court held that a motion for a writ of sale was a subsidiary procedural action that could not serve as the basis of a malicious prosecution claim because it "occurs after liability and damages have been determined, and it does not result in a separate and distinct proceeding . . . A writ . . . is part of the remedy to effectuate the action by the enforcement of the judgment." (*Id.* at pp. 61-62.) "[A] writ of sale occurs after liability has been determined and a judgment ordered. The court will not issue a writ of sale without proof of a valid, unsatisfied judgment (Code Civ. Proc., § 712.010), making this procedure the continuation, or the enforcement, of the prior action, and not a separate proceeding." (*Id.* at p. 63.) Like the writ in *Merlet*, the renewal of a judgment is also a continuation of an existing action. A renewal is a ministerial act performed by the clerk which merely serves to extend the time to enforce a judgment. The renewal "has no independent existence from the original judgment." (*Rubin v. Ross* (2021) 65 Cal.App.5th 153, 165.) The renewal does not constitute a new or separate judgment and is considered a "subsequent proceeding" for the original court to retain jurisdiction under Code of Civil Procedure Section 410.50. (*Goldman v. Simpson* (2008) 160 Cal.App.4th 255, 262.)

In his Opposition, Plaintiff argues that the renewal constitutes the continuation of an existing lawsuit, maintained without probable cause, which can also satisfy the first element under *Zamos*, *supra*. In *Zamos*, the court held that the first element can be satisfied when an attorney continues to prosecute a lawsuit after he or she discovers the suit lacks probable cause. *Zamos* was decided after *Merlet* (and not discussed in the Court's first order because it was not cited or argued by Plaintiff for this point). However, *Zamos* did acknowledge the rule set forth in *Merlet*, describing *Merlet* as "involv[ing] application of the familiar rule that subsidiary procedural actions cannot be the basis for malicious prosecution claims." (*Zamos*, 32 Cal.App.4th at n. 8.)

The issue is therefore whether the filing of a renewal of judgment is a "continuation" of the existing lawsuit that is sufficient to satisfy the first element under *Zamos*, or a "subsidiary procedural action" that is insufficient to satisfy the first element under *Merlet*. The Court concludes that it is the latter. Like the writ of execution in *Merlet*, a renewal of judgment "occurs after liability and damages have been determined, and it does not result in a separate and distinct proceeding." (*Merlet*, 64 Cal.App.4th at p. 61.) Both procedural mechanisms are used to enforce a preexisting judgment and do not exist absent the judgment. (*Ibid.*) In contrast, in *Zamos*, there was no final judgment, and liability was based on the attorney's decision to continue prosecuting the case even after discovering facts showing there was no probable cause to proceed. The factual scenario in *Zamos* does not exist here.

The demurrer is sustained on the ground that Plaintiff does not allege the first element of a malicious prosecution claim. Because the Court sustains the demurrer on this ground, the Court does not address Defendants' jurisdiction argument. The Court does not grant leave to amend as Plaintiff has already had several opportunities to amend his pleading to state a viable claim but has failed to do so.

***Parties must comply with Marin County Superior Court Local Rules, Rule 7.12(B), (C), which provides that if a party wants to present oral argument, the party must contact the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing. Notice may be by telephone or in person to all other parties that argument is being requested (i.e., it is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court. In the event no party requests oral argument in accordance with Rule 7.12(C), the tentative ruling shall become the order of the court.***

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***FURTHER ORDERED that the parties are responsible for ensuring that they have a good connection and that they are available for the hearing. If the connection is inadequate, the Court may proceed with the hearing in the party's absence.***

# SUPERIOR COURT OF CALIFORNIA
# COUNTY OF MARIN

DATE: 02/20/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0007196

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

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| PLAINTIFF: KATHY TAYLOR<br><br>vs.<br><br>DEFENDANT: JEANINE JOHNSON, ET AL | |

NATURE OF PROCEEDINGS: MOTION – OTHER

RULING

Presently before the Court is the motion of plaintiff Kathy Taylor ("Plaintiff") (1) to appoint an appraiser to determine the fair market value of the real property located at 76 Cottonwood Drive, San Rafael, California 94901, identified as Marin County Assessor Parcel Number 185-092-02 (the "Property"), (2) to assign the costs of appraisal and set a deadline for their payment within 10 business days of the hearing on this Motion, (3) to set a hearing to determine value, or alternatively to order the Property to be sold, and (4) to send a buyout notice with a deadline for compliance.

## *BACKGROUND*

This is a property dispute. According to the complaint, Plaintiff and Defendant own real property at 76 Cottonwood Drive in San Rafael as tenants in common. Plaintiff brings this suit for partition of the property, ouster, and intentional infliction of emotional distress. Among other relief, Plaintiff requests an "allowance, accounting, contribution or any compensatory adjustments among the parties according to the principles of equity under Code of Civil Procedure section 872.140 and 872.430."

## *DISCUSSION*

Defendant Jeanine Johnson ("Defendant") opposes the motion only to the extent Plaintiff asks the Court to order Defendant to pay the full cost of the appraisal. Defendant asks the Court to order Plaintiff and Defendant to equally split the cost.

Code of Civil Procedure section 874.040 states that, "[e]xcept as otherwise provided in this article, the court shall apportion the costs of partition among the parties in proportion to their interests or make such other apportionment as may be equitable. The costs allowable consist of all expenses determined to have been incurred "for the common benefit." (§ 874.010, subd. (e).) As explained in *Finney* v. *Gomez* (2003) 111 Cal.App.4th 527, 545-546:

> Section 874.040 has been consistently interpreted as giving courts only two options in apportioning the costs and fees of a partition action. The court may apportion the fees and costs based on the parties' respective interests in the property, or it may apportion the costs and fees based on some other equitable apportionment. The Law Revision Commission comments to section 874.040 offer the only guidance as to what constitutes "other apportionment[s] as may be equitable." The Comment states: "Although normally the costs of partition are apportioned in proportion to the interests of the parties, there may be cases in which some other arrangement will be equitable. *Where litigation for the common benefit arises among only some of the parties,* or *where the interest of the parties in all items, lots, or parcels of property are not identical,* the court may segregate the costs of partition to the extent practicable and apportion a part among particular parties only."
> (Footnotes omitted.)

Plaintiff argues that the appraisal only benefits Defendant because "Plaintiff would simply prefer for the Property to be sold" and she "does not want an appraisal." She also "anticipate[s]" that Defendant will not actually be able to purchase the Property following the appraisal. Defendant argues that the appraisal benefits both parties because it "creates a model for the courts and parties to use for buyout or sale negotiations."

Here, the court finds Defendant's argument persuasive. An appraisal benefits both parties. Since Plaintiff has a 1/3 interest in the Property and Defendant has a 2/3 interest (ex. 1 to Sikavi decl.), the cost of the appraisal shall be shared by the parties in those percentages.

The parties are to meet and confer to identify an appraiser.

***Parties must comply with Marin County Superior Court Local Rules, Rule 7.12(B), (C), which provides that if a party wants to present oral argument, the party must contact the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing. Notice may be by telephone or in person to all other parties that argument is being requested (i.e., it is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court. In the event no party requests oral argument in accordance with Rule 7.12(C), the tentative ruling shall become the order of the court.***

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