

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Timothy P. DeMartini, et al. v. Michael J. DeMartini, et al.

DeMartini v. DeMartini, No. 2:14-cv-02722-DJC-CKD (E.D. Cal. Apr. 1, 2025) · No. 2:14-cv-02722-DJC-CKD
· Decided April 2, 2025

OPINION

(PS) DeMartini v. DeMartini

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 TIMOTHY P. DEMARTINI, et al., No. 2:14-cv-02722-DJC-CKD 12 Plaintiffs, v.

13 ORDER

MICHAEL J. DEMARTINI, et al., 14 Defendants. 15 16 17 Before the Court is Plaintiffs Timothy DeMartini and Margie DeMartini's Motion 18 for Allocation of Statutory Partition Costs. Plaintiffs argue they have incurred 19 attorney's fees and costs while litigating this partition action for work that benefits all 20 Parties in common. Plaintiffs argue that, under California law, these fees and costs 21 must be apportioned among the Parties. Defendants Michael DeMartini and Renate 22 DeMartini oppose the apportionment of any fees and costs arguing they are excessive 23 and the work performed by Plaintiffs' counsel did not serve the common benefit. 24 Having considered the Parties' briefings and arguments, the Court finds that 25 apportionment of Plaintiffs' fees and costs is appropriate as they compensate Plaintiffs' 26 counsel for work performed for the Parties' common good and are reasonable. 27 Accordingly, the Court will order the fees and costs be apportioned according to the 28 Parties' property interests in the subject property.

1 BACKGROUND

2 The Parties and Court are well acquainted with the factual background of this 3 partition action as laid out in the Court's prior orders. (See ECF No. 483 at 2–4; ECF 4 No. 529 at 1–6.) On December 3, 2024, Plaintiffs filed a Motion for Allocation of 5 Statutory Partition Costs. (Mot. (ECF No. 538).) The Motion is fully briefed and was 6 taken under submission by the Court pursuant to Local Rule 230(g). (ECF No. 545.)

7 LEGAL STANDARD

8 California Code of Civil Procedure section 874.040 governs the apportionment 9 of costs in a partition action. It provides: "Except as otherwise provided in this article, 10 the court shall apportion the costs of partition among the parties in proportion to their 11 interests or make such other apportionment as may be equitable." Code Civ. Proc. 12 § 874.040. Allowable costs are set

forth in Code of Civil Procedure section 874.010, 13 which include: “(a) [r]easonable attorney’s fees incurred or paid by a party for the 14 common benefit;” “(b) [t]he fee and expenses of the referee;” “(c) [t]he compensation 15 provided by contract for services of a surveyor or other person employed by the 16 referee in the action;” “(d) [t]he reasonable costs of a title report procured pursuant to 17 section 872.220;” and “(e) [o]ther disbursements or expenses determined by the court 18 to have been incurred or paid for the common benefit.” Id. § 874.010. 19 As California courts have explained, “[t]here is no ambiguity in the language of 20 section 874.040. It simply states that the trial court must apportion the costs incurred 21 in a partition action based upon either the parties’ interests in the property, or 22 equitable considerations.” *Lin v. Jeng*, 203 Cal. App. 4th 1008, 1025 (2012) (emphasis 23 added). Thus, while section 874.040 gives courts discretion to apportion costs based 24 upon equitable considerations, it also mandates that apportionment occur. Id. 25 “The costs of partition as apportioned by the court may be ordered paid in 26 whole or in part prior to judgment.” Code Civ. Proc. § 874.110. Thus, courts may 27 apportion partition costs before the entry of the final judgment on partition. “Any 28 costs that remain unpaid shall be included and specified in the judgment.” Id.

1 DISCUSSION

2 Plaintiffs ask the Court to apportion their attorney’s fees and costs incurred from
3 March 2019 through September 2024 for the partition of the 12757, 12759, and
4 12761 Loma Rica Drive property (“Property”), which is jointly owned by Plaintiffs and 5 Defendants. (Mot. at 13.) Plaintiffs claim \$247,263.25 in fees and \$4,115.12 in law 6 firm costs. (Id. at 17.) Plaintiffs ask that the Court allocate those costs in proportion to 7 the Parties’ respective ownership interest in the Property, i.e., 50% to Plaintiffs and 8 50% to Defendants, or as the Court may deem equitable. (Id.) 9 As discussed below, the Court finds the claimed fees and costs are for the 10 common benefit and are largely reasonable. See Code Civ Proc. § 874.010(a). Thus, 11 the Court will apportion the fees and costs according to the Parties’ interests in the 12 Property. 13 I. Plaintiffs’ Motion is Not Barred by the Court’s Prior Denial of Plaintiffs’ Fee 14 Request 15 As a preliminary matter, Defendants argue that Plaintiffs’ request for 16 apportionment of partition costs is barred under the “law of the case” doctrine as the 17 Court previously denied Plaintiffs’ request for fees following trial in April 2018. (Opp’n 18 Mot. (ECF No. 543) at 2–4.) The Court disagrees. “The law of the case doctrine 19 ordinarily precludes a court from reexamining an issue previously decided by the 20 same court or a higher court in the same case.” *S. Or. Barter Fair v. Jackson Cnty.*, 372 21 F.3d 1128, 1136 (9th Cir. 2004). Here, the prior request for fees was denied on the 22 basis that the request was untimely under Local Rule 293(a) because the request was 23 brought over a year after the Court issued a “final” Interlocutory Judgment (ECF No. 24 361) ordering the Property to be partitioned in kind. (See ECF No. 428;) see also E.D. 25 Cal. L.R. 293(a) (“Motions for awards of attorneys’ fees to prevailing parties pursuant to 26 statute shall be filed not later than twenty-eight (28) days after entry of final 27 judgment.”). However, the partition costs presented for allocation here are not 28 prevailing parties’ fees;

rather, they are the costs of implementing the Court's 1 Interlocutory Judgment, which inure to the benefit of all Parties. Indeed, the costs 2 Plaintiffs seek do not overlap with the costs sought in their prior motion, as the costs 3 presented here were incurred after the last fees motion. Further, the Ninth Circuit has 4 determined that the Interlocutory Judgment was not, in fact, a "final judgment," such 5 that Plaintiffs' prior request for fees was likely not untimely. (ECF 473 at 3.) Thus, the 6 Court's prior denial of fees does not affect the timeliness of this current request, as the 7 basis for that decision has been effectively overruled, and Plaintiffs seek to apportion 8 costs for the common benefit, not their own prevailing party fees. 9 Additionally, Plaintiffs seek clarification as to whether the Court's Partition 10 Order (ECF No. 529), which modified the Court's prior Interlocutory Judgment and 11 orders partition by sale under California Code of Civil Procedure section 872.820, can 12 "be considered a 'final judgment' of sale such that the time constraints imposed by 13 Local Rule 239(a) [sic] for a partition costs allocation motion apply." (Mot. at 1.) The 14 Court does not consider the Partition Order a final judgment for purposes of Local

15 Rule 293(a), as it contemplates numerous further steps that must be taken before the 16 Property can be sold and acknowledges that sale might not be possible if 17 environmental contamination on the Property ultimately proves too severe or costly to 18 remediate. (See ECF No. 529.) Thus, the Partition Order does not "end the litigation 19 on the merits and leave nothing for the court to do but execute the judgment." *Am. 20 Ironworks & Erectors, Inc. v. N. Am. Const. Corp.*, 248 F.3d 892, 897 (9th Cir. 2001) 21 (quoting *Catlin v. United States*, 324 U.S. 229, 233 (1945)). 22 Accordingly, Plaintiffs' present Motion is timely and is not precluded by any 23 prior order of this Court. 24 II. The Costs and Fees are for the Common Benefit 25 Plaintiffs argue the claimed fees and costs were incurred while defending 26 Plaintiffs' and Defendants' ownership interests and partition rights in the Property and 27 were thus incurred "for the common benefit." (Mot. at 13–14.) Specifically, Plaintiffs 28 explain that the Court held a bench trial on Plaintiffs' partition claim in April 2018. (*Id.* 1 at 6.) During trial, Defendants asserted that a partnership, not the Parties, owned the 2 Property. (*Id.* at 6.) The Court rejected that assertion, finding there was no evidence 3 the Property was owned by a partnership, and, after trial concluded, issued an 4 Interlocutory Judgment ordering the Property be partitioned in kind according to 5 Plaintiffs' and Defendants' respective fifty percent ownership interests. (*Id.* at 6–8.) 6 Defendants appealed that Interlocutory Judgment in March 2019, arguing the 7 judgment was inappropriate because they had been precluded from presenting 8 evidence the Property was owned by a partnership at trial. (*Id.* at 7–8, 13–14.) That 9 appeal was dismissed. (*Id.* at 8.) Defendants then moved to set aside the 10 Interlocutory Judgment, again raising the argument that a partnership, not the Parties, 11 owned the Property, and that they had been precluded from providing evidence of 12 that at trial. (*Id.* at 8.) The Court denied that motion on the basis that Defendants had 13 been provided ample opportunity to provide evidence and argument at trial that the 14 Property was owned by a partnership, but that the Court had not deemed that 15 evidence credible. (*Id.* at 8–9.) Defendants

subsequently moved for reconsideration 16 of that order, which the Court denied. (ECF Nos. 489, 497.) Thus, Plaintiffs argue that, 17 although Plaintiffs and Defendants hold title in the Property and have a right to 18 partition of the Property according to their property interests, “Defendants have 19 sought to defeat that title interest for the entirety of this case from inception until 20 present.” (Mot. at 9, 13–14.) 21 The Court finds the claimed attorney’s fees and costs are for the common 22 benefit. A review of the billing records provided by Plaintiffs’ counsel demonstrates 23 that the hours charged involve work on the appeal and motions mentioned above, as 24 well as communications with the partition referee appointed by the Court in this 25 matter, Charles R. Farrar. (See Billing Statements (ECF No. 538-2).) As such, the 26 billing records demonstrate Plaintiffs’ post-trial work from March 2019 through

27 September 2024 has been aimed at preserving both Plaintiffs’ and Defendants’

28 1 ownership interests in the Property as well as advancing partition of the Property. This 2 constitutes work for the common benefit. 3 Defendants protest that a good deal of Plaintiffs’ post-2019 work in this matter 4 cannot be considered for the “common benefit” because Plaintiffs have consistently 5 petitioned the partition referee and this Court to partition the Property by sale rather 6 than in kind. (Opp’n Mot. at 4.) Defendants argue that this work has been solely to 7 promote Plaintiffs’ interests, not the interests of all Parties. (Id.) 8 First, this argument fails to rebut Plaintiffs’ argument that at least some of the 9 fees and costs claimed were incurred defending both Plaintiffs’ and Defendants’ 10 interests in the Property, work which was for the common benefit. Second, that 11 Plaintiffs advocated for partition by sale rather than in kind during the partition 12 process does not indicate their work was not for the common benefit. As courts have 13 explained, “the ‘common benefit’ in a partition action is the proper distribution of the 14 ‘respective shares and interests in the said property by the ultimate judgment of the 15 court.’” *Orien v. Lutz*, 16 Cal. App. 5th 957, 967 (2017) (quoting *Capuccio v. Caire*, 16 215 Cal. 518, 528 (1932)). “This sometimes will require that controversies be litigated 17 to correctly determine those shares and interests, but this ultimately can be for the 18 common benefit as well.” *Id.* (internal citations and quotations omitted). “That fact 19 that a party resists the partition does not change this.” *Id.* 20 “[D]efendants are nonetheless protected from plaintiffs who bring unfounded 21 claims or otherwise drive up costs unnecessarily, just as plaintiffs are protected from 22 unscrupulous defendants.” *Id.* at 968. Courts may adjust the allocation of costs if, “for 23 example, fees are incurred for purposes that unduly exacerbate the dispute or do not 24 provide a common benefit to all parties.” *Id.* For instance, “a court may find that fees 25 incurred advocat[ing] a position of limited merit are not for the common benefit and 26 should be borne by the party pressing such spurious matters.” *Id.* (alteration in 27 original) (quotations omitted). However, the Court does not find that to be the case 28 here. When the Court appointed the partition referee to oversee the partition 1 process, the Court asked the partition referee to determine, as a first step, the most 2 equitable method of partition, whether by sale or in kind. (See ECF No. 529 at 2–3.) 3 The referee has proceeded to do just that by consulting with the Parties

and other 4 experts concerning the appropriate method of partition. (See *id.* at 3–6.) Plaintiffs 5 should not be faulted for advocating for partition by sale during this process, just as 6 Defendants cannot be faulted for advocating partition in kind, as this advocacy has 7 been essential to determining the proper method of partition here. 8 Thus, Plaintiffs’ claimed fees and costs are for the common benefit. 9 III. The Costs and Fees are Largely Reasonable 10 Plaintiffs also argue that the \$247,263.25 in attorney’s fees and \$4,115.12 in law 11 firm costs are reasonable. (Mot. at 15–16.) Plaintiffs’ counsel Peter Kleinbrodt and 12 Christian Kemos state that they performed a detailed review of their billing records 13 prior to filing the Motion, and removed any fees that did not relate to the partition 14 action. (*Id.* at 15.) Counsel also state they excluded fees not for the common benefit, 15 adjusted fees that were for the common benefit by a reduced hourly rate, and 16 excluded legal work that was performed but not charged for. (*Id.*) Finally, counsel 17 note that the hourly rates charged by Kleinbrodt and Kemos, \$450 and \$325 18 respectively, are substantially lower than what they customarily charge and lower than 19 the market rate for their services. (*Id.*) Counsel provide evidence of both their hours 20 worked and the reasonableness of their hours. (See Kleinbrodt Decl. (ECF No. 538-1) 21 (attesting to reasonableness of hourly rate); Billing Statements.) 22 Defendants argue the fees and costs claimed are not reasonable because many 23 of the billing entries are too vague to determine if they can be considered for the 24 common benefit. (Opp’n Mot. at 4–7.) The Court does not generally fault Plaintiffs’ 25 counsel for the lack of detail in those entries, as the Court recognizes a certain level of 26 abstraction is required to preserve attorney-client privilege. The Court also credits 27 counsel’s representation that they reviewed the billing entries in detail to exclude fees 28 not for the common benefit. However, the Court will impose a small 10% reduction to 1 counsel’s claimed fees to account for any vague entries that may not correspond to 2 fees for the common benefit and that were missed in counsel’s review. See *Orien*, 16 3 Cal. App. 5th at 968 (courts may adjust allocation of fees to the extent they do not 4 provide a common benefit to all parties or are not reasonable including by “setting 5 the fee amounts and determining the appropriate allocation”); see also *Gonzalez v. 6 City of Maywood*, 729 F.3d 1196, 1203 (9th Cir. 2013) (A district court can impose a 7 small reduction no greater than 10% based on its exercise of discretion and without a 8 more specific explanation). 9 Defendants also argue Plaintiffs claim fees and costs for work that was not for 10 the common benefit, such as work on the appeal, work advancing Plaintiffs’ position 11 with respect to the partition, and internal communications. (Opp’n Mot. at 6–8.) As 12 discussed above in Section II *supra*, the Court does not find these arguments 13 compelling. Plaintiffs have adequately demonstrated their work benefits the Parties’ 14 common good. 15 Thus, the Court will apportion \$222,536.93 (i.e., \$247,263.25 x .9) in attorney’s 16 fees and \$4,115.12 in law firm costs among the Parties. 17 IV. Pending Appeal 18 Finally, Defendants argue that they have appealed this Court’s Partition Order, 19 and that this “appeal raises significant issues, including the trial court’s alleged failure 20 to follow the Ninth Circuit’s mandate regarding Defendants’ right to a jury trial on the 21 partnership evidence,” resolution of which “will directly impact the

final outcome of 22 the partition action, including the propriety of any fee award.” (Opp’n Mot. at 8.) 23 Defendants argue that the Court should stay any ruling on Plaintiffs’ Motion pending 24 this appeal under Federal Rule of Civil Procedure 54. (Id.) 25 The Court disagrees. First, Rule 54(d) governs the timing for a prevailing party 26 to seek attorney’s fees after final judgment in a case. Plaintiffs here seek 27 apportionment of partition costs, not prevailing party attorney’s fees. In addition, as 28 discussed in Section I supra, the Court’s Partition Order was not a final judgment. 1 | Second, even assuming Rule 54 applied, Defendants have not made the required 2 | showing for a stay. “If an appeal on the merits of the case is taken, the court may rule on the claim for fees, may defer its ruling on the motion, or may deny the motion 4 | without prejudice, directing ... anew period for filing after the appeal has been 5 | resolved.” Fed. R. Civ. P. 54, Advisory Committee Note (1993). Courts consider four 6 | factors to determine whether to stay awarding attorney’s fees and costs pending 7 | appeal: (1) “whether the stay applicant has made a strong showing that he is likely to 8 || succeed on the merits;” (2) “whether the applicant will be irreparably injured absent a 9 | stay;” (3) “whether issuance of the stay will substantially injure the other parties 10 | interested in the proceeding;” and (4) “where the public interest lies.” *Hilton v. 11 | Braunskill*, 481 U.S. 770, 776 (1987). Defendants have failed to address any of these 12 | factors. 13 Accordingly, the Court will not stay its ruling on Plaintiffs’ Motion.

14 CONCLUSION

15 In accordance with the above, it is hereby ORDERED that Plaintiffs’ Motion for 16 | Allocation of Statutory Partition Costs (ECF No. 538) is GRANTED. The Court orders 17 | that the \$222,536.93 in attorney’s fees and \$4,115.12 in law firm costs incurred by 18 | Plaintiffs shall be apportioned among the Parties according to their ownership 19 || interests in the Property, i.e., 50% to Plaintiffs and 50% to Defendants. 20 IT IS SO ORDERED. 22 | Dated: _April 1, 2025
Donel J CDbnettr Hon. Daniel alabretta

23 UNITED STATES DISTRICT JUDGE

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