

1. JOHNSON v. McCALL, 21CV0173

(A) Referee's Motion to Approve Accounting, Direct Payment of Proceeds, and Discharge Referee

(B) Plaintiff's Motion for Attorney Fees and Disposition of Remaining Sale Proceeds

Referee's Motion to Approve Accounting, Direct Payment of Proceeds, and Discharge Referee

Before the court is the Referee's motion to approve accounting, direct payment of proceeds, and discharge referee. Plaintiff and defendant each filed an opposition or response to the motion.

1. Referee's Fees and Costs

Code of Civil Procedure section 1023 provides, "[t]he fees of referees are such reasonable sum as the court may fix for the time spent in the business of the reference; but the parties may agree, in writing, upon any other rate of compensation, and thereupon such rates shall be allowed." (Code Civ. Proc., § 1023.)

Here, the Referee claims that her billable rate for this matter is \$400.00 per hour. The Referee further claims that: (1) between February 17, 2023 (the date of the Referee's appointment as partition referee) and April 29, 2024 (the date of the Referee's instant motion), she rendered 498.8 hours of legal services for a total of \$199,520.00; (2) between April 29, 2024 (the date of the Referee's instant motion), and May 17, 2024 (the date of the Referee's reply brief), she rendered 36.1 hours of legal services for a total of \$14,400.00; and (3) she anticipates she will require approximately five hours of additional time following the filing of her reply brief for a total of \$2,000.00. Added together, the Referee requests \$215,920.00 in attorney fees.

Next, the Referee claims she required paralegal services at an hourly rate of \$175.00. Specifically, the Referee claims she required: (1) between February 17, 2023, and April 29, 2024, 29.7 hours of paralegal time for a total of \$5,197.50; and (2) between

April 29, 2024, and May 17, 2024, 3.1 hours of additional paralegal time for a total of \$542.50. Added together, the Referee requests \$5,740.00 in paralegal fees.

Lastly, the Referee claims she has incurred a total of \$4,553.77 in expenses, as follows: (1) \$1,174.81 in filing fees¹; (2) \$495.00 in legal research software; (3) \$40.00 in certified copy fees; (4) \$2,443.96 for publication of the Notice of Sale; and (5) \$400.00 for CPA consulting services.

Plaintiff argues that she should not bear any of the referee's fees and costs because, as she claims, the referee's fees would not have been incurred but for defendant's refusal to cooperate with the sale of the property. (Opp. at 2:2–4.) However, this argument concerns the apportionment, not the validity, of the Referee's fees and costs. The court addresses this argument below under plaintiff's motion for attorney fees and costs.

Alternatively, plaintiff argues that: (1) the Referee's claimed paralegal fees should be disallowed because "[n]othing in the [court's February 2, 2023,] Order^[2] directed or allowed Referee Fox to charge for paralegal fees or hire an attorney or paralegal to assist"³ (Opp. at 2:12–3:16); (2) plaintiff should not bear any fees related to defendant's 1031 exchange (\$25,280.00) (Opp. at 3:25–4:20); and (3) the referee's claimed fees should be reduced for "block billing." (Opp. at 4:21–25.)

¹ Plaintiff's motion claims she incurred \$1,013.96 in filing fees. Plaintiff's reply brief indicates that she incurred an additional \$160.85 in filing fees for said reply. Together, the requested reimbursement for filing fees amounts to \$1,174.81.

² The court's minute order dated February 2, 2023, states in relevant part, "[t]he Referee is authorized to enter into contracts for the services and expenses of real estate brokers, surveyors, appraisers, and others necessary to effect the sale of the Property. (Code Civ. Proc., sec. 873.110.) The Referee is not personally liable on contracts made, or for expenses incurred, except as such liability is expressly assumed by the Referee in writing. (Code Civ. Proc., sec. 873.160.) The Referee is appointed without bond. The Referee's reasonable fees and expenses shall be paid from the proceeds of sale."

As for the paralegal fees, the Referee argues that: (1) under Code of Civil Procedure section 874.010,⁴ the costs of partition include “[t]he compensation provided by contract for services of a surveyor or other person employed by the referee in the action” (Code Civ. Proc., § 874.010, subd. (c)) (Reply at 2:6–14); and (2) the Referee sought paralegal assistance in an effort to reduce the costs to the parties. (Reply at 2:21–22.)

The rule is now fairly well settled that parties may recover as part of an attorney fee award reasonable amounts separately billed by law clerks, paralegals and support staff. (See *Guinn v. Dotson* (1994) 23 Cal.App.4th 262, 269; *Bussey v. Affleck* (1990) 225 Cal.App.3d 1162, 1165–1166.) As noted in *Guinn*, at page 269, “[a]n award of attorney fees which does not compensate for paralegal service time would not fully compensate the attorney.” The rationale for an award of paralegal fees is that paralegals provide attorneys necessary support services. (See *Salton Bay Marina, Inc. v. Imperial Irrigation Dist.* (1985) 172 Cal.App.3d 914, 951 [“We think, however, necessary support services for attorneys, e.g., secretarial and paralegal services, are includable within an award of attorney fees”].) Because the usage of paralegals reduces the costs of litigation, the court exercises its discretion and will award the requested paralegal fees.

Next, plaintiff claims that the referee’s billing entries on several dates refer to tasks related to defendant’s 1031 exchange. (Pltf.’s Opp. at 3:25–4:11, citing Michael Johnson Decl., Ex. 1 at pp. 6, 7.) Plaintiff also claims that the same billing entries make reference to tasks other than 1031-related activities, but it is impossible to discern how much time

⁴ Code of Civil Procedure section 874.010 provides: “The costs of partition include: [¶] (a) Reasonable attorney’s fees incurred or paid by a party for the common benefit. [¶] (b) The fee and expenses of the referee. [¶] (c) The compensation provided by contract for services of a surveyor or other person employed by the referee in the action. [¶] (d) The reasonable costs of a title report procured pursuant to Section 872.220 with interest thereon at the legal rate from the time of payment or, if paid before commencement of the action, from the time of commencement of the action. [¶] (e) Other disbursements or expenses determined by the court to have been incurred or paid for the common benefit.”

was spent with regard to each type of activity because the amount of time is not segregated. (Pltf.'s Opp. at 4:21–23.)

The court agrees that the Referee's fees concerning defendant's 1031 exchange should be disallowed. The court also agrees that the Referee's billing entries use "block billing." While block billing is generally disfavored, the court notes that the Referee's billing entries are relatively descriptive and provide a fair amount of information. If plaintiff has a particular task that she objects to, she may bring it to the court's attention. Nonetheless, the court will need the Referee to identify how much time she spent on defendant's 1031 exchange during the period of March 11 through March 29, 2024.

Defendant also submitted a response to the Referee's motion, which includes a bullet point list of comments regarding the Referee's motion. Defendant provides virtually no legal authority for her contentions. As relevant here, defendant claims that: (1) the Referee's charge of \$495.00 for legal research software is inappropriate (Def.'s Resp. at 2:23–25); (2) interacting with financial institutions to coordinate final distributions to the parties is the job of the title company, not the Referee (Def.'s Resp. at 2:27–28); and (3) the Referee's estimate of the need for ten additional hours following the filing of the instant motion is contradicted by the estimated additional charge of \$3,200, which would be eight hours at the Referee's hourly rate of \$400.00. (Def.'s Resp. at 3:14–15, citing Fox Decl., ¶ 8.)

As it relates to the legal research software, the Referee explains that she is a transactional attorney that has limited experience with the preparation and submission of court filings. Accordingly, and to carry out her duties as partition referee, the Referee purchased a monthly subscription service for "Trellis," which offers a searchable database of court filings in other matters to better understand the procedure, process, and form of documents that she would be required to file with the court. (Reply at 6:7–12.) The court exercises its discretion to disallow the requested expense of \$495.00 for legal research software, reasoning that it is akin to "overhead" fees.

Defendant does not provide any support for his statement that “interacting with financial institutions to coordinate final distributions to the Parties is the job of the title company,” not the Referee. The court makes no finding in this regard.

Lastly, the court finds that defendant’s argument regarding the Referee’s estimated ten additional hours is moot. The Referee’s reply brief indicates that she actually incurred 36.1 hours of billable time following the filing of the instant motion.

As previously discussed, the court needs a declaration from the Referee identifying how much time she spent on defendant’s 1031 exchange during the period of March 11 through March 29, 2024. The Referee’s declaration shall be submitted by June 7, 2024. Otherwise, the Referee’s requested fees and costs are granted as set forth above.

2. Remaining Proceeds

At the close of escrow, the balance of the sale proceeds in the amount of \$2,927,553.20 was deposited to a trust account maintained by the Referee’s law firm. On May 10, 2024, the court granted a stipulation and order for additional disbursement to parties from sale proceeds. Pursuant to this stipulation, an additional \$1 million of the proceeds of the sale was distributed to each plaintiff and defendant from the Referee’s trust account. Thus, the current remaining proceeds of sale in the Referee’s trust account are \$927,553.20 (\$2,927,553.20 minus \$2,000,000.00).

Following the disbursement of the Referee’s fees and costs, the Referee requests that \$223,110.00 be disbursed to defendant to account for the additional state tax amounts withheld on plaintiff’s behalf.⁵ The Referee requests that the remaining balance in the

⁵ The Referee indicates that at the close of Escrow, the following amounts were withheld from the proceeds of sale to satisfy the parties’ state tax obligations to the California Franchise Tax Board: (1) \$256,410.00 on behalf of plaintiff; and (2) \$33,300.00 on behalf of defendant. The Referee further explains the CPA advised her that, because each party’s respective state tax withholding obligations were not deducted from their distributions, but instead withheld from the remaining proceeds of sale after such distributions were made, plaintiff received \$223,110.00 more than defendant from the proceeds of the sale. (Mtn. at 6:19–23.) Neither plaintiff nor defendant appear to dispute this statement.

Referee's trust account after deducting the foregoing payments be divided equally between the parties in accordance with their former ownership interests in and to the Property (i.e., 50 percent to plaintiff and 50 percent to defendant).

The Referee further recommends that the court authorize her to instruct the escrow holder to divide any funds currently held in escrow equally between the parties in proportion to their former ownership interests in and to the Property (i.e., 50 percent to plaintiff and 50 percent to defendant) upon the escrow holder's receipt of an instruction from the City for the release of such funds. (Mtn. at 7:9–14.)

Absent objection, the Referee's motion regarding the payment of proceeds is granted as requested.

Plaintiff's Motion for Attorney Fees and Disposition of Remaining Sale Proceeds

Plaintiff requests that \$438,102.26 of the remaining proceeds that might otherwise be released to defendant as her share of the proceeds instead be released to plaintiff as reimbursement for her attorney fees and costs in this matter. Plaintiff claims she is entitled to these fees and costs under Code of Civil Procedure section 874.040⁶ and as the prevailing party under Code of Civil Procedure section 1032, subdivision (a)(4).⁷

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⁶ Code of Civil Procedure section 874.040 provides, "[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.

⁷ Code of Civil Procedure section 1032, subdivision (a)(4) provides: " 'Prevailing party' " includes the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant. If any party recovers other than monetary relief and in situations other than as specified, the 'prevailing party' shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not and, if allowed, may apportion costs between the parties on the same or adverse sides pursuant to rules adopted under Section 1034."

The following is a breakdown of the \$438,102.26 that plaintiff requests:

- Plaintiff's attorney fees in this action: \$86,712.50
- Plaintiff's attorney fees in the 2020 action⁸: \$20,562.50
- Costs in the instant action: \$329,944.86
 - Referee fees: \$207,917.50⁹
 - Referee costs: \$4,392.92
 - Mark Salmon (broker): \$115,500.00
 - Court fees: \$976.50
 - Litigation guarantee: \$550.00
 - Service/publication fee: \$487.94
 - Recorder fees: \$120.00
- Costs in the 2020 action: \$882.40
 - Court Fees: \$455.00
 - Service/publication fee: \$427.40

Total: \$438,102.26

In support of her request, plaintiff argues that: (1) the broker's fees (\$115,500.00) were unnecessary where plaintiff had already identified and spoken with the eventual buyer of the Property years ago (Mtn. at 3:19–23); (2) in the instant action, plaintiff incurred \$74,987.50 in attorney fees and \$2,396.52 in costs (through April 2024)¹⁰ (Mtn. at 3:23–26); and (3) plaintiff incurred \$20,562.50 in attorney fees and \$882.40 in costs for the benefit of both her and defendant in the 2020 action, *Matter of the Real Property*

⁸ The 2020 action refers to the action entitled, *Matter of the Real Property Located at 2375 Lake Tahoe Boulevard and 940 Sunset Drive, South Lake Tahoe, California* (El Dorado County Superior Court case number SP20200034). In that case, plaintiff sought to determine the identity of issue for her father, Knox Van Dyke Johnson.

⁹ Plaintiff indicates that the Referee informed plaintiff she has expended \$204,717.50 in legal fees and anticipates an additional eight hours (\$3,200.00) to complete this matter.

¹⁰ Plaintiff alleges that the total attorney fees incurred is \$86,712.50. (See Mtn. at 2:18.)

Located at 2375 Lake Tahoe Boulevard and 940 Sunset Drive, South Lake Tahoe, California
(El Dorado County Superior Court case number SP20200034). (Mtn. at 3:27–4:10.)

Meanwhile, defendant argues that: (1) plaintiff chose to file this lawsuit instead of “cooperating” with defendant to sell the Property (Opp. at 5:3–7); (2) plaintiff has not shown that the 2020 action was necessary to establish the biological issue of Knox Johnson (Opp. at 5:12–16); (3) even if the 2020 action were necessary, the court’s website indicates that hardly any activity was necessary to conclude the case (i.e., the case was opened on September 4, 2020; there was one hearing on November 4, 2020; and then the case was closed) (Opp. at 5:17–21); and (4) ordering defendant to pay plaintiff’s fees and the referee’s fees on top of her own attorney fees would be oppressive and unfair. (Opp. at 5:24–28.)

Code of Civil Procedure section 874.040 controls the award of costs in a partition action. Under that section, “the court shall apportion the costs of partition among the parties in proportion to their interests” in the subject property “or make such other apportionment as may be equitable.” (§ 874.040.) Under section 874.010, costs of partition include “[r]easonable attorney’s fees incurred or paid by a party for the common benefit.” (§ 874.010, subd. (a).)

“[T]he ‘common benefit’ in a partition action is the proper distribution of the ‘“respective shares and interests in [the] property by the ultimate judgment of the court.”’ [Citation.] This sometimes will require that ‘“controversies”’ be ‘“litigated”’ to correctly determine those shares and interests [citation], but this ultimately can be for the common benefit as well.” (*Orien v. Lutz* (2017) 16 Cal.App.5th 957, 967 (*Orien*).) Section 874.040 gives the trial court the equitable power “to adjust the allocation of costs if, for example, fees are incurred for purposes that unduly exacerbate the dispute....” (*Orien, supra*, at p. 968.)

Beginning with the broker’s fees, plaintiff argues that the broker fees were unnecessary where plaintiff had already identified and spoken with the eventual buyer of

the Property years ago. (Mtn. at 3:19–23.) However, the court does not find plaintiff's argument persuasive. Following an alternative dispute resolution conference held on March 28, 2023, the parties agreed to have a real estate agent market the Property to other buyers than the eventual buyer. (See Fox Decl., filed Apr. 4, 2023, in support of Referee's Petn. for Instructions, Ex. 5.) Thus, it is not accurate to contend that there was only one potential buyer when the parties agreed to market and actively seek other potential buyers, without the knowledge or consent of the Referee. The court denies plaintiff's request to attribute all of the real estate broker's fees to defendant.

The court also denies plaintiff's request to attribute any of the fees and costs from the 2020 action to defendant. Plaintiff initiated the 2020 action to determine the issue of her father, Knox Van Dyke Johnson, and defendant consented to plaintiff's petition. Plaintiff has not established that filing the 2020 action was the only way in which to determine the issue of her father. Therefore, the court declines to attribute any of the fees or costs from the 2020 action to defendant.

As for the fees and costs related to the instant action, the court notes that defendant had a right to refuse to sell the property as plaintiff requested and plaintiff had a right to bring a partition action. The court does not find it appropriate to apportion all of the Referee's fees and costs to defendant. Further, in order to apportion any of the fees and costs to defendant, the court needs plaintiff to identify exactly which fees and costs should be attributed to defendant and explain how defendant's tactics caused unnecessary litigation. Plaintiff shall have until June 3, 2024, to file any supplemental declaration or briefing, and defendant shall have until June 7, 2024, to file any supplemental declaration or briefing in response.

TENTATIVE RULING # 1: MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, JUNE 14, 2024. THE REFEREE SHALL SUBMIT A DECLARATION BY JUNE 7, 2024, REGARDING HOW MUCH TIME SHE SPENT DURING THE PERIOD OF MARCH 11 AND MARCH 29, 2024, ON

DEFENDANT'S 1031 EXCHANGE. PLAINTIFF SHALL HAVE UNTIL JUNE 3, 2024, TO FILE ANY SUPPLEMENTAL DECLARATION OR BRIEFING REGARDING HER REQUEST FOR ATTORNEY FEES AND COSTS; AND DEFENDANT SHALL HAVE UNTIL JUNE 7, 2024, TO FILE ANY SUPPLEMENTAL DECLARATION OR BRIEFING IN RESPONSE.

2. LOPEZ v. MARTINEZ, 23CV0580**Order of Examination Hearing**

On April 17, 2024, the court ordered the judgment debtor to appear for examination. To date, however, there is no proof of service showing the judgment debtor was personally served with the order at least 10 days prior to this hearing.

TENTATIVE RULING # 2: THE PERSONAL APPEARANCE OF THE DEBTOR IS REQUIRED, PROVIDED PROOF OF SERVICE OF THE ORDER TO APPEAR FOR EXAMINATION IS FILED PRIOR TO THE HEARING SHOWING THAT PERSONAL SERVICE ON THE DEBTOR WAS EFFECTED NO LATER THAN TEN (10) DAYS PRIOR TO THE HEARING DATE. (CODE CIV. PROC., § 708.110, SUBD. (d).) IF THE APPROPRIATE PROOF OF SERVICE IS NOT FILED, NO EXAMINATION WILL TAKE PLACE.

3. IMPERIUM BLUE TAHOE HOLDINGS v. TAHOE CHATEAU LAND HOLDINGS, 22CV1204

Demurrer to Third Amended Complaint

TENTATIVE RULING # 3: DUE TO THE UNAVAILABILITY OF THE JUDICIAL OFFICER ASSIGNED FOR ALL PURPOSES, MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, MAY 31, 2024, IN DEPARTMENT FOUR. THE COURT APOLOGIZES FOR ANY INCONVENIENCE TO THE PARTIES.

4. HINES, AS TRUSTEE OF THE SEP HINES REVOCABLE LIVING TRUST v. JIANG, 23CV1101**Motion to Be Relieved as Counsel**

California Rules of Court, Rule 3.1362 requires, amongst other things, that: (1) a notice of motion and motion to be relieved as counsel under Code of Civil Procedure section 284, subdivision (2) must be made on the *Notice of Motion and Motion to Be Relieved as Counsel—Civil* (form MC-051); and (2) the motion must be accompanied by a declaration on the *Declaration in Support of Attorney’s Motion to Be Relieved as Counsel—Civil* (form MC-052). Here, counsel submitted incomplete forms. To date, the second page of form MC-051 and the first page of form MC-052 are not in the court’s file.

Additionally, the notice of motion and motion, the declaration, and the proposed order must be served on the client and on all other parties who have appeared in the case. (CRC 3.1362, subd. (d).) Where, as here, the notice is served on the client by mail under Code of Civil Procedure section 1013, it must be accompanied by a declaration stating facts showing that either: (A) the service address is the current residence or business address of the client; or (B) the service address is the last known residence or business address of the client and the attorney has been unable to locate a more current address after making reasonable efforts to do so within 30 days before the filing of the motion to be relieved. (CRC 3.1362, subd. (d)(1)(A)–(B).) Counsel’s declaration does not satisfy this requirement. Rather, counsel’s declaration states in relevant part, “I have visited with Plaintiff, Sep Hines and her husband at her address on 1925 Marconi Way, South Lake Tahoe, California 96150 and have been invited to stay over as a guest just recently.” (Weinberger Decl., ¶ 5.)

The matter is continued to June 28, 2024, for counsel to submit the required documents and information.

TENTATIVE RULING # 4: MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, JUNE 28, 2024, IN DEPARTMENT FOUR.