

VIVINT SOLAR DEVELOPER, LLC v CARTWRIGHT

24CV47409

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, OR ALTERNATIVELY, SUMMARY ADJUDICATION

Before the Court is a motion for summary adjudication filed by Vivint Solar Developer, LLC ("Plaintiff") against Shane Cartwright ("Defendant.")

The Motion does not comply with Local Rule 3.3.7. All matters noticed for the Law & Motion calendar shall include the following language in the notice:

3 3 7 Tentative Rulings (Repealed Eff 7/1/06, As amended 1/1/18) All parties appearing on the Law and Motion calendar shall utilize the tentative ruling system. Tentative Rulings are available by 2:00 p.m. on the court day preceding the scheduled hearing and can be accessed either through the court's website or by telephoning 209-754-6285. The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the Court no later than 4:00 p.m. on the court day preceding the hearing including advising that all other sides have been notified of the intention to appear by calling 209-754-6285. Where appearance has been requested or invited by the Court, all argument and evidence is limited pursuant to Local Rule 3 3. All matters noticed for the Law & Motion calendar shall include the following language in the notice:

Pursuant to Local Rule 3 3 7, the Court will make a tentative ruling on the merits of this matter by 2:00 p.m. the court day before the hearing. The complete text of the tentative ruling may be accessed on the Court's website or by calling 209-754-6285 and listening to the recorded tentative ruling. If you do not call all other parties and the Court by 4:00 p.m. the court day preceding the hearing, no hearing will be held and the tentative ruling shall become the ruling of the court [emphasis in original.]

However, in the interests of justice and in consideration of the effort put forth by the parties in proposing and opposing the instant motion, the Court opts to set aside the transgression in failing to follow the local rules and rule on the merits of the Motion.

I. Factual Background

On or about October 21, 2015, Defendant executed a Residential Solar Power Purchase Agreement (“Contract”) pursuant to which he promised to purchase from Plaintiff all energy produced by a certain photovoltaic solar system (“Solar System.”) (UMF 1.) The Solar System was installed on real property known as 4348 Messing Rd., Valley Springs, CA 95252 (“Property.”) (*Ibid.*) The parties agree that the Solar System was installed in November 2015 but disagree about whether it was “fully operational” or generating energy. (UMF 2; Declaration of Shane Cartwright (“Cartwright Decl.”) ¶ 13, Ex. A.)

Pursuant to the Contract, Plaintiff would design, install, retain ownership of, maintain, and monitor the Solar System for the term of the Contract. (UMF 3.) Plaintiff alleges that on April 07, 2023, it issued a “Deactivation Notice” to Defendant informing him that he was 105 days delinquent on the Contract and that Plaintiff would be deactivating the Solar System and pursuing remedies. However, Defendant disputes this, stating that he never received such notice either personally or by mail and had not lived at the Property since 2017. (UMF 4; Cartwright Decl. ¶ 5.)

The parties dispute whether Defendant defaulted on the Contract, whether Plaintiff performed all terms of the Contract, and the potential amounts due. (UMFs 5-8; Cartwright Decl. ¶¶ 6-9.)

II. Legal Standard

Summary judgment or adjudication is proper when there are no triable issues of material fact, and the moving party is entitled to a judgment as a matter of law. (Code Civ. Proc., § 437c(c).)

A plaintiff may move for summary judgment when the plaintiff contends there is no defense to the cause of action. (Code Civ. Proc., § 437c, subd. (a).) A plaintiff meets the burden of showing there is no defense by proving each element of the cause of action.

(Code Civ. Proc., § 437c, subd. (p)(1).) A plaintiff moving for summary judgment is not required to disprove any defense asserted by the defendant in addition to proving each element of the plaintiff's own cause of action. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853.) If the plaintiff meets its burden, then the burden shifts to the defendant to show the existence of a triable issue of material fact. (*Ibid.*) The moving party bears the burden of persuasion that there is no triable issue of material fact and that she is entitled to adjudication as a matter of law. (*Id.* at 850.)

III. Legal Analysis

The essential elements for a claim of breach of contract include proof of: (1) the contract; (2) plaintiff's performance of the contract or excuse for nonperformance; (3) defendant's breach; and (4) resulting damages. (*Otworth v. So. Pacific Transportation Co.* (1985) 166 Cal.App.3d 452, 458.)

There is no dispute that the parties entered into a contract. However, there are significant disputes of material fact regarding Plaintiff's performance of the contract and Defendant's breach. Defendant avers, and presents evidence, that the Solar System was not operative for several months after it was installed. (UMF 2; Cartwright Decl. ¶ 13, Ex. A.) Defendant also avers that Plaintiffs had an obligation under the contract to maintain and monitor the Solar System appropriately but failed to do so, resulting in excessive energy use and bills. (*Id.* ¶ 7.)

"Generally, a party's failure to perform a condition precedent will preclude an action for breach of contract." (*Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1192.) Here, there remain significant issues of material fact regarding whether Plaintiffs performed their obligations under the Contract, thereby alleging a defense to the claims that Defendant breached the Contract.

Accordingly, Plaintiff's motion for summary judgment/adjudication is **DENIED**.

The clerk shall provide notice of this ruling to the parties forthwith. No further formal Order in compliance with Rule of Court 3.1312 in conformity with this Ruling is required.

PURDY, et al v MERRICK

24CV47781

PLAINTIFFS' MOTION FOR JUDGMENT ON PARTITION (AND VARIOUS RELATED ORDERS)

This case involves a complaint to partition real property located at 1439 Calaveritas Road, San Andreas, CA 95249 ("Property") brought by Kristie Purdy ("Purdy") and Steven Savickas ("Savickas") (collectively "Plaintiffs") against Robert Merrick ("Defendant").

Now before the Court is Plaintiffs' amended motion for judgment on partition.

I. Background

On August 14, 2023, the Court ordered Plaintiffs to receive a one-half interest in the Property. (Declaration of Kristie Purdy ("Purdy Decl.") ¶ 1, Ex A.) The deed quitclaiming the one-half interest was recorded on August 16, 2023. (*Id.* Ex. B.) Plaintiffs are tenants in common with Defendant with Plaintiffs each owning an undivided one-quarter interest, and Defendant owning an undivided one-half interest in the Property. (*Id.* ¶ 3.)

On April 27, 2024, Plaintiffs and Defendant all signed an agreement in which Defendant agreed to pay the following: 1) Legal fees of \$58,918.74; 2) Mortgage reinstatement of \$40,915.27; 3) Removal of tenants of \$5,365.00; and 4) Property cleanup of \$8,898.66. (Purdy Decl. ¶ 4, Ex. C.) On May 18, 2024, the Plaintiffs and Defendant signed an addendum in which Defendant agreed to pay the following additional expenses from his share of the Property sale proceeds: 1) Mortgage of \$385.65; 2) Property expenses of \$13,868.46; and; 3) Tenant removal of \$303.00. (*Id.* ¶ 6., Ex. D.) (for a total of \$114,907.67.)

In or about July 2024, Plaintiffs lost contact with Defendant. (Purdy Decl. ¶ 8.) Since then, Plaintiffs have incurred additional Property-related expenses totaling \$36,045.05. (*Id.* ¶ 9, Ex. E.)

Plaintiffs filed their Complaint for Partition on December 17, 2024. On April 5, 2024, the Court granted Plaintiffs' motion for service by publication. Plaintiffs completed the process of service by publication on or about May 15, 2025. (Declaration of Kristie Purdy Re: Service, ¶¶ 1-4.)

The Court entered default against Defendant on July 18, 2025.

II. Legal Standard and Discussion

A co-owner of real or personal property may bring an action for partition. (Code Civ. Proc. § 872.210.) “ ‘Partition is a remedy much favored by the law.’” (*LEG Investments v. Boxler* (2010) 183 Cal.App.4th 484, 493 [citation omitted].) Partition not only allows parties to avoid the inconvenience of sharing joint possession of land, but also avoids “ ‘unreasonable restraints on the use and enjoyment of property.’ [citation]” (*Ibid.*)

Civil Code §872.210 provides, in pertinent part:

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.

“A co-owner of property has an absolute right to partition unless barred by a valid waiver.” (*LEG Investments*, supra 183 Cal.App.4th at 493, citing Code Civ. Proc. § 872.710(b).)

In the instant case, it is undisputed that the parties took title to the subject property as tenants in common when Defendant quitclaimed a one-half interest in the Property to Plaintiffs. (Purdy Decl. ¶ 1; Ex. A.) As such, either party has an absolute right to partition. There is no argument that either party waived their right to partition and Defendant has not appeared in Court to make this argument. Indeed, Defendant has not filed any opposition to the Plaintiffs’ motion.

If the court finds that the plaintiff is entitled to partition, it must make an interlocutory judgment that determines the interests in the property and orders partition of the property. (*LEG Investments*, supra 183 Cal. App.4th at 498.) “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.” (Code Civ. Proc. § 872.810.) In cases of partition by sale, 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...[or] (b) the court determines that, under the circumstances, sale and division of the proceeds would be more equitable than division of the property. For the purpose of making the determination, the court may appoint a referee and take into account his report.” (Code Civ. Proc. § 872.820.)

Plaintiffs have provided uncontroverted evidence that Defendant contractually agreed to pay a total of \$129,464.78 in costs and expenses related to the Property. (Purdy Decl. ¶¶ 4-7, Exs. C and D.) Since losing contact with Defendant, Plaintiffs have incurred an additional \$36,045.05 in Property-related fees and expenses. (*Id.*, ¶¶ 9-10.)

The Court finds that the owners of the Property located at 1439 Calaveritas Road, San Andreas, CA 95249, as tenants in common, are Kristie Purdy (1/4 interest), Steven Savickas (1/4 interest), and Robert Merrick (1/2 interest.) The Court orders that Plaintiffs are entitled to partition of the Property pursuant to Code of Civil Procedure § 872.720(a). The Property shall be partitioned by sale, as partition in kind would be inequitable or impractical.

The Court orders that the Plaintiffs to submit a proposed Interlocutory Judgment of Partition consistent with this order and Code of Civil Procedure § 872.720. The proposed Interlocutory Judgment must specify the manner of partition and sale, including the realtor Plaintiffs intend to use and that realtor’s qualifications to fairly and adequately represent the interests of all parties. The Interlocutory Judgment shall be filed and served no later than August 31, 2025.

Unless modified by subsequent order of this Court, the proceeds of the sale of the Property shall be applied as follows: 1) to pay the expenses of the sale; 2) payment of any liens on the property; (3) payment of the \$129,464.78 contractually owed from Defendant to Plaintiffs; and 4) payment of the additional \$36,045.05 equitably owed from Defendant to Plaintiffs. Any remaining net amount from the sale is to apportioned on the 1/4, 1/4, and 1/2 basis detailed above. The Court reserves jurisdiction over the sale confirmation, distribution of proceeds, attorney’s fees, referee costs, and any offsets or credits between the parties.

For the foregoing reasons, Plaintiffs’ motion for partition is **GRANTED**.

The clerk shall provide notice of this ruling to the parties forthwith. Plaintiffs to submit a formal Order in compliance with Rule of Court 3.1312 in conformity with this Ruling.

**RINAURO v STATE OF CALIFORNIA –
EMPLOYMENT DEVELOPMENT DEPARTMENT**

24CV47789

DEFENDANT’S DEMURRER

The demurrer does not comply with Local Rule 3.3.7. All matters noticed for the Law & Motion calendar shall include the following language in the notice:

3.3.7 Tentative Rulings (Repealed Eff 7/1/06, As amended 1/1/18) All parties appearing on the Law and Motion calendar shall utilize the tentative ruling system. Tentative Rulings are available by 2:00 p.m. on the court day preceding the scheduled hearing and can be accessed either through the court's website or by telephoning 209-754-6285. The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the Court no later than 4:00 p.m. on the court day preceding the hearing including advising that all other sides have been notified of the intention to appear by calling 209-754-6285. Where appearance has been requested or invited by the Court, all argument and evidence is limited pursuant to Local Rule 3.3. All matters noticed for the Law & Motion calendar shall include the following language in the notice:

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For the foregoing reasons, Defendant’s demurrer is **OVERRULED**, without prejudice to refile in compliance with the Local Rules.

The clerk shall provide notice of this ruling to the parties forthwith. No further formal Order is required.

