

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

Department 2, Honorable Drew C. Takaichi, Presiding
Audrey Nakamoto, Courtroom Clerk

191 North First Street, San Jose, CA 95113
Telephone 408.882-2120

To contest the ruling, call (408) 808-6856 before 4:00 P.M.

PROBATE LAW AND MOTION TENTATIVE RULINGS

DATE: July 25, 2024

TIME: 10:00 A.M.

*****NOTICE*****

**APPEARANCES IN DEPT. 2 MAY BE IN PERSON OR
REMOTE THROUGH MICROSOFT TEAMS**

PLEASE GO TO:

**[https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.
shtml](https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml) to find the appropriate link.**

**State and local Court Rules prohibit recording of court proceedings without
a Court order. This prohibition applies while on Microsoft Teams.**

Prevailing party shall prepare the order by e-file, unless stated otherwise below

**The court does not provide official court reporters for civil/probate law and motion
hearings. See court website for policy and forms for court reporters at hearing**

TROUBLESHOOTING TENTATIVE RULINGS

If do not see this week's tentative rulings, they have either not yet been posted or
your web browser cache (temporary internet files) is accessing a prior week's rulings.
"REFRESH" or "QUIT" your browser and reopen it, or adjust your internet settings to
see only the current version of the web page. Your browser will otherwise access old
information from old cookies even after the current week's rulings have been posted.

LINE #	CASE #	CASE TITLE	RULING
LINE 1	22PR193233	<i>The Estate of Betty Wang</i>	Click or scroll to line 1 for tentative ruling.
LINE 2			
LINE 3			
LINE 4			
LINE 5			
LINE 6			
LINE 7			

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

Department 2, Honorable Drew C. Takaichi, Presiding
Audrey Nakamoto, Courtroom Clerk

191 North First Street, San Jose, CA 95113
Telephone 408.882-2120

To contest the ruling, call (408) 808-6856 before 4:00 P.M.

PROBATE LAW AND MOTION TENTATIVE RULINGS

LINE 8			
LINE 9			
LINE 10			
LINE 11			
LINE 12			
LINE 13			
LINE 14			
LINE 15			
LINE 16			
LINE 17			
LINE 18			
LINE 19			
LINE 20			
LINE 21			
LINE 22			
LINE 23			
LINE 24			
LINE 25			
LINE 26			
LINE 27			
LINE 28			
LINE 29			
LINE 30			

Calendar line 1

Case Name: *The Estate of Betty Wang*

Case No.: 22PR193233

Hearing date, time, and department: July 25, 2024 at 10:00 a.m. in Department 2

INTRODUCTION

On September 6, 2022, Petitioner Jennifer Gee-Huei Wang (“Jennifer”)¹ initiated this case by filing a petition for letters of administration for the estate of her sister, Decedent Betty Wang (“Betty” or “Decedent”). Decedent’s husband, Respondent Vinod Mathew (“Vinod”), opposed the petition. Ultimately, letters of administration were issued to Vinod.

On April 4, 2023, Jennifer filed the petition currently at issue, a Probate Code section 850 petition (“the petition”) seeking an order confirming that, at the time she died, Betty held a 50 percent interest in real property located at 3962 Ross Avenue in San Jose (“the property”). The petition alleged that, in 2010, Jennifer and Betty had purchased the property together, each receiving a 50 percent undivided interest in the property as tenants in common.

On or around October 2012, Betty married Vinod. Vinod executed an interspousal transfer deed disclaiming interest in Betty’s community property. In 2015, Betty executed a grant deed Jennifer interprets as gifting her 50% of Betty’s interest in the property. In 2021, Betty and Vinod executed the Mathew Wang Living Trust dated May 5, 2021 (“the trust”) and a trust transfer deed, which purported to transfer “all of [Betty’s] undivided 1/2 interest in and to” the property to Betty and Vinod as trustees of the trust.

Currently before the court is Vinod’s demurrer or, in the alternative, motion for abatement. Jennifer has opposed the motion and Vinod has filed a reply.

DISCUSSION

I. Vinod’s Request for Judicial Notice

Vinod requests judicial notice of the following documents filed in Santa Clara County Superior Court Case No. 23CV423984, entitled *Mathew v. Wang*:

- (A) the Order Re: Demurrer, or Alternatively, Motion to Stay First Amended Complaint filed on March 14, 2024;
- (B) the Complaint for (1) Partition of Real Property; (2) Reformation or Cancellation of Instrument; (3) Damages for Ouster filed by Vinod on October 9, 2023;
- (C) the First Amended Complaint for (1) Partition of Real Property; (2) Reformation or Cancellation of Instrument; (3) Damages for Ouster filed by Vinod on December 14, 2023;
- (D) the Cross-Complaint on Rejected Creditor’s Claim filed by Jennifer on January 26, 2024; and
- (E) the First Amended Cross-Complaint on Rejected Creditor's Claim filed by Jennifer on March 25, 2024.

¹ For the purposes of clarity, the court will refer to the parties by their first names. No disrespect is intended.

The unopposed request for judicial notice is GRANTED pursuant to Evidence Code section 452, subdivision (d).

II. Merits of the Motion

A. Demurrer: Plea of Abatement

Vinod demurs to Jennifer’s Probate Code section 850 petition filed April 4, 2023² on the ground that “[t]here is another action pending between the same parties on the same cause of action.” (Code Civ. Proc. § 430.10, subd. (c).)³ Specifically, Vinod contends that the civil action in docket 23CV423984 (“the civil matter”) involves the same parties and cause of action as the petition.

“A statutory plea in abatement requires that the prior pending action be ‘between the same parties on the same cause of action.’ [Citation.]” (*People ex rel. Garamendi v. American Autoplan, Inc.* (1993) 20 Cal.App.4th 760, 770, quoting *Plant Insulation Co. v. Fibreboard Corp.* (1990) 224 Cal.App.3d 781, 787, emphasis in original.) “In determining whether the causes of action are the same for purposes of pleas in abatement, the rule is that such a plea may be maintained only where a judgment in the first action would be a complete bar to the second action. [Citation.]” (*Plant Insulation Co.*, *supra*, 224 Cal.App.3d at pp. 787-788.) “If the court exercising original jurisdiction has the power to bring before it all the necessary parties, the fact that the parties in the second action are not identical does not preclude application of the rule. Moreover, the remedies sought in the separate actions need not be precisely the same so long as the court exercising original jurisdiction has the power to litigate all the issues and grant all the relief to which any of the parties might be entitled under the pleadings. [Citations.]” (*Id.* at p. 788.)

In deciding whether two lawsuits involve the same cause of action, California courts apply the “primary right” theory. (*Pitts v. City of Sacramento* (2006) 138 Cal.App.4th 853, 856.) Under this theory, a single injury, or violation of a primary right, gives rise to a single cause of action, even if a particular injury entitles a plaintiff to multiple forms of relief under multiple theories of liability. (*Hamilton v. Asbestos Corp.* (2000) 22 Cal.4th 1127, 1145 (Hamilton).) The identical cause of action must be involved in both suits, so that a judgment in the first action would be res judicata on the claim in the present lawsuit (claim preclusion). (*Bush v. Super. Ct. (Rains)* (1992) 10 Cal.App.4th 1374, 1384 [noting that tort action did not involve the same primary right as indemnity action because primary right in tort action was right to be free from bodily injury caused by negligence while primary right in indemnity action was right to be free from disproportionate liability].)

“ “ ‘The primary right theory is a theory of code pleading that has long been followed in California. It provides that a “cause of action” is comprised of a “primary right” of the plaintiff, a corresponding “primary duty” of the defendant, and a wrongful act by the defendant constituting a breach of that duty. [Citation.] The most salient characteristic of a primary right is that it is indivisible: the violation of a single primary right gives rise to but a single cause of

² Although the petition was filed over a year ago, Jennifer does not contend that the demurrer is untimely.

³ All further undesignated statutory references are to the Code of Civil Procedure.

action. [Citation.] A pleading that states the violation of one primary right in two causes of action contravenes the rule against ‘splitting’ a cause of action.’ . . . ‘As far as its content is concerned, the primary right is simply the plaintiff’s right to be free from the particular injury suffered.’ ” (*Hamilton, supra*, 22 Cal.4th at p. 1145.)

Here, as recognized by the civil court in ruling on Jennifer’s demurrer on the same ground, the same parties, Jennifer and Vinod, are involved in both the civil action and the probate petition.⁴ Additionally, as recognized by the civil court, the civil action does not involve the same causes of action as the probate petition. The civil action contains causes of action requesting partition by sale and damages for ouster. The probate petition seeks only an order that Decedent owned a 25% interest in the property at the time of her death and that title to the property be determined to be 75% in Jennifer’s name and 25% in the trust. Notably, the ouster cause of action asserts that Vinod constructively ousted Jennifer in 2022 and seeks one half of the rental proceeds that have been or could have been obtained had the property rented during the period from the constructive ouster to the present. Accordingly, the petition and the civil action do not contain the same causes of action and abatement pursuant to section 430.10 is inappropriate. The demurrer is **OVERRULED**.

B. Motion to Abate

Vinod moves to abate the petition under Probate Code section 854 because the civil matter and the petition concern the same subject matter, namely, the property.

Probate Code section 854 provides, in full,

If a civil action is pending with respect to the subject matter of a petition filed pursuant to this chapter this part [sic] and jurisdiction has been obtained in the court *where the civil action is pending prior to the filing of the petition*, upon request of any party to the civil action, the court shall abate the petition until the conclusion of the civil action. This section shall not apply if the court finds that the civil action was filed for the purpose of delay.⁵

(Italics added.)

Here, Vinod concedes that the probate petition was filed before the civil action was initiated. However, he argues that, because the notice of hearing on the petition was not served until after the civil action commenced and the hearing date on the petition, currently June 3, 2024, was not set until January 11, 2024. This argument must be rejected as the plain language of Probate Code section 854 indicates that it applies “where the civil action is pending prior to the *filing* of the petition[.]” (Italics added.) Thus, it is the filing of the petition and not the service of the notice of hearing or setting of the hearing on the petition that is relevant. The alternative request to abate the proceedings on the probate petition under Probate Code section 854 is **DENIED**.

⁴ However, based on the complaint and first amended complaint provided by Vinod, the civil action also appears to involve the defendant Mortgage Electronic Registration Systems, Inc.

⁵ No party suggests that the civil matter was filed for the purpose of delay and the court will not so find as there is no evidence to that effect.

Vinod also points to Probate Code section 856.5, which provides, “The court may not grant a petition under this chapter if the court determines that the matter should be determined by a civil action.” He asserts that this section provides for discretionary abatement.⁶

The court finds that a stay is appropriate. The civil court has already overruled Jennifer’s demurrer and determined that the civil action should not be abated because the civil action contains additional causes of action and requests relief not requested in the petition. The court agrees with Vinod that the determination of the outcome of the petition is not a prerequisite to determining the outcome of the civil action. The civil court will necessarily need to determine the percentages of the parties’ ownership of the property in order to determine the outcome of the partition cause of action. (See § 872.720, subd. (a) [“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.”]; *Summers v. Superior Court* (2018) 24 Cal.App.5th 138, 143 [in partition action where ownership interests are disputed, court must determine the ownership interests in the property before the property is ordered to be sold].)

It would be an inefficient use of resources to allow both the petition and the civil action to proceed at the same time. Additionally, there is a risk of inconsistent rulings should both actions proceed at the same time. Accordingly, the court orders proceedings on the petition stayed pending the outcome of the civil action.

CONCLUSION

The demurrer is **OVERRULED**. The motion to abate the probate action is **GRANTED**. The proceedings on Jennifer’s petition filed April 4, 2023 are hereby stayed pending the outcome of the civil action. The parties are ordered to appear for a status conference on January 27, 2025 at 10:30 a.m. in Department 2. The status review, currently set for August 19, 2024 is hereby vacated.

⁶ The court also notes that it has the inherent power to stay proceedings. The court has the inherent authority to control the litigation before it to avoid conflicting rulings and unnecessary waste of parties’ and judicial resources. (Code Civ. Proc., § 128, subds. (a)(2), (a)(8).) The authority includes the power “to stay an action when appropriate.” (*Jordache Enters., Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 758.) “A court ordinarily has inherent power, in its discretion, to stay proceedings when such a stay will accommodate the ends of justice.” (*OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 141, internal punctuation and citation omitted.)

Calendar line 2

Calendar line 3

- oo0oo -

Calendar line 4

- 00000 -

Calendar line 5

Calendar line 6

Calendar line 7

Calendar line 8

Calendar line 9

- oo0oo -

Calendar line 10

Calendar line 11

Calendar line 12

- oo0oo -

Calendar line 13

- oo0oo -

Calendar line 14

- oo0oo -

Calendar line 15

- oo0oo -

Calendar line 16

- oo0oo --

Calendar line 17

- oo0oo -

Calendar line 18

- oo0oo -

Calendar line 19

- oo0oo -

Calendar line 20

- oo0oo -

Calendar line 21

- oo0oo -

Calendar line 22

- oo0oo -

Calendar line 23

- oo0oo -

Calendar line 24

- oo0oo -

Calendar line 25

- oo0oo -

Calendar line 26

- oo0oo -

Calendar line 27

- oo0oo -

Calendar line 28

- oo0oo -

Calendar line 29

- oo0oo -

Calendar line 30

- oo0oo -