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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

GARY RANDA,

Plaintiff and Appellant,

v.

CATHERINE RANDA,

Defendant and Respondent.

B276888

Los Angeles County  
Super. Ct. No. EC062185

APPEAL from a judgment of the Superior Court of  
Los Angeles County, Donna Fields Goldstein, Judge. Affirmed.

Law Offices of Leon Small and Leon Small for Plaintiff  
and Appellant.

Hinshaw & Culbertson and Charles G. Brackins for  
Defendant and Respondent.

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Gary Randa sued his mother Catherine Randa and others, seeking partition and sale of a house in North Hollywood that Gary and Catherine<sup>1</sup> owned as joint tenants. Catherine filed a cross-complaint. The trial court adopted the findings of a referee, and filed an order denying partition and ordering Gary to reimburse Catherine for \$15,000 she had paid against a lien on the property for Gary's unpaid child support. We conclude the trial court did not abuse its discretion, and we affirm.

### **BACKGROUND**

Gary filed his complaint against Catherine for partition and declaratory relief on March 3, 2014. The complaint alleged Gary and Catherine owned the house as joint tenants under a 1984 grant deed. Gary claimed Catherine had excluded Gary from living in the main house or in a guest house on the property, was receiving rent, and had refused to buy Gary's interest in the property. Gary asked the trial court to partition and sell the property. He also sought an accounting of all amounts due him from the sale proceeds, and of "all income and expenses of the Property ever since Gary left the Property."

On April 23, 2014, Catherine filed a cross-complaint requesting an accounting of the money she had spent to maintain and preserve the property and to discharge a lien filed against the property when Gary failed to pay a child support judgment. She also requested a judicial determination of both parties' responsibilities for the expenses of the property. Gary filed a general denial.

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<sup>1</sup> We refer to son and mother by their first names for ease of reference, intending no disrespect.

On March 19, 2015, the trial court filed an order of reference under Code of Civil Procedure section 639, subdivision (a)(1)-(4),<sup>2</sup> in part because the issues involved the taking of an account. The order sent the case to a retired superior court judge for a report and recommendation on Gary's partition claim and both parties' claims for an accounting.

The referee held a hearing on August 11, 2015. Neither party requested a court reporter. The morning session (in which Gary gave direct testimony and cross-examination began) was not transcribed. At the beginning of the afternoon session, the referee stated that he now believed a court reporter was necessary, especially given Gary's ambiguous answers. Although he remembered Gary's direct testimony clearly, the referee invited Gary's counsel to "cover some of that same ground" on redirect, "so it's on the record."<sup>3</sup>

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<sup>2</sup> Code of Civil Procedure section 639, subdivision (a) states that when the parties do not consent the court may, upon the written notice of any party or on its own motion, appoint a referee when (1) the trial of an issue of fact requires the examination of a long account; (2) the taking of an account is necessary for the court's information before judgment; (3) a question of fact other than upon the pleadings arises upon motion or otherwise; or (4) "[w]hen it is necessary for the information of the court in a special proceeding." "An action for partition is considered a special proceeding [citation], but it is also an equitable proceeding to which principles of equity apply [citations]." (*American Medical International, Inc. v. Feller* (1976) 59 Cal.App.3d 1008, 1013 (*Am. Medical*).)

<sup>3</sup> Although we have only a partial reporter's transcript of the hearing before the referee, we conclude the record is adequate for our review. (*Crespo v. Superior Court* (1974) 41 Cal.App.3d 115,

Gary testified that in 1983, when he was 18, he had about \$15,000 left from a personal injury settlement. He and Catherine bought the North Hollywood house (which Catherine had been renting) so she would not have to move. Gary moved to San Francisco around 2000. When he told Catherine the move was not working out, she told him not to come back. Catherine wrote him a letter in 2002 demanding that he pay some of the expenses related to the house. A child support judgment entered against Gary in 1992 resulted in a judgment lien against the house. The lien was satisfied 19 years later, in 2011, when Gary paid \$7,000, although until then he made no payments.

Gary's father testified he and Catherine divorced around 1969, when Gary was five or six years old. He confirmed that in 1984 Catherine and Gary agreed that for as long as they owned the house, Catherine would pay the house expenses, and with the remainder of Gary's settlement, Gary and his father would convert an existing outbuilding into a guesthouse for Gary to live in.

Catherine testified that when she wrote the 2002 letter to Gary, she was trying to refinance the mortgage and Gary had refused to participate. Gary lived in the converted garage for 20 years for free, without ever contributing to the expenses. After Gary left in 1999, he never asked to move back in. For the last 13 years, Catherine's disabled sister (and Gary's aunt) Patty had lived in the converted garage. Catherine cared for Patty, and Patty paid Catherine about \$650 a month for rent, clothes, and food. When Catherine discovered the child support lien against

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119-120; *Cummings v. Dessel* (2017) 13 Cal.App.5th 589, 595 & fn. 1 (*Cummings*).)

the house, Catherine called the mother of Gary's son and negotiated a \$15,000 settlement. The mother released the lien, and Gary made a separate agreement to pay the mother \$10,000.

After testimony concluded and just before adjourning, the referee stated: "I'll make an editorial comment, having nothing to do with the merits of the case. But this is a very, very sad case for both sides, when a mother and son are at odds with each other. And my hope is that the relationship between parent and son can be restored."

In subsequent briefing submitted to the referee, Gary stated Catherine was renting the North Hollywood house when he and she purchased it in 1984, using proceeds from Gary's personal injury settlement as a down payment. "The agreement between them at the time was that if Gary used his insurance proceeds for the down payment, that Catherine would be responsible for paying all of the debt service including mortgage, taxes, insurance and utilities, for as long as they owned the property. Moreover, Gary would agree to invest further sums to build a guest house out of an existing garage and the guest house would be for Gary to reside in, while Catherine would live in the main house." He argued that Catherine had made disastrous financial decisions and only a partition sale could salvage his equity. Catherine should receive nothing on her claims for accounting, pay Gary all the rental income she received from Patty over the years, and pay the entirety of the remaining mortgage out of her share of the purchase proceeds.

Catherine's brief maintained that a forced sale of the house would leave her homeless, and the law disfavored a forced sale of partitioned property. Catherine wanted an accounting of the

expenses she paid over the years and an award of those sums against any equity Gary had in the property.

The referee's February 16, 2016 report found that Catherine presented no credible evidence supporting reimbursement of anything more than the \$15,000 she spent to release Gary's child support lien, and denied her request for an accounting. The monthly payments Catherine received from her sister Patty were only minimally "rent," and Gary was not entitled to any of the payments. Neither Catherine nor Gary met the burden of proof as to damages, and so the referee denied their requests for accountings and damages.

Under "CONCLUSIONS OF LAW," the referee stated: "The parties entered into the agreement that CATHERINE could live at the property as long as she wished. Pursuant to that agreement, CATHERINE has paid and continues to pay the mortgage(s) and other property-related expenses. [¶] The parties conducted themselves and acted upon that agreement." "By the parties' agreement, the right to partition is waived," and "[b]ased upon principles of law and of equity, [Gary's] request for partition of the subject property is denied." The referee's recommended ruling was to deny the request for partition and sale; Catherine was entitled to live on the property as long as she wishes and was obligated to maintain it and pay all expenses; Gary was to reimburse Catherine \$15,000 for Catherine's payment on the child support lien; and each party was to bear its own attorney fees and costs.

Gary objected to the referee's report and recommendations and Catherine replied. The trial court, after reviewing the pleadings, the report and recommendation, and the objection and response of the parties, adopted the report and recommended

rulings in full on May 17, 2016, ordering that any further encumbrances of the property must be agreed to by all title holders, or by order of the court. The court denied Gary's cause of action for partition and sale, granted Catherine's claim for reimbursement of the \$15,000 she paid on the child support lien, and denied all her other accounting claims. The trial court filed judgment in Catherine's favor on June 9, 2016. Gary filed a timely notice of appeal.

### DISCUSSION

“‘A co-owner of real or personal property may bring an action for partition. (Code Civ. Proc., § 872.210.) ‘The primary purpose of a partition suit is . . . to partition the property, that is, to sever the unity of possession.’ ” (*Cummings, supra*, 13 Cal.App.5th at p. 596.) “‘[A]lthough the action of partition is of statutory origin in this state, it is nonetheless an equitable proceeding.’ ” (*Id.* at pp. 596-597.) We review a trial court ruling based on equitable considerations for an abuse of discretion, and a disposition that is based on an error of law is an abuse of discretion. (*Id.* at p. 597.) “Whether the division made by the referee[ ] was fair and equitable was a question of fact submitted to the trial court . . . . As in other cases, an appellate court, in a partition suit, will not ordinarily consider the sufficiency of the evidence to sustain the findings of the trial court, but such findings will be taken as conclusive where the evidence is conflicting and there is sufficient evidence to sustain them.” (*Camicia v. Camicia* (1944) 65 Cal.App.2d 487, 490 (*Camicia*).)

While physical partition, or partition in kind, is favored in law and equity, “[a] forced sale is strongly disfavored.” (*Butte Creek Island Ranch v. Crim* (1982) 136 Cal.App.3d 360, 365.) “The burden of proof remains upon the party endeavoring to force

a sale.” (*Id.* at p. 366.) A partition sale is not permitted “in the absence of sufficient proof of the equities of such a method of partition.” (*Ibid.*) “Although partition is a matter of right when a cotenant desires it [citation], it is subject to the requirement of fairness and the right may be waived by contract, either expressly or by implication.” (*Penasquitos, Inc. v. Holladay* (1972) 27 Cal.App.3d 356, 358.) Any unwritten waiver is necessarily by implication. (*Ibid.*)

Gary argues that no evidence showed he or Catherine waived the right to partition. To the contrary, both Gary and Catherine testified that when they purchased the house as joint tenants, they agreed that Gary would fund the down payment on the house, and Catherine would remain in the house and pay all the expenses, so that she would not have to move. “[A]n oral understanding that one joint tenant was to continue to live on the property as his home [has been] held to defeat a right to partition the property.” (*Lehmann v. Kamp* (1969) 273 Cal.App.2d 701, 706, fn. 5; *Am. Medical, supra*, 59 Cal.App.3d at p. 1014; *Williams v. Williams* (1967) 255 Cal.App.2d 648, 651-652; *Rowland v. Clark* (1949) 91 Cal.App.2d 880, 882.) The referee found that, by their agreement, Gary and Catherine impliedly waived the right to partition. The trial court adopted that ruling and denied Gary’s action for partition and sale. This ruling was supported by substantial evidence, correct in law, and necessarily not an abuse of discretion. (*Camicia, supra*, 65 Cal.App.2d at p. 490.)

Gary also argues that he is entitled to half of the “rent” paid to Catherine by Patty, her disabled sister and his aunt. The trial court adopted the referee’s conclusion that the payments were rent in name only, as they served to reimburse Catherine



for Patty's care, clothing, and expenses. Again, this conclusion is supported by substantial evidence (Catherine's testimony) and is not an abuse of the trial court's equitable discretion.

Finally, Gary argues he should not have to reimburse Catherine for the \$15,000 she paid to the mother of his child to settle the child support obligation which was the basis for the lien on the property. He argues there is no evidence that he "preapproved" the payment, that the payment alone was sufficient to remove the lien, or that he subsequently ratified the payment, and points to evidence he submitted that the lien was formally removed nine months later after he paid an additional \$7,000. None of these arguments has merit. The evidence also showed that Catherine, faced with a lien on the property for Gary's unpaid child support, paid the mother of his child \$15,000 against the amount in arrears, with the understanding Gary had promised to make an additional \$10,000 payment. Despite some conflicts in the evidence, sufficient evidence supports the trial court's finding that Catherine paid \$15,000. The court's conclusion that Gary was required to reimburse her was not an abuse of discretion.

In sum, the trial court did not abuse its discretion when it denied Gary's request for partition and required Gary to reimburse Catherine \$15,000.

**DISPOSITION**

The judgment is affirmed. Costs are awarded to Catherine Randa.

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EGERTON, J.

We concur:

LAVIN, Acting P. J.

GOODMAN, J.\*

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\* Retired judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.