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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

ROYA BROUKHIM, Plaintiff and Respondent, v. NEDA BROUKHIM, Defendant and Appellant.	B232563 (Los Angeles County Super. Ct. No. BC400082)

APPEAL from a judgment of the Superior Court of Los Angeles County, Soussan G. Bruguera, Judge. Affirmed in part, reversed in part and remanded.

Kousha Berokim for Defendant and Appellant.

Rogers, MacLeith & Stolp and Thomas J. Stolp for Plaintiff and Respondent.

Following a bench trial, the court granted Roya Broukhim's request for partition, ordered property she owned jointly with her sister-in-law Neda Broukhim sold and the proceeds of the sale divided in accordance with their respective ownership interests, and found for Roya[1] on her contribution claim. While conceding Roya's partition claim was timely and partition properly ordered, Neda appeals from the judgment, contending Roya's claim for contribution was time-barred. We affirm the order granting partition, directing a sale of the property and awarding Roya contribution but reverse the judgment and remand for the limited purpose of allowing the trial court to correct a clear mistake in its allocation of the sale proceeds.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Purchase of the Property*

On August 6, 1990 Roya's husband, Fariborz Broukhim, and his sister, Neda, purchased real property on West Olympic Boulevard in California for $365,000.[2] Fariborz and Neda took title to the property as tenants in common; each owned an undivided 50 percent interest. The property was purchased for use by their parents, Faraj Broukhim and Farideh Shirazi Broukhim. Faraj and Farideh have lived at the property since its purchase. Neither Fariborz nor Neda has ever resided at the property.

On March 23, 1999 Fariborz transferred his 50 percent interest in the property to the Fariborz Broukhim and Roya Broukhim 1999 Trust (the 1999 Trust) of which he and Roya were the trustees. After Fariborz died in October 2007, Roya became the sole trustee and beneficiary of the 1999 Trust.

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1 Because the parties and their family members mentioned in this opinion share a surname, we refer to them by their first names for convenience and clarity. (See *In re Marriage of Herr* (2009) 174 Cal.App.4th 1463, 1466, fn. 1; *Cruz v. Superior Court* (2004) 120 Cal.App.4th 175, 188, fn. 13.)

2 Although the parties agree the purchase price was $365,000, the court's statement of decision reflects they paid $231,000 through escrow ($150,000 contributed by Fariborz and $81,000 by Neda) and financed the balance with a $140,000 secured loan.

2. *The Instant Action*

On October 16, 2008 Roya, as surviving trustee of the 1999 Trust, brought an action for partition and sale of the property and for contribution. Alternatively, she sought to quiet title to the property and obtain a declaration that she was the 100 percent owner of the property. Neda answered the complaint and asserted various affirmative defenses, including the contribution claim was time-barred.[3]

3. *The Bench Trial*

Roya's claims were tried to the court over two days. On April 1, 2011 the court found: (1) Neda and Fariborz had purchased the property as tenants in common in 1990, each owning a 50 percent interest; (2) Fariborz paid $150,000 toward the down payment, Neda paid $81,000, and Fariborz obtained a loan for the balance; (3) Fariborz made all the payments on the loan without Neda's assistance or contribution and paid all the taxes and maintenance expenses related to the property; and (4) Roya's claims for partition and contribution, as trustee of the 1999 Trust, were not time-barred as neither Neda nor Roya had repudiated the cotenancy prior to Roya's filing the partition action.

Pursuant to Code of Civil Procedure section 873.820,[4] the court ordered the property sold with the sale proceeds to be applied first to pay the expenses connected with the sale and then to Roya's attorney fees and court costs.[5] As to the remaining proceeds, the court ordered 22 percent be paid to Neda based upon her $81,000 down payment toward the $365,000 purchase price and 88 percent to Roya to reflect Fariborz's

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3 Neda also filed a cross-complaint, which the court later dismissed. Neda does not challenge that ruling on appeal.

4 Statutory references are to the Code of Civil Procedure.

5 Section 873.820 provides, "The proceeds of sale for any property sold shall be applied in the following order: [¶] (a) Payment of the expenses of sale. [¶] (b) Payment of the other costs of partition in whole or in part or to secure any cost of partition later allowed. [¶] (c) Payment of any liens on the property in their order of priority except liens which under the terms of sale are to remain on the property. [¶] (d) Distribution of the residue among the parties in proportion to their shares as determined by the court."

greater down payment, as well as his payment of the home loan, property taxes and insurance.[6]

DISCUSSION

1. *The Trial Court Properly Found Roya's Contribution Claim Was Not Time-barred*

a. *Governing law*

A co-owner of real or personal property may bring an action for partition. (§ 872.210.) "The primary purpose" of a partition suit is to sever the co-ownership and divide the existing property interests. (See *Rancho Santa Margarita v. Vail* (1938) 11 Cal.2d 501, 539 [an action for partition does not create new title in property; it simply divides existing interests]; *LEG Investments v. Boxler* (2010) 183 Cal.App.4th 484, 493 [purpose of partition is to "'permit cotenants to avoid the inconvenience and dissension arising from sharing joint possession of land'"].) In lieu of dividing the property, the court may order the property sold and the proceeds allocated among the parties "in accordance with their interests in the property" if the parties either agree to such relief (§ 872.820, subd. (a)) or "[t]he court determines that, under the circumstances, sale and division of the proceeds would be more equitable than the division of the property" (§ 872.820, subd. (b)).

In any partition action the court may "order allowance, accounting, contribution or other compensatory adjustment among the parties according to the principles of equity." (§ 872.140; accord, *Lazzarevich v. Lazzarevich* (1952) 39 Cal.2d 48, 50-51 ["where one cotenant has, in good faith, expended money in making permanent improvements necessary to the preservation of the common property, partition should not be decreed without making a suitable allowance for such expenditures"]; see § 874.040 [court shall apportion the costs of partition among the parties in proportion to their interests or make such other apportionment as may be equitable"].)

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6 The allocation, which the trial court adopted from Roya's proposed form of judgment, exceeds 100 percent of the proceeds. As we discuss, a remand is necessary for the trial court to clarify and correct its allocation order.

A partition action is not subject to a statutory limitations period: "The statute of limitations never bars relief between tenants in common in an action for partition. [Citation.] It is only where a party has by operation of the statute of limitations lost all right to and in the land and such right has by prescription become vested in another, that the statute of limitations cuts any figure in a partition case. Of course, if one has no interest left in the property, he cannot have partition." (*Adams v. Hopkins* (1904) 144 Cal. 19, 27; accord, *Akley v. Bassett* (1922) 189 Cal. 625, 645 ["the general rule [is] that the action for partition between tenants in common is not barred by the lapse of time"].)

b. *Roya's contribution claim is neither time-barred, nor limited to expenditures made within two years prior to the filing of the partition action*

While acknowledging the partition action is not time-barred, Neda contends Roya's claim for contribution is. Citing *Willmon v. Koyer* (1914) 168 Cal. 369 (*Willmon*), Neda contends section 339's two-year statute of limitations, applicable to actions upon an obligation not founded on a written agreement, precludes a plaintiff from recovering contribution for expenditures made more than two years prior to the filing of the contribution action.[7] Because all the expenditures Roya seeks to recover were made more than two years prior to the filing of her action, Neda contends her contribution claim is time-barred.

Neda's argument reflects a fundamental misapprehension of *Willmon*. There, the plaintiff and the defendant had purchased real property in May 1902. They agreed to take title to the property as tenants in common. However, the plaintiff violated their agreement, took title to the property in his own name and repudiated the defendant's claim to the property. In 1903 the defendant brought a quiet title action to establish his joint ownership of the property as a tenant in common. In January 1910 the trial court ruled in the defendant's favor in the quiet title action, finding the defendant owned a

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[7] Section 339, provides in part, "Within two years: 1. An action upon a contract, obligation or liability not founded upon an instrument of writing . . . ."

50 percent interest in the property as a tenant in common. In March 1910 the plaintiff brought a partition action and sought an accounting and contribution for expenditures he had made from December 1902 through October 1909. (*Willmon, supra,* 168 Cal. at pp. 371-372.)

The Supreme Court held the two-year statute of limitations in section 339 began to run on any claims of the parties arising out of their cotenancy relationship as soon as the plaintiff had repudiated the agreement. (See *Willmon, supra,* 168 Cal.App.4th at p. 372 [once plaintiff had repudiated defendant's interest in the property by denying any cotenancy existed, "the parties became adversaries, and as to any right or cause of action growing out of the cotenancy relationship, which might be asserted by either against the other, [including contribution,] the statute of limitations immediately began to run"].) Thus, the Court held, the plaintiff could recover in contribution for expenditures made from March 1908 through March 1910 because those payments, made for the benefit of the property, occurred within the two-year limitations period; however, the plaintiff's claims for other property-related expenditures prior to March 1908 were time-barred. (*Id.* at p. 373.)

Nothing in *Willmon* establishes a two-year limitations period for contribution actions if the cotenancy has not been repudiated. To the contrary, *Willmon* holds the statute of limitations does not begin to run on a claim for contribution unless or until the parties' ownership interests in the property becomes adversarial. At that point, a two-year limitations period begins to run as to each expenditure made to benefit the property. (*Willmon, supra,* 168 Cal. at pp. 373-374.)

Neda's reliance on *Regalado v. Regalado* (1961) 198 Cal.App.2d 549 is similarly misplaced. In *Regalado* the defendant in a partition action argued on appeal the trial court had failed to credit him for payments made for the common benefit of the property while he was the sole tenant in possession. The defendant, however, had repudiated the cotenancy well before the filing of the partition action, asserting exclusive ownership of the property while he was the tenant in possession. (*Regalado,* at p. 552 ["[w]e know of no rule of law requiring a cotenant out of possession to contribute for moneys paid in

connection with the property by the cotenant in possession while during the very period for which the moneys were paid he asserted exclusive ownership in himself"].) Citing *Willmon*, the court explained "in an action for partition, the defendant cannot have an accounting and contribution from his cotenant for the latter's proportionate part of expenditures made by the defendant for the benefit of the common property if the expenditures were made more than two years prior to the commencement of the action *and after the defendant had repudiated the existence of the cotenancy*." (*Id.* at pp. 553-554, italics added.)

Here, unlike in *Willmon and Regalado*, there was no evidence Roya or Fariborz had repudiated the cotenancy until Roya filed her partition action and contribution claim. Accordingly, the trial court correctly ruled as a matter of law[8] there was no statutory bar to any of Roya's contribution claims.

2. *Neda's Arguments as to the Disbursement of the Proceeds Lack Merit, but Remand Is Necessary For the Trial Court To Address a Mistake in the Allocation*

Neda also challenges on various grounds the court's order distributing the proceeds of the sale: First, she contends there was no basis for the trial court to hold her responsible for part of the sale expenses when it is Roya that is seeking the partition and sale. Neda's argument ignores section 873.820, which expressly requires the court in a partition action to apply the proceeds of the sale first to the "payment of the expenses of the sale."

Neda also contends there is no authority for awarding attorney fees to Roya from the proceeds of the sale. Once again, she is mistaken. Section 873.820 expressly directs the court to apply the proceeds of the sale first to the payment of the expenses of sale and then to the payment of other costs of partition. Section 874.010, subdivision (a), states the costs of partition shall include "[r]easonable attorney's fees incurred or paid by a

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8 When, as here, the facts are not in dispute, application of the statute of limitations is a question of law subject to de novo review. (*International Engine Parts, Inc. v. Feddersen & Co.* (1995) 9 Cal.4th 606, 611-612; *Aiuto v. City and County of San Francisco* (2011) 201 Cal.App.4th 1347, 1355.)

party for the common benefit." (See *Regalado v. Regalado, supra,* 198 Cal.App.2d at p. 552 [former § 796, which was repealed and recodified in § 874.010, authorizes attorney fee award as part of costs of partition when such services are for the "common benefit" of joint property owners]; cf. *Riley v. Turpin* (1960) 53 Cal.2d 598, 603 [trial court's order awarding attorney fees as costs in partition action to both parties was not abuse of discretion based on trial court's finding both counsel contributed services for the common benefit of the cotenancy].) Neda does not address this statute or argue the fees expended by Roya in this partition action were not for the common benefit.[9]

Finally, Neda contends the monies Fariborz paid were "presumed to have been gifted to the common tenancy." That contention, made without any supporting authority, has been forfeited. (See Cal. Rules of Court, rule 8.204(a)(1)(B) [each point in appellate brief must be supported by argument and, if possible, by citation to authority]; *Osornio v. Weingarten* (2004) 124 Cal.App.4th 304, 316, fn. 7 ["'[i]ssues do not have a life of their own: if they are not raised or supported by argument or citation to authority, we consider the issues waived'"]; *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785 [same].)

In sum, the court's disbursement order properly tracks section 873.820's provisions concerning the order of application of the sale proceeds. However, as the parties acknowledge, in apportioning 22 percent of any remaining proceeds from the sale to Neda and 88 percent to Roya, the court's disbursement order exceeds 100 percent of the proceeds. Because we cannot determine from the record whether the court intended

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9 Section 874.040 requires the court to "apportion the costs of partition," which would include attorney fees, in proportion to the parties respective interests in the property "or make such other apportionment as may be equitable." (See, e.g., *Shoyoye v. County of Los Angeles* (Feb. 23, 2012, No. B223542) ___ Cal.4th ___[2012 Cal.App. Lexis 196].) The judgment appealed from states the proceeds of the sale shall be applied to pay the attorney fees and court costs of the plaintiff, "subject to a memorandum of costs and declaration of Plaintiff's attorney of record as to the amount of attorney fees expended by the plaintiff." This appeal concerns only the statutory authorization for attorney fees. The trial court will have the opportunity to apportion the costs of partition, including attorney fees, pursuant to section 874.040 when it considers that issue.

to apportion 22 percent to Neda and 78 percent to Roya, or 12 percent to Neda and 88 percent to Roya, or some other allocation altogether, remand is necessary for the court to correct and clarify its allocation order.

DISPOSITION

The order granting partition, directing a sale of the property, prioritizing the disbursement of the sale proceeds and finding for Roya on her contribution claim is affirmed. The judgment is reversed, and the matter is remanded to the trial court for the limited purpose of clarifying and correcting the percentages in its allocation award. Roya is to recover her costs on appeal.

PERLUSS, P. J.

We concur:

ZELON, J.

JACKSON, J.