ESTATE OF DEREIS

10PR7129

PERSONAL REPRESENTATIVE'S MOTION FOR OSC TO ENFORCE RULINGS AT HEARING

This matter involves a lengthy dispute about the disposition of the assets of the Estate of Joseph Dereis ("Estate"). Deborah Burke ("Burke") is the daughter of the decedent and the Personal Representative of the Estate. Steven Dereis ("Steven")[1] is the son of the decedent and has sons, Austin and Joseph Dereis, who are his heirs to the Estate. The Estate was administered and closed on December 2012.

In January of 2021, Austin and Joseph filed a complaint against Burke for partition of real property and accounting. In or about 2023, the Probate Court granted Burke's Petition for Subsequent Administration on the grounds that Burke had discovered that Steven may have improperly kept property out of the Estate. Specifically, the probate matter was reopened to determine if two vehicles, a 1969 Ford Mustang ("1969 Mustang") and a 1965 Ford Mustang ("1965 Mustang") (collectively "Mustangs") which were in Steven's possession should have been included in the Estate.

On August 21, 2023, the Civil and Probate matters were consolidated. A one-day hearing commenced and on May 17, 2024, the Court entered an Order after Hearing ("Order"). Pursuant to the Order, the Court found that the Mustangs should have been included in the Estate. (Order, ¶ 1.) The Order further stated that the Estate ownership was 25% to Joseph, 25% to Austin and 50% to Burke.

The Order also found that the decedent owned many Hot Wheels and silver coin collections, and that these items were also properly part of the Estate.

On January 3, 2015, the Court granted in part, and denied in part, Burkes' Motion for an Order to Show Cause to Steven why he should not be ordered to comply with the Court's earlier Order. Specifically, the tentative ruling stated:

The Court finds Steven IS in contempt of the Order as to the Hot Wheels. The Court orders that the appropriate sanction against Steven for his willful failure to comply

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[1] Given the common surname among many of the parties, the Court refers to each by their first name. No disrespect is intended.

with this Court's 5/16/24 Order is that he pay $75,000 ($5 each for 15,000 withheld hot wheels) to the Estate's Personal Representative Deborah Burke by 5:00 p.m. on 1/31/25 to be distributed on the 50/25/25 basis detailed in the Court's Order of 5/16/24.

After the hearing, the Court ordered the parties to provide supplemental briefing on the location of the hot wheels.

II. Legal Standard

Pursuant to Code Civil Procedure section 1209(a)(5), contempt occurs whenever there is "disobedience of any lawful judgment, order, or process of the court." When, as is the case here, the contempt occurs outside of the presence of the Court, "an affidavit shall be presented to the court or judge of the facts constituting the contempt. . . (CCP §1211(a).) Once the affidavit is presented and accepted, the Court may order the offending party to show cause as to why they should not be held in contempt.

"The essential facts to establish contempt for violation of a court order are: 1) the making of the order, 2) knowledge of the order, 3) ability of the respondent to render compliance, and 4) willful disobedience of the order." (*Moore v. Superior Court*, (2020) 57 Cal.App.5th 441, 456.)

III. Legal Discussion

As stated in the previous ruling, there is no argument that there was the making of an order and that Steven Dereis was aware of that Order. The primary issue here is whether Steven has the ability to comply with the order and whether there was willful disobedience of the Order.

Previously, the Court took issue with the fact that in his opposition, Steven failed to provide any declaration in support and failed to deny possessing any of the Hot Wheels. Instead, at that time, Steven only submitted the declaration of his attorney who argued that it was too late for Burke to try to prove that Steven does in fact own any Hot Wheels. This, however, as the Court held, was insufficient to show that Steven does not have the ability to comply with the Court's Order to turn over any and all Hot Wheels in his possession or control.

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As part of his supplemental opposition, Steven now provides a declaration related to the Estate property. As regards the Hot Wheels, Steven avers that he moved at least some portion of the Hot Wheels from his parent's property ("Estate Property") to a "safer location." (Declaration of Steven DeReis ("DeReis Decl.") ¶ 3.) Steven then avers that he moved the Hot Wheels first to his personal property and then to Burke's home. (*Id*. ¶ 4.) He states he moved the "entire Hot Wheel collection" to Burke's home but that at some point in 2018, Burke's husband Shawn asked him to store the Hot Wheels for some period of time. (*Id*. ¶ 6.) Steven avers that he refused to take possession of the Hot Wheels in 2018. (*Ibid*.)

However, the location of the Hot Wheels is still unclear. Despite stating that he gave them all to Burke, Steven also testifies that he built the garage on the Estate Property to house the Hot Wheels and that he had the key and lock to said garage. (*Id*. ¶ 9.) Steven avers that he was responsible for the upkeep and care of the Estate Property. (*Id.* ¶ 10.)

In the Court's tentative ruling of January 3, 2015, the Court took particular note of the declaration of Arnie Mozetti ("Mozetti Decl") and a 2018 letter from DDA Seth Matthews ("DDA Letter"). In that letter, the DDA Matthews states that in early 2018, a collection of Hot Wheels was moved from the Estate Property and into a trailer. At that time, the investigation revealed that a neighbor, Dennis Henderson, knew that there was a vast collection of Hot Wheels on the Estate Property. The DDA Letter corroborated the facts set forth in the Mozetti Declaration, in which Mr. Mozetti averred that he assisted Steven in moving "1/2 of a two car garage of the Hot Wheel cars from Joseph DeReis' extensive collection. We brought all of the Hot Wheel Cars to Steven DeReis' shop in Fremont." (Mozetti Decl. ¶ 2.) However, in 2021, Steven told the investigators that he had "not taken" any items from the Estate. (DDA Letter, ¶ 11.)

In his declaration, Steven does not address the significant evidence that he had assistance in moving a large quantity of the Hot Wheels to his shop in Fremont. His statements in his declaration are confusing, because he admits to moving the Hot Wheels from the Estate Property, but also states that he remained in charge of the Hot Wheels stored on the Estate Property. Steven also told the law enforcement investigator that he did not take any of the Estate Property when asked in 2021, but in his opposition now tries to clarify that he did not "take" any of the property but he did "move" the property. (Steven Decl. ¶ 17.) Most concerning to the Court is the fact that

Steven never straightforwardly avers that he does not possess any of the estate Hot Wheels at this time.

The Court finds Steven's declaration to be insufficient to determine that he was not in contempt of the Court's order regarding the Hot Wheels.

Burke seeks an adjustment to the Court's order regarding the amount of money the Hot Wheels are worth, asking the Court to increase the value from $75,000 to $100,000. Burke had the opportunity to present evidence of the specific value of the Hot Wheels in the earlier briefing and failed to do so. Although Burke has now provided declarations seeking to place a greater value on the collection, the Court is not inclined to revisit the value of the Hot Wheels.

IV. Conclusion

The Court finds Steven **IS in contempt of the Order as to the Hot Wheels**. The Court orders that the appropriate sanction against Steven for his willful failure to comply with this Court's 5/16/24 Order is that **he pay $75,000 ($5 each for 15,000 withheld hot wheels) to the Estate's Personal Representative Deborah Burke by 5:00 p.m. on 1/31/25 to be distributed on the 50/25/25 basis detailed in the Court's Order of 5/16/24**.

The Court finds Steven is **NOT in contempt of the Order related to the 1965 Mustang**.

In light of this continued mixed ruling, the Court **DENIES** the request to award Steven's counsel **attorney's fees** as sanctions.

The Clerk shall provide notice of this Ruling to the parties forthwith. Burke to prepare a formal Order complying with Rule of Court 3.1312 in conformity with this Ruling.

GENESIS PVB, LLC v GRAFER

18CV43485

DEFENDANT'S MOTION FOR ENTRY OF JUDGMENT

This case involves a failed venture to cultivate marijuana for profit. On August 12, 2024, Defendant/Cross-Complainant George Grafer ("Grafer") entered into a settlement agreement with Cross-Defendant Craig Bordon ("Bordon") at a judicially supervised settlement conference. Now before the Court is Grafer's Motion for Entry of Judgment Pursuant to Code of Civil Procedure section 664.6 ("Motion").

At the outset, the Court notes that 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.]
>
> Failure to include this language in the notice may be a basis for the Court to deny the motion.

In its April 19, 2024, Ruling on Grafer's motion for trial preference, the Court called attention to the failure to include the above requisite language and specifically stated:

> In the instant matter, the Court finds that exigent circumstances occur in both motions. (Defendant is cautioned this is a rare instance where the Court does not deny a pending motion for the failure to include the mandated language.)

Defendant failed to heed the uniqueness of the Court excusing the failure to include the mandatory language in the notice. Accordingly, the motion is **DENIED**, without prejudice to refile.

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

JOHNSON v CITY OF ANGELS, et al

24CV47321

DEFENDANTS' MOTIONS TO DISMISS

On June 13, 2024, Plaintiff filed a First Amended Complaint ("FAC") alleging "Intentional Tort" against City of Angels Camp ("City"), Mark Twain Elementary School District ("District"), Alvin Broglio ("Broglio"), Rebecca Callen ("Callen"), Jenny Eltringham ("Eltringham"), Scott McNurlin ("McNurlin"), Diane Bateman ("Bateman"), Christy Miro ("Miro"), Timothy Randall ("Randall", and Paula Wyant ("Wyant") (collectively "Defendants.")

On October 24, 2024, the Court sustained the demurrers (with leave to amend) and granted the motions to strike as moot which were filed by 1) Defendants City, Callen and Broglio and 2) Defendants McNurlin, Bateman, Miro, Eltringham, Randall, and the District. In that Ruling, the Court gave Plaintiff twenty (20) days to file a Second Amended Complaint ("SAC").

Well over twenty days have passed and Plaintiff has not filed a Second Amended Complaint. Now before the Court is Defendants City, Callen and Broglio's Motion to Dismiss [First] Amended Complaint Following Order Granting Demurrer ("Motion"). Defendants McNurlin, Bateman, Miro, Eltringham, Randall, and the District have filed a joinder to the Motion.

Pursuant to Code of Civil Procedure section 581(f)(2) the Court may dismiss the complaint when:

> Except where Section 597 applies, after a demurrer to the complaint is sustained with leave to amend, the plaintiff fails to amend it within the time allowed by the court and either party moves for dismissal.

Plaintiff was aware that the demurrers were granted in October 2024 as is made clear by his request to enlarge the time to respond to said demurrers. Plaintiff failed to file the amended complaint as ordered by the Court. Accordingly, the Motions to Dismiss are **GRANTED** as to all Defendants.

The Clerk shall provide notice of this Ruling to the parties forthwith. Defendants to prepare formal Order complying with Rule of Court 3.1312 in conformity with this Ruling.

HSU v DEL MUNDO

24CV47462

DEFENDANTS' DEMURRER

Plaintiff Mike Sheng Con Hsu ("Plaintiff") filed his Complaint arising out of a real property dispute with Defendants Leonardo Del Mundo and Angela Del Mundo ("Defendants"). Now before the Court is Defendants' 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:
>
> **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.]
>
> Failure to include this language in the notice may be a basis for the Court to deny the motion.

Based on the foregoing, the motion is **DENIED**, without prejudice to refile, if otherwise allowed by statute.

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

PG&E v TAN PROPERTY INVESTMENTS, LLC

24CV47680

PLAINTIFF'S MOTION FOR PRE-JUDGMENT POSSESSION OF PROPERTY

Pacific Gas & Electric ("PG&E") seeks to acquire by eminent domain the modification of a permanent easement utility as part of the Stanislaus-Manteca Reconductoring Project ("Project"). The location for the property is commonly known as 550 Skunk Ranch Road, Murphys, California ("Property"). Specifically, "PG&E proposes to remove and replace existing electrical transmission towers on the Property with new structures and conductor wires within two existing PG&E easements on the Property from 1907 and 1910 (Easement 1 and Easement 2, respectively), that require updating and replacement." (Complaint ¶ 6.)

PG&E now moves for an order for prejudgment possession of certain real property interests that are contained within the Property. Defendant Tan Property Investments, LLC ("Tan") opposes the motion.

I. **Evidentiary Objections**

The Court rules on Tan's evidentiary objections to the Declaration of Sanjeev S. Bhatawadekar and overrules all objections.

II. **Legal Standard**

Pursuant to Code Civil Procedure section 1255.410, subd.(a):

> "At the time of filing the complaint or at any time after filing the complaint and prior to entry of judgment, the plaintiff may move the court for an order for possession under this article, demonstrating that the plaintiff is entitled to take the property by eminent domain and has deposited pursuant to Article 1 (commencing with Section 1255.010) an amount that satisfies the requirements of that article."

Where, as is the case here, the motion is opposed, the Court may make an order for possession “upon consideration of the relevant facts and any opposition, and upon completion of a hearing on the motion,” only where the Court finds each of the following:

(A) The plaintiff is entitled to take the property by eminent domain.

(B) The plaintiff has deposited pursuant to Article 1 (commencing with Section 1255.010) an amount that satisfies the requirements of that article.

(C) There is an overriding need for the plaintiff to possess the property prior to the issuance of final judgment in the case, and the plaintiff will suffer a substantial hardship if the application for possession is denied or limited.

(D) The hardship that the plaintiff will suffer if possession is denied or limited outweighs any hardship on the defendant or occupant that would be caused by the granting of the order of possession.

(Code Civ. Proc. §1255.410(d)(2)(A)-(D).)

The determination of the Plaintiff’s right to take the property by eminent domain is preliminary only and does not prejudice the defendant’s right to demur to the complaint or contest to the overtaking. Likewise, the denial of an order of possession does not require the dismissal of the proceeding and does not prejudice the plaintiff’s rights to fully litigate the matter. (Legislative Committee Comments to Code Civ. Proc., § 1255.410.)

Because Tan opposes this Motion, PG&E’s Motion is governed by Code of Civil Procedure section 1255.410, subdivision (d)(2).

III. Legal Analysis

A. PG&E has the right to take the Property by Eminent Domain

PG&E is a public utility. (Declaration of Sanjeev S. Bhatawadekar ("Bhatawadekar Decl.") ¶ 5.) A gas and/or electrical company "may condemn any property necessary for the construction and maintenance of its electric [or gas] plant." (Public Utility Code § § 612-613.) An electric plant is very broadly defined to include all real and personal property that is connected with or facilitates the production or transmission of electricity. (Pub. Util. Code § 217.)

Here, PG&E requires the Property in question as part of its larger planned scope of work involving the "replacement of approximately 410 existing electrical transmission structures with new steel structures, within approximately one hundred (100) circuit miles of existing electrical transmission corridors serving PG&E's residential and business customers." (Bhatawadekar Decl. ¶ 8.) PG&E currently has two "existing and parallel electric transmission line easements owned by PG&E that currently transverse the Property and allow PG&E to operate, construct, repair and maintain these lines." (*Id*. ¶ 9.)

Accordingly, PG&E has the statutory right to acquire the Property by eminent domain in order to construct and maintain its electric plant.

Tan does not dispute that PG&E has the right to take possession of the utility corridor. (Opp. p. 11.) Rather, Tan takes issue with the lack of clarity and information as to how much of the Property will be needed, and when and how long it will be needed, in order for PG&E to access the utility corridor. Specifically, Tan points out that there is no specific language regarding how much Property will be taken over in order to access the utility corridor within the proposed easement, and that the language in the Complaint refers broadly to accessing the easement area "over and across said lands by means of roads and lanes thereon." (Complaint ¶ 9C.)

While the language is perhaps less than ideal in terms of ingress and egress, it is no broader than the easements currently in place which grant the utility company the "right at any time to enter upon said land for the purpose of erecting, maintaining, operating and repairing said lines…" (Declaration of Michelle Patton ("Patton Decl."), Ex. A p. 29.) Accordingly, Defendant is within its rights to seek eminent domain of the Property and to access the Property pursuant to its easement rights of ingress and egress.

B. PG&E has made the requisite deposit

Pursuant to Code of Civil Procedure section 1255.010(a), the Plaintiff may deposit with the State Treasury the "probable amount of compensation, based on an appraisal, that will be awarded in the proceeding. The appraisal upon which the deposit is based shall be one that satisfies the requirements of subdivision (b)."

Subdivision (b) requires that, before making the deposit, the plaintiff must have a qualified expert : 1) appraise the property and 2) prepare a written statement or basis for that appraisal. The appraisal must contain sufficient detail and specific information regarding how the valuation was made and account for the Property's best uses.

Plaintiff has provided the declaration of Michelle Patton who is a California State Certified General Real Estate Appraiser and a Member of the Appraisal Institute. (Declaration of Michelle Patton ("Patton Decl.") ¶ 1.) Ms. Patton avers that she has investigated the Property for the purposes of "ascertaining its use, character, adaptability, quality and location" and is familiar with other property in the area and the values of those properties. (Id. ¶ 2.) After review, Ms. Patton concluded that the Fair Market Value of the Property was $14,000.00. (*Id*., Ex. A "Appraisal Report".) The Appraisal Report is thorough and detailed and contains the information required by Code Civil Procedure section 1255.010(b).

Tan takes issue with the appraiser's valuation of the Property because it failed to take into account the potential new means of ingress and egress. However, as stated above, the currently existing easements already provide PG&E the right to enter the property for repair and maintenance purposes. Additionally, Tan provides no legal authority to suggest that the Court is expected, or even allowed, to consider the appropriateness of the amount of the deposit if all other statutory requirements are met.

C. Plaintiff has an overriding need for the prejudgment possession and will suffer hardship.

The Property is part of a large scale project to replace 410 existing electrical transmission structures within a roughly 100 mile area. (Bhatawadekar Decl. ¶ 9.) PG&E asserts that it requires prejudgment possession because the entire project depends on making sure that all the properties along the transmission corridor be "planned, coordinated and implemented (as to materials, workers, equipment, securing necessary permit(s), etc.) in an orderly fashion." (*Id*. ¶ 11.) PG&E has concerns that if it is not granted prejudgment possession of the Property, it may encounter severe delays as to the whole project. (*Id*. ¶ 12.)

Tan argues that PG&E is only reciting the language of the statute and provides no factual basis for its assertion that it has an overriding need for possession. The Court disagrees. PG&E has provided sufficient evidence that it has a large scale project aimed at modernizing and improving its electrical transmission towers and that possession of the Property (like many others on the route) is key to ensuring the Project is permitted, staffed and completed in a timely manner.

D. Balancing Hardships

PG&E asserts that delaying possession will create a substantial hardship in its ability to start and complete the Project, which in turn will affect the public. In the opposition, Tan asserts that it will suffer hardship if the proposed order is granted because there is no way of knowing how much of the surrounding property will be affected by PG&E entering and exiting in order to work on the utility line.

In response, PG&E submits a second declaration from its Senior Consulting Project Manager, Sanjeev S. Bhatawadekar ("Bhatawadekar Decl. 2"). In this second declaration, Mr. Bhatawadekar confirms that the current easements already give PG&E rights of ingress and egress. (Bhatawadekar Decl. 2. ¶ 5.) Second, Mr. Bhatawadekar avers that most of the work is going to be done through helicopter work, thus limiting the use of the paved access road on the Property to use by light crew trucks. (Id. ¶ 5.) He further avers that there is no intention or need to disrupt the Property driveway. (*Ibid.*)

PG&E has demonstrated its right to the Property and need for immediate possession, while also showing its intention to use helicopters and limit the disruption to the Tan Property. In contrast, Tan bases most of its arguments on speculative events that might happen and no actual information or expert evidence to back up its contentions. Balancing the information before it, the Court finds that PG&E is likely to suffer greater hardships if denied prejudgment possession than Tan will if it is granted.

IV. Conclusion

Based on all the foregoing reasons, PG&E's motion or prejudgment possession is **GRANTED**.

The Clerk shall provide notice of this Ruling to the parties forthwith. PG&E to prepare a formal Order complying with Rule of Court 3.1312 in conformity with this Ruling.

PURDY v MERRICK

24CV47781

PLAINTIFF'S MOTION FOR PARTITION

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' motion for partition of real property ("Motion").

I. Factual and Procedural Background

Pursuant to Quitclaim Deed dated August 16, 2023, Defendant transferred a one-half interest in the Property to Plaintiffs, with each plaintiff receiving their interest as sole and separate property. (Complaint ¶ 7, Ex. 1.) Accordingly, Plaintiffs and Defendant each hold an undivided one-half interest in the Property. (*Id*. ¶ 8.) Plaintiffs allege that the value of the Property is approximately $350,000, which exceeds the encumbrance[s] on the Property after costs of sale. (*Id*. ¶ 9.)

On or about April 27, 2024, Plaintiffs and Defendant entered into an agreement ("Agreement") (Complaint ¶ 12, Ex. 2.) Pursuant to the Agreement, Defendant acknowledged that he was responsible for significant back taxes and other expenses and would repay Plaintiffs these costs from his share of the sale of the Property. (*Id*.) Plaintiffs allege that Defendant now owes them $165,576.52, which includes items covered by the Agreement as well as additionally incurred expenses. (Complaint ¶ ¶ 12-13.)

The Complaint and summons was filed on December 17, 2024. It does not appear that Defendant has been served and he has not filed any appearance in Court.

II. Legal Standard and Analysis

A co-owner of real property may file an action for partition, severing unity of possession in that property. (Code Civ. Proc., § 872.210, subd. (a)(1).) “A co-owner of property has an absolute right to partition unless barred by a valid waiver.” (Code Civ. Proc., § 872.710, subd. (b)._ Partition allows cotenants to “avoid the inconvenience and dissension arising from sharing joint possession of land” and facilitates transmission of title. (LEG Investments, supra, at 493.) If the party is entitled to partition, the trial court makes an interlocutory judgment determining the interests of the parties in the property and may order the manner of partition at that time. (§ 872.720, subd. (a).)

Under Code of Civil Procedure section 872.030, “[t]he statutes and rules governing practice in civil actions generally apply to actions under this title except where they are inconsistent with the provisions of this title.” (Code Civ. Proc. § 872.030.) To obtain a judgment in a civil action typically requires a trial, which is consistent with the partition statutes. (Code Civ. Proc. § 872.610 [“The interests of the parties, plaintiff as well as defendant, may be put in issue, tried, and determined in the action.”]; Code Civ. Proc. 872.210 [“At the trial, the court shall determine whether the plaintiff has a right to partition.”].) That is, until the rights of and interests of all the parties have been determined, the Court cannot order partition. (*Withington v. Collins* (1943) 60 Cal.App.2d 110, 114.)

Although the Court determined ownership interests in an earlier trial involving these parties and this parcel of property, this determination does not obviate the need for defendant to be served with the current summons and complaint, let alone the instant motion. Lack of service equals lack of notice which violates the constitutional requirement of due process in any legal proceeding. As the Court’s file contains no proof of service of the summons, complaint, or the instant motion, plaintiffs’ motion is **DENIED**, without prejudice to refile with proper service of all relevant pleadings.

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