

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TIMOTHY P. DEMARTINI, et al.,
Plaintiffs,
v.
MICHAEL J. DEMARTINI, et al.,
Defendants.

No. 2:14-cv-02722-JAM-CKD

**ORDER DENYING PLAINTIFFS' MOTION
FOR ATTORNEY FEES**

On May 10, 2019, Plaintiffs Margie and Timothy Martini filed a motion for attorney fees. ECF No. 414. In a procedurally-improper series of filings, pro se Defendants Michael and Renate Martini, filed an "ex parte application/preliminary opposition" to Plaintiffs' motion and a "counter-motion for separation; for extension of time." See Prelim. Opp'n, ECF No. 420; Counter-mot. for Separation, ECF No. 421.

Essentially, Defendants' filings urged the Court to extend the briefing schedule and allow separate briefing on Defendants' procedural and substantive challenges to Plaintiffs' motion. See generally Prelim. Mot. (raising procedural challenges to the propriety of Plaintiffs' motion); Counter-mot. for Separation at

1 3-5. The Court denied this request by minute order, ECF No. 423,
2 and the parties proceeded with the original briefing schedule.
3 See Opp'n to Plfs.' Mot. ("Opp'n"), ECF No. 425; Reply ISO Plfs.'
4 Mot. ("Reply"), ECF No. 427.¹ For the reasons discussed below,
5 the Court DENIES Plaintiffs' motion for attorney fees as
6 untimely.

8 I. BACKGROUND

9 The parties are familiar with the years of litigation
10 leading up to Plaintiffs' requested apportionment of attorney
11 fees. For purposes of this motion, the relevant starting point
12 is the Court's June 1, 2017 Order adopting in full Magistrate
13 Judge Delaney's recommendation to (1) allow a second amended
14 complaint, and (2) sever and remand Plaintiffs' Accounting and
15 Dissolution of Partnership claim to state court. ECF No. 224;
16 see also Findings and Recommendations at 4, ECF No. 214. The
17 Court's order narrowed the scope of Plaintiffs' suit to two
18 claims: a breach of contract claim and a partition claim. See
19 Pretrial Conference Order at 2, ECF No. 284.

20 In April 2018, the Court held a jury trial on Plaintiffs'
21 breach of contract claim. The jury returned a verdict in favor
22 of Plaintiffs. ECF No. 335. The Court entered a judgment, ECF
23 No. 347, and Defendants appealed, ECF No. 350. A month later,
24 the Court issued findings of fact and conclusions of law on the
25 partition claim, ordering the property at issue to be partitioned

27 ¹ This motion was determined to be suitable for decision without
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was
scheduled for July 16, 2019.

1 in kind according to Plaintiffs' and Defendants' fifty percent
2 interest. Findings of Fact and Conclusions of Law at 15, ECF No.
3 361. The parties were unable to agree on how to partition the
4 land, so the Court appointed a referee to carry out its judgment.
5 See Minutes for September 19, 2018 hearing, ECF No. 388.

7 II. OPINION

8 Plaintiffs' motion for attorney fees, filed nearly a year
9 after the Court's resolution of the partition claim, is
10 untimely. Under the local rules, "[m]otions for awards of
11 attorneys' fees to prevailing parties pursuant to statute shall
12 be filed not later than twenty-eight (28) days after entry of
13 final judgment." E.D. Cal. L. R. 293(a). Courts interpret
14 "final judgment" in Local Rule 293(a) to have the same meaning
15 as "final decision" in 28 U.S.C. § 1291. See, e.g., Jones v.
16 Bradshaw Bar Group, Inc., 735 Fed.Appx. 233, 234 (9th Cir.
17 2017). Accordingly, a "final judgment" is a decision that "ends
18 the litigation on the merits and leaves nothing for the court to
19 do but execute the judgment." Caitlin v. United States, 324
20 U.S. 229, 233 (1945). It is "typically" a decision "by which a
21 district court disassociates itself from a case." Mohawk
22 Industries, Inc. v. Carpenter, 558 U.S. 100, 106 (2009). But
23 the fact that the district court retains jurisdiction over a
24 case does mean it has not issued a final judgment. See Ray
25 Haluch Gravel Co. v. Central Pension Fund of Int'l Union of
26 Operating Engineers & Participating Employers, 571 U.S. 177,
27 183-84 (2014).

28 ///

1 Plaintiffs do not dispute that Local Rule 293 sets out the
2 relevant timeline for requesting attorney fees. Rather, they
3 propose the Court's May 30, 2018 Order did not amount to a final
4 judgment. Reply at 6. In response to Defendants' claims of
5 untimeliness, Plaintiffs argue:

6 How can Defendants protest the fees incurred in this
7 action at the same time as claiming that this Court
8 has somehow disassociated itself from the case by
9 issuing a final judgment for partition? Not only does
10 the Court receive status reports from the Referee, the
11 Court has been unequivocal in its expression [of] how
12 partition will proceed, and that the case remains
13 open.

14 Id. Nothing in Plaintiffs' argument identifies a claim that has
15 yet to be resolved. The issue of costs is "collateral" to the
16 merits of the suit and may therefore be resolved after a court
17 enters its final judgment. See Ray Haluch Gravel Co., 571 U.S.
18 at 185, 189-90. Moreover, the court-appointed referee is doing
19 nothing more than "execut[ing] the judgment." Caitlin, 324 U.S.
20 at 233.

21 After the Court remanded Plaintiffs' accounting claim, two
22 claims remained. A jury resolved the breach of contract claim
23 on April 18, 2018. Following the Court's resolution of the
24 partition claim on May 30, 2018, there was nothing left for the
25 Court to adjudicate. Consequently, the Court's May 30 order
26 amounted to a final judgment. Plaintiffs' motion for attorney
27 fees was due 28 days later. Instead, Plaintiffs waited eleven
28 months after this deadline to file their motion. The motion is
therefore DENIED as untimely. Johnson v. Wells Fargo Bank N.A.,
No. 2:10-cv-2839-GEB-CKD, 2013 WL 4854790, at *1 (E.D. Cal.
Sept. 11, 2013) ("Failure to comply with the local rule

1 governing the filing of motions for attorney's fees is a reason
2 for denial of the motion.").

3

4

III. ORDER

5

6

For the reasons set forth above, the Court DENIES
Plaintiffs' motion for attorney fees.

7


IT IS SO ORDERED.

8

Dated: July 16, 2019

9

10



JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28