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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

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

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

ORDER

Pending before the Court is Defendants' Motion to Set Aside Interlocutory Judgment on Partition ("Motion to Set Aside" or "Motion"). (ECF No. 458.) For the reasons set forth below, the Motion to Set Aside is DENIED.

The Court will schedule a hearing on the Status Report (ECF No. 441) and Appraisal Report and Analysis (ECF No. 442) (collectively, "Partition Report") prepared by Referee Charles R. Farrar, Jr. in October 2019. Referee Farrar and the Parties will be granted an opportunity to submit supplemental briefing on the Partition Report.

In addition, the Ninth Circuit has reversed summary judgment as to Defendants' breach of partnership and defamation counterclaims and ordered retrial of Plaintiffs' breach of contract claim. (ECF No. 455.) Accordingly, the Court will order the Parties to contact the Court with proposed trial dates so that a scheduling order may be issued forthwith.

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1 **BACKGROUND**

2 This action arises from a property and partnership dispute between Plaintiffs
3 Timothy DeMartini and Margie DeMartini and Defendants Michael DeMartini and
4 Renate DeMartini. Plaintiffs filed this action on September 15, 2014, in the Superior
5 Court of California, and the action was removed to the United States District Court for
6 the District of Nevada on September 16, 2014. (ECF No. 1.) The action was
7 transferred to the United States District Court for the Eastern District of California on
8 November 20, 2014. (ECF No. 27.)

9 Plaintiffs' First Amended Complaint alleged three causes of action for
10 (1) partition of real property located at 12757, 12759, and 12761 Loma Rica Drive,
11 Grass Valley, California (the "Property"), which is co-owned by the Parties; (2) breach
12 of contract concerning payment on a promissory note jointly executed by the Parties;
13 and (3) dissolution of a partnership formed by the Parties to improve upon and
14 manage real property owned by the partnership at 12731 Loma Rica Drive, Grass
15 Valley, California. (ECF No. 75.)

16 In their operative Second Amended Answer, Defendants asserted three
17 counterclaims against Plaintiffs for (1) declaratory relief that the Parties were in a
18 global partnership to own and manage "various joint properties and businesses";
19 (2) breach of the Parties' partnership agreement; and (3) defamation and defamation
20 per se. (ECF No. 104.)

21 Plaintiffs' third cause of action for dissolution of partnership as to the 12731
22 Loma Rica Drive property was subsequently remanded to state court. (ECF Nos. 214,
23 224.) The Court also granted summary judgment in Plaintiffs' favor on Defendants'
24 counterclaims. (ECF Nos. 232, 267.) Accordingly, the case proceeded to trial on
25 Plaintiffs' partition and breach of contract claims only.

26 **I. Jury Trial on Breach of Contract Claim**

27 The Court held a jury trial on Plaintiffs' breach of contract claim on April 16 and
28 17, 2018. The jury returned a verdict in favor of Plaintiffs. (ECF No. 335.) The Court

1 entered a final Partial Judgment Order for Plaintiffs on their breach of contract claim,
2 awarding them \$68,606.25 plus prejudgment interest, and affirming judgment in
3 Plaintiffs' favor on Defendants' counterclaims. (ECF Nos. 345, 347.)

4 Defendants appealed this Partial Judgment Order. (ECF No. 348.) The Ninth
5 Circuit upheld summary judgment on Defendants' first counterclaim, finding that
6 although there was evidence of an oral partnership agreement formed by the Parties
7 in the 1970s to manage the Property, there was no evidence of a global partnership
8 extending beyond the Property. (ECF No. 455 at 2-5.) However, the Ninth Circuit
9 reversed summary judgment on Defendants' breach of partnership counterclaim,
10 finding dismissal of this claim was premised on an alleged breach of the global
11 partnership, while Defendants' claim was actually premised on a breach of the oral
12 partnership agreement formed in the 1970s. (*Id.* at 3-5.) The Ninth Circuit also
13 reversed summary judgment on Defendants' defamation counterclaim, finding the
14 Court erred in granting summary judgment on Defendants' defamation per se claim.
15 (*Id.* at 5-6.) Finally, the Ninth Circuit vacated the Court's judgment on Plaintiffs' breach
16 of contract claim and remanded for a new trial, reasoning that the Court had
17 improperly excluded partnership and mitigation evidence during the trial which likely
18 tainted the jury's verdict. (*Id.* at 6-8.)

19 **II. Bench Trial on Partition Claim**

20 The Court held a bench trial on Plaintiff's partition claim on April 17 and 18,
21 2018. The Court issued an Interlocutory Judgment of Partition on May 30, 2018,
22 ordering the Property be partitioned in kind. (ECF No. 361.) The Court appointed
23 Referee Farrar to supervise the partition on September 18, 2018. (ECF Nos. 381, 388.)
24 Referee Farrar submitted the Partition Report on October 17, 2019, recommending
25 that the Property be partitioned by sale instead of partitioned in kind. (ECF Nos. 441,
26 442.)

27 Plaintiffs filed a Motion for Allocation of Partition Costs (ECF No. 414) which the
28 Court denied in finding that the Interlocutory Judgment of Partition was a final order,

1 and that Plaintiffs' motion for costs came too late after entry of a final order. (ECF No.
2 428.) The Court denied reconsideration of this denial. (ECF No. 437.)

3 Defendants appealed the Interlocutory Judgment of Partition. (ECF No. 409.)
4 The Ninth Circuit dismissed the appeal, finding the notice of appeal was untimely.
5 (ECF No. 472.)

6 Plaintiffs appealed the Court's denial of Plaintiffs' Motion for Allocation of
7 Partition Costs and the Court's determination that the Interlocutory Judgment of
8 Partition was a final order. (ECF No. 438.) The Ninth Circuit dismissed the appeal for
9 lack of jurisdiction, finding the Interlocutory Judgment of Partition was not a final
10 judgment because it granted partition, but did not decide exactly which Parties would
11 be entitled to which portion of the Property; thus, the Ninth Circuit reasoned the
12 Interlocutory Judgment, as well as the order denying the Motion for Allocation of
13 Partition Costs, were not final judgments meriting review. (ECF No. 473.)

14 The Court's hearing on the Partition Report was stayed on February 7, 2020,
15 pending resolution of the appeals. (ECF No. 453.) During this stay, Defendants
16 brought the Motion to Set Aside under Federal Rule of Civil Procedure 60(b)(5) on
17 December 3, 2021, arguing the Court should hold a new trial on partition. (ECF No.
18 458.) This Motion is currently pending.

19 **III. The Parties' Status Reports**

20 This matter was transferred to the undersigned on April 4, 2023. (ECF No. 467.)
21 Following the Ninth Circuit rulings, the Court ordered the Parties to file a joint status
22 report. (ECF No. 477.) Instead, the Parties each filed their own status reports,
23 requesting, in short, (1) a ruling on the Motion to Set Aside, (2) a hearing on the
24 Partition Report, and (3) that the Court schedule the retrial ordered by the Ninth
25 Circuit. (ECF Nos. 476, 478.)

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1 **DISCUSSION**

2 **I. Motion to Set Aside**

3 Defendants brought the pending Motion to Set Aside (ECF No. 458) under
4 Federal Rule of Civil Procedure 60(b)(5), arguing the Court should hold a new trial on
5 partition because “Defendants were barred from proffering any claim or defense of
6 partnership in the partition trial.” (ECF No. 458 at 3.) Defendants argue that the Ninth
7 Circuit’s reversal of summary judgment on their breach of partnership counterclaim
8 weighs in favor of a new trial because the Ninth Circuit found that there was evidence
9 of a partnership between the Parties as to the Property, and that if the Property was
10 owned by a partnership, then partition would need to proceed under California Code
11 of Civil Procedure § 872.730, which governs partition of partnership property and is
12 discretionary, as opposed to section 872.710, which governs all other partitions of real
13 property and permits partition as of right unless barred by a valid waiver. (*Id.* at 8-12.)

14 Under Rule 60(b)(5), “On motion and just terms, the court may relieve a party or
15 its legal representative from a final judgment, order, or proceeding for the following
16 reasons . . . the judgment has been satisfied, released, or discharged; it is based on an
17 earlier judgment that has been reversed or vacated; or applying it prospectively is no
18 longer equitable.”

19 Procedurally, Defendants’ Motion is improper. By its terms, Rule 60(b)(5)
20 permits the Court to grant relief from a final judgment. However, the Ninth Circuit has
21 ruled the Interlocutory Judgment on Partition is not final. (ECF No. 473.) Accordingly,
22 Rule 60(b)(5) is not the proper vehicle to solicit the Court’s reconsideration of the
23 partition order.

24 Even construing the Motion as a motion for reconsideration of an interlocutory
25 order, the Court finds that Defendants’ requested relief, retrial of Plaintiffs’ partition
26 claim, is not warranted. Federal Rule of Civil Procedure 54(b) authorizes a district
27 court to revise an interlocutory order. See *City of Los Angeles v. Santa Monica*
28 *Baykeeper*, 254 F.3d 882, 889 (9th Cir. 2001). Although Rule 54(b) does not describe

1 the standard for reconsideration, some district courts in the Ninth Circuit have
2 imported standards of review from Rule 60(b). See *AmeriColor Corp. v. Kosto Food*
3 *Prods. Co.*, No. SACV 16-00029-CJC-KESx, 2016 WL 10576634, at *2 (C.D. Cal. June
4 30, 2016).

5 “Reconsideration is ordinarily appropriate only when controlling law has
6 changed, if new evidence has become available, or when necessary to correct a clear
7 error or prevent manifest injustice.” *Sants v. Seipert*, No. 2:15-00355-KJM-CKD, 2021
8 WL 465292, at *6 (E.D. Cal. Feb. 9, 2021) (applying local rule and Rule 60(b) standard).
9 Absent a showing of manifest injustice, the court will not disturb its prior ruling.
10 *Advanced Steel Recovery, LLC v. X-Body Equip., Inc.*, No. 2:16-cv-00148-KJM-JDP,
11 2020 WL 6043935, at *5 (E.D. Cal. Oct. 13, 2020). This Court's local rules also govern
12 reconsideration. They require the moving party to provide “what new or different
13 facts or circumstances are claimed to exist which did not exist or were not shown” or
14 “what other grounds exist for the motion” and “why the facts or circumstances were
15 not shown at the time of the prior motion.” L.R. 230(j).

16 The Court has reviewed the trial transcript and finds that although Defendants
17 were barred from presenting evidence concerning a global partnership between the
18 Parties, Defendants were allowed ample opportunity to argue and present evidence
19 that the Property was owned and operated by a sub-partnership throughout the trial.
20 (See ECF No. 343 at 245:9-249:24; *id.* at 254:7-259:25; ECF No. 344 at 396:25-397:5;
21 *id.* at 400:7-401:13; *id.* at 402:18-410:25; *id.* at 415:20-416:18; *id.* at 422:16-427:24;
22 *id.* 427:24-440:13; *id.* at 496:19-497:14.)

23 Of note, at trial, Judge Mendez reviewed the recorded deeds for the Property,
24 each of which referred to the Parties as joint tenants and made no mention of any
25 partnership. (See ECF No. 344 at 382:5-391:4; ECF No. 361 at 2-3.) Judge Mendez
26 then considered arguments and evidence that a quitclaim deed giving a quarter
27 ownership interest in the Property to a partnership, DeMartini & Sons, was recorded in
28 2014. (ECF No. 343 at 245:19-24; ECF No. 344 at 428:9-430:11.) Further, Judge

1 Mendez considered arguments that funds from the 12731 Loma Rica Drive property,
2 which the Parties held as a partnership, were used to purchase the Property. (ECF No.
3 344 at 422:18-427:24.) However, Judge Mendez was not persuaded by this argument
4 because it implicated ownership by a global partnership between the Parties (i.e., a
5 partnership to own and manage several properties), a claim which had been properly
6 disposed of at summary judgment. (*Id.*) Judge Mendez also found that claims
7 concerning the 12731 Loma Rica Drive property had been remanded to state court
8 and could not be considered at the partition trial. (*Id.*) Finally, Judge Mendez
9 considered Defendants' arguments that the Parties operated the Property based on
10 an oral partnership agreement. (See *id.* at 402:18-408:24; *id.* at 415:20-416:18; *id.* at
11 433:21-436:10.)

12 Thus, Judge Mendez considered evidence and arguments concerning (1) the
13 name or names on the title of the Property, (2) the source of the funds used to
14 purchase the Property, and (3) the Parties' treatment of the Property as partnership
15 property. After considering the evidence, Judge Mendez found that there was
16 insufficient evidence a partnership owned the Property such that California Code of
17 Civil Procedure section 872.730 did not apply, and that Plaintiffs were entitled to
18 partition under section 872.710. (ECF No. 361.)

19 Specifically, Judge Mendez held that "there is no global partnership between
20 the parties," and the "evidence does not show that the property is owned by a
21 partnership." (*Id.* at 9.) Judge Mendez concluded:

22 The only evidence indicating that a partnership may have
23 had an interest in the property at some point is the quitclaim
24 deed dated May 6, 2015, which refers to a prior quitclaim
25 deed executed on August 14, 2014. The August 14th deed
26 purported to transfer Michael J. DeMartini's interest in the
27 property to "DeMartini & Sons," a partnership. However, the
28 referenced deed was not entered into evidence, nor was its
validity, which is suspect, otherwise established. The Court
therefore finds there to be no valid partnership interest in the
property.

1 (*Id.*) As there was also no evidence of waiver under section 872.710, Judge Mendez
2 found Plaintiffs were entitled to partition as of right. (*Id.* at 9-11.)

3 Reconsideration of this conclusion is not warranted by the Ninth Circuit's
4 decisions. First, the Ninth Circuit upheld summary judgment in Plaintiffs' favor as to
5 Defendants' global partnership claim, finding there was no evidence of a partnership
6 extending beyond the Property. (ECF No. 455.) Accordingly, Judge Mendez was not
7 required to consider evidence of a global partnership at trial. Second, the Ninth
8 Circuit found there was evidence of a partnership formed to operate the Property.
9 (*Id.* at 3-4 ("Michael and Renate nonetheless produced evidence that the business
10 managing and leasing commercial real estate at the 12759 parcel was a partnership
11 between the two couples.")) Judge Mendez did not act contrary to this conclusion at
12 trial. Rather, Judge Mendez considered arguments that the Property was operated by
13 a partnership, but found that insufficient to establish the Property was *owned* by a
14 partnership, the relevant question under section 872.730. (See, e.g., ECF No. 344 at
15 404:22-405:16; *id.* at 408:12-17.) This finding is consistent with California
16 Corporations Code section 16204(d), which states that property acquired by one or
17 more partners is presumed to be separate property even if used for partnership
18 purposes unless there is "an indication in the instrument transferring title to the
19 property of the person's capacity as a partner or of the existence of a partnership"
20 No such indication of partnership was present in the deeds put forth at trial. Thus, the
21 Ninth Circuit's ruling changes nothing regarding ownership under section 16204.

22 Nothing in the partition trial or Judge Mendez's ruling is inconsistent with the
23 Ninth Circuit's decisions in this case, and Defendants have provided no other basis for
24 reconsideration of Judge Mendez's Interlocutory Judgment. Accordingly,
25 Defendants' Motion to Set Aside is DENIED.

26 **II. Partition Hearing**

27 As noted above, this matter was stayed on February 7, 2020, pending
28 resolution of the Ninth Circuit appeals. (ECF No. 453.) The appeals have now been

1 resolved, and the Ninth Circuit has held that the Interlocutory Judgment on Partition,
2 which ordered partition in kind, was not a final order. (ECF No. 473.) As the Court
3 understands it, Referee Farrar recommends that, instead of partitioning the Property
4 in kind, the Court order that the Property be partitioned by sale, with the sale
5 proceeds to be split between the Parties. (See ECF No. 441.) Referee Farrar indicates
6 that, if the Court approves partition by sale, the Court should order Referee Farrar to
7 prepare further recommendations as to the best process, terms, and procedures for
8 the sale. (*Id.*)

9 As noted above, the Interlocutory Judgment on Partition was not a final order.
10 Accordingly, the Court can reconsider the prior order to partition the Property in kind.
11 In light of the Referee's recommendation, the Court will schedule a hearing on the
12 Partition Report to determine whether partition by sale is the better remedy.

13 The Partition Report was filed in October of 2019. (ECF Nos. 441, 442.) The
14 Parties' responses to the Partition Report were filed in November and December of
15 2019. (ECF Nos. 445, 446, 447, 448.) Thus, over four years have passed since this
16 matter was fully briefed.

17 Given this substantial time lapse, the Court will order Referee Farrar to advise
18 the Court within twenty-one days of this Order whether any updates to the Partition
19 Report are necessary, and, if so, how much time he will require to submit updated
20 briefing. Parties will also be given an opportunity to respond to Referee Farrar, if
21 necessary, and to provide any updated information to the Court. Once the Court has
22 received Referee Farrar's response to this Order, the Court will set a briefing schedule
23 and a hearing date.

24 **III. New Trial**

25 Finally, the Ninth Circuit has ordered that the Court retry Plaintiffs' breach of
26 contract claim and has reversed summary judgment as to Defendants' breach of
27 partnership agreement and defamation counterclaims. (ECF No. 455.) Accordingly,
28 the Parties shall meet and confer within fourteen days and thereafter contact Judge

1 Calabretta's courtroom deputy, Gabriel Michel, via e-mail
2 (gmichel@caed.uscourts.gov) to obtain available and mutually acceptable dates for a
3 pretrial conference and jury trial.

4 While no settlement conference is currently scheduled, the Parties are
5 reminded that if they wish to have a settlement conference, they may file a request to
6 do so at any time. They may also elect Voluntary Dispute Resolution ("VDRP") with the
7 Court indicating that all parties to the action agree to submit the action to VDRP
8 pursuant to E.D. Cal. L.R. 271.

9 CONCLUSION

10 In accordance with the above, it is hereby ordered that:

- 11 1. The stay entered by this Court on February 7, 2020 (ECF No. 453) is
12 LIFTED;
- 13 2. Defendants' Motion to Set Aside (ECF No. 458) is DENIED;
- 14 3. Referee Farrar shall advise the Court within twenty-one (21) days whether
15 any updates to his Partition Report (ECF Nos. 441, 442) are necessary,
16 with a briefing schedule to follow; and
- 17 4. The Parties shall meet and confer within fourteen (14) days and
18 thereafter contact Judge Calabretta's courtroom deputy, Gabriel Michel,
19 via e-mail (gmichel@caed.uscourts.gov) to obtain available and mutually
20 acceptable dates for a pretrial conference and jury trial.

21
22 IT IS SO ORDERED.

23 Dated: March 13, 2024


24 Hon. Daniel J. Calabretta

25 UNITED STATES DISTRICT JUDGE

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