
PARTIES/ATTORNEYS

Plaintiff	Bruno Marin Carillo	Stephens & Stephens LLP Conrad Stephens
Defendant	Jose Jesus Marin	Self-Represented

TENTATIVE RULING

Appearance is required to address the issues raised below.

On April 8, 2022, plaintiff Bruno Marin Carillo filed a complaint for partition of real property located at 1315 DeJoy Street in Santa Maria held in joint tenancy by plaintiff and defendant Jose Jesus Marin. On September 14, 2022, the clerk entered default against defendant. On October 11, 2022, the court entered a default judgment against defendant, ordered the property to be sold, and ordered the proceeds be distributed equally between plaintiff and defendant after escrow paid off any existing liens or judgments, and after payment of \$3,540.03 from defendant's share to plaintiff's then attorney.

On March 1, 2023, the court appointed the "Clerk of The Court [or] Clerk's Designee" as elisor to sign the listing agreement on defendant's behalf and ordered the funds from the sale to be held in escrow subject to the court's approval for release. On May 5, 2023, court clerk Norma Willoughby signed the documents.

That listing agreement presumably lapsed before the property was sold and on July 24, 2025, plaintiff filed another request for an order appointing an elisor to execute on defendant's behalf the documents necessary to list the real property for sale as well as any documents required by escrow and title officers to effectuate the sale. The court granted this request on September 3, 2025.

On or about January 23, 2026, plaintiff accepted an offer on the property in the amount of \$345,000 and executed the standard forms for California Residential Purchase Agreement and Joint Escrow Instructions. The contract provides that the sale is subject to court approval. Plaintiff now returns to court to report the sale of the property, obtain court approval of the terms and confirmation of the sale, obtain an order authorizing the clerk to execute the sale contract, and ordering distribution of the sale proceeds due to defendant be deposited with the Santa Barbara Superior Court because defendant cannot be located for purposes of distributing his share.

Partition in California is a two-step procedure consisting of an interlocutory judgment followed by a final judgment. The interlocutory judgment determines the parties' interests in the property and orders partition (Code Civ. Proc. ¹, §§ 872.610 – 873), while subsequent proceedings implement the partition through sale or division and result in a final judgment. This phase implements the partition through the method ordered—whether by physical division, sale, or appraisal. It involves additional proceedings such as appointing referees, conducting sales, and distributing proceeds. The process concludes with a final judgment that confirms the partition and addresses remaining matters such as costs and distribution of sale proceeds. (§§ 873.010 – 874.240.)

After an interlocutory judgment is entered for sale of the property, the court “shall” appoint a referee (Code Civ. Proc., §873.010) to divide or sell the property as ordered (§873.210 [division]; §873.510 [sale].) Once a partition by sale is ordered and the referee reaches an agreement to sell the property, the referee must report the sale to the court. (§ 873.710, subd. (a).) The referee's report must contain, at a minimum, the information listed in section 873.710, subdivision (b), which includes a description of the property sold, the purchaser's name, the sale price, and the terms and conditions of the sale. The purchaser, the referee, or any party may then move the court to confirm or set aside the sale. (§ 873.720, subd. (a).) At the hearing on the motion, the trial court must examine the report and witnesses in relation to the report, and may either confirm the sale or vacate the sale and direct a new one if it determines the proceedings were unfair, notice of sale was not properly given, the sale price is disproportionate to the property's value, or a new sale will yield a sum that exceeds the sale price by specified amounts. (§ 873.730, subds. (a), (b) & (c).) “If there is no finding at the hearing of unfairness or improper notice, the sale may thereafter not be attacked on such grounds.” (§ 873.730, subd. (c)(1).)

In this case, the interlocutory order determined that each party had an equal interest in the property and ordered its partition by sale. (October 11, 2022, Order, ¶ 1—ordering property to be immediately listed for sale., ¶ 6—sale proceeds to be distributed 50% to Bruno Marin and 5 0% to Jose Jesus Marin.) Although the court made orders to implement the sale of the property, including that the sale occur by private sale rather than public auction, plaintiff did not request, and the court did not order, appointment of a referee upon entry of the order for partition.²

¹ All statutory references are to the Code of Civil Procedure, unless stated otherwise.

² The court ordered: “Plaintiff or their agent will handle all aspects of showing and maintaining the property for showings and working directly with the listing agent regarding scheduling showings, keeping Plaintiff’s counsel reasonably informed of the progress of the sale.” To the extent this was intended by plaintiff to be an appointment of himself as referee, it fails. An owner of any interest in the property that is the subject of the action is ineligible to act as referee. (§ 873.050, subd. (d).)

Because a referee was not appointed, there is no referee's report for the court to examine. The report must contain certain information as specified by the statute. (§873.710—" (1) A description of the property sold to each purchaser; (2) The name of the purchaser; (3) The sale price; (4) The terms and conditions of the sale and the security, if any, taken; (5) Any amounts payable to lienholders; (6) A statement as to contractual or other arrangements or conditions as to agents' commissions; (7) Any determination and recommendation as to opening and closing public and private ways, roads, streets, and easements; (8) Other material facts relevant to the sale and the confirmation proceeding.) While much of the information is available in the motion papers submitted, it is unclear whether the court is able to confirm a sale absent appointment of a referee, or if the order would remain subject to collateral attack.

Other consequences flow from the failure to appoint a referee. For example, "[t]he referee appointed by the court to make a sale of the property shall sell the property in the manner and following the procedures provided in this chapter." (§873.510.) One of those procedures is publication of a notice of private sale, which must contain specific information. (§§873.640, 873.650.) Notice of sale was not given here. Compliance with the statutory sales procedures remains paramount to determining its fairness. (See § 873.730, subd. (c)(1)—court may vacate the same if the proceedings were unfair or notice of sale was not properly given.)

The court is sensitive to the fact that discussion of these issues after a sale has been obtained is not ideal and that a protracted delay may result in losing the buyer. The court nevertheless finds that delay is warranted to ensure the court is fully informed and in the best position to enter an order.

Accordingly, plaintiff's counsel is ordered to appear at the hearing to address the issues raised above. If, upon considering this tentative ruling, plaintiff intends to request appointment of a referee to satisfy the statutory mandate, no appearance of counsel will be required at the hearing upon submission of a proposed order for such appointment. Any such order must include the name of a proposed appointee and any relevant directives.

If plaintiff intends to pursue the confirmation based on the present record (i.e., without the appointment of a referee), the court intends to continue the matter (after hearing from counsel on the record) to May 27, 2026 at 10:30 a.m. for the submission of a supplement by May 6, 2026 addressing the following:

- Whether the confirmation of sale would be void based on the failure to appoint a referee;³

³ The court is aware of authority that states appointment of a referee to perform the prejudgment duties is discretionary (*Richmond v. Dofflemyer* (1980) 105 Cal.App.3d 745) and finds that to be distinguishable from the postjudgment duties that are raised in this matter.

- Whether the property was advertised on the MLS and whether that is the functional equivalent of a required Notice of Sale under §§873.640-873.650;
- The methodology by which the property's sale price was determined;
- Whether there are any lienholders on the property;
- Whether plaintiff intends to seek fees for himself or counsel beyond that which was ordered by Judge Rigali on October 11, 2022, and if so, the authority for the request as well as the amounts.