

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
COSTA MESA JUSTICE COMPLEX**

MINUTE ORDER

DATE: 09/06/2023

TIME: 01:30:00 PM

DEPT: CM07

TEMPORARY JUDGE: Seni Linnebur

CLERK: C. Johnson

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: M Robinson

CASE NO: **30-2022-01294770-PR-PL-CMC** CASE INIT.DATE: 12/05/2022CASE TITLE: **Jordan - Probate**

CASE CATEGORY: Probate

CASE TYPE: Probate Of Will - Letters Of Administration With Will A

EVENT ID/DOCUMENT ID: 74053502

EVENT TYPE: (P) Motion - Other

MOVING PARTY: Sharon Jordan

CAUSAL DOCUMENT/DATE FILED: Motion - Other, 07/12/2023

APPEARANCES

Attorney for Sharon Jordan - M. Onana Filmon, in person

Attorney for Hytoshia McDaniels Jordan - Jason Yang

Parties and counsel advised that by appearing remotely for this hearing, they have waived the right to appear in-person for this hearing if they failed to object at the time the case is heard.

All parties present this date having been advised by virtue of a posted notice and verbal notification of the right to have the matter heard before a judge or commissioner and no objections having been made, it is deemed that the parties have stipulated that the matter may be heard by the temporary judge, pursuant to California Rules of Court, rule 2.816(d)(1).

Hearing held, participants appearing remotely and in person.

Tentative Ruling posted on the court's public website as follows:

Before the court is a motion by Petitioner Sharon Jordan ("Sharon") to expunge the notices of pendency of action recorded against real properties located at 8016 Hampshire Road, Orange, CA 92867 ("Hampshire Property") and 7468 Palmetto Ave, Fontana, CA 92336 ("Palmetto Property"). The notices of pendency of action were recorded by Petitioner Hytoshia McDaniels Jordan ("Hytosha"). Sharon and Hytoshia have competing claims to administer the Estate of Gregory Jordan, Sr. Sharon is the Decedent's first wife. Hytoshia was the Decedent's wife when he passed away.

A motion to expunge a lis pendens must be granted where a lis pendens is improper, either because: (1) the pleading on which the lis pendens is based does not contain a real property claim; or (2) the claimant cannot establish the probable validity of its real property claim(s) by a preponderance of the evidence. (Code Civ. Proc., §§ 405.31, 405.32; Prob. Code, § 1000.) Unlike most other motions, when a motion to expunge is brought, the burden is on the party opposing the motion to both show the existence of a real property claim and the probable validity of that claim. (Kirkeby v. Superior Court (2004) 33 Cal.4th 642, 647; Code Civ. Proc., § 405.30.)

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NO:

Here, the only evidence in opposition to the motion to expunge lis pendens is the declaration of Jason J.L. Yang, attorney for Hytosha. Mr. Yang does not have personal knowledge of the majority of the facts stated in his declaration. Nonetheless, from the documents attached as exhibits to his declaration it is clear that the parties had a marital dissolution action pending when the Decedent passed away; the marital status had been resolved, but the issues concerning the division of property, including the Hampshire Property and the Palmetto Property, had not been resolved. After the Decedent passed away, Sharon filed an Affidavit of Death of Joint Tenant as to both the Hampshire Property and the Palmetto Property. Hytosha claims that said properties are part of the estate and she has claim as the surviving spouse of the Decedent pursuant to Probate Code section 6401.

States a Real Property Claim

A "real property claim" is one which, if meritorious, would affect title to, or the right to possession of, specific real property; or the use of an easement identified in the pleading. (Code Civ. Proc., § 405.4.) The allegations of the relevant pleading determines whether a "real property claim" is involved; no independent evidence is required. (See *Urez Corporation v. Superior Court* (1987) 190 Cal.App.3d 1141, 1149.) Here, the competing petitions to administer the estate establish that Hytosha has a real property claim to the Hampshire Property and the Palmetto Property as a surviving spouse of the Decedent. Thus, the pleading on which the lis pendens are based contain a real property claim.

Probable Validity of Real Property Claim

"Probable validity," with respect to a real property claim, means that it is more likely than not that the claimant will obtain a judgment against the defendant on the claim. (Code Civ. Proc., § 405.3.) As noted above, the party opposing the motion has the burden of showing the probable validity of at least one of the real property claims upon which the lis pendens is based. (*Kirkeby v. Superior Court*, supra, 33 Cal.4th at p. 647; Code Civ. Proc., § 405.32.)

Here, Hytosha has not produced admissible evidence sufficient to show that she is more likely than not to obtain a judgment on the real property claim. This is not to say that the record presented on this motion shows or suggests that Hytosha would not ultimately prevail on one or more claims at trial. But it was Hytosha's burden to show a probability that she will prevail. She did not do so.

Therefore, the motion to expunge lis pendens is **GRANTED**.

FURTHER ORDERS

The probate court has broad power to supervise the administration of a trust estate and "to protect the estate and ensure its assets are properly protected for the beneficiaries." (*Est. of Ferber* (1998) 66 Cal. App. 4th 244, 253, as modified on denial of reh'g.)

Accordingly, the court **ORDERS** neither the Hampshire property nor the Palmetto property are to be sold or encumbered until further order of the court or agreement of the parties.

Oral arguments heard.

The court's modified tentative ruling is now the final order of this court.

Parties waive notice.

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