

JAN 14 2016

MICHAEL D. PLANET

BY: *Spaques* Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

David Chambers and Haruko Chambers, as
individuals and as trustees of The David
Chambers and Haruko Chambers Trust of
2008,

Plaintiffs,

vs.

Frances Seyssel AKA Panchita Seyssel; and
DOES 1-25,

Defendants.

Frances Seyssel, aka Panchita Seyssel

Cross-Complainant,

vs.

David Chambers, an individual; et al.,

Cross-Defendants.

Case No.: 56-2013-00435233-CU-OR-VTA

Assigned to the Honorable Rocky Baio

STATEMENT OF DECISION

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I. INTRODUCTION

A. General Factual Background

Plaintiffs and cross-defendants David Chambers and Haruko Chambers as individuals and trustees of the David Chambers and Haruko Chambers Trust of 2008 (referred to herein as "the Chambers", "David," or "Haruko") filed a lawsuit against Frances Seyssel (referred to herein as

1 "Frances") on April 22, 2013. After a series of demurrers and amendments, the Chambers filed the
2 operative Third Amended Complaint on March 24, 2014. Frances filed an answer and cross-complaint
3 on June 3, 2014.

4 As is the case with many lawsuits, these parties started off as friends and are now opposing
5 parties in this lawsuit. The Chambers and Frances first met in about 1986 when David assisted Frances
6 in inventorying property for estate planning purposes belonging to her grandfather Willis Hawley. As
7 part of that association, in 1988 David and Frances entered into a notarized and recorded agreement to
8 explore the possible development of 120 acres of raw land in Acton, CA (the "Acton" property).
9 Shortly thereafter, in about August, 1989 the Chambers and Frances purchased a condominium located
10 in Westlake Village, CA (the "Shoreview" property) as an investment and rental property. In about
11 February, 1990 the parties entered into a "Partnership Agreement" in respect to the Shoreview
12 property. Starting about April, 1994 the parties had a falling out of their relationship, and this lawsuit
13 seeks to resolve their rights in respect to the Acton and Shoreview properties. The facts stated within
14 this Section I.A.-D., along with any other factual findings set forth herein under each subheading in
15 sections II-VI, below, shall constitute the factual findings of the Court.

16 **B. Chronology Of Facts – Shoreview Property**

17 On August 21, 1989, Frances took title to the Shoreview Property with Plaintiffs David and
18 Haruko Chambers by Grant Deed, recorded on August 30, 1989, in the Ventura County Recorder's
19 Office as document no. 89-136749, with vesting as follows: "David Chambers and Haruko Chambers,
20 husband and wife as joint tenants as to an undivided 2/3 interest, and Frances Seyssel, a married
21 woman as her sole and separate property as to and undivided 1/3 interest, as tenants in common."

22 The legal description of the Shoreview Property is as follows:

23 PARCEL 1: Lot 79, Tract No. 2288, in the City of Thousand Oaks,
24 County of Ventura, State of California, as shown on a map recorded in
25 book 62 Pages 1 to 11 inclusive, of Maps, in the office of the County
26 Recorder of said County. EXCEPT all the oil, gas and other
27 hydrocarbon substances lying within and under that portion of said land
28 lying below a depth of 500 feet, measured vertically, from the surface of
said land, without, however, any right to enter upon the surface of said
land, or into that portion of the subsurface thereof, lying above a depth
of 500 feet, measured vertically from said surface.

1 PARCEL 2: An easement appurtenant to Lot 79 of Tract 2288 over lot
2 237 to 263 of said tract, for the purpose of placement, maintenance,
3 repair and reconstruction of fire places to project up to 18 inches in said
4 lot 79.

4 PARCEL 3: An easement 4'2" wide for the placement, maintenance,
5 repair and reconstruction of wing walls not to exceed sixteen (16) inches
6 in width, appurtenant to said land, said easement to be over and across
7 Lot 237 to 263.

7 Frances contributed \$20,000.00 to the down payment for the purchase of the Shoreview Property.
8 David and Haruko contributed \$40,000.00 toward the down payment for the purchase of the
9 Shoreview Property. David, Haruko and Frances financed the sum of \$161,200.00 for the purchase of
10 the Shoreview Property. Frances entered into an agreement with David and Haruko regarding the
11 Shoreview Property on or about February 5, 1990. The Shoreview Agreement states "It is agreed that
12 the partners will equally share the expense and effort of holding this property, including any negative
13 cash flow that the event that any partner/s cannot fulfil this obligation the partnership will be dissolved
14 and the property sold."

15 **C. Chronology Of Facts - The Acton Property**

16 Frances was the owner of the Acton Property through a trust executed by her grandparents,
17 Willis and Lillian Hawley. Frances and David entered into The Hawley Associates Partnership
18 Agreement on April 22nd 1988, "...by and between the Hawley Revocable Trust No. 1 and
19 FRANCES SEYSSSEL as Trustee, of 8200 Gould Ave. Hollywood CA 90046 California, and DAVID
20 CHAMBERS, of 3718 River Farm Drive, Westlake Village CA 91361..."

21 The Hawley Associates Partnership Agreement states: "(b) Initial Contributions. The initial
22 contribution of each partner shall be as follows: (1) Frances Seyssel - The initial contribution of 120
23 acres of land (2) David Chambers - Labor and services"

24 The Hawley Associates Partnership Agreement states: "(e) Effect of Failure To Make Initial
25 Contribution. If any partner fails to make his entire initial contribution to the capital of the partnership,
26 this Agreement shall be abandoned and of no further effect. On the happening of such contingency, all
27 contributions which have been made shall be returned to the partners who made such contributions.

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1 The Hawley Associates Partnership Agreement states: "(b) Property To Be In Partnership
2 Name. The title to all partnership property shall be held in the name of the partnership." The Acton
3 property was never titled in the name of the Hawley partnership. After entering into the Hawley
4 Partnership, David acknowledged that the Acton Property was owned, not by the Hawley Partnership,
5 but by Frances.

6 On or about December 12, 1988 – Hawley Partnership Line of Credit/Checking Account was
7 opened (Account No.: 3386589/9001).

8 Due to a separate lawsuit, on May 4, 1989, a lis pendens is recorded against the Acton
9 Property. David's testimony that the lis pendens stopped development of the Acton Property was not
10 credible, as several payments from Hawley Partnership Account were made (and the Hawley
11 Partnership Agreement was recorded) *after* recordation of the lis pendens:

- 12 o July 30, 1989 – Payment to Donald Royce for "Prof. Fees";
- 13 o July 30, 1989 – Payment to L.A. County for "filing fees";
- 14 o August 21, 1989 – Shoreview Property Purchased;
- 15 o September 9, 1989 – Payment to David for "out of pocket reimb"; and
- 16 o September 19, 1989 – Payment to C&C Aerial Mapping.

17 Additionally, the Hawley Associates Partnership Agreement was not recorded until September 21,
18 1989. Frances' testimony regarding the Hawley Associates Partnership and Acton Property – including
19 that in February 1991, David called her and told her that the Acton Property cannot be subdivided as
20 they had planned, that the Hawley Partnership should be dissolved and the bank account closed - was
21 entirely credible.

22 Frances obtained a separate Line of Credit from Security Pacific Asian Bank (Account No.:
23 7035373/9001) in the amount of \$59,000.00 and retired the line of credit for The Hawley Associates
24 Partnership account, and as of March of 1991, The Hawley Associates checking account was closed
25 and The Hawley Partnership Loan was terminated.

26 David testified that he has done no work pertaining to the Acton property for its development
27 since the early 1990's. David's testimony that Frances agreed to develop the Acton Property at a later
28 undetermined date was not credible. David's testimony that Frances promised to maintain the Acton

1 Property for later development was not credible. David's testimony that the Hawley Partnership
2 Agreement was not terminated was not credible. Frances' testimony regarding the termination of the
3 Hawley Partnership Agreement in the early 1990's was credible in all respects.

4 A portion of the Acton Property was sold at a tax sale on February 15, 2001. The remainder of
5 the Acton Property was sold by Frances on August 18, 2004.

6 **D. Procedural Background**

7 Frances filed a Motion for Summary Adjudication on November 21, 2014. The Court issued
8 its ruling on April 9, 2015. The Court ruled, in pertinent part, as follows:

9 The Court, having previously taken the Motion for Summary
10 Adjudication (01/12/2015) under submission, now rules as follows:

11 Issue 1: Seyssel's action for partition - All UMFs except No. 4 are
12 established or undisputed.

13 GRANTED, in part. At best, Seyssel is entitled to an interlocutory
14 judgment that she has a 1/3 interest in the Shoreview property and the
15 Chambers have a 2/3 interest, and ordering partition. But the manner of
16 partition (in kind or sale) is still subject to dispute as Seyssel did not
17 meet her burden on this issue.

18 Issue 3: Seyssel's action for dissolution of Shoreview partnership -
19 UMFs 47-50 are not disputed. Given that both parties want the
20 partnership dissolved, GRANTED. A judgment of dissolution of the
21 partnership may be entered, but how it is to be wound up remains at
22 issue.

23 Issue 4: Seyssel's action for specific performance/appointment of
24 receiver and accounting-All UMFs except 76 and 77 are established.
25 DENIED. Since the court does not find that Seyssel waived her right to
26 partition, the issue of specific performance is moot according to the
27 motion...

28 This cause came on for trial on May 18, 2015 in Department 20, Rocky J. Baio, Judge
presiding, sitting without a jury. After several days of testimony, the matter was completed with
closing argument on July 6, 2015. The parties submitted additional written argument, and the matter
was taken under submission on July 9, 2015.

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1 The Chambers as individuals and trustees of the David Chambers and Haruko Chambers Trust
2 of 2008 appeared at all times with their attorney Michael Kwasigroch. Frances appeared at all times
3 with her attorney Regis Guerin.

4 **II. PLAINTIFFS' CAUSES OF ACTION FOR BREACH OF FIDUCIARY DUTY,**
5 **DISSOLUTION AND ACCOUNTING AS TO THE HAWLEY ASSOCIATES**
6 **PARTNERSHIP AND ACTON PROPERTY**

7 **A. Findings Of Fact**

8 The above-stated findings of fact are incorporated into this section of the Statement of
9 Decision by this reference. The court finds that the parties entered into a partnership agreement dated
10 April 22, 1988 to explore the feasibility of developing the 120 acres in Acton, CA. The agreement
11 provided that Frances would provide the property and money necessary to determine the feasibility
12 and start up of the project and David would do the necessary leg work and "labor and services" to get
13 the project started. A bank account and equity line were opened in both names to fund the project, but
14 all payments were made by Frances only. The account was later closed, with the then balance due
15 transferred to a new account in Frances' name only.

16 The court finds that by late 1990 David and Frances had determined that the project was not
17 feasible. By mutual oral agreement, and as ratified by their actions, they absolved themselves of any
18 responsibility to each other in respect to the project (the Hawley Partnership Agreement states that the
19 Hawley Partnership may be dissolved by "Unanimous agreement of the parties."). The 120 acres were
20 to remain Frances' and the financial obligation incurred in exploring the development would also
21 remain Frances' obligation. David had no further obligations to Frances in attempting to develop the
22 property.

23 In all respects, Frances' testimony as to the Acton property was credible. David's position that
24 the parties agreed to merely defer the development to a later date is not credible. The court finds David
25 to be sophisticated and astute businessman. It is not credible that he would have allowed such an
26 agreement to lay dormant for over 20 years without doing anything to protect his claimed investment.
27 Based upon the above finding, the related testimony and evidence about easements, is landlocked
28 property, current value of property, and the subsequent tax sale and private sale of the property are all

1 moot.

2 Because David and Frances mutually agreed to absolve themselves of any responsibility to
3 each other respecting the Acton Property and Hawley Partnership Agreement, Frances owed no
4 fiduciary duty to David at the time of the tax sale of a portion of the Acton Property and at the time of
5 the sale of the other portion of the Acton Property. Because the Hawley Associates Partnership was
6 terminated by mutual agreement, David's causes of action for Dissolution and Accounting are moot.

7 **B. Conclusions Of Law**

8 "The elements of a cause of action for breach of fiduciary duty are: (1) existence of a fiduciary
9 duty; (2) breach of the fiduciary duty; and (3) damage proximately caused by the breach." (*Stanley v.*
10 *Richmond* (1995) 35 Cal.App.4th 1070, 1086.)

11 An executory contract is one "on which performance is due to some extent on both sides."
12 (*National Labor Relations Bd. v. Bildisco & Bildisco* (1984) 465 US 513, 521-523.) "This case
13 therefore comes within the rule stated in *Richter v. Union Land & Stock Co.*, 129 Cal. 372, 62 Pac.
14 40, as follows: 'In all executory contracts the several obligations of the parties constitute to each,
15 reciprocally, the consideration of the contract; and a failure to perform constitutes a failure of
16 consideration—either partial or total, as the case may be—within the meaning of section 1689 of the
17 Civil Code.' See, also, *Sterling v. Gregory*, 149 Cal. 121, 85 Pac. 305, and *Cleary v. Folger*, 84 Cal.
18 316, 24 Pac. 280, 18 Am. St. Rep. 187." (*Bray v. Lowery* (1912) 163 Cal. 256, 260.)

19 Moreover, "[a]n executory contract may be rescinded, abandoned, or terminated, either wholly
20 or in part, by the mutual consent of the respective parties at any stage of their performance.' [Citation].
21 The question whether there was an intent to abandon a contract is one of fact to be ascertained from all
22 the facts and circumstances surrounding the transaction [Citations]." *Kane v. Sklar* (1954) 122
23 Cal.App.2d 480.) The mutual rescission or abrogation of a written contract may be effected by an oral
24 agreement whether executed or not, and supported sufficient consideration in the mutual cancellation
25 of executory contractual rights. "When such is the case each party has suffered a legal detriment in
26 giving up such rights and the consideration is adequate." (*Sass v. Hank* (1952) 108 Cal.App.2d 207,
27 215, 238 P.2d 652, 658.) Section 1698 of the Civil Code, however, has no application to the
28 abandonment by mutual consent of an agreement in writing. Abandonment is not an 'alteration' or

1 modification of a contract. Abandonment of a contract terminates it and entirely abrogates so much of
2 it as is unperformed. (*Grant v. Aerodraulics Co.* (1949) 91 Cal.App.2d 68, 75.) A contract may be
3 mutually abandoned by the parties at any stage of its performance or before any performance has been
4 commenced, and by such abandonment each party is released from any further performance, or, as in
5 the instant action, each party is released from any performance at all. (*Martin v. Butter* (1949) 93
6 Cal.App.2d 562.)

7 **C. Decision**

8 Frances owed no fiduciary duty to David with respect to the Hawley Partnership or the Acton
9 Property because David and Frances mutually agreed to terminate the Hawley Partnership Agreement,
10 based upon the credible testimony of Frances, and based upon lack of credible testimony from David,
11 as set forth above.

12 **III. CROSS-COMPLAINANT'S CAUSE OF ACTION FOR PARTITION OF THE**
13 **SHOREVIEW PROPERTY**

14 **A. Findings Of Fact**

15 The above-stated findings of fact are incorporated into this section of the Statement of
16 Decision by this reference. The parties purchased the Shoreview property in August, 1989 for
17 \$210,000. The Chambers contributed \$40,000 and Frances contributed \$20,000 toward the purchase
18 price; the balance was borrowed. The parties signed an agreement in respect to the Shoreview property
19 in about February, 1990, drafted by David. The property has been rented to various tenants since at
20 least 1991 with the rental payments used to pay the mortgage and other expenses. Until the end of
21 1993 the parties jointly managed the property. Since January, 1994 the Chambers have managed all
22 aspects of the property. With the exception of information provided by an accountant for tax purposes,
23 there has been little or no exchange between the parties in respect to an accounting or request for
24 information about the management of the property or the income or expenses related to the property.

25 Significantly, since from about 1994 the property has suffered from a significant crack in the
26 slab that makes up its foundation. The court finds there are so many variables to be considered as to
27 the value of the property that to place a value on the property would be no more than sheer
28 speculation. On that basis, the testimony offered by the Chambers' witnesses in respect to possible

1 repairs and value was unpersuasive and not helpful. The court is particularly concerned that no
2 consideration was given to the fact that notwithstanding the properties apparent problems, that it has
3 been continually rented out since 1991 and is currently rented at a rent of about \$2,200 per month.

4 The Court granted Ms. Seyssel's Motion for Summary Adjudication for partition, as follows:

5
6 Issue 1: Seyssel's action for partition - All UMFs except No. 4 are
7 established or undisputed. **GRANTED**, in part. At best, Seyssel is
8 entitled to an interlocutory judgment that she has a 1/3 interest in the
9 Shoreview property and the Chambers have a 2/3 interest, and ordering
partition. But the manner of partition (in kind or sale) is still subject to
dispute as Seyssel did not meet her burden on this issue.

10 The Order further denied Ms. Seyssel's cause of action for Specific Performance of the Shoreview
11 Agreement (buyout provisions of the Shoreview Agreement) as follows: "DENIED. Since the court
12 does not find that Seyssel waived her right to partition, the issue of specific performance is moot
13 according to the motion."

14 **B. Conclusions Of Law**

15 Code of Civil Procedure section 872.710, subdivision (b), provides in relevant part, "partition
16 as to concurrent interests in the property shall be as of right unless barred by a valid waiver."

17 A co-owner of real or personal property may bring an action for partition. (Code of Civil
18 Procedure § 872.210.) The term "partition" means " 'the procedure for segregating and terminating
19 common interests in the same parcel of property.' " (*14859 Moorpark Homeowner's Assn. v. VRT*
20 *Corp.* (1998) 63 Cal.App.4th 1396, 1404–1405.) "Partition is a remedy much favored by the law. The
21 original purpose of partition was to permit cotenants to avoid the inconvenience and dissension arising
22 from sharing joint possession of land. An additional reason to favor partition is the policy of facilitating
23 transmission of title, thereby avoiding unreasonable restraints on the use and enjoyment of property."
24 (*LEG Investments v. Boxler* (2010) 183 Cal.App.4th 484, 493.)

25 The statutes governing partition are found at Code of Civil Procedure section 872.010 et seq. A
26 co-owner of property has an absolute right to partition unless barred by a valid waiver. (Code of Civil
27 Procedure § 872.710, subd. (b).) "[A]lthough the action of partition is of statutory origin in this state, it
28 is nonetheless an equitable proceeding." (*Elbert, Ltd. v. Federated Income Properties* (1953) 120

1 Cal.App.2d 194, 200.) “If the court finds that the plaintiff is entitled to partition, it shall make an
2 interlocutory judgment that determines the interests of the parties in the property and orders the
3 partition of the property and, unless it is to be later determined, the manner of partition.” (Code of Civil
4 Procedure § 872.720, subd. (a).) The manner of partition may be in kind or by sale. (§§ 873.210–
5 873.50.) In lieu of dividing the property among the parties, the court shall order the property be sold
6 and the proceeds divided among the parties in accordance with their interests in the property if the
7 parties agree to such relief or the court determines sale and division of the proceeds would be more
8 equitable than a division of the property. (Code of Civil Procedure § 872.820.)

9 “[I]n many modern transactions, sale of the property is preferable to physical division since the
10 value of the divided parcels frequently will not equal the value of the whole parcel before division.
11 Moreover, physical division may be impossible due to zoning restrictions or may be highly impractical,
12 particularly in the case of urban property. [¶] The [Law Revision] Commission recommends that
13 partition by physical division be required unless sale would be ‘more equitable.’ This new standard
14 would in effect preserve the traditional preference for physical division while broadening the use of
15 partition by sale. [Citation.]” (*Butte Creek, supra*, 136 Cal.App.3d at p. 365.)

16 At common law and in equity, co-owners of property are entitled to partition. (See, e.g., *Butte*
17 *Creek, supra*, 136 Cal.App.3d at pp. 364–365.) Section 872.710, subdivision (b), provides in relevant
18 part, “partition as to concurrent interests in the property shall be as of right unless barred by a valid
19 waiver.” Waiver of the right to partition under section 872.710, subdivision (b) occurs when there is
20 evidence of an actual or implied contract expressing an intent to waive the rights under the statute.
21 (See, e.g., *Penasquitos, Inc. v. Holladay* (1972) 27 Cal.App.3d 356, 358 (implied waiver of partition
22 when cotenants entered into a long term lease with an option to buy at a stated price.) Furthermore,
23 waiver is the intentional relinquishment of a known right after knowledge of the facts. The burden,
24 moreover, is on the party claiming a waiver of a right to prove it by **clear and convincing evidence**
25 that does not leave the matter to speculation, and “‘doubtful cases will be decided against a waiver.’”
26 (*City of Ukiah v. Fones* (1966) 64 Cal.2d 104, 107-108.)

27 Code of Civil Procedure section 872.820 states: “Notwithstanding Section 872.810, the court
28 shall order that the property be sold and the proceeds be divided among the parties in accordance with

1 their interests in the property as determined in the interlocutory judgment in the following
2 situations:...The court determines that, under the circumstances, sale and division of the proceeds
3 would be more equitable than division of the property. For the purpose of making the determination,
4 the court may appoint a referee and take into account his report.”

5 Furthermore, “[i]f a motion for summary adjudication is granted, *at the trial of the action*, the
6 *cause or causes of action* within the action, affirmative defense or defenses, claims for damages, or
7 issue or issues of duty as to the motion which has been granted *shall be deemed to be established* and
8 *the action shall proceed as to the cause or causes of action*, affirmative defense or defenses, claim for
9 damages, or issue or issues of duty *remaining*...[T]he policy behind summary adjudication motions [is]
10 to ‘promote and protect the administration of justice, and to expedite litigation by the elimination of
11 needless trials.’” (*St. Paul Mercury Ins. Co. v. Frontier Pacific Ins. Co.* (2003) 111 Cal.App.4th 1234,
12 1249.)

13 In *Logoluso v. Logoluso* (1965) 233 Cal.App.2d 523, 530, the court states:

14 “...we note that an action to dissolve a partnership is an equitable
15 proceeding, and so is an action in partition. Both kinds of cases present
16 similar problems as to whether jointly-owned property should be divided
17 in equity are parallel, **we apply the long established rules of partition**
18 **to the property division aspects of a partnership dissolution action.**
19 Equity, by its very nature, requires that like principles be applied to like
20 cases...Therefore we hold that in a partnership dissolution action a court
21 has authority to make distribution of partnership real property in kind.
22 This power, of course, is conditioned upon a finding that it is not
23 necessary to hold a sale in order to satisfy partnership obligations.” (*Id.*)

24 Also, to the extent that the court determines that the provisions of the partition statutory
25 scheme “...are a suitable remedy, such provisions may be applied in a proceeding for partnership
26 accounting and dissolution, or in an action for partition of partnership property...” (Civ. Proc. Code §
27 872.730.)

28 C. Decision

Based upon the foregoing and consistent with the court’s previous order granting Frances’s
motion for summary adjudication on the issue of partition, the court grants Frances’ request for an
interlocutory judgment for the sale of Shoreview as provided in more detail below.

1 **IV. ACCOUNTING FOR SHOREVIEW PROPERTY**

2 **A. Findings of Fact**

3 The above-stated findings of fact are incorporated into this section of the Statement of
4 Decision by this reference. In addition to the partition of Shoreview, each party is seeking an
5 accounting and damages from the other. Since 1994, Frances has paid her one-third portion of the
6 property taxes, but has not contributed anything toward other expenses. Conversely, the Chambers
7 have not provided Frances with an accounting during their management of Shoreview and have failed
8 to provide her with her share of rent receipts during those months or years when there was a positive
9 cash flow.

10 In respect to both parties request for an accounting of the rents and expenses related to
11 Shoreview between January 1, 1994 and December 31, 2014, the court makes the following
12 findings:

13 Rental receipts: \$386,472

14 Expenses: \$437,707

15 Payments toward interest on loan: \$140,786

16 Payments toward loan principal: \$114,317

17 Property tax payments: \$66,603

18 HOA fees: \$56,001

19 Other: \$60,000

20 Net loss of: \$51,235

21 In respect to "other", these expenses cover: cleaning, repairs, insurance, legal fees, and
22 miscellaneous other expenses. The Chambers have claimed of about \$73,500 for these other items.
23 The court has disallowed \$13,500 of these claimed expenses as being improper or not supported by the
24 evidence.

25 Over the 21 year accounting period expenses exceeded revenue by \$51,235. The Chambers are
26 responsible for \$34,156 of this amount and Frances is responsible for \$17,078. Frances paid \$22,198
27 toward these expenses in the form of property tax payments, and therefore is entitled to a
28 reimbursement from the Chambers of \$5,119 for the period through December 31, 2014. Frances is

1 the prevailing party with the net monetary recovery (and because she obtained a complete defense
2 verdict to David's claims pertaining to the Acton Property and Hawley Associates Partnership).

3 The request of the Chambers for compensation for their services related to the management of
4 or work related to the property is denied. Similarly, the request by either party for interest on any
5 money they may be entitled to (depending upon whether a particular year had a positive or negative
6 cash flow and how an accounting period might be interpreted) is also denied. In making these orders,
7 the court has given due consideration to the fact at any time since 1994 either side could have sought
8 an accounting or partition of the property. Neither party elected to do so. To seek these additional
9 forms of compensation 20 years later is unfair and barred by laches.

10 **B. Conclusions Of Law**

11 "Partnership is a fiduciary relationship, and partners **are held to the standards and duties of a**
12 **trustee** in their dealings with each other. "[I]n all proceedings connected with the conduct of the
13 partnership every partner is bound to act in the highest good faith to his copartner and may not obtain
14 any advantage over him in the partnership affairs by the slightest misrepresentation, concealment,
15 threat or adverse pressure of any kind.' [Citations.]" (*BT-I v. Equitable Life Assurance Society* (1999)
16 75 Cal.App.4th 1406, 1410-1411, quoting *Leff v. Gunter* (1983) 33 Cal.3d 508, 514.) Or to put the
17 point more succinctly, "Partnership is a fiduciary relationship, and partners may not take advantages
18 for themselves at the expense of the partnership." (*Jones v. Wells Fargo Bank* (2003) 112 Cal.App.4th
19 1527, 1540; see *Jones v. H.F. Ahmanson & Co.* (1969) 1 Cal.3d 93, 108, 111; (*Enea v. Superior Court*
20 (2005) 132 Cal.App.4th 1559, 1564.)

21 A lessor cotenant is not entitled to management fees. Unless the lessor cotenant was acting as
22 the agent for, or receiver of, the other cotenant's interest, the collecting cotenant is not entitled to
23 compensation for his or her personal services in taking charge of the property, renting it, and
24 collecting the rents. Also, he or she is not entitled to interest on the necessary expenditures before the
25 entry of a judgment determining any liability for contribution. (*Miller and Starr California Real*
26 *Estate 3D* (2013) Harry D. Miller and Marvin B. Starr Chapter 12. Holding Title (Cotenancy, Rights
27 and Duties of Cotenants; *Steeve v. Yaeger* (1956) 145 Cal.App.2d 455, 464; *Combs v. Ritter* (1950)
28 100 Cal.App.2d 315, 317; *Hanna v. Pipes* (1949) 92 Cal.App.2d 106, 112; see also *Howard v.*

1 *Throckmorton* (1881) 59 Cal. 79, 89; *Raun v. Reynolds* (1861) 18 Cal. 275, 291.)

2 Similarly, in the absence of an agreement, no partner has a right to compensation for
3 conducting partnership business other than a share of the profits. (See *Dickson, Carlson & Campillo*
4 *v. Pole* (2000) 83 Cal.App.4th 436, 445; *Cagnolatti v. Guinn* (1983) 140 Cal.App.3d 42, 50.) The
5 partnership agreement made no provision for compensation. The parties clearly intended to be
6 governed by Corporations Code, section 15018, subdivision (f), which provides: ‘No partner is
7 entitled to remuneration for acting in the partnership business, except that a surviving partner is
8 entitled to reasonable compensation for his services in winding up the partnership affairs.’ (*Chazan v.*
9 *Most* (1962) 209 Cal.App.2d 519, 523.)

10 “The defendant also contends that the court erred in failing to find that there existed between
11 him and the plaintiff an agreement that he should be paid a salary, and that \$16,800 is due him in this
12 connection. The usual rule is that one partner is not entitled to more compensation than another in the
13 absence of an agreement to the contrary. [Citations]” (*Nevarov v. Nevarov* (1953) 117 Cal.App.2d
14 581, 586.)

15 A partner or joint adventurer is not entitled to interest on his capital contribution prior to an
16 accounting unless it is expressly so agreed among the partners or joint adventurers. (*Luchs v. Ormsby*
17 (1959) 171 Cal.App.2d 377; *Clement v. Duncan* (1923) 191 Cal. 209, 211; *Bowman v. Carroll* (1932)
18 120 Cal.App. 309, 312; Cal.Jur.2d, Partnership, § 161, p. 134.) It is provided in the California
19 Uniform Partnership Act, found in Corporations Code section 15018, subdivision (d), that: “A partner
20 shall receive interest on the capital contributed by him only from the date when repayment should be
21 made.” There is no way to determine whether any partner owes anything to the other until an
22 accounting is rendered. (See, *Burge v. Michael* (1963) 213 Cal.App.2d 780, 790-791.) Accordingly,
23 in the absence of an agreement, no partner has a right to compensation for conducting partnership
24 business other than a share of the profits. (See *Dickson, supra*, 83 Cal.App.4th at p. 445; *Cagnolatti*
25 *supra*, 140 Cal.App.3d at p. 50.)

26 **C. Decision**

27 Over the 21 year accounting period expenses exceeded revenue by \$51,235. The Chambers are
28 responsible for \$34,156 of this amount and Frances is responsible for \$17,078. Frances paid \$22,198

1 toward these expenses in the form of property tax payments, and therefore is entitled to a
2 reimbursement from the Chambers of \$5,119 for the period through December 31, 2014.

3 The request of the Chambers for compensation for their services related to the management of
4 or work related to the property is denied. Similarly, the request by either party for interest on any
5 money they may be entitled to (depending upon whether a particular year had a positive or negative
6 cash flow and how an accounting period might be interpreted) is also denied. In making these orders,
7 the court has given due consideration to the fact at any time since 1994 either side could have sought
8 an accounting or partition of the property. Neither party elected to do so. To seek these additional
9 forms of compensation 20 years later is unfair and barred by laches.

10 **V. PREVAILING PARTY**

11 "Prevailing party" includes the party (plaintiff or defendant) who obtains a *net monetary*
12 *recovery*. (Code of Civil Proc. § 1032(a)(4); *Reveles v. Toyota by the Bay* (1997) 57 Cal.App.4th 1139,
13 1151.) This is so even if a party receives only partial recovery (e.g., prevails on only one of several
14 causes of action). As long as that party obtains a "net monetary recovery," he or she is entitled to
15 recover costs as a matter of right. (*Michell v. Olick* (1996) 49 Cal.App.4th 1194, 1199.)

16 Frances is the prevailing party in the litigation and is entitled to an award of costs.

17 **VI. THE INTERLOCUTORY JUDGMENT OF PARTITION**

18 The above-stated findings of fact are incorporated into this section of the Statement of
19 Decision by this reference. The interlocutory judgment for the sale of Shoreview shall provide as
20 follows:

21 1. The subject of this action is the real property located in the City and County of Ventura,
22 State of California, commonly known as 2806 Shoreview Circle, Westlake Village,
23 California 91359 ("Shoreview" property) described as follows:

24 PARCEL 1: Lot 79, Tract No. 2288, in the City of Thousand Oaks, County of Ventura,
25 State of California, as shown on a map recorded in book 62 Pages 1 to 11 inclusive, of
26 Maps, in the office of the County Recorder of said County. EXCEPT all the oil, gas and
27 other hydrocarbon substances lying within and under that portion of said land lying below a
28 depth of 500 feet, measured vertically, from the surface of said land, without, however, any

1 right to enter upon the surface of said land, or into that portion of the subsurface thereof,
2 lying above a depth of 500 feet, measured vertically from said surface.

3 PARCEL 2: An easement appurtenant to Lot 79 of Tract 2288 over lot 237 to 263 of said
4 tract, for the purpose of placement, maintenance, repair and reconstruction of fire places to
5 project up to 18 inches in said lot 79.

6 PARCEL 3: An easement 4'2" wide for the placement, maintenance, repair and
7 reconstruction of wing walls not to exceed sixteen (16) inches in width, appurtenant to said
8 land, said easement to be over and across Lot 237 to 263.

- 9 2. The owners of the fee simple interest in the Shoreview property are, as follows:
- 10 a. Frances Seyssel aka Panchita Seyssel - Thirty Three and One Third Percent (33 1/3%);
11 and
12 b. David Chambers and Haruko Chambers as Trustee of the David Chambers and Haruko
13 Chambers Trust of 2008 - Sixty Six and Two Thirds Percent (66 2/3%).
- 14 3. The Shoreview property is subject to the following encumbrances: First Deed of Trust,
15 Wells Fargo Bank.
- 16 4. Sale of Shoreview property and division of the net proceeds of sale is more equitable than
17 division of Shoreview property in kind.
- 18 5. The Shoreview property shall be sold and the net proceeds of the sale applied in accordance
19 with the provisions of Paragraph 10 below.
- 20 6. DAVID B. SHEA, Attorney at Law and Court Appointed Receiver, is appointed as Referee
21 with authority to sell the Shoreview property at private sale, to the highest and best net
22 bidder, subject to confirmation of the Court, which manner of sale is hereby determined to
23 be most beneficial to the parties. If deemed to be the highest bidder there is no prohibition
24 against any party to this lawsuit purchasing the property, provided that all provisions of
25 paragraph 10 can be met. Notice of sale shall be given in the manner required for notice of
26 sale specified in California Code of Civil Procedure Sec. 873.640 and shall be given to the
27 persons specified in California Code of Civil Procedure Sec. 873.640. In all other respects
28 the sale shall be conducted as provided in California Code of Civil Procedure Sec. 873.600

1 873.690. No bond shall be required of the Referee until such time as the sale of the
2 Shoreview property is confirmed by the Court.

3 7. The Referee shall have the authority to enter upon the Shoreview property; to inspect the
4 Shoreview property; to evict any person or persons residing in the Shoreview property; to
5 borrow money to repair the Shoreview property for sale and to repay any money borrowed,
6 together with interest at five (5%) percent simple interest per annum, from the net proceeds
7 of sale of the Shoreview property; to engage the services of inspectors and experts and is to
8 pay for the same from net proceeds of sale of the Shoreview property; and to enter into an
9 exclusive listing agreement with a duly licenses realtor in the State of California for the
10 sale of the Shoreview property, provided that the realtor's commission does not exceed six
11 (6%) percent of the sale price and the term of the exclusive listing agreement does not
12 exceed ninety (90) days.

13 8. The Shoreview property shall be sole on an "as is" basis, without any warranty, express or
14 implied, except as to title. The sale is subject to current taxes, covenants, conditions,
15 restrictions, reservations, rights, rights of way, existing tenancies, and easements of record.
16 Any encumbrances of record shall be satisfied out of the proceeds of sale. The Shoreview
17 property shall be sold for cash. Shoreview property taxes, rents, operating and maintenance
18 expenses, and premiums on insurance acceptable to the purchases shall be prorated as of
19 the date of recording the conveyance. Examination of title, recording of conveyance, notary
20 fees, escrow fees, tax service fees, any fees for any reports and/or inspections, and any title
21 insurance policy shall be at the expense of the purchaser or purchasers. Escrow shall close
22 within thirty (30) days after the date of confirmation of sale by the Court.

23 9. The Referee, after selling the Shoreview property shall report to the Court on the sale
24 proceedings, and, upon confirmation of the sale by the Court and payment of the purchase
25 price, is authorized to execute and deliver a deed to the Shoreview property to the
26 purchaser. Such report may be made on ex parte application.

27 10. The proceeds of the sale of the Shoreview property shall be applied, as follows:

28 a. To pay the first lien holder, WELLS FARGO BANK in an amount sufficient to retire

1 the first lien debt;

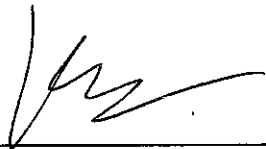
- 2 b. To pay the fees and expenses of the Referee and of his attorney, if any;
- 3 c. To pay the expenses of sale;
- 4 d. To pay the costs of partition or to secure any cost of partition later allowed;
- 5 e. To pay to Frances an off-set payment of \$5,119 as provided herein;
- 6 f. \$10,000 shall be held in reserve for any accounting offsets either party may be entitled
- 7 to from the period of January 1, 2015 until sale.
- 8 g. To distribute the residue among the owners of the Shoreview property in proportion to
- 9 their percentage ownership interests in the Shoreview property as set forth in Paragraph
- 10 2 above.
- 11 h. To the extent any party appeals this Judgment, the Referee shall be entitled to collect
- 12 rents from tenants at the Shoreview property and pay to the parties in accordance with
- 13 their interests in the Shoreview property during the pendency of the appeals.
- 14 i. If at any time there is not sufficient funds to pay the property's mortgage, taxes,
- 15 insurance, or other essential expenses, each party shall be given the opportunity to
- 16 advance the necessary funds to meet the obligation, subject to reimbursement at the
- 17 time of sale.
- 18 j. The Court shall retain jurisdiction of the above-captioned matter to confirm the sale of
- 19 the Shoreview property and to review the report of the Referee, and to order any
- 20 equitable adjustments that the Court considers just and appropriate,
- 21 k. The Court retains jurisdiction over the parties to effect an accounting for the period of
- 22 January 1, 2015 until date of sale.

23 **NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:** that this is the ruling of

24 the court on the claims tried to the bench.

25

26 Dated: 6.13.2016



HON. ROCKY J. BAIO
JUDGE OF THE SUPERIOR COURT

DECLARATION OF MAILING
VENTURA SUPERIOR COURT

STATE OF CALIFORNIA)
COUNTY OF VENTURA) ss.

Case Number: 56-2013-00435233-CU-OR-VTA
Case Title: CHAMBERS V SEYSSEL

I am employed in the County of Ventura, State of California. I am over the age of 18 years and not a party to the above-entitled action. My business address is 800 S. Victoria Avenue, Ventura, CA 93009. On the date set forth below, I served the within:

INTERLOCUTORY JUDGMENT OF PARTITION

On the following named party(ies)

Regis A. Guerin
The Guerin Law Firm
17752 Sky Park Circle, #235
Irvine, CA 92614

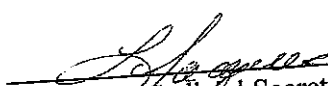
Michael D Kwasigroch
1975 Royal Avenue # 4
Simi Valley, CA 93065

BY PERSONAL SERVICE: I caused a copy of said document(s) to be hand delivered to the interested party at the address set forth above on _____ at _____ a.m./p.m.

X BY MAIL: I caused such envelope to be deposited in the mail at Ventura, California. I am readily familiar with the court's practice for collection and processing of mail. It is deposited with the U.S. Postal Service on the dated listed below.

and BY FACSIMILE: I caused said documents to be sent via facsimile to the interested party at the facsimile number set forth above with no notice of error at _____ from telephone number _____.

I declare under penalty of perjury that the foregoing is true and correct and that this document is executed on January 14, 2016 at Ventura, California.

By: 
L. Jacques, Judicial Secretary

JAN 14 2016

MICHAEL D. PLANET

BY: *A. Jacques*, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA**

David Chambers and Haruko Chambers, as) Case No.: 56-2013-00435233-CU-OR-VTA
individuals and as trustees of The David)
Chambers and Haruko Chambers Trust of) Assigned to the Honorable Rocky Baio
2008,)

Plaintiffs,) **INTERLOCUTORY JUDGMENT OF**
) **PARTITION**

vs.)

Frances Seyssel AKA Panchita Seyssel; and)
DOES 1-25,)

Defendants.)

Frances Seyssel, aka Panchita Seyssel)

Cross-Complainant,)

vs.)

David Chambers, an individual; et al.,)

Cross-Defendants.)

INTERLOCUTORY JUDGMENT

The Trial in the above-captioned matter was heard in Department 20, with the Honorable Rocky J. Baio, judge presiding, on May 18, 2015 and concluded on July 6, 2015. The Court took the matter under submission on July 9, 2015. Defendant and Cross-Complainant Frances Seyssel aka Panchita Seyssel (hereinafter "Ms. Seyssel") was represented by Regis A. Guerin. Plaintiffs and

1 Cross-Defendants David and Haruko Chambers, individually and in their capacities as trustees were
2 represented by Michael Kwasigroch.

3 After full consideration of the evidence, and good cause appearing therefor, the Court enters
4 its interlocutory judgment of partition, as follows,

5 **IT IS HEREBY ORDERED, ADJUDGED and DECREED that:**

6 1. The subject of this action is the real property located in the City and County of Ventura,
7 State of California, commonly known as 2806 Shoreview Circle, Westlake Village,
8 California 91359 ("Shoreview" property) described as follows:

9 PARCEL 1: Lot 79, Tract No. 2288, in the City of Thousand Oaks, County of Ventura,
10 State of California, as shown on a map recorded in book 62 Pages 1 to 11 inclusive, of
11 Maps, in the office of the County Recorder of said County. EXCEPT all the oil, gas and
12 other hydrocarbon substances lying within and under that portion of said land lying below a
13 depth of 500 feet, measured vertically, from the surface of said land, without, however, any
14 right to enter upon the surface of said land, or into that portion of the subsurface thereof,
15 lying above a depth of 500 feet, measured vertically from said surface.

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17 tract, for the purpose of placement, maintenance, repair and reconstruction of fire places to
18 project up to 18 inches in said lot 79.

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21 land, said easement to be over and across Lot 237 to 263.

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24 and

25 b. David Chambers and Haruko Chambers as Trustee of the David Chambers and Haruko
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- 3 5. The Shoreview property shall be sold and the net proceeds of the sale applied in accordance
4 with the provisions of Paragraph 10 below.
- 5 6. DAVID B. SHEA, Attorney at Law and Court Appointed Receiver, is appointed as Referee
6 with authority to sell the Shoreview property at private sale, to the highest and best net
7 bidder, subject to confirmation of the Court, which manner of sale is hereby determined to
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20 of sale of the Shoreview property; to engage the services of inspectors and experts and is to
21 pay for the same from net proceeds of sale of the Shoreview property; and to enter into an
22 exclusive listing agreement with a duly licensed realtor in the State of California for the
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24 (6%) percent of the sale price and the term of the exclusive listing agreement does not
25 exceed ninety (90) days.
- 26 8. The Shoreview property shall be sold on an "as is" basis, without any warranty, express or
27 implied, except as to title. The sale is subject to current taxes, covenants, conditions,
28 restrictions, reservations, rights, rights of way, existing tenancies, and easements of record.

1 Any encumbrances of record shall be satisfied out of the proceeds of sale. The Shoreview
2 property shall be sold for cash. Shoreview property taxes, rents, operating and maintenance
3 expenses, and premiums on insurance acceptable to the purchases shall be prorated as of
4 the date of recording the conveyance. Examination of title, recording of conveyance, notary
5 fees, escrow fees, tax service fees, any fees for any reports and/or inspections, and any title
6 insurance policy shall be at the expense of the purchaser or purchasers. Escrow shall close
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9 proceedings, and, upon confirmation of the sale by the Court and payment of the purchase
10 price, is authorized to execute and deliver a deed to the Shoreview property to the
11 purchaser. Such report may be made on ex parte application.

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- 13 a. To pay the first lien holder, WELLS FARGO BANK in an amount sufficient to retire
14 the first lien debt;
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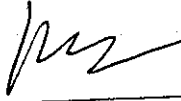
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3 j. The Court shall retain jurisdiction of the above-captioned matter to confirm the sale of
4 the Shoreview property and to review the report of the Referee, and to order any
5 equitable adjustments that the Court considers just and appropriate,

6 k. The Court retains jurisdiction over the parties to effect an accounting for the period of
7 January 1, 2015 until date of sale.

8 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

9
10 Dated: 1.13, 2016


11 _____
12 HON. ROCKY J. BAIO
13 JUDGE OF THE SUPERIOR COURT
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**DECLARATION OF MAILING
VENTURA SUPERIOR COURT**

STATE OF CALIFORNIA)
COUNTY OF VENTURA) ss.

Case Number: 56-2013-00435233-CU-OR-VTA
Case Title: **CHAMBERS V SEYSSEL**

I am employed in the County of Ventura, State of California. I am over the age of 18 years and not a party to the above-entitled action. My business address is 800 S. Victoria Avenue, Ventura, CA 93009. On the date set forth below, I served the within:

STATEMENT OF DECISION

On the following named party(ies)

Regis A. Guerin
The Guerin Law Firm
17752 Sky Park Circle, #235
Irvine, CA 92614

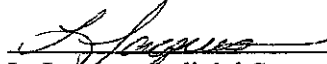
Michael D Kwasigroch
1975 Royal Avenue # 4
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____ **BY PERSONAL SERVICE:** I caused a copy of said document(s) to be hand delivered to the interested party at the address set forth above on _____ at _____ a.m./p.m.

BY MAIL: I caused such envelope to be deposited in the mail at Ventura, California. I am readily familiar with the court's practice for collection and processing of mail. It is deposited with the U.S. Postal Service on the dated listed below.

and ____ **BY FACSIMILE:** I caused said documents to be sent via facsimile to the interested party at the facsimile number set forth above with no notice of error at _____ from telephone number _____.

I declare under penalty of perjury that the foregoing is true and correct and that this document is executed on **January 14, 2016** at Ventura, California.

By: 
L. Jacques, Judicial Secretary