

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN MATEO

**Amended** Special Set Calendar

Judge: HONORABLE WILLIAM P. BARRY  
Department 43  
400 County Center, Redwood City  
Courtroom **2C**

Wednesday, May 8, 2024

IF YOU **INTEND TO APPEAR** ON ANY CASE ON THIS CALENDAR, YOU MUST DO ONE OF THE FOLLOWING:

1. EMAIL [jarnott@sanmateocourt.org](mailto:jarnott@sanmateocourt.org) BEFORE 4:00 P.M. CONTEMPORANEOUSLY COPIED TO ALL PARTIES OR THEIR COUNSEL OF RECORD. IF BY EMAIL, IT MUST INCLUDE THE NAME OF THE CASE, THE CASE NUMBER AND THE NAME OF THE PARTY CONTESTING THE TENTATIVE RULING.
2. YOU MUST CALL (650) 261-5020 BEFORE 4:00 P.M. AND LEAVE A MESSAGE INCLUDING THE NAME OF THE CASE, THE CASE NUMBER AND THE NAME OF THE PARTY CONTESTING THE TENTATIVE RULING.
3. You must give notice before 4:00 P.M. to all parties of your intent to appear pursuant to California Rules of Court 3.1308(a)(1).

Failure to do both items 1 or 2 and 3 will result in no oral presentation.

**At this time, appearances shall be made by Zoom Video. Sign in using your first and last name. Mute your line until your case is called. RECORDING OF A COURT PROCEEDING IS PROHIBITED.**

**Zoom Video Information:**

<https://sanmateocourt.zoomgov.com/>

Meeting ID: 161 818 2020

Password: 957524

**TO ASSIST THE COURT REPORTER, the parties are ORDERED** to: (1) state their name each time they speak and only speak when directed by the Court; (2) not to interrupt the Court or anyone else; (3) speak slowly and clearly; (4) use a dedicated land line if at all possible, rather than a cell phone; (5) if a cell phone is absolutely necessary, the parties must be stationary and not driving or moving; (6) no speaker phones under any circumstances; (7) provide the name and citation of any case cites; and (8) spell all names, even common names.

Case Title / Nature of Case

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2:00

LINE: 1

22-CIV-02094 NAIFEH AZAR VS. OMAR AZAR, ET AL.

NAIFEH AZAR  
NADIA AZAR

PRO/PER  
MARC D. BENDER

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DEMURRER TO COMPLAINT AND REQUEST FOR JUDICIAL NOTICE BY NADIA AZAR  
**TENTATIVE RULING:**

1. Request for Judicial Notice – grant.

The court will take Judicial Notice of the truth of the contents of the documents referenced in Requests #1-3, and 5. The court will only take Judicial Notice of the contents of the document in Request #4, not the truth of the matters in that document (Defendant Naifeh Azar's Notice of Motion and Motion for Order Cancelling Instruments, etc.).

2. Nadia's General and Special Demurrers to the Complaint – sustain without leave to amend, as to demurring party Nadia only.

Litigation time line:

**09/26/19** – Decision rendered in favor of Indrawous and Nadia Azar (“Indrawous and Nadia”) against Naifeh and her husband Shibli Azar (“Shibli”) in the prior case, Azar v. Azar, case no. 18-CIV-01833 (“Azar I”).

**02/25/21** – The first appellate decision in Azar I is filed, reversing the 9/26/19 judgment, with the appellate court directing the trial court to "issue a statement of decision and enter judgment accordingly," after determining two narrow issues: (1) Naifeh's intent and (2) Shibli's authority to act for Naifeh.” See 8/22/22 Statement of Decision and Judgment (“Statement of Decision”), p. 2, ls. 15-17.

**03/24/21** – Indrawous and Nadia transferred their interest in the real property at issue to their four children, who are defendants in this action.

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**04/30/21** – Remittitur filed for the 02/25/21 Decision in the Azar I appeal.

**05/24/22** – Over 12 months later, Naifeh filed this Complaint (“Azar II”).

**08/22/22** – The new Statement of Decision was filed in Azar I, holding that Nadia and Shibli had “no title or ownership interest” in the subject property. *See* 8/22/22 Statement of Decision, p. 14, ls. 13-14.

**10/11/23** – The appellate decision for the second appeal in Azar I is filed. The 08/22/22 Judgment is upheld, again in favor of Indrawous and Nadia and against Naifeh.

**12/12/23** – The Remittitur for the second appeal in Azar I is filed.

Legal Analysis:

General and Special Demurrers:

At the outset, it must be noted that any arguments Naifeh makes in support of her claim to have an interest in the real property in question are meritless. The 08/22/22 Judgment is final. At no time did she or her husband have a right to claim an interest in that real property. If the court were prepared to cancel the Deed to the children, which it is not, doing so would not put her on title.

However, her complaint makes the further argument that the 03/24/21 Deed by Indrawous and Nadia to their four children was wrongful. That Deed falls between the date in which the first Judgment in favor of Indrawous and Nadia was reversed by the 02/25/21 appellate decision, and 04/30/21, the date when the Remittitur for the appellate decision was filed in the Superior Court.

That argument also lacks merit. At the time they deeded the property to their children, the first appellate decision was not yet final, and the judgment in favor of Indrawous and Nadia having title was still in effect. The Deed would have been cancelable if Naifeh had prevailed in Azar I, but she did not.

More fundamentally, all of the claims and causes of action alleged against Nadia in the Complaint are barred because they involve the same primary right,

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who has title to the real property, and they all lack an essential element – legal harm. She could not have suffered any damages by anything Indrawous and Nadia did with respect to the title to the property because she never had title to, or an ownership interest in the property. In colloquial terms: “No harm, no foul.” She could not have had a legally viable expectation that she was harmed in some way by the Deed to the children.

In her Opposition, Naifeh argues that the court lacked subject matter jurisdiction over the case because, at the time the Statement of Decision was rendered, the children had title to the property, not Indrawous and Nadia.

The Deed did not affect the court’s jurisdiction. The underlying dispute did not vanish with the recording of the Deed. The issue remained – who had title to the property, Indrawous and Nadia, or Haifeh and Shibli? If the court had found in favor of Haifeh and Shibli, the Deed to the children would have been void because the grantors had no title to transfer. But, the court did not agree with Haifeh and Shibli. Instead, it found that they never had title, and therefore, Naifeh has no standing to complain about what Indrawous and Nadia did with it.

Naifeh also argues that that the court’s 09/08/23 decision to overrule Indrawous’s Demurrer to the Complaint is significant. It is not. Because Azar II was still on appeal, his Demurrer was premature.

Naifeh’s arguments about evidence have no application in this setting. For this Demurrer, the court will only consider the evidence that has been judicially noticed, as indicated above. Nothing else is allowed.

Demurring party Nadia argues that Naifeh’s 10/05/21 unsuccessful Motion in Azar I to Cancel Instrument and to Restore Title ought to be considered. The court deems it to be irrelevant. The motion was denied because the issue of title had not yet been determined on the first remand in Azar I.

In her Reply, Nadia asks the court to dismiss the Complaint as to all the other Azar defendants. The court declines to expand the scope of the Demurrer, and notes that all of the other Azar defendants have already appeared in the action, or been defaulted. Only Nadia brought this Demurrer. As to her, the

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Demurrers are sustained without leave to amend. There is no possible amendment that can cure the deficiencies in the Complaint.

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2:00

LINE: 2

22-CIV-02094 NAIFEH AZAR VS. OMAR AZAR, ET AL.

NAIFEH AZAR  
INDRAWOUS AZAR

PRO/PER  
MARC D. BENDER

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MOTION FOR MONETARY SANCTIONS RE: FILING OF FRIVOLOUS ACTION BY  
INDRAWOUS AZAR, NADIA AZAR, SHUKRY AZAR, RONNY AZAR AND FADWA AZAR

**TENTATIVE RULING:**

This motion is based upon C.C.P. §128.5. Sanctions are not warranted because the claims presented in Azar II were not directly adjudicated in Azar I. Here, Naifeh seeks to cancel the Deed to the children. In addition, the motion has no evidentiary foundation for the \$15,000 award it seeks. The motion is denied.

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POSTED: 3:00 P.M.