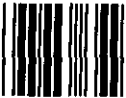


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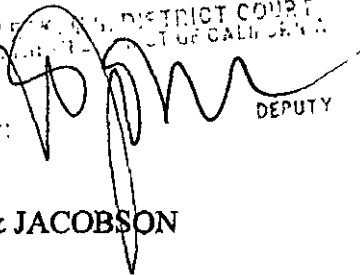
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P/A.

ORIGINAL

1 Stephen D. Alexander (SBN: 141099)
2 Susan C. Chun (SBN: 193364)
3 FRIED, FRANK, HARRIS, SHRIVER & JACOBSON
350 South Grand Avenue, Suite 3200
4 Los Angeles, CA 90071-3406
Telephone: 213.473.2000
Facsimile: 213.473.2222

FILED

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:  DEPUTY

5 Of Counsel:

6 Debra M. Torres
7 FRIED, FRANK, HARRIS, SHRIVER & JACOBSON
8 One New York Plaza
New York, NY 10004-1980
9 Telephone: 212.859.8000
Facsimile: 212.859.4000

10 Attorneys for Plaintiff
THE SOCIETY OF LLOYD'S

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON
350 South Grand Avenue, Suite 3200
Los Angeles, CA 90071-3406

11
12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA

14 THE SOCIETY OF LLOYD'S,
15 Plaintiff,
16 v.
17 ROBERT BLACKWELL, et al.,
18 Defendants.

14 Case No. 02-CV-0448 ~~J~~(AJB)

~~BY~~ FAX

15 MEMORANDUM OF POINTS AND
16 AUTHORITIES IN SUPPORT OF *EX*
17 *PARTE* APPLICATION FOR ORDER
18 ENJOINING ANY FURTHER
19 TRANSFER OF JUDGMENT
20 DEBTOR FRANK LIN'S ASSETS AND
21 COMPELLING FRANK LIN TO
22 RESPOND TO DISCOVERY,
23 PRODUCE DOCUMENTS AND
24 APPEAR AT A DEBTOR'S
25 EXAMINATION

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF *EX PARTE* APPLICATION FOR ORDER ENJOINING ANY
FURTHER TRANSFER OF JUDGMENT DEBTOR FRANK LIN'S ASSETS AND COMPELLING FRANK LIN TO RESPOND TO
DISCOVERY, PRODUCE DOCUMENTS AND APPEAR AT A DEBTOR'S EXAMINATION
Case No. 02 CV 0448 J (AJB)

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1 Memorandum of Points and Authorities

2 **Introduction**

3 On June 4, 2003, a judgment ("Judgment") in favor of The Society of Lloyd's
4 ("Lloyd's") was entered in this action against Defendant Frank Lin ("Lin") in the amount of
5 \$963,819.¹ To date, Lin has failed to satisfy the Judgment, has refused to respond to Lloyd's
6 post-judgment discovery, has refused to communicate with Lloyd's counsel and has
7 fraudulently transferred assets to avoid his obligations to Lloyd's. In short, Lin has and
8 continues to make every effort to evade payment of the Judgment.

9 To prevent Lin and those working in concert with him from engaging in further
10 improper conduct, Lloyd's hereby respectfully submits this *Ex Parte* Application for a Court
11 order enjoining any further transfer, sale or disposal of Lin's assets, including but not limited
12 to his interest in any real property, other than in the ordinary course of business and for basic
13 living expenses; and compelling Lin to respond to discovery, produce documents and appear
14 for a debtor's examination.

15 **Factual Background**

16 In August 2002, Lloyd's filed in this action two substantively identical summary
17 judgment motions against defendants represented by separate counsel (Lin and defendant
18 Robert Lowry were represented by attorney Ken Chiate,² and the remaining defendants were
19 represented by attorneys Theodore Grippo and Greg Ryan ("Grippo Defendants")).
20 Declaration of Susan Chun ("Chun Decl.") ¶ 3. On February 24, 2003, this Court granted
21 Lloyd's summary judgment motion against the Grippo Defendants and provided notice of its
22 ruling to all parties, including Lin. On May 20, this Court also granted Lloyd's summary
23 judgment motion against Lin and Lowry and simultaneously dismissed their counterclaim.³
24 The clerk of this Court entered judgments against each of the defendants, including Lin, on
25

26 ¹ This sum represents the Judgment amount in United States dollars, including pre-judgment interest,
on June 4, 2003. Post-judgment interest is currently accruing on the Judgment.

27 ² Ken Chiate subsequently withdrew as Lin's counsel on March 19. Lin has not obtained new counsel
and is proceeding pro per. Chun Decl. ¶ 3.

28 ³ The Grippo Defendants did not file a counterclaim. Chun Decl. ¶ 4.

1 June 4, 2003. Chun Decl. ¶ 4.

2 Since entry of the Judgment, Lloyd's has diligently attempted to collect against Lin:
3 Lloyd's filed a notice of judgment lien with the California Secretary of State, filed abstracts
4 of judgments in counties where Lloyd's believes Lin owns real property, and obtained a writ
5 of execution from this Court. Chun Decl. ¶ 6. Lloyd's also served on Lin written discovery
6 to obtain further information relating to his assets. *Id.* ¶ 6. Lin, however, failed to provide
7 the required responses by the August 4 deadline. On August 5, counsel for Lloyd's
8 attempted to contact Lin to discuss the status of Lin's discovery responses, but received a
9 busy signal. *Id.* ¶ 7.

10 That same day, Lloyd's received notice from Ticor Title Company (the "Title
11 Company") that Lin was finalizing the sale of some real property located at 134 W. Yucca
12 Street, Oxnard, CA 93033 (the "Property"). Chun Decl. ¶ 8. According to Liz Stage of the
13 Title Company, in April of this year, Lin transferred his entire interest in the Property to his
14 wife,⁴ Jane Lin, and thereafter placed the Property for sale. Chun Decl. ¶ 8. Lin then
15 obtained a buyer to purchase the Property for \$215,000.00 and had nearly completed the
16 sales transaction when the Title Company discovered Lloyd's judgment lien on the Property.
17 The Title Company promptly notified Lloyd's counsel Fried, Frank, Harris, Shriver &
18 Jacobson ("Fried Frank") of the pending sale. Hoping to collect on the Judgment from the
19 proceeds of the sale and to satisfy the Title Company's concerns regarding insurance on the
20 Property, Fried Frank informed Ms. Stage that Lloyd's would sign an appropriate release to
21 clear the Property's title (since Lloyd's judgment amount (nearly \$1 million) exceeded the
22 value of the Property). Chun Decl. ¶ 9.

23 When the Title Company informed Lin that Lloyd's may have a claim to the
24 proceeds of the sale, however, Lin emphatically asserted that his name was no longer on the
25 title and that Lloyd's therefore should have no interest in the Property. Chun Decl. ¶ 10.

26
27 ⁴ Lloyd's is in the process of obtaining a copy of the title records and upon receipt, will provide a copy
to the Court.

1 After the Title Company informed Lin that his recent transfer did not insulate the Property
2 from Lloyd's claim, Lin unilaterally terminated the sale. Chun Decl. ¶ 11.

3 On August 8, the Title Company informed Fried Frank that Lin had canceled the
4 sale.⁵ Chun Decl. ¶ 11. Faced with this evidence of Lin's clear intent to avoid payment of
5 the Judgment, Lloyd's now seeks this *ex parte* relief.

6 After receiving notice of the canceled sale, on August 8, Fried Frank attempted to
7 provide notice of this Application to Lin: (1) at 9:55 a.m., Susan Chun of Fried Frank
8 telephoned Lin twice but received busy signals both times; (2) at 10:20 a.m., Ms. Chun
9 called Lin using a new phone number that was provided by the buyer's real estate agent and
10 spoke with an individual who purported to be Lin's brother; before Ms. Chun had an
11 opportunity to leave a message, however, Lin's "brother" abruptly terminated ("hung up")
12 the call; and (3) at 11:20 a.m., Ms. Chun again telephoned Lin at the new number and left a
13 message on the answering machine providing notice of this motion. Chun Decl. ¶ 13.

14 Argument

15 A. An Order Enjoining Any Transfer, Sale or Disposal of Lin's Assets is 16 Necessary to Prevent Lin and Third Parties Aiding Lin from 17 Accomplishing Further Fraudulent Conveyances

18 "There can be little question that federal courts generally possess the power to
19 protect their judgments . . . [indeed, it is well settled that a federal court of equity even has]
20 jurisdiction of an [action] ancillary to an original case or proceeding in the same court,
21 whether at law or in equity, to secure or preserve the fruits and advantages of a judgment . . .
22 rendered therein." *Thomas, Head and Greisen Employees Trust v. Buster*, 95 F.3d 1449,
23 1453 (9th Cir. 1996)("[A] court of equity has power to entertain an action which has for its
24 purpose the enforcement of a judgment in order that complete justice may be done to the
25 parties of interest as the exigencies of the case or the interests of justice may

26
27 ⁵ The real estate agent for the Property's buyer informed Fried, Frank that, other than Lloyd's judgment
lien, the title to the Property was clear and there were no other encumbrances. Chun Decl. ¶ 12.

1 require")(citations omitted). Consistent with these broad powers, federal courts may issue
2 injunctions against judgment debtors or third parties prohibiting them from transferring
3 assets liable to execution by a judgment creditor. *See id.* at 1451 (Court issued preliminary
4 injunction freezing assets of judgment debtor and third party transferees). Such post-
5 judgment orders are permitted to protect a creditor's judgment and prevent fraudulent
6 conveyances. *Id.* at 1452; *see also* Fed. R. Civ. Proc. 69(a)(permits use of state procedure to
7 enforce a federal judgment); Cal. Civ. Code § 3439.07(a)(3)(provides for an injunction
8 against further disposition of an asset after a fraudulent conveyance).

9 Here, the injunction requested by Lloyd's is imperative to prevent further fraudulent
10 transfers by Lin and third parties assisting Lin in his efforts to avoid payment of the
11 Judgment. *Ex parte* relief is necessary because Lin, having now terminated the sale of the
12 Property, may attempt to immediately dispose of other assets. Lin has already fraudulently
13 conveyed his interest in one property⁶ and is likely to repeat this type of misconduct. This is
14 especially the case because Lin, who is presently without counsel, has demonstrated no
15 regard for the law or his obligations arising under it: Lin has failed to respond to discovery
16 served on him by Lloyd's and has unabashedly attempted to shield his assets by fraudulently
17 transferring them to his wife. *See* Chun Decl. ¶ 14; footnote 6. Indeed, it appears that in his

18
19 ⁶ That Lin fraudulently conveyed his interest in the Property to his wife is firmly supported by his
20 statement to the Title Company that Lloyd's has no rights to the proceeds of the Property's sale because his
21 name was no longer on the title. Thus, Lin's clear intent in conveying his interest was to facilitate the sale of
22 the Property and to prevent Lloyd's from reaching the proceeds of that sale. Indeed, facts surrounding Lin's
23 transfer are replete with "indicia" of fraud, as California courts have delineated. *See* Cal. Code of Civ. Proc. §
24 3439.04(a)(a transfer by a judgment debtor is fraudulent if the debtor made the transfer with the "intent to
hinder, delay or defraud any creditor"); *Wyzard v. Goller*, 23 Cal. App. 4th 1183, 1191 n.4 (1994)(fraudulent
intent under CCP § 3439.04 can be inferred from certain types of debtor conduct, including that the transfer
was to an "insider" (e.g., a relative), the debtor retained possession or control of the property after the transfer,
the debtor was sued or threatened with suit before the transfer was made, and the debtor did not receive
reasonably equivalent consideration for the asset transferred).

25 Here, Lin transferred his interest in the Property to his wife without receiving any consideration and
26 retained control over the Property, as evidenced by his efforts to sell the Property without an agent. Chun
27 Decl. ¶ 12. Moreover, Lin made his transfer not only after a suit had been filed, but after he had been given
28 notice that the Court had ruled in Lloyd's favor on a summary judgment motion that was substantively identical
to the motion filed against him. Chun Decl. ¶ 4. Not surprisingly, the Court's ruling against Lin was rendered
a few short weeks after Lin transferred his interest in the Property.

1 efforts to evade his obligations, Lin has even enlisted the aid of others, possibly including
2 his wife and brother, who "hung up" on Ms. Chun when she attempted to leave a message
3 for Lin. Chun Decl. ¶ 13.

4 Accordingly, without this Court's intervention and the requested injunction, Lin will
5 likely continue to engage in improper conduct in order to thwart Lloyd's collections efforts
6 and avoid payment of the nearly \$1 million Judgment.

7
8 **B. Lin Should be Compelled to Respond to Written Discovery, Produce
9 Documents Requested in Lloyd's Document Subpoena and Appear at a
10 Debtor's Examination**

11 Under Federal Rule of Civil Procedure 69(a), the procedure for enforcing federal
12 court judgments "shall be in accordance with the practice of the state in which the district
13 court is held . . . except that any statute of the United States governs to the extent that it is
14 applicable." *See also Peacock v. Thomas*, 516 U.S. 349, 359 (1996). Rule 69(a) therefore
15 permits judgment creditors to use any enforcement procedures provided for under state law.
16 *Id.*

17 **1. Lloyd's Special Interrogatories**

18 Pursuant to Rule 69(a), on July 1, Lloyd's served on Lin its First Set of Special
19 Interrogatories in aid of execution of the Judgment. Cal. Code of Civ. Proc. § 708.020(a)
20 (judgment creditors may serve interrogatories on judgment debtors any time while the
21 judgment is enforceable); Chun Decl. ¶ 14. Lin, as the judgment debtor, was required to
22 answer the interrogatories within 30 days, or by August 4. C.C.P. § 708.020(a). To date,
23 however, Lloyd's has not received any responses from Lin. Chun Decl. ¶ 14.

24 If a judgment debtor fails to respond timely to written interrogatories, the judgment
25 creditor may bring a motion to compel answers. C.C.P. § 2030(k)(1). Moreover, a
26 monetary sanction "shall" be imposed against the party losing a motion to compel unless the
27 Court finds "substantial justification" for that party's position. Here, Lin has made no effort
28 whatsoever in responding to the discovery or in communicating with Lloyd's counsel, who

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON
350 South Grand Avenue, Suite 3200
Los Angeles, CA 90071-3406

1 attempted to contact Lin to discuss his failure to respond. Chun Decl. ¶¶ 13-14.

2 Accordingly, Lin should be compelled to provide within the next ten days full and
3 complete responses to Lloyd's interrogatories, and sanctions should be imposed on Lin for
4 his unsubstantiated failure to provide timely written responses.

5 **2. Debtor's Examination and Lloyd's Document Subpoena**

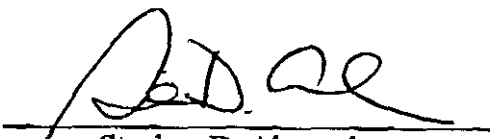
6 Pursuant to Fed. R. Civ. Proc. 69(a) and Cal. Code of Civ. Proc. § 708.110(a),
7 Lloyd's is presently obtaining an order requiring Lin to appear for a debtor's examination,
8 which when issued will be promptly served on Lin with a document subpoena. Chun Decl.
9 ¶ 15; see Cal. C.C.P. § 708.110(a)(judgment creditor is entitled to examine judgment debtor,
10 who must "furnish information to aid in enforcement of the money judgment"); California
11 Rutter Guide, Enforcing Judgments and Debts, Shwartz & Ahart, § 6:1301 (document
12 "subpoenas should be served with the examination order"). Given Lin's prior failure to
13 comply with his discovery obligations, Lloyd's requests that this Court specifically order Lin
14 to appear for his debtor's examination on the date and place specified in the examination
15 order and produce all documents responsive to the requests identified in the document
16 subpoena.

17 **Conclusion**

18 For the foregoing reasons, the Court should grant Lloyd's *Ex Parte* Application.

19 Dated: August 12, 2003

Fried, Frank, Harris, Shriver & Jacobson
Stephen D. Alexander
Susan C. Chun

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25 Stephen D. Alexander
Attorneys for Plaintiff The Society of Lloyd's

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the county of Los Angeles, State of California. I am over the age of eighteen years, and not a party to the within action. My business address is 350 South Grand Avenue, 32nd Floor, Los Angeles, California 90071.

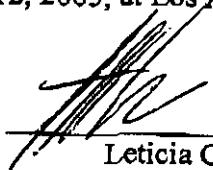
On August 12, 2003, I served the following documents described as **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE APPLICATION FOR ORDER ENJOINING ANY FURTHER TRANSFER OF JUDGMENT DEBTOR FRANK LIN'S ASSETS AND COMPELLING FRANK LIN TO RESPOND TO DISCOVERY, PRODUCE DOCUMENTS AND APPEAR AT A DEBTOR'S EXAMINATION** on the parties in this action by placing a true copy(ies) thereof enclosed in a sealed envelope addressed as follows:

Frank Lin
4031 Ischia Drive
Oxnard, CA 93035
805.985.4025

BY U.S. MAIL by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at the address stated above. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

(FEDERAL) I declare that I am employed in the office of a member of the bar of this court whose direction the service was made.

Executed on August 12, 2003, at Los Angeles, California.



Leticia Collier

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON
350 South Grand Avenue, Suite 3200
Los Angeles, CA 90071-3406