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3:02-CV-00448 SOCIETY OF LLOYDS V. BLACKWELL

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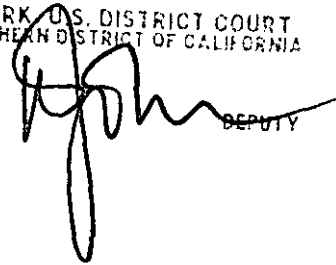
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CLERK U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY:



DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

THE SOCIETY OF LLOYD'S

Plaintiff,

v.

ROBERT C. BLACKWELL, ET AL.

Defendants.

Civil No. 02CV448-J (AJB)

**ORDER:**

**(1) DENYING PLAINTIFF'S *EX PARTE* APPLICATION FOR ORDER ENJOINING ANY FURTHER TRANSFER OF JUDGMENT DEBTOR FRANK LIN'S ASSETS;**

**(2) GRANTING PLAINTIFF'S *EX PARTE* APPLICATION FOR ORDER COMPELLING FRANK LIN TO RESPOND TO DISCOVERY AND PRODUCE DOCUMENTS; AND**

**(3) DENYING PLAINTIFF'S *EX PARTE* APPLICATION FOR ORDER COMPELLING FRANK LIN TO APPEAR AT A DEBTOR'S EXAMINATION**

Before the Court is Plaintiff's *ex parte* application for an order enjoining Defendant Frank Lin ("Lin") from further transferring any of his assets, as well as an order compelling Lin to respond to Plaintiff's interrogatories and appear at a debtor's examination. Plaintiff has already obtained a judgment against Lin from this Court and now seeks execution of the judgment. For the reasons set forth below, Plaintiff's application is **DENIED** in part, and **GRANTED** in part.

223<sup>1</sup>

## *Background Facts*

1  
2 On February 24, 2003, this Court granted Plaintiff's summary judgment motion against  
3 the Blackwell Defendants, including Defendant Lin. The clerk of this Court entered judgment  
4 against each of the defendants, including Lin, on June 4, 2003. Following entry of the judgment  
5 against Lin, Plaintiff filed a notice of judgment with the California Secretary of State, filed  
6 abstracts of judgments in counties where Plaintiff believes Lin owns real property, and obtained  
7 a writ of execution from this Court. (Chun Decl. ¶ 6). Specifically, Plaintiff procured a  
8 judgment lien on real property owned by Lin located at 134 W. Yucca Street, Oxnard, CA 93033  
9 ("Oxnard Property"). (P. & A. at 4, fn. 6). Moreover, in an attempt to obtain additional  
10 information concerning Lin's assets, Plaintiff served Lin with written discovery. (*Id.*). Lin,  
11 however, failed to respond to Plaintiff's discovery requests by the August 4, 2003 deadline.

12 Subsequent to serving Lin with discovery requests, Plaintiff learned that Lin had  
13 transferred his entire interest in the Oxnard Property to his wife without any consideration.  
14 (Chun Decl. ¶ 8; P. & A. at 4, fn. 6). Plaintiff discovered the transfer during an attempted sale of  
15 the Oxnard Property after being contacted by Ticor Title Company. (Chun Decl. ¶ 8-9). In order  
16 to secure satisfaction of its judgment, Plaintiff has requested that this Court issue an order (1)  
17 enjoining any further transfer, sale, or disposal of Lin's assets, other than in the ordinary course  
18 of business and for basic living expenses; (2) compelling Lin to respond to discovery and  
19 produce documents; and (3) requiring Lin to appear for a debtor's examination.

## *Discussion*

### **A. Plaintiff's Request for an Order Enjoining Lin from Transferring his Assets**

22 Plaintiff contends that this Court may issue injunctions against judgment debtors  
23 prohibiting them from transferring assets liable to execution by a judgment creditor. In  
24 proceedings "supplementary to and in aid of judgment," federal courts must apply "the practice  
25 and procedure of the state in which the district court is held, existing at the time the remedy is  
26 sought." Fed. R. Civ. P. 69(a). As a result, this Court must look to California law to determine  
27 whether Plaintiff is entitled to post-judgment injunctive relief.  
28

1           The power to enjoin is an “extraordinary remedy, and is to be exercised always with great  
2 caution and the power rarely, if ever, should be exercised in a doubtful case.” *Dawson E. Side*  
3 *Union High Sch. Dist.*, 34 Cal. Rptr. 2d 108, 130 (Ct. App. 1994) (citations omitted). Plaintiff  
4 relies on Cal. Civ. Code § 3439.07(a)(3) as authority to enjoin the conveyance of any of Lin’s  
5 assets. This section describes remedies available to creditors following a fraudulent transfer by a  
6 judgment debtor. Once there has been a fraudulent conveyance, a judgment creditor may obtain  
7 “an injunction against further disposition by the debtor or a transferee, or both, of *the asset*  
8 *transferred* or its proceeds. Cal. Civ. Code § 3439.07(a)(3) (West 1997) (emphasis added).

9           Plaintiff requests that the Court enjoin transfers beyond “the asset transferred” and  
10 prohibit the disposition of all assets owned by Lin. Nevertheless, the plain language of §  
11 3439.07(a)(3) limits the injunction to only that asset which was the subject of a fraudulent  
12 conveyance. As a result, the Court lacks authority under § 3439.07(a)(3) to enjoin the transfer of  
13 any of Lin’s assets beyond the Oxnard Property. Because Lin no longer has an ownership  
14 interest in the Oxnard Property, however, an injunction against Lin is not appropriate.

15           In addition to § 3439.07, Plaintiff cites *Thomas, Head and Greisen Employees Trust v.*  
16 *Buster*. There, a judgment creditor filed a post-judgment pleading joining grantees of an  
17 allegedly fraudulent conveyance. *Thomas, Head and Greisen Employees Trust v. Buster*, 95  
18 F.3d 1449, 1451 (9th Cir. 1996). Applying Alaska law, the Ninth Circuit upheld the district  
19 court’s preliminary injunction freezing the assets of the judgment creditor and the third party  
20 transferees. *See id.*; Alaska R. Civ. P. 69(c) (West 2002) (stating that “the court may make an  
21 order restraining the judgment debtor from selling, transferring, or in any manner disposing of  
22 any of his property liable to execution pending the proceeding”).

23           As stated above, California law is controlling in the present matter. Plaintiff has failed to  
24 provide the court with any California law permitting the practice contained in the Alaska statute.  
25 Although Plaintiff has expressed concerns about the likelihood of Lin attempting to fraudulently  
26 convey assets, California affords Plaintiff other statutory safeguards. *See, e.g.*, Cal. Civ. Code §  
27 3439 *et seq.* Accordingly, Plaintiff’s *ex parte* application to enjoin any further transfer of Lin’s  
28 assets is **DENIED**.

1 **B. Plaintiff's Request for an Order Compelling Lin to Respond to Discovery Requests**  
2 **and Imposing Monetary Sanctions**

3 As a means of enforcing a money judgment, judgment creditors "may obtain discovery  
4 from any person, including the judgment debtor, in the manner provided in [the Federal Rules of  
5 Civil Procedure] or in the manner provided by the practice of the state in which the district is  
6 held." Fed. R. Civ. P. 69(a). Under California law, judgment creditors may propound written  
7 interrogatories to the judgement debtor to aid in enforcement of the money judgment. See Cal.  
8 Civ. Proc. Code § 708.20(a) (West 1987). The judgment debtor must respond within thirty days  
9 after service of the interrogatories, unless on motion the court has shortened or extended the time  
10 for response, or the parties have agreed otherwise. Cal. Civ. Proc. Code § 2030(h), (i) (West  
11 1998). If a judgment creditor fails to serve a timely response to interrogatories, the propounding  
12 party may move for an order compelling a response. Cal. Civ. Proc. Code § 2030(k) (West  
13 1998). Furthermore, the court "shall impose a monetary sanction . . . against any party . . . who  
14 unsuccessfully makes or opposes a motion to compel a response to interrogatories, unless it finds  
15 that the one subject to the sanction acted with substantial justification or that other circumstances  
16 make the imposition of the sanction unjust." *Id.*

17 On July 1, 2003, Plaintiff served its First Set of Special Interrogatories in aid of execution  
18 of the judgment against Lin. (Chun Decl. ¶ 14). After the deadline for making a timely response  
19 expired, Plaintiff attempted to contact Lin by telephone on four occasions to discuss the status of  
20 the discovery responses, as well as the proposed sale of the Oxnard Property. (*Id.* ¶ 7, 13).  
21 Although Plaintiff never spoke to Lin, Plaintiff did leave a telephone message on Lin's  
22 answering machine on August 8, 2003 informing Lin of this motion. (*Id.* ¶ 13). As of the filing  
23 date of Plaintiff's *ex parte* application, August 12, 2003, Lin had not responded to the  
24 interrogatories. (*Id.*). As a result, Plaintiff's *ex parte* application for an order compelling Lin to  
25 respond to discovery and produce documents is **GRANTED**. Accordingly, Lin must serve  
26 Plaintiff with full and complete responses to Plaintiff's First Set of Special Interrogatories within  
27 ten calendar days of this Order.  
28

1 Plaintiff has also requested that this Court impose sanctions on Lin for his failure to serve  
2 a timely response. As stated above, sanctions are appropriate when a party unsuccessfully  
3 opposes a motion to compel a response to interrogatories. See Cal. Civ. Proc. Code § 2030(k).  
4 Because Plaintiff's application is *ex parte*, Lin has not even been presented with the opportunity  
5 to oppose this motion or present evidence justifying his failure to respond. As a result,  
6 Plaintiff's request for the award of monetary sanctions is **DENIED**.

7  
8 **C. Plaintiff's Request for an Order Compelling Lin to Appear for a Debtor's**  
9 **Examination**


10 Although Plaintiff is currently obtaining an order requiring Lin to appear for a debtor's  
11 examination, Plaintiff requests that this Court specifically order Lin to appear at the  
12 examination. Because Plaintiff is already in the process of obtaining an order requiring Lin to  
13 appear at an examination, the Court need not take action on this request. Accordingly, Plaintiff's  
14 request for an order compelling Lin to appear at a debtor's examination is **DENIED**.

15  
16 **Conclusion**

17 For the reasons set forth above, the Court DENIES Plaintiff's request for an order  
18 enjoining Lin from conveying any of his assets; GRANTS Plaintiff's request for an order  
19 compelling Lin to respond to Plaintiff's First Set of Special Interrogatories; and DENIES  
20 Plaintiff's request to have this Court issue an order compelling Lin to appear for a debtor's  
21 examination.

22 **IT IS SO ORDERED.**

23  
24 Dated: August 18, 2003

25   
26 **NAPOLEON A. JONES, JR.**  
27 United States District Judge

28 cc: Magistrate Judge Battaglia  
All Counsel of Record