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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Martin Arnaudov, et al.,

10 Plaintiffs,

11 v.

12 California Delta Mechanical Incorporated,
13 et al.,

14 Defendants.

No. MC-16-00085-PHX-MTL

ORDER

15 In this miscellaneous action, Plaintiffs (the “Judgment Creditors”) seek to register
16 a foreign judgment. Pending before the Court are two motions: a Motion for
17 Judgment/Application for Garnishment (Doc. 81) and a Motion to Stay (Doc. 78). The
18 Court rules as follows.

19 **I. Background**

20 The Court has previously set forth the complicated procedural background of this
21 case. (Doc. 78 at 1–2.) As relevant here, Judgment Creditors sued Todor Kitchukov in
22 the Northern District of California for violations of the Fair Labor Standards Act. (Doc.
23 1.) The parties reached a settlement agreement in 2015, prompting the California District
24 Court to enter a judgment against Todor Kitchukov (“Judgment Debtor”) personally for
25 more than \$1.5 million. (Doc. 1 at 1–3.) In 2016, the Judgment Creditors registered the
26 judgment here in District of Arizona, and five years later, they sought writs of
27 garnishment against several earnings and non-earnings entities. (Doc. 1-1, Docs. 2, 4, 6,
28 8, 10, 12, 14, 16.) Comerica Bank answered that it held \$9,195 of Judgment Debtor’s

1 money. (Doc. 25.) Delta Mechanical, an earnings garnishee, also answered that it
2 employed the Judgment Debtor and the total amount owed to the Judgment Creditors is
3 \$1,220,191.42. (Doc. 54 at 2.)

4 A Magistrate Judge held a garnishment hearing to address, in part, Judgment
5 Debtor’s argument that the Comerica bank account is community property, held by
6 himself and his wife, Marianna Kitchukova (“Wife”). (Doc. 39 at 2–3, Doc. 42.) In
7 January 2022, the Court accepted the Magistrate Judge’s Report and Recommendation—
8 over the objections of Judgment Debtor and Wife. The Court applied *Gagan v. Sharar*,
9 376 F.3d 978 (9th Cir. 2004), and found that the foreign judgment entered against
10 Judgment Debtor may be executed on the community property of both spouses in
11 Arizona, “despite failure to name the other spouse in the action filed outside Arizona.”
12 *Gagan*, 376 F.3d at 992. Moreover, Wife’s intervention, personal appearance and
13 representation in the garnishment hearing, and multiple objections and motions in the
14 litigation satisfied the requirement that she had opportunity to challenge the enforcement
15 of the judgment against the community assets in Arizona. (Doc. 78 at 5–6.)

16 The next day, the Court entered a Writ of General Execution to the State of
17 Arizona against Judgment Debtor. (Doc 79.) Simultaneously, the Court entered an Order
18 of Continuing Lien against Judgment Debtor’s nonexempt earnings by employer Delta
19 Mechanical. (Doc. 80.) Then, in February 2022, within the span of one week, Judgment
20 Creditors filed a Motion for Judgment Application for Garnishment. (Doc. 81.)
21 Judgment Debtor and Wife filed a timely notice of appeal (Doc. 83), a Motion to Stay
22 (Doc. 85), and a Motion for Expedited Hearing (Doc. 86).

23 **II. ANALYSIS**

24 Judgment Debtor and Wife assert they are entitled to a stay as a matter of right
25 under Rule 62(b) because they are “appealing the validity of a money judgment” and
26 willing to “post[] a supersedeas bond.” (Doc. 85 at 2.) Rule 62 provides “[a]t any time
27 after judgment is entered, a party may obtain a stay by providing a bond or other
28 security.” Fed. R. Civ. P. 62(b). But the applicability of Rule 62(b) hinges on the Court

1 entering a “judgment” and the party requesting the stay taking an appeal from that
2 “judgment.” *Id.*; see also *American Mfrs. Mut. Ins. Co. v. American Broadcasting-*
3 *Paramount Theatres, Inc.*, 87 S.Ct. 1, 3 (1966) (holding “a party taking an appeal from
4 the District Court is entitled to a stay of a money judgment as a matter of right if he posts
5 a bond in accordance with Fed. R. Civ. P. 62”). The Court’s Order in this miscellaneous
6 action—from which Judgment Debtor and Wife now appeal—was not a judgment as
7 contemplated by Rule 54.* (Doc. 78.) See Fed. R. Civ. P. 54(a); see *Hoffart v. DWD*
8 *Contractors, Inc.*, No. 3:12-MC-00395-SI, 2013 WL 11232320, at *3 (D. Or. July 10,
9 2013), *aff’d*, 594 F. App’x 929 (9th Cir. 2015) (concluding that the court shall not enter a
10 judgment in an action filed as a miscellaneous case); *Boosalis Options, LP v. Farnbacher*
11 *Loles Motorsports, LLC*, No. C 09-80316 WHA, 2010 WL 335651, at *1 (N.D. Cal. Jan.
12 22, 2010) (denying application for entry of judgment in a miscellaneous action).

13 Judgment Debtor and Wife also insist that Rule 62(f) requires the Court to quash
14 the judgment liens against them upon posting of a supersedeas bond (Doc. 95 at 3), but
15 even a cursory review of case law reveals their position is legally untenable. Under Rule
16 62(f), “[i]f a judgment is a lien on the judgment debtor’s property under the law of the
17 state where the court is located, the judgment debtor is entitled to the same stay of
18 execution the state court would give.” Fed. R. Civ. P. 62(f). From this rule, Judgment
19 Debtor and Wife invoke Arizona Rule of Civil Appellate Procedure 7(b)(3): “If another
20 party has recorded a judgment lien before the supersedeas bond is filed, that party must
21 promptly record a release of the lien.” ARCAP 7(b)(3). Therefore, they assert, Rule
22 7(b)(3) “require[s]” Judgment Creditors to release their judgment liens. (*Id.*)

23 But Rule 62(f) does not apply if a judgment creditor must take further action on a
24 judgment before the lien arises under the state’s law. *Ribbens Int’l, S.A. de C.V. v.*
25 *Transp. Int’l Pool, Inc.*, 40 F. Supp. 2d 1141, 1143 n.2 (C.D. Cal. 1999) (finding Fed. R.
26 Civ. P. 62(f) did not apply “Because California is not a state in which a judgment is
27 automatically a lien upon the property of the judgment debtor”); *Mueller v. Dep’t of Pub.*

28 * The Court of Appeals noted in its docket at Doc. 2 that this Court did not enter a
judgment. See *Arnaudov et al. v. Kitchukov et al.*, 22-15327 (9th Cir.) at Doc. 2.

1 *Safety*, No. CV 17-00571 HG-WRP, 2022 WL 614983, at *2 (D. Haw. Mar. 2, 2022)
2 (citing *Ribbens Int'l*, 40 F. Supp. 2d at 1143) (concluding that because Hawaii statutory
3 procedures require “additional steps for a judgment to become a lien against real
4 property,” the exemption requirements of Rule 62(f) are not met); *Cotton ex rel. McClure*
5 *v. City of Eureka, Cal.*, 860 F. Supp. 2d 999, 1026 (N.D. Cal. 2012) (maintaining that the
6 act of recording or filing a judgment to transform it into a lien bars the application of
7 Rule 62(f)); *Acevedo-Garcia v. Vera-Monroig*, 296 F.3d 13, 17–18 & n.5 (1st Cir. 2002)
8 (finding Rule 62(f) to be inapplicable because of Puerto Rico law requiring steps to
9 obtain judgment lien); *United States v. O’Callaghan*, 805 F. Supp. 2d 1321, 1329 (M.D.
10 Fla. 2011) (“Put plainly, if a judgment is not ‘in and of itself’ a lien on property, Rule
11 62(f) is inoperable.”).

12 Obtaining a judgment lien in Arizona requires several steps. A.R.S. §§ 33-961,
13 33-964, 33-967. These steps are not “merely ministerial.” *Wichansky v. Zowine*, No.
14 CV-13-01208-PHX-DGC, 2016 WL 3345481, at *3 (D. Ariz. June 16, 2016) (finding
15 that the judgment lien registration statutes under Arizona law are not “merely ministerial”
16 and therefore finding Rule 62(f) does not apply); *see also Marandino v. D’Elia*, 151
17 F.R.D. 227, 229 (D. Conn. 1993) (concluding that “[p]repar[ing] a judgment lien
18 certificate and fil[ing] such certificate in the specific land records where the debtor’s
19 property is located” is more than a “ministerial act” and thus precludes the application of
20 Rule 62(f)). Accordingly, Rule 62(f) is inoperable here.

21 Even setting aside the inapplicability of Rule 62(f), “a pre-bond levy is not
22 automatically extinguished by operation of law upon the Court’s approval of Rule 62(d)
23 supersedeas bond.” *Khan v. Shamrock Partners, Ltd.*, 292 F. App’x 604, 607 (9th Cir.
24 2008) (quoting *Ribbens Int'l, S.A. de C.V.*, 40 F. Supp. 2d. at 1145–46) (internal
25 quotations omitted) (referring to a prior version of Fed. R. Civ. P. 62(d), which has been
26 reorganized and edited to be Fed. R. Civ. P. 62(b)).

27 To the extent that Judgment Debtor and Wife’s argument rests on their willingness
28 to post a bond to invoke a Rule 62(b) stay of enforcement of the judgment issued by the

1 Northern District of California while their appeal of this Court’s Order is pending with
2 the Ninth Circuit (*see* Doc. 85 at 1–2), the Court does not have authority to take such a
3 drastic action. Judgment Debtor and Wife provide no authority that this miscellaneous
4 action is governed by the Federal Rules of Civil Procedure at all. (*See id.*) To that end, it
5 is not clear whether the Federal Rules of Civil Procedure are even applicable to a
6 miscellaneous action arising in the District of Arizona. *See, e.g., Middleton v. Wells*
7 *Fargo Bank, N.A.*, No. 219CV00348APGVCF, 2019 WL 3400630, at *3 (D. Nev. July
8 26, 2019) (applying the Fed. R. Civ. P. to a registration of foreign judgment action in
9 Nevada); *but see Guancione v. Stumpf*, No. 2:10-CV-1123 JAM DAD, 2011 WL
10 4374989, at *2 (E.D. Cal. Sept. 19, 2011) (determining that a registration action met
11 neither the Fed. R. Civ. P. requirements to be a civil action nor the separate requirements
12 to qualify as a foreign judgment that could be registered in California). Accordingly, to
13 the extent Rule 62 applies to the judgment issued by the Northern District of California
14 (filed in this Court at Doc. 1), the Court holds that Rule 62 applies in the Northern
15 District of California—the issuing court.

16 In other words, Judgment Debtors could not have waived their appeal of the
17 judgment in California, waited until Judgment Creditors filed the notice of foreign
18 judgment here in Arizona at Doc. 1, and then at Doc. 2 filed a notice of appeal of the
19 California judgment and posted a bond to stay enforcement under Rule 62. Thus,
20 application of Rule 62 in *this* Court must stem from a judgment issued by *this* Court. A
21 motion to modify or annul the judgment must be presented to the court that rendered the
22 judgment. *Bumgardner v. Kupka*, No. S06MC0061WBS PAN EFB, 2006 WL 2666078,
23 at *1 (E.D. Cal. Sept. 15, 2006), report and recommendation adopted, No. CIVS06 2205
24 WBS PAN, 2006 WL 2864638 (E.D. Cal. Oct. 5, 2006); *see also First Beverages, Inc. v.*
25 *Royal Crown Cola Co.*, 612 F.2d 1164, 1172 (9th Cir. 1980); *Board of Trustees, Sheet*
26 *Metal Workers’ Nat. Pension Fund v. Elite Erectors, Inc.*, 212 F.3d 1031, 1034 (7th Cir.
27 2000). The same logic extends to motions to stay the judgment brought under Rule 62.
28 Accordingly, the Court finds that the automatic stay (upon the posting and approval of a

1 bond) available under Rule 62 is not available to Judgment Creditors in this action based
2 on the judgment filed in this Court's docket at Doc. 1.

3 Judgment Debtor and Wife also object to the application for garnishment to
4 Comerica Bank. (Doc. 89.) They argue that their appeal entitles them to a stay on the
5 execution of the California judgment under Rule 62. (Doc. 89 at 2.) But for reasons
6 explained above, Judgment Debtor and Wife are not entitled to a stay under Rule 62.
7 Therefore, there being no just reason for delay, the Court will enter the writ of execution
8 in favor of Judgment Creditors to Comerica Bank.

9 **III. CONCLUSION**

10 Accordingly,

11 **IT IS ORDERED denying** Todor Kitchukov and Mariana Kitchukova's Motion
12 to Stay. (Doc. 85.)

13 **IT IS FURTHER ORDERED** that Garnishee Delta Mechanical shall release the
14 wage garnishment funds it holds pursuant to Doc. 80 into Judgment Creditors' counsel's
15 trust account.

16 **IT IS FURTHER ORDERED** that the Order of Continuing Lien (Doc. 80)
17 remains in effect during the pendency of the Judgment Debtor's appeal to the Ninth
18 Circuit. All nonexempt earnings withheld pursuant to the Writ shall be transferred to
19 Judgment Creditors' counsel's trust account.

20 **IT IS FURTHER ORDERED** entering this disposition order in favor of
21 Judgment Creditors to Garnishee Comerica Bank (Doc. 81) and directing Garnishee
22 Comerica Bank to release the withheld funds to Judgment Creditors' counsel into
23 counsel's trust account.

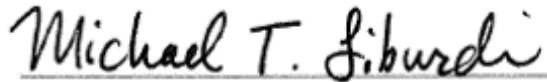
24 **IT IS FURTHER ORDERED** that Comerica Bank, once it has released the
25 withheld funds to Judgment Creditors' counsel's trust account, shall be dismissed from
26 this case without further order of the Court.

27 **IT IS FURTHER ORDERED** directing the Clerk of the Court to mail a copy of
28 this Order to Garnishee Comerica Bank.

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IT IS FINALLY ORDERED that Judgment Creditors' counsel shall retain the Comerica Bank funds and the wage garnishment funds in counsel's trust account until the mandate from the Court of Appeals issues. At that point, the parties are directed to seek further order of the Court.

Dated this 26th day of April, 2022.



Michael T. Liburdi
United States District Judge