

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GLORIA AVILA, et al.

Plaintiffs,

No. 2:08-cv-02488 JAM KJN

vs.

OLIVERA EGG RANCH, LLC

Defendant.

ORDER AND

ORDER TO SHOW CAUSE

On August 5, 2010, plaintiffs filed two applications and proposed orders for appearance and examination regarding an enforcement of judgment. (Dkt. Nos. 147, 148.) Plaintiffs seek to take the examination of Edward Olivera Jr. as agent for the claimed judgment debtor and the Bank of Stockton to answer questions concerning the property of the claimed judgment debtor. (Id.) On August 6, 2010, plaintiffs filed a related writ of execution and memorandum of costs after judgment. (Dkt. Nos. 149, 150.)

Plaintiffs are apparently attempting to seek recovery of this court's prior award of attorneys' fees and costs. (See Dkt. Nos. 97, 105, Order Awarding Attorneys' Fees and Costs and Order Denying Motion for Reconsideration of Award.) Plaintiffs' motivation for seeking debtors examinations appears to be that defendant has not paid the attorneys' fees and costs award against it in the amount of \$143,057.00.

1 However, it is not apparent from the documents submitted by plaintiffs: (1) why
2 defendant has not paid the attorneys' fees and costs award as ordered by this court;¹ or (2) that a
3 *judgment* has been entered which is entitled to enforcement at this stage of the proceedings.
4 Accordingly, at this time the court will not enter the plaintiffs' proposed orders for the August
5 26, 2010 judgment debtors examinations.

6 In consideration of the foregoing, IT IS HEREBY ORDERED that:

7 1. Defendant is ORDERED TO SHOW CAUSE in writing within 10 days of
8 the date of this order why sanctions should not be entered against it for failing to pay the
9 attorneys' fees award entered pursuant to prior orders of this court. In lieu of responding
10 substantively to this order to show cause, defendant may file a statement that it has paid the
11 \$143,057.00 award to plaintiffs;

12 2. Plaintiffs' applications and proposed orders for appearance and
13 examination (Dkt. Nos. 147 and 148) are DENIED without prejudice;

14 3. Plaintiffs' accompanying writ of execution is DENIED without prejudice
15 (Dkt. No. 149);

16 4. If plaintiffs desire to resubmit these applications and proposed orders for
17 appearance and examination at this stage of the proceedings, plaintiffs are ordered to first submit
18 a memorandum of points and authorities which addresses the authority for the commencement of
19 a judgement debtor's examination under the circumstances presented here. Such memorandum
20 shall be filed, if at all, within 21 days of the date of this order;

21 5. Within 14 days following the filing of any points and authorities from
22 plaintiffs, defendant is permitted to file a responsive points and authorities;

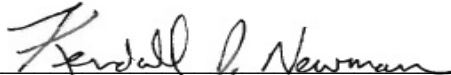
23 6. Following the receipt of any further briefing regarding the debtor's
24

25 ¹ Local Rule 110 provides that "[f]ailure of counsel or of a party to comply with these
26 Rules or with any order of the Court may be grounds for imposition by the Court of any and all
sanctions authorized by statute or Rule or within the inherent power of the Court."

1 examinations, the court will take the matter under submission and may invite plaintiffs to
2 reschedule them.

3 DATED: August 10, 2010

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE