

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
27
28

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

PASSPORT HEALTH, INC., a)	
Maryland Corporation,)	2:09-cv-01753-GEB-JFM
)	
Plaintiff,)	
)	<u>ORDER</u>
v.)	
)	
TRAVEL MED, INC., a California)	
Corporation, and GINA FLAHERTY,)	
an individual,)	
)	
Defendants.)	
_____)	

Plaintiff filed a motion for post-judgment orders against Defendant Travel Med, Inc. ("Travel Med"), seeking:

An Order pursuant to Code of Civil Procedure section 699.040 that [Travel Med] shall turn over to PLAINTIFF all non-exempt personal property together with documentary and electronic evidence of title, including but not limited to [Travel Med's] customer list, business telephone number(s), . . . and [Travel Med's] business web address(es)

An Order pursuant to Code of Civil Procedure sections 708.510-708.560 directing [Travel Med] to assign to PLAINTIFF, or in the alternative to a Receiver, to the extent necessary to fully pay and satisfy the judgment with all accrued interest and post-judgment costs, the rights to any and all payments due or to become due to [Travel Med] including but not limited to from [Travel Med's] business operations at 4250 H Street, Suite 4, Sacramento, CA 95819, 850 Iron Point Road, Suite 150, Folsom, CA 95630 and 125 N. Lincoln Street, Suite I, Dixon, CA

An Order pursuant to Code of Civil Procedure sections 564(b)(4) and 708.620 appointing a Post

1 Judgment Receiver to take possession of [Travel
2 Med's] business and any and all real and/or
3 personal property owned by [Travel Med] either
4 directly, indirectly, or beneficially (which are
5 not exempt from execution), all for the purpose of
6 having it lawfully liquidated and the proceeds
7 applied to the satisfaction of the Judgment, and to
8 have access to all books and records pertaining to
9 [Travel Med's] business, all for the purpose of
10 identifying and applying its assets toward
11 satisfaction of the Judgment

12 An Order pursuant to Code of Civil Procedure
13 sections 526 and 708.520(a) restraining [Travel
14 Med] from assigning or otherwise disposing, through
15 sale, transfer, conveyance, or encumbrance of all
16 of [Travel Med's] property, assets and rights to
17 payments pending satisfaction of the Judgment
18 herein.

19 (Pl.'s Mot. 1:23-2:23.) Travel Med opposes the motion, arguing
20 "Plaintiff's motion must be denied in its entirety because Travel Med's
21 sole shareholder, [Gina Flaherty], filed for bankruptcy on or about
22 December 30, 2011 and an automatic stay bars [Plaintiff] from taking any
23 further action[.]" (Def.'s Opp'n 1:24-26.) Further, Travel Med argues
24 Plaintiff's requested turnover order is improper and broad; its
25 requested assignment order for all payments is broad, vague, and
26 ambiguous; and its requests for a receiver and a restraining order is
27 unnecessary. Id. 2:3-16.

28 **I. AUTOMATIC STAY**

29 Travel Med argues "an automatic stay bars [Plaintiff] from
30 taking any further action against [Travel Med] under 11 [U.S.C.] § 362
31 because protection of the automatic stay is extended to non-debtors
32 where an action [against] a non-debtor might have a significant adverse
33 impact upon the debtor." Id. 1:26-28. Plaintiff rejoins, arguing "the
34 automatic stay [imposed because of Flaherty's] Chapter 7 filing does not
35 extend to [Travel Med], despite the fact that [Travel Med] is wholly
36 owned by Ms. Flaherty." (Pl.'s Reply 2:5-7.)

1 procedures for the assignment of assets, issuance of restraining orders,
2 and issuance of turnover orders." UMG Recordings, Inc. v. BCD Music
3 Grp., Inc., No. CV 07-05808, 2009 WL 2213678, at *1 (C.D. Cal. July 9,
4 2009).

5 **A. Turnover Order Under Section 699.040**

6 Plaintiff seeks "[a]n Order pursuant to Code of Civil
7 Procedure section 699.040 that [Travel Med] shall turn over to PLAINTIFF
8 all non-exempt personal property together with documentary and
9 electronic evidence of title, including but not limited to [Travel
10 Med's] customer list, business telephone number(s), including but not
11 limited to (916) 254-2100, and [Travel Med's] business web
12 address(es) [.]" (Pl.'s Mot. 1:23-2:2.) Defendant counters arguing, *inter*
13 *alia*, that "a turnover order under [section] 699.040 may only be used to
14 have the judgment debtor transfer tangible property to the levying
15 officer because that is property that can be taken into custody."
16 (Def.'s Opp'n 4:13-15 (emphasis omitted).)

17 Section 699.040(a) prescribes:

18 (a) If a writ of execution is issued, the judgment
19 creditor may apply to the court *ex parte*, or on
20 noticed motion if the court so directs or a court
21 rule so requires, for an order directing the
22 judgment debtor to transfer to the levying officer
23 either or both of the following:

24 (1) Possession of the property sought to be
25 levied upon if the property is sought to be
26 levied upon by taking it into custody.

27 (2) Possession of documentary evidence of
28 title to property of or a debt owed to the
judgment debtor that is sought to be levied
upon. An order pursuant to this paragraph may
be served when the property or debt is levied
upon or thereafter.

Cal. Civ. Proc. Code. § 699.040(a). "The statute allows a judgment
creditor to seek an order directing the judgment debtor to transfer [the

1 enumerated property and documentary evidence] *to the levying officer*
2 It does not allow a turnover to the judgment creditor.” Palacio
3 Del Mar Homeowners Ass’n, Inc. v. McMahon, 174 Cal. App. 4th 1386, 1391
4 (2009) (emphasis in original). Therefore, Plaintiff’s request to turn
5 over all non-exempt personal property to Plaintiff is DENIED.

6 **B. Assignment Order Under Section 708.510-.560**

7 Plaintiff also seeks

8 An Order pursuant to Code of Civil Procedure
9 sections 708.510-708.560 directing [Travel Med] to
10 assign to PLAINTIFF, or in the alternative to a
11 Receiver, to the extent necessary to fully pay and
12 satisfy the judgment with all accrued interest and
13 post-judgment costs, the rights to any and all
14 payments due or to become due to [Travel Med]
including but not limited to from [Travel Med’s]
business operations at 4250 H Street, Suite 4,
Sacramento, CA 95819, 850 Iron Point Road, Suite
150, Folsom, CA 95630 and 125 N. Lincoln Street,
Suite I, Dixon, CA[.]

15 (Pl.’s Mot. 2:3-10.) Travel Med rejoins, arguing Plaintiff’s “request
16 for ‘all payments due to [Travel Med] from its business operations’ is
17 too broad, vague, and ambiguous to warrant consideration.” (Def.’s Opp’n
18 6:21-22.)

19 Under section 708.510(a):

20 Except as otherwise provided by law, upon
21 application of the judgment creditor on noticed
22 motion, the court may order the judgment debtor to
23 assign to the judgment creditor or to a receiver
appointed pursuant to Article 7 (commencing with
Section 708.610) all or part of a right to payment
due or to become due, whether or not the right is
24 conditioned on future developments, including but
not limited to the following types of payments: (1)
25 Wages due from the federal government that are not
subject to withholding under an earnings
withholding order. (2) Rents. (3) Commissions.
26 (4) Royalties. (5) Payments due from a patent or
copyright. (6) Insurance policy loan value.

27
28 “Although the Court may take into consideration all relevant factors,

1 [including those enumerated in section 708.510(c),] the sole constraints
2 placed on the Court are that the right to payment be assigned only to
3 the extent necessary to satisfy the creditor's money judgment and that,
4 where part of the payments are exempt, the amount of payments assigned
5 should not exceed the difference between the gross amount of the
6 payments and the exempt amount." Sleepy Hollow Inv. Co. No. 2 v.
7 Prototek, Inc., No. C 03-4792, 2006 WL 279349, at *2 (N.D. Cal. Feb. 3,
8 2006); see also Cal. Civ. Pro. Code § 708.510(d) ("A right to payment
9 may be assigned pursuant to this article only to the extent necessary to
10 satisfy the money judgment.").

11 "[D]etailed evidentiary support' is not required under
12 [section] 708.510. But some evidentiary support is still needed;
13 [section] 708.510 refers to a 'payment due or become due,' which
14 suggests some degree of concreteness to the expected payment is
15 required." Legal Additions LLC v. Kowalksi, No. C-08-2754, 2011 WL
16 3156724, at *2 (N.D. Cal. July 26, 2011) (emphasis omitted) (internal
17 citations omitted). "Certainly, there needs to be more than just
18 speculation before the remedy of an assignment can be provided." Id.

19 "Plaintiff's request appears to be for a general assignment of
20 all possible funds due to Defendant; [it] has failed to identify any
21 specific source of money to be assigned." Garden City Boxing Club, Inc.
22 v. Briano, No. CIV-F-06-1270, 2007 WL 4463264, at *2 (E.D. Cal. Dec. 17,
23 2007); see also UMG Recordings, Inc. v. BCD Music Grp., Inc., No. CV 07-
24 05808, 2009 WL 2213678, at *2 (C.D. Cal. July 9, 2009) ("The Court
25 rejected UMG's assignment request because of its generality and failure
26 to identify any specific assets."). Therefore, Plaintiff's request for
27 an assignment of all payments due is DENIED.

28

1 **C. Appointment of a Receiver**

2 Plaintiff also seeks

3 [a]n Order pursuant to Code of Civil Procedure
4 sections 564(b)(4) and 708.620 appointing a Post
5 Judgment Receiver to take possession of [Travel
6 Med's] business and any and all real and/or
7 personal property owned by [Travel Med], either
8 directly, indirectly, or beneficially (which are
9 not exempt from execution), all for the purpose of
 having it lawfully liquidated and the proceeds
 applied to the satisfaction of the Judgment, and to
 have access to all books and records pertaining to
 [Travel Med's] business, all for the purpose of
 identifying and applying its assets toward
 satisfaction of the Judgment[.]

10 (Pl.'s Mot. 2:11-19.) Travel Med rejoins, arguing "the appointment of a
11 receiver is not necessary to protect anyone's interest in the property."

12 (Def.'s Opp'n 8:15-17.)

13 "Rule 66 governs the appointment of a receiver in federal
14 court." Office Depot Inc. v. Zuccarini, 596 F.3d 696, 701 (9th Cir.
15 2010). "Under [Rule] 66, federal courts are authorized to appoint
16 receivers, but doing so is considered an 'extraordinary remedy.'" First
17 Cnty. Bank v. Miller, No. 09-80131, 2010 WL 2528964, at *2 (N.D. Cal.
18 June 18, 2010) (quoting Canada Life Assurance Co. v. LaPeter, 563 F.3d
19 837, 844 (9th Cir. 2008)).

20 "Notwithstanding, when the federal statute is a general
21 procedural rule, specific state statutes addressing the particular
22 proceeding at issue apply." Joe Hand Promotions, Inc. v. Saddeldin, No.
23 1:09-cv-02197, 2011 WL 1806919, at *1 (E.D. Cal. May 10, 2011) (citing
24 Office Depot Inc., 596 F.3d at 701). "Therefore, state law has been
25 applied under Rule 69(a) to appointment of receivers, when such actions
26 are undertaken in aid of executing a judgment." Id.

27 Under California law, "the court may appoint a receiver to
28 enforce the judgment where the judgment creditor shows that, considering

1 the interests of both the judgment creditor and the judgment debtor, the
2 appointment of a receiver is a reasonable method to obtain the fair and
3 orderly satisfaction of the judgment." Cal. Civ. Proc. Code § 708.620.
4 "The legislative comment to [section] 708.620 indicates that, under this
5 section, a receiver may be appointed where a writ of execution would not
6 reach certain property and other remedies appear inadequate." J&J Sports
7 Prods., Inc. v. Huezo, No. C 09-4906, 2011 WL 1134265, at *2 (N.D. Cal.
8 Mar. 25, 2011).

9 Plaintiff argues as follows in support of its request for
10 appointment of a receiver:

11 The appointment of a post-judgment receiver would
12 be the most efficient way to enforce collection and
13 the most efficient way to affect an assignment
14 order. There would be minimal interruption in
15 [Travel Med's] business by having a post-judgment
16 receiver appointed to take possession of [Travel
17 Med's] business and any and all non-exempt real
18 and/or personal property owned by [Travel Med] for
19 the purpose of having it lawfully liquidated and
20 the proceeds applied to the satisfaction of the
21 Judgment, and to have access to all books and
22 records pertaining to [Travel Med's] business, all
23 for the purpose of applying such assets toward
24 satisfaction of the Judgment.

19 (Pl.'s Mot. 7:1-8.) Since Plaintiff has not shown why appointment of a
20 receiver is a reasonable method of satisfying the judgment, that certain
21 property is unable to be reached without it, and that other remedies are
22 inadequate, Plaintiff's request to appoint a receiver is DENIED.

23 **D. Injunction**

24 Plaintiff seeks "[a]n Order pursuant to Code of Civil
25 Procedure sections 526 and 708.520(a) restraining [Travel Med] from
26 assigning or otherwise disposing, through sale, transfer, conveyance, or
27 encumbrance of all of [Travel Med's] property, assets and rights to
28 payments pending satisfaction of the Judgment herein." (Pl.'s Mot. 2:20-

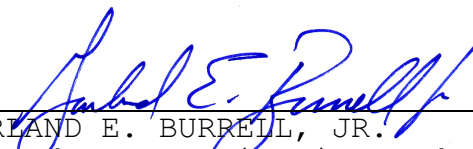
1 23.)

2 "Under [section] 708.520, a court may issue an order
3 restraining the judgment debtor from assigning or otherwise disposing of
4 the right to payment that is sought to be assigned upon a showing of
5 need for the order." Legal Additions LLC v. Kowalksi, No. C-08-2754,
6 2011 WL 3156724, at *2 (N.D. Cal. July 26, 2011) (internal quotation
7 marks omitted). However, "[a]s the court is denying Plaintiff's request
8 for assignment under [section] 708.510, the court also declines to issue
9 a restraining order." Garden City Boxing Club, Inc. v. Briano, No. CIV-
10 F-06-1270, 2007 WL 4463264, at *2 (E.D. Cal. Dec. 17, 2007). Therefore,
11 Plaintiff's request for an injunction is DENIED.

12 **III. CONCLUSION**

13 For the stated reasons, Plaintiff's request for post-judgment
14 orders is DENIED.

15 Dated: April 13, 2012

16
17 
18 _____
19 GARLAND E. BURRELL, JR.
20 United States District Judge
21
22
23
24
25
26
27
28