

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

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DENNL Y R. BECKER, et al.,  
Plaintiffs,  
v.  
WELLS FARGO BANK, N.A., Inc., et al.,  
Defendants.

No. 2:10-cv-2799-TLN-KJN (PS)

ORDER

Presently before the court is plaintiff Denny Becker’s (“plaintiff”) motion for an order directing defendant Wells Fargo Bank, N.A., Inc. (“defendant”) to show cause why it should not be ordered to rescind copies of the abstract of judgment it recorded in San Joaquin County and Placer County and to identify and rescind any copies of the abstract of judgment it may have recorded in other counties. (ECF No. 268.) Defendant filed an opposition to plaintiff’s motion and plaintiff filed a reply. (ECF Nos. 269, 270.) The undersigned has fully considered the parties’ briefs and appropriate portions of the record.<sup>1</sup> For the reasons that follow, plaintiff’s motion is denied.

///

///

---

<sup>1</sup> This motion was submitted on the record and briefs without oral argument pursuant to Local Rule 230(g). (ECF No. 271.)

1 Plaintiff asserts in his motion that the abstract of judgment issued in this action concerning  
2 the court's award of attorneys' fees to defendant contains a false statement that a stay of  
3 enforcement of that judgment has not been put in place in this action even though a stay of  
4 enforcement was ordered pursuant to Federal Rule of Civil Procedure 62(d) that went into effect  
5 after plaintiff posted a supersedeas bond on April 20, 2015, and remains in effect pending his  
6 appeal of the court's award of attorneys' fees to defendant. Accordingly, plaintiff argues,  
7 defendant's recording of this document with the county recorders' offices is in violation of  
8 Federal Rule of Civil Procedure 62(d) and Local Rule 180(e) because it contains a material  
9 misrepresentation that no stay on the judgment has been implemented in this action. Plaintiff  
10 appears to assert that defendant's recording of the false abstract of judgment places an unjustified  
11 cloud on the title of plaintiff's properties and that the recording will effectively permit defendant  
12 to improperly pursue enforcement of the stayed judgment. Plaintiff's arguments are not well  
13 taken.

14 Numerous courts, including the Ninth Circuit Court of Appeals, have determined that the  
15 recording of an abstract of judgment while a stay of execution under Federal Rule of Civil  
16 Procedure 62 is in place is not prohibited under that Rule. See, e.g., Yusov v. Yusuf, 892 F.2d  
17 784, 785, n.1 (9th Cir. 1989) (holding that the district court's refusal "to expunge the abstract of  
18 judgment from the county records[ ] was not an abuse of discretion" when the recording occurred  
19 while a stay of execution under Rule 62 was in place because "[r]ecording a judgment is  
20 generally not held to be prohibited by Fed. R. Civ. P. 62(a)"); In re Vanden Bossche, 125 B.R.  
21 571, 573 (N.D. Cal. 1991) ("The view that Rule 62(a) does not prohibit the recordation of an  
22 abstract of judgment during [the time the automatic stay required by that rule is in place] has  
23 received both judicial and academic acceptance."); Anastos v. M.J.D.M. Truck Rentals, Inc., 521  
24 F.2d 1301 (7th Cir. 1975) (noting that Rule 62(a) does not prevent recording of the judgment); 7  
25 J. Moore & J. Lucas, Moore's Federal Practice ¶ 62.03 n.6 (2d ed. 1987) (collecting cases).  
26 While those decisions have focused on the automatic stay imposed by Federal Rule of Civil  
27 Procedure 62(a) and not the automatic stay imposed by the court's approval of a supersedeas  
28 bond under Rule 62(d), as is the case here, the reasoning provided by those courts is equally

1 applicable to the stay at issue here. The general function of both Rule 62(a) and Rule 62(d) is to  
2 prevent a victorious party from executing the judgment on property owned by the loser before the  
3 loser has an opportunity to prepare an appeal of that judgment. See In re Vanden Bossche, 125  
4 B.R. at 573 (“The purpose of the stay provision is to give a party time to prepare for an appeal or  
5 to determine what other course of action to take, while at the same time prohibiting the victorious  
6 party from racing out and executing the judgment on property owned by the loser.”); J. Perez &  
7 Cia., Inc. v. United States, 578 F. Supp. 1318, 1320 (D.P.R.) aff’d, 747 F.2d 813 (1st Cir. 1984)  
8 (“This matter-of-right stay [under Rule 26(d)] as its name indicates supersedes the right of  
9 enforcement of the previous judgment. . . . The bond operates to [the] appellant’s advantage and  
10 deprives the appellee of the immediate benefits of his judgment.”). Accordingly, the act of  
11 recording an abstract of judgment is consistent with this purpose as it does not constitute an  
12 execution of the judgment nor otherwise undermine the stay. See In re Vanden Bossche, 125  
13 B.R. at 573 (“[B]ecause the act of recording a judgment does not have the effect of transferring  
14 any interest in property, allowing a party to record an abstract would be consistent with the  
15 purpose of Rule 62(a).”). Therefore, defendant’s mere recording of the abstract does not violate  
16 Rule 62(d) as plaintiff seems to suggest.

17 Moreover, because a stay on execution of the judgment awarding defendant attorneys’  
18 fees is in place during the pendency of plaintiff’s appeal of that judgment due to the court’s  
19 approval of plaintiff’s supersedeas bond, defendant is prevented from seeking execution of that  
20 judgment unless and until that stay is lifted. While the recording of the abstract does create a  
21 valid judgment lien under applicable California law,<sup>2</sup> see In re Vanden Bossche, 125 B.R. at 575  
22 (“[T]he Court finds that recording an abstract of a judgment obtained in federal court, even if  
23 recorded during the [Rule 62(a)] automatic stay period, does create a valid judgment lien under  
24 applicable California law.”), it does not permit defendant to execute on that judgment while the  
25 stay is in place, even though the abstract incorrectly states that a stay has not been ordered. The  
26 mere fact that the copies of the abstract of judgment recorded by defendant erroneously state that


---

27 <sup>2</sup> Under California Code of Civil Procedure § 697.040(b), unless a court orders otherwise, a stay  
28 of enforcement does not prevent the creation of a judgment lien.

1 no stay of enforcement has been put in place does not nullify the fact that a stay pursuant to Rule  
2 62(d) is still in place during the pendency of plaintiff's appeal of the court's award of attorneys'  
3 fees. Therefore, plaintiff's assertion that the recording of the abstract of judgment in this action  
4 permits defendant to collect on the stayed judgment awarding attorneys' fees while plaintiff  
5 appeals that judgment is without merit. Furthermore, because the abstract of judgment as  
6 recorded creates a valid judgment lien, albeit one that cannot yet be enforced as a result of the  
7 stay pending plaintiff's appeal, the title of plaintiff's properties to which copies of the abstract  
8 have been recorded against have not been unduly burdened as plaintiff appears to contend.<sup>3</sup>

9 Accordingly, IT IS HEREBY ORDERED that plaintiff's motion for an order to show  
10 cause (ECF No. 268) is DENIED.

11 Dated: December 3, 2015

12   
13 \_\_\_\_\_  
14 KENDALL J. NEWMAN  
15 UNITED STATES MAGISTRATE JUDGE  
16  
17  
18  
19  
20  
21  
22  
23

24 <sup>3</sup> Plaintiff also asserts that his motion is made pursuant to Local Rule 180(e), which concerns the  
25 standards of professional conduct by which attorneys admitted to practice in this court are to  
26 adhere. This provision in no way provides the relief plaintiff seeks through his motion.  
27 Furthermore, while it appears that plaintiff invokes this local rule in order to insinuate that  
28 counsel for defendant acted unethically by recording copies of the abstract of judgment  
containing the erroneous statement that no stay has been placed on the execution of that  
judgment, this argument is frivolous as defendant merely recorded the abstract as it had been  
issued by the Clerk of Court pursuant to the court's direction. (See ECF No. 244.)