

1 DONGMING XU, )  
 2 )  
 3 Plaintiff, )  
 4 )  
 5 v. )  
 6 ) No. CV-91-01178-DLJ  
 7 )  
 8 ) **ORDER**  
 9 YUN SANG IP, and )  
 10 SUN HING COMMODITY, LTD., )  
 11 )  
 12 Defendants. )  
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 14 )  
 15 )

16 On July 22, 2008, plaintiff Dongming Xu ("Xu") filed an  
 17 application seeking (1) a writ of execution to enforce his money  
 18 judgment, and (2) a judicial sale of residential real property  
 19 owned by defendant Yun Sang Ip ("Ip"). Ip did not file an  
 20 opposition. Having considered the papers submitted and the  
 21 applicable law, the Court hereby DENIES the application.

**I. BACKGROUND**

**A. Factual Background and Procedural History**

22 On April 18, 1991, Xu filed a pro se complaint for fraud  
 23 against Ip. On August 28, 1992, the Court granted default judgment  
 24 in favor of Xu. The Court awarded Xu money damages in the amount  
 25 of \$60,203. Since that time, Xu has renewed his judgment every  
 26 five years: on August 28, 1997; August 28, 2002; and August 28,  
 27 2007. Due to the accrual of interest over time, the value of the  
 28 judgment has increased to \$203,184.

Xu has been unsuccessful in enforcing his judgment. On July  
 22, 2008, Xu filed the instant application seeking a writ of  
 execution pursuant to Federal Rule of Civil Procedure ("FRCP") 69.

1 In conjunction with the writ, Xu moves for the sale of a house  
2 owned by Ip in Rosemead, California. Rosemead is located in Los  
3 Angeles County.

4 **B. Legal Standard**

5 Under FRCP 69, a money judgment must be enforced by a writ of  
6 execution. Fed. R. Civ. P. 69(a)(1). The writ process is governed  
7 by the law of the state where the presiding court is located. Id.

8 In California, once a court has entered a money judgment, the  
9 court clerk must issue a writ of execution upon application of the  
10 judgment creditor. See Cal. Civ. Proc. Code § 699.510(a). In most  
11 cases, the issuance of the writ is a ministerial act which the  
12 clerk has no discretion to refuse. See In re Marriage of Farner,  
13 216 Cal. App. 3d 1370, 1376 (1989). Judicial action is only  
14 required if the judgment is conditional, or if there is some  
15 question regarding the value of the judgment. See id.

16 Special rules apply when the judgment creditor seeks the forced  
17 sale of a dwelling. Under the so-called homestead exemption, the  
18 judgment creditor must obtain a writ of execution and have it  
19 executed by the appropriate levying officer. See Cal. Civ. Proc.  
20 Code § 704.750(a). Only then may the creditor move for a court-  
21 ordered sale. See, e.g., id.; In re Marriage of Schenck, 228 Cal.  
22 App. 3d 1474, 1477-78 (1991). The motion for sale must be heard in  
23 the county where the dwelling is located. See Cal. Civ. Proc. Code  
24 § 740.750(b)(1).  
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II. DISCUSSION

Xu has not followed the proper procedure for obtaining a writ of execution. No part of Xu's judgment was conditional or unclear as to the amount due. As a result, there is no need for judicial consideration of the matter. Accordingly, Xu's application is improperly before the Court.

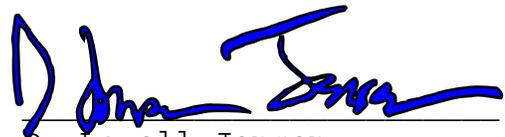
Xu also failed to follow the proper procedure for obtaining the court-ordered sale of a dwelling. Xu has not yet obtained a valid writ or had it executed. As a result, Xu's motion is premature. Even if the motion were timely, however, this Court -- sitting in the Northern District of California -- lacks jurisdiction over property located in Los Angeles County. Xu contends the homestead exemption might not apply to this case because there is evidence that Ip does not live at the Rosemead property. The record is not clear on this issue, however, and this Court is not the proper venue to engage in argument on the substance of the homestead exemption.

III. CONCLUSION

Based on the foregoing, the Court hereby DENIES the application.

IT IS SO ORDERED

Dated: October 7, 2008



D. Lowell Jensen  
United States District Judge