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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ELIZABETH GREWAL,
Plaintiff,
v.
AMIT CHOUDHURY,
Defendants.

No. C 07-4218 CRB (JL)

**ORDER OVERRULING OBJECTIONS
TO TURNOVER ORDER (Docket # 356)**

Post-judgment proceedings in this case have been referred by the district court (Hon. Charles R. Breyer) under 28 U.S.C. §636(b).

Judgment Debtor Amit Choudhury’s objections to this Court’s Turnover Order issued September 30, 2009, came on for hearing. E. Jeffrey Banchemo appeared for Judgment Creditor Elizabeth Grewal. Kevin Coleman appeared for Judgment Debtor Amit Choudhury. The Court carefully considered the moving and opposing papers and the arguments of counsel and hereby overrules the objections.

Choudhury’s objections have already been rejected by Judge Breyer, including his objection to seizure of the pink slip for his Mercedes and Karen Choudhury’s objection to levy on his bank account at First Republic Bank, San Francisco, on the basis that she is a resident of Illinois, not a community property state, and therefore she has some interest in his bank account that can’t be attached. Choudhury can’t trade a defunct personal exemption in the car for the proceeds of the bank accounts in India, for which he has no

1 basis to object. As for any interest that Karen Choudhury may have had in the First
2 Republic Bank account in San Francisco, This Court finds that she also failed to follow the
3 proper procedure for filing a third-party claim, and therefore her claim has been
4 extinguished, whether or not Judge Breyer expressly rejected it at the Show Cause
5 hearing.

6 **FACTUAL AND PROCEDURAL BACKGROUND**

7 On August 12, 2008, the following Judgment was entered against Judgment Debtor
8 by Judge Charles Breyer:

9 “The jury having found in favor of Plaintiff and against Defendant on Counts One
10 through Four, and having awarded \$1,423,740.00 in compensatory damages and
11 \$500,000.00 in punitive damages, judgment is now entered in favor of Plaintiff Elizabeth
12 Grewal and against Defendant Amit Choudhury.” (Judgment at Docket # 143)

13 Choudhury has resisted paying this judgment.

14 This Court entered a Turnover Order on September 30, 2009, (Docket # 355) that
15 Choudhury turn over his interest in two bank accounts at HDFC Bank in New Delhi, India:
16 one in the amount of 13,824.63 rupees, and one in the amount of 170,650.31 rupees. The
17 value in dollars of both accounts is about \$4,000 US.

18 **The Judgment**

19 Amit Choudhury’s version of what happened that led to the Judgment against him is
20 that he lost his entire personal fortune in the Silicon Valley tech bust of 2001. His losses
21 “included Ms. Grewal’s \$880,000.00.” See Transcript of Trial (“TT”) at 525:21-526:11;
22 558:20-561:10, 19-25; 562:23-563:11, appended to Judgment Debtor’s Objections as
23 Exhibit A. On September 10, 2001, he started a new company to earn his way out of his
24 personal losses. This company, Pinnacle Partners Systems, Inc. (“PPS”), was incorporated
25 in November 2002 and is a technology company in the financial investment services sector.
26 TT 564:11-19 Choudhury gave Ms. Grewal 70,000 shares of the new company, priced at
27 \$0.01 per share (\$70 in total) as a good faith gesture. TT564:20-565:3 Ms. Grewal owns
28 those shares today. Choudhury also owns a small percentage of PPS shares.

1 During this time period, Choudhury also owned 100% of a consulting company
2 Pinnacle Partners, Inc. (“PPI”) and a research and development company Pinnacle
3 Partners, Inc. (Canada) (“PPI (Canada)”). PPS had many investors which have invested
4 several million dollars. With the investor money and agreement, PPS hired PPI (Canada) to
5 build the technology and PPI to market and sell the product. The money paid was used to
6 pay salaries for the employees and business overhead such as business travel expenses,
7 office rent and equipment. Although it was required to lay off nearly all of its regular
8 employees, PPS survived the 2008 financial crisis and is still in existence today. Choudhury
9 remains employed by PPS as a sales agent, to sell the software built by PPS so as to make
10 the business a success and, he claims, to earn the money to repay Ms. Grewal. TT
11 558:7-22.

12 **Choudhury’s Objections to levy on First Republic Bank account**

13 On October 15, 2008, Ms. Grewal’s counsel caused to be issued a Levy and Writ of
14 Execution to First Republic bank with the following declaration: “During the course of
15 litigation, the judgment debtor, Amit Choudhury, identified Karen H. Choudhury as his
16 spouse. Pursuant to California Code of Civil Procedure §695.020, bank accounts held in
17 the name of Karen H. Choudhury, whether individually or jointly with Amit Choudhury,
18 constitute community property subject to judgment in this action.” See Exhibit B attached
19 hereto. As a result, the funds in an account held solely in the name of Karen Choudhury
20 were seized.

- 21 • On December 10, 2008, Karen Choudhury filed a Declaration Regarding
22 Wrongful Levy on First Republic Bank Account. (Doc. No.197)
- 23 • On December 23, 2008, this Court entered its Amended Turnover Order.
24 (Doc. No. 201).
- 25 • On January 20, 2009, Mr. Choudhury filed a Limited Objection to Levy. (Doc.
26 No. 203).
- 27 • On February 20, 2009, this Court issued an Order to Show Cause Re
28 Contempt based inter alia upon its determination that he caused Pinnacle

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Partners, Inc., a company he owned controlled, to pledge rights to recoveries under a settlement agreement in violation of its prior orders, and that he was concealing assets held in the name of Amisil Holdings, Ltd. Based thereon, the Court stated that “[t]his Court entertains none of Choudhury’s objections [to levy]” and transferred this matter to Judge Breyer to determine whether Choudhury had violated the subject orders. (Doc. No. 247). This Court also concluded that Mr. Choudhury had not submitted a declaration in support of his objection to levy. Read in context, however, the order suggests that the evidentiary deficiencies with which the Court was concerned related to Mr. Choudhury’s claims that he was not the owner of property that was not turned over to the U.S. Marshal.

- On February 26, 2009, Mr. Choudhury filed a Response to Order to Show Cause. (Doc. Nos. 270, 271).
- On August 11, 2009, the District Court issued orders attached as Exhibit C and Exhibit D. The order attached as Exhibit C determined that the settlement agreement pledge had not violated any prior orders of the Court, that the pledge was not a fraudulent transfer because “[b]y funding the Clarium litigation, PPI was preserving its ability to recover on its loan to Amisil, as well as creating an opportunity for an additional gain”. The order attached as Exhibit D determined that Ms. Grewal was not a creditor of Amisil and was not entitled to assert an interest in the proceeds of a settlement paid to Amisil. (Doc. No. 347 and Doc. No. 348).

To date, Ms. Grewal has not executed on any of the turned over assets.

DEBTOR’S OBJECTIONS

The law of a judgment debtor’s domicile controls what exemptions the judgment debtor may claim. See *In re Arrol*, 170 F.3d 934 (9th Cir. 1999) (California exemption law applies to a debtor domiciled in California, regardless of where the property claimed as exempt was located). This is consistent with conflict of laws principles, which provide that

1 the law of the state with the most significant interest in the thing and the parties should
2 supply the rule of decision. Rest.2d, Conflict of Laws, §§ 6(2), 91 & 222. California courts
3 have adopted the principles articulated in the Restatement. *ABF Capital Corp. v. Berglass*,
4 30 Cal.Rptr.3d 588, 597 (2005) (following the Restatement 2d, Conflict of Laws §6(2)). (§ 9
5 Limitations on Choice of Law - A court may not apply the local law of its own state to
6 determine a particular issue unless such application of this law would be reasonable in the
7 light of the relationship of the state and of other states to the person, thing or occurrence
8 involved.)

9 The State of Illinois has enacted its exemption laws in order to provide judgment
10 debtors with necessary shelter and a minimum level of support required for his or her
11 welfare during difficult economic circumstances. *State Bank of Antioch v. Nelson*, 132
12 Ill.App.3d 120, 123, 477 N.E.2d 77, 79 (1985). Those exemptions are to be liberally
13 construed in the judgment debtor's favor. *Bank of Illmo v. Simmons*, 142 Ill. App. 3d 741,
14 744 (1986). Since a judgment debtor's domiciliary state is best equipped to determine what
15 is necessary under local conditions to provide a minimal standard of living, and since the
16 judgment debtor's domiciliary state will also experience the negative impacts of depriving
17 its citizens of the property it has determined is necessary to maintain a minimum standard
18 of living, the State of Illinois has a greater interest than California in defining what property
19 should be exempt from execution of the judgment in this case. The point is perhaps best
20 illustrated by considering the converse situation. Compared to many states (including
21 Illinois), California has a generous exemption for homesteads – \$50,000 for individuals and
22 \$75,000 for a married couple. Cal. Code Civ. Proc. §704.730. This presumably reflects the
23 higher cost of housing in this State because the purpose of the exemption is to ensure that
24 its citizens can maintain a roof over their heads despite the fact that they owe money to
25 their creditors. *Strangman v. Duke*, 140 Cal.App.2d 185, 295 P.2d 12 (1956) (California
26 enacted its homestead exemption laws in order to 'to provide a place for the family and its
27 surviving members, where they may reside and enjoy the comforts of a home, freed from
28 any anxiety that it may be taken from them against their will, either by reason of their own

1 necessity or improvidence, or from the importunity of their creditors,' and to this end a
2 liberal construction of the law and facts will be adopted by the courts.')

3 *Kachigian*, 20 Cal.2d 787, 791, 128 P.2d 865, 867. Permitting Illinois' homestead
4 exemption laws (which allow only \$7,500 to \$10,000) to govern the rights of judgment
5 debtors who are California citizens would make it far more difficult for those individuals to
6 retain shelter, and therefore, would significantly undermine California's policy objective in
7 enacting its homestead exemption laws.

8 Amit Choudhury argues that allowing the alternative claimed exemption would
9 further, rather than hamper his ability to repay the judgment. He has no assets and so can
10 only repay the judgment if he can earn income. As the only salesperson for Pinnacle
11 Partners Systems, Inc. having the use of the 1995 Mercedes is necessary, Choudhury
12 claims, for Choudhury to make sales calls in locations where public transportation is not
13 accessible. Choudhury filed timely objections asserting statutory exemptions for the 1995
14 Mercedes and is willing to waive any exemption in the HDFC Bank funds to obtain the car.
15 Accordingly, he is respectfully requesting that he be permitted to apply the personal
16 property and automobile exemptions to the 1995 Mercedes, in exchange for which he will
17 waive any exemption in the HDFC Bank funds so that those funds (\$4,017.65) can be paid
18 to Ms. Grewal. The Choudhurys also respectfully request that this Court consider the
19 allegedly improper circumstances in which Karen Choudhury's First Republic assets were
20 seized and issue an order that Karen Choudhury's is entitled to a return of the First
21 Republic funds of \$2,078.69.

22 **CREDITOR'S RESPONSE**

23 Debtor may not "reassert" his claim of exemption for the 1995 Mercedes. Judge
24 Breyer already ruled that his objections to levy on the Mercedes is not supported by
25 evidence. (2/20/09 Order to Cause , at p. 6:-25-28) Judge Breyer at the Show Cause
26 hearing already overruled all of Choudhury's objections to levy. (*Id.* at 8:10-11). Choudhury
27 also attempts to assert a claim on the Mercedes in exchange for not asserting a claim on
28

1 the money from the bank in New Delhi, India - \$4,017.65. He bases this trade-off on his
2 assertion that he is domiciled in Illinois and that Illinois law supports this claim. Grewal
3 disputes his claim of Illinois domicile, since he was born in India, is a citizen of Canada, and
4 last year applied for a permit to reside in Switzerland. Domicile is determined by where one
5 intends to stay. "Residence" in Switzerland implies staying in Switzerland.

6 Choudhury's claim of domicile in Illinois is highly questionable and he should not be
7 able to play hide-the-asset by claiming whatever domicile is most convenient. His wife may
8 have an apartment in Chicago, but that does not necessarily determine where he intends to
9 stay. His claim that he needs the Mercedes to make sales calls, or otherwise he is going to
10 be on the bus is laughable. Where is he getting the money to pay all these high-priced
11 attorneys who keep appearing on his behalf?

12 Grewal says that if Choudhury wants to claim either the Mercedes or the monies,
13 she would prefer that he take the car and give her the monies. Grewal offers to accept
14 Choudhury's representation that the Mercedes is worth \$5,850. She will give him the pink
15 slip in exchange for this amount in cash. Then he will have his car and will have paid down
16 the judgment by this amount.

17 **Account at First Republic Bank, San Francisco**

18 On November 19, 2008, Grewal notified Karen Choudhury by serving a Notice of
19 Levy, that Grewal was levying on these assets. (Ex. D. to Grewal's Response) This Court
20 may decline to rule on this objection, since there is nothing in the Turnover Order about
21 these funds, so they are not properly the subject of objections to the Turnover Order.
22 Grewal obtained the \$2,237.08 in this account by obtaining a writ of execution for "All
23 personal property in which Amit Choudhury, the judgment debtor, has any interest,
24 including the community property of Karen H. Choudhury. . ." The U.S. Marshall turned
25 over the funds to Grewal in mid-January 2009, by check in the amount of \$2,237.08, and a
26 Memorandum of Garnishee, executed on October 16, 2008, by an officer of First Republic
27 Bank (Id. at Ex. E). In its Memorandum the Bank is required to describe "any claims and
28 rights of other persons to the property or obligation levied upon that are known to you and
the names and addresses of the other persons." The bank responded, "Pran Kumar

1 Choudhury,” but made no mention of Karen Choudhury or any interest Karen Choudhury
2 may have had in these monies. (*Id.*) It was revealed at the hearing that Pran Kumar
3 Choudhury was Amit Choudhury’s father, now deceased.

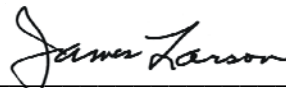
4 California law provides a “quick and effective procedure” to determine whether a
5 third person, such as Karen Choudhury, has “rights in property levied upon by a judgment
6 creditor” - third-party claims and related procedures. Cal. Code of Civ. Pro. §720.010 et
7 seq.) If Karen Choudhury had believed she had an interest in the funds that First Republic
8 Bank turned over to the Marshall, then she could have filed a third-party claim asserting
9 that interest, but she didn’t. Had she filed such a claim, the Marshall would not have
10 delivered the funds to Grewal. Now that the funds have been turned over, any claim if she
11 had one, has been extinguished. Cal. Code of Civil pro. §720.101.

12 **CONCLUSION**

13 Judge Breyer rejected all Choudhury’s objections that he had asserted at the time of
14 the Show Cause hearing, including the claim of exemption for the Mercedes, and arguably
15 including Karen Choudhury’s claim. In any event, Karen Choudhury fails to show that she
16 has filed a valid and timely third party claim pursuant to the California Code of Civil
17 Procedure. Her Declaration filed before the Show Cause hearing supports that Judge
18 Breyer already rejected her claim, since he ruled that none of Choudhury’s objections were
19 valid, since they were not supported by evidence. That’s the law of the case. This Court
20 accordingly overrules both objections to the Turnover Order (in fact the money in the Old
21 Republic Bank account was not part of the Turnover Order so not even properly part of
22 Choudhury’s motion) and suggests that Choudhury accept Grewal’s offer to give him the
23 pink slip to the car in exchange for its cash value, and thereby demonstrate his good faith
24 intent to pay this Judgment

25 IT IS SO ORDERED.

26 DATED: March 22, 2010

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28 _____
JAMES LARSON
U.S. Magistrate Judge