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28IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ELIZABETH GREWAL,

Plaintiff,

v.

AMIT CHOUDHURY,

Defendant.

No. C 07-4218 CRB

**ORDER AFFIRMING MAGISTRATE
JUDGE**

Choudhury appeals to this Court Judge Larson's order denying his claims of exemption and declining to release property. Because this issue can be resolved without the aid of oral argument, the hearing currently scheduled for May 7 is hereby VACATED.

He makes three arguments, two of which intertwine and are based upon Illinois law. First, he argues that Judge Larson erred by failing to exempt from levy the monies found in Choudhury's Indian bank accounts. Second, he argues that Judge Larson—and by extension this Court, since this issue was previously appealed but not ruled upon—erred by failing to award an exemption based on the value of Choudhury's car. Choudhury asks this Court to allow him to keep his car, at which point he would agree not to challenge the levy on the bank funds. Third, Choudhury argues that Grewal improperly obtained money that had been held in a bank account in his wife's name. Choudhury argues that such a transfer was improper because the Debtor himself had no rights to that property.

1 As for Choudhury's argument with regard to his claimed exemptions under Illinois
2 law, this Court AFFIRMS Judge Larson's orders. First, as for the automobile exemption,
3 Judge Larson first rejected such an exemption in his Order to Show Cause issued on
4 February 20, 2009. He held that Choudhury failed to present evidence sufficient to support
5 any of his claimed exemptions, including the exemption based on the value of his car.
6 Choudhury appealed that determination to this Court, but it appears this Court never ruled on
7 it.¹ Choudhury asked Judge Larson to reconsider his ruling on remand, but Judge Larson
8 declined to do so. Second, Choudhury argues that he is entitled to exempt \$4000 of the
9 assets found in the Indian bank accounts under Illinois law. Judge Larson rejected this
10 argument, as he was unconvinced that Choudhury is, in fact, entitled to the protection of
11 Illinois law.

12 The pivotal question as to these arguments concerns the application of Illinois law.
13 Choudhury is only entitled to the protection of Illinois law if he is domiciled in that state, and
14 he has presented only minimal evidence of this fact. Judge Larson concluded that
15 Choudhury failed to meet his burden. For the reasons explained below, this Court agrees,
16 and so AFFIRMS Judge Larson's order.

17 Choudhury's final argument concerns Grewal's acquisition of funds held in a First
18 Republic bank account. Judge Larson concluded that it is improper to consider this issue at
19 this time, and once again, this Court agrees. Therefore, Judge Larson's order is AFFIRMED
20 in its entirety.

21 BACKGROUND

22 On August 12, 2008, this Court entered a judgment in favor of Elizabeth Grewal and
23 against Amit Choudhury of \$423,740.00 in compensatory damages and \$500,000.00 in
24 punitive damages. In an attempt to collect on this Judgment, on October 15, 2008, Grewal
25 caused to be issued a Levy and Writ of Execution to First Republic Bank, seeking transfer of
26 the funds held in an account under the Choudhury name. On October 16, 2008, this Court

27
28 ¹ The monetary value of this exemption is approximately \$5000, but the other issues in the
Order to Show Cause concerned claims worth many hundreds of thousands of dollars. It is therefore
unsurprising that this Court, and the lawyers involved, were more focused on the more valuable claims.

1 referred to Judge Larson Ms. Grewal’s application for a judgment debtor examination. After
2 Judge Larson issued an amended turnover order, Choudhury filed his Limited Objection to
3 Levy. Among other things, this objection included an argument that the value of
4 Choudhury’s car “was exempt pursuant to Section 12-1101(b)&(c) of the Illinois Compiled
5 Statutes.” Mot. at 3.

6 On February 20, 2009, Judge Larson issued an Order for Defendant to Appear Before
7 District Court and Show Cause Why He Should Not Be Held in Contempt. The Contempt
8 Certification overruled Choudhury’s claimed exemptions, including that relating to his car.
9 The certification did so in reliance on the fact that Choudhury had never submitted a
10 declaration in support of his exemption claims, and so had failed to meet his evidentiary
11 burden.

12 On August 11, 2009, this Court issued two orders resolving the Contempt
13 Certification, but the orders did not focus any attention on Choudhury’s claims of exemption
14 in his automobile.

15 On September 30, 2009, Choudhury appeared for his second judgment debtor
16 examination. Judge Larson issued his Turnover Order No. 2 in Aid of Execution that same
17 day. This Turnover Order required Choudhury to turn over the contents of two bank
18 accounts in India, which amounted to \$4,017.65. Choudhury turned over that sum the next
19 month. However, Choudhury filed an objection to this levy on the ground that \$4,000 of
20 those funds were exempt under Section 12-1101(b) of the Illinois Compiled Statutes. This
21 objection also made clear that, as remains the case, Choudhury is “willing to waive any
22 exemption claim in the funds held by the U.S. Marshal if he were instead allowed to assert
23 that exemption in the [car].” Dkt. #356, ¶ 4. Choudhury also raised once again the issue of
24 the money levied from the First Republic Bank Account two years earlier.

25 On March 22, 2010, Judge Larso overruled these objections. Choudhury now appeals.

26 DISCUSSION

27 This Court reviews a magistrate’s decision de novo.

28 //

1 **1. Karen Choudhury’s Bank Account**

2 Judge Larson gave two independent grounds for denying Choudhury’s objection to the
3 transfer of funds from the First Republic account: First, he noted that the same issue had
4 previously been rejected by this Court. Second, he found that Karen Choudhury “failed to
5 follow the proper procedure for filing a third-party claim, and therefore her claim has been
6 extinguished, whether or not Judge Breyer expressly rejected it at the Show Cause hearing.”
7 Dkt. #364, at 2. This Court agrees with Judge Larson’s second holding, and so does not need
8 to reach the merits of the first.

9 This motion comes before the Court on an appeal from a turnover order. The most
10 recent turnover order, issued on September 30, 2009, concerned the contents of two Indian
11 bank accounts. See Dkt. #355. The prior turnover order, issued on December 23, 2008,
12 ordered the transfer of various forms of stock, any assets relating to settlement or proceeds of
13 settlement between Pinnacle Partners, Inc. and Allante Corporation, any monies held in trust
14 by law firms who had represented Choudhury, the title to Choudhury’s Mercedes Benz, and
15 all cash in Choudhury’s possession at the time of the judgment-debtor’s examination.
16 Importantly, neither of these Turnover Orders had anything to do with the First Republic
17 bank account in question. Indeed, the writ of execution issued as to that account was issued
18 two months before Judge Larson’s first turnover order. Hence, this issue does not come
19 within the scope of an appeal of the first turnover order, let alone an appeal of the second
20 turnover order, issued in March of 2010.

21 On the contrary, California law provides a separate procedure by which a third party
22 can assert her “rights in property levied upon by a judgment creditor.” Karen Choudhury
23 never availed herself of this procedure, and instead has tried to shoehorn the issue into an
24 appeal of a turnover order that had no relation to the bank account in question. The
25 procedure further provides that a person making a third-party claim must do so before the
26 “levying officer . . . [d]elivers possession of the property to the creditor.” Cal. Code Civ.
27 Pro. § 720.120. That time has clearly passed. Karen Choudhury was given notice of the
28 Levy on November 19, 2008, and the monies were delivered in mid-January 2009. Her

1 failure to initiate the proper proceedings despite having adequate notice cannot be remedied
2 in this forum. This is not to say that Ms. Choudhury's rights, if she has any, have been
3 extinguished. See Cal. Code Civ. Proc. § 720.120(b). But they cannot be resolved at this
4 juncture, in this proceeding.

5 **2. The Car & The Indian Bank Accounts**

6 While there is much procedural wrangling between the parties as to what was decided
7 by whom, and why, and whether it remains binding, a threshold question is whether
8 Choudhury is entitled to avail himself of the protections of Illinois law. The parties agree
9 that the controlling law is the law of the debtor's domicile, see, e.g., In re Arrol, 170 F.3d
10 934 (9th Cir. 1999), but disagree as to whether Choudhury has established that he is
11 domiciled in Illinois. Judge Larson, for his part, concluded that Choudhury had failed to
12 meet his burden. Judge Larson noted that Choudhury "was born in India, is a citizen of
13 Canada, and last year applied for a permit to reside in Switzerland. Domicile is determined
14 by where one intends to stay. 'Residence' in Switzerland implies staying in Switzerland."
15 Dkt. #364, at 7. This Court agrees. Given Choudhury's systematic failure to submit sworn
16 statements in support of his claimed exemptions, and his failure to cite to any such
17 evidentiary support in this appeal, he has failed to submit sufficient evidence to establish his
18 entitlement to the protection of Illinois law. Therefore, Choudhury's arguments based upon
19 exemptions available under Illinois law fail.

20 **CONCLUSION**

21 In sum, Judge Larson's order below is **AFFIRMED** in its entirety.

22 **IT IS SO ORDERED.**

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25 Dated: May 5, 2010

26 **CHARLES R. BREYER**
27 **UNITED STATES DISTRICT JUDGE**