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

MIDLAND INNOVATIONS, NV,

Plaintiff,

v.

WEILAND INTERNATIONAL INC., et
al.,

Defendants.

MC 07-80257 CW

ORDER ADOPTING
MAGISTRATE JUDGE'S
REPORTS AND
RECOMMENDATIONS
AND DENYING MOTION
TO EXPAND RECORD
(Docket Nos. 99
and 100)

The Court has reviewed Magistrate Judge Vadas's four Reports and Recommendations regarding: (1) Enjoining the Levying Officer From Releasing Real Property Levied Under a Writ of Execution (Docket No. 86); (2) Denying Third Party Claim of Weiping Chen (Docket No. 87); (3) Sustaining Objection to Undertaking filed by Third Party Weiping Chen (Docket No. 88); and (4) Sale of Dwelling (Docket No. 89), as well as Third Party Weiping Chen's objections thereto and Judgment Creditor Midland Innovations' opposition to the objections. The Court finds the Reports to be correct and adopts the Recommendations.

BACKGROUND

This case arises from a default judgment entered in the Southern District of New York against Judgment Debtor Wen Wang for patent infringement damages, the amount of which, with accrued interest, has accumulated to a sum exceeding \$1.3 million. On November 8, 2007, Judgment Creditor Midland Innovations, NV registered the New York judgment in this Court. On January 14, 2008, Judgment Creditor recorded an abstract of judgment on a

1 house in Dublin, California, which is recorded as purchased on May
2 19, 2005 by Judgment Debtor Wang and Third Party Chen as husband
3 and wife. Title to the property was taken as community property
4 with right of survivorship. See Docket No. 53, Ex. B.

5 In March 2014, this Court issued a renewed abstract of
6 judgment in the amount of \$1.385 million and Judgment Creditor
7 filed motions for judgment debtor examinations as to Judgment
8 Debtor Wang and Third Party Chen. Docket Nos. 8, 9. On March 31,
9 2014, the undersigned referred the post-judgment collections
10 matters to Magistrate Judge Vadas. Docket No. 10.

11 On April 22, 2014, at the request of Judgment Creditor, the
12 Levying Officer, the United States Marshals Service, levied on the
13 Dublin property under a Writ of Execution issued on January 13,
14 2014 to foreclose on Midland's judgment lien created by the
15 January 14, 2008 Abstract of Judgment.

16 On May 13, 2014, the Levying Officer served Judgment Creditor
17 with notice that Chen had filed a Third Party Claim pursuant to
18 California Code of Civil Procedure section 720.110. On May 28,
19 2014, Judgment Creditor filed an undertaking with the Levying
20 Officer pursuant to California Code of Civil Procedure section
21 720.160.

22 On June 5, 2014, Judgment Creditor filed an Application for
23 Order for Sale of Dwelling with respect to the Dublin property.
24 Judge Vadas held a hearing on the application on July 17, 2014.
25 Judge Vadas took the application under submission to allow Third
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1 Party Chen and Hongdi Ren¹ to retain counsel and file papers in
2 opposition to the application.

3 On July 21, 2014, Judgment Creditor received notice by mail
4 from the Levying Officer that, on June 12, 2014, Third Party Chen
5 had filed an undertaking with the Levying Officer pursuant to
6 California Code of Civil Procedure section 720.630.

7 Between July 22 and August 1, 2014, Judgment Creditor filed
8 three additional motions: a petition for hearing on Chen's third
9 party claim, an ex parte application for an emergency order
10 enjoining the Levying Officer from releasing the Dublin property,
11 and a motion objecting to the undertaking filed by Third Party
12 Chen. On July 29, 2014, Judge Vadas granted the ex parte
13 application and enjoined the release of the Dublin property
14 pending further order of the court.

15 In their oppositions to the motions, Third Party Chen and Ren
16 argued that Third Party Chen was never married to Judgment Debtor
17 Wang and that Third Party Chen's father provided the funds for the
18 purchase of the Dublin property. Third Party Chen also offered,
19 as an exhibit to her declaration, a purported May 25, 2005
20 agreement between herself and Judgment Debtor Wang, stating that
21 (1) Chen paid for the Dublin property in full; (2) the parties
22 agreed to take title to the property as husband and wife, but that
23 Wang was not entitled to any share of the property until Wang and
24 Third Party Chen married; (3) if Wang and Chen married, they would
25 jointly own the property from the time of the marriage; (4) if
26 they did not marry, Chen would own the property alone and would

27 ¹ Ren is Judgment Debtor Wang's mother. As discussed below,
28 her name is on the most recently recorded title to the Dublin
property.

1 have the right to sell or transfer the property; and (5) if they
2 married and divorced, Chen would own the property alone from the
3 date of the divorce. Docket No. 30, Ex. 3.

4 Third Party Chen and Ren also asserted that, in late 2007,
5 after it became clear that Judgment Debtor Wang did not intend to
6 marry Chen, Wang's mother Ren approached Chen, stating that she
7 was interested in buying a fifty percent share in the Dublin
8 property. Third Party Chen declared that she estimated that the
9 property was worth approximately one million dollars, so she
10 agreed to sell a fifty percent share of the property to Ren for
11 \$500,000. Although Ren was not able to pay the full amount, she
12 and Third Party Chen agreed that Ren would make installment
13 payments to Chen's father. Ren's declaration attached a copy of a
14 check in the amount of \$13,300, made out to Third Party Chen,
15 which Ren and Chen represent was her first payment. According to
16 Third Party Chen, as of July 30, 2014, Ren had paid approximately
17 \$300,000 toward the amount promised. On February 19, 2008,
18 shortly after the original abstract of judgment was recorded on
19 the house, a Grant Deed was recorded in which Judgment Debtor Wang
20 and Third Party Chen transferred their community property right of
21 survivorship interests in the Dublin property to Chen and Judgment
22 Debtor Wang's mother Ren as tenants in common. The Grant Deed
23 indicated that the transfer was a gift and not pursuant to a sale.
24 Docket No. 53, Ex. D. Accordingly the parties to the transfer did
25 not pay any transfer taxes.

26 In response, Judgment Creditor argued that Third Party Chen
27 and Ren's declarations were not credible because Third Party Chen
28 and Judgment Debtor Wang took title to the Dublin property as
husband and wife and as community property with right of

1 survivorship. In addition, Judgment Creditor produced evidence
2 that, as early as 2000, Third Party Chen and Judgment Debtor Wang
3 had taken title to real property in New Jersey as "husband and
4 wife." Moreover, Judgment Creditor noted that the February 2008
5 recording of the transfer of property from Judgment Debtor Wang
6 and Third Party Chen to Ren and Chen as a gift was inconsistent
7 with the claimed payments from Ren to Chen.

8 On August 22, 2014, Judge Vadas issued the four reports and
9 recommendations to which Third Party Chen now objects: (1) a
10 recommendation that the Court enjoin the Levying Officer from
11 releasing real property pending additional orders of the Court;
12 (2) a recommendation that the Court deny Chen's third party claim;
13 (3) a recommendation that the Court sustain Judgment Creditor's
14 objection to the undertaking filed by Chen; and (4) a
15 recommendation that the Court order the sale of the Dublin
16 property.

17 LEGAL STANDARD

18 When a party files a timely objection to a magistrate judge's
19 report and recommendation, the district court must "make a de novo
20 determination of those portions of the report or specified . . .
21 recommendations to which objection is made," and "may accept,
22 reject, or modify, in whole or in part, the findings or
23 recommendations made by the magistrate." 28 U.S.C.
24 § 636(b)(1)(c); see also Fed. R. Civ. P. 72(b)(3).

25 DISCUSSION

26 I. Motion to Expand the Record and Introduce of New Arguments

27 Along with her objections to Judge Vadas's Reports and
28 Recommendations, Third Party Chen seeks to expand the record with
additional evidence and to introduce new arguments regarding

1 jurisdiction, abstention and the Eighth Amendment not raised
2 before the magistrate judge. Judgment Creditor argues that the
3 introduction of new evidence and arguments is improper.

4 A. Newly Presented Evidence

5 The Ninth Circuit has held that "a district court has
6 discretion, but is not required, to consider evidence presented
7 for the first time in a party's objection to a magistrate judge's
8 recommendation." United States v. Howell, 231 F.3d 615, 621 (9th
9 Cir. 2000). When issuing the reports and recommendations at issue
10 in this order, Judge Vadas rejected declarations submitted by Chen
11 and Ren. Judge Vadas struck the declarations because they failed
12 to comply with Civil Local Rule 5-1(i)(3). He also noted that the
13 declarations "reflect perjury and fraud on their part" and
14 characterized them as "self-serving and not credible." See, e.g.,
15 Docket No. 86 at 5. Indeed, referring to the initial recording of
16 the purchase of the property as community property with right of
17 survivorship, counsel for Chen stated, "I will admit that they did
18 lie in the grant deed." Hearing Transcript at 26.

19 Among the bases for Judge Vadas's concerns about the
20 reliability of the declarations were counsel's acknowledgment of
21 Wang and Chen's dishonesty when originally purchasing the property
22 and the evidence of dishonesty created by the recording document
23 which indicated that Wang and Chen were giving part of the
24 interest in the Dublin property to Ren, contrasted with the claim
25 that Ren was expected to and did pay for the interest.

26 Chen now seeks to augment the record to present (1) a
27 properly signed version of her declaration, including additional
28 documents that she asserts support her contention that she and
Wang were never married; (2) a declaration from her father,

1 Zuxiang Chen; and (3) a request for judicial notice attaching
2 various documents she contends are necessary to support her new
3 arguments regarding jurisdiction and abstention.

4 1. Chen's Declaration

5 The Court declines to augment the record to accept Chen's new
6 declaration. The credibility and authenticity concerns that
7 existed when most of the information contained in the declaration
8 was presented to Judge Vadas still exist. Moreover, the new
9 exhibits, a certificate of naturalization from September 2003
10 indicating that Chen was divorced at the time and a 2004 federal
11 tax return indicating that Chen filed her personal income tax
12 return as a head of household and not as married, are not relevant
13 to whether Wang and Chen were married at the time they took title
14 to the Dublin property on May 19, 2005. A person is eligible to
15 file her federal tax return as head of household if she is
16 unmarried or "considered unmarried" as of the last day of the tax
17 year. Accordingly, to the extent the 2004 tax return is evidence
18 of Chen's marital status, it is only relevant as to her status on
19 December 31, 2004. Moreover, individuals can be "considered
20 unmarried" for purposes of head of household status even when they
21 are married. See 26 U.S.C. § 2.

22 2. Zuxiang Chen's declaration

23 The Court also declines to augment the record to accept the
24 declaration of Chen's father, Zuxiang Chen. The declaration
25 contains discussion of Zuxiang Chen's intention, when he allegedly
26 funded the purchase of the Dublin property, that Judgment Debtor
27 Wang only have an interest in the property if he married and
28 stayed married to Chen. However, this declaration is similarly
self-serving for the Chen family, and Zuxiang Chen's intentions

1 with respect to his gift are not relevant to whether Wang and Chen
2 were married at the time they took title to the Dublin property on
3 May 19, 2005.

4 3. Documents Related to Jurisdiction and Abstention

5 The Court further declines to augment the record to permit
6 the introduction of evidence to support Chen's arguments that
7 (1) the Court lacks subject matter jurisdiction over her and
8 (2) the Court should dismiss or stay this action under the
9 doctrine of abstention. As discussed below, the Court finds that
10 these arguments fail as a matter of law. Accordingly, augmenting
11 the record with these additional documents would not aid in the
12 resolution of the present motion.

13 B. New Arguments not Raised before Judge Vadas

14 1. Jurisdiction

15 Chen first argues that this Court lacks jurisdiction over her
16 because she was not a party to the New York action which led to
17 the judgment on which Judgment Creditor is trying to collect.
18 Accordingly, Chen argues that the Court cannot collect any portion
19 of the judgment from her, including the proceeds of a forced sale
20 of the Dublin property. However, to succeed on this argument,
21 Chen must demonstrate that she and Wang did not jointly own the
22 Dublin property in January 2008, when the abstract of judgment was
23 recorded. As discussed above, Judge Vadas found that all evidence
24 that Wang and Chen were not married at that time lacked
25 credibility and was unreliable because it was self-serving. The
26 Court similarly discounts that evidence. Accordingly, Chen's
27 jurisdiction argument fails as a matter of law.
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1 2. Abstention

2 Chen next argues that the Court should dismiss or stay this
3 case based on two pending Alameda County Superior Court cases.
4 One case, Midland Innovations, NV v. Wang, Alameda County Superior
5 Court Case No. RG 13 706542, was filed on December 12, 2013. In
6 that case, Midland asserts a claim of intentional fraudulent
7 transfer based on the 2008 transfer of the Dublin property from
8 Wang and Chen to Ren and Chen. The other, Chen v. Wang, et al.,
9 Alameda County Superior Court Case No. RG 14 739421, was filed on
10 September 5, 2014. In that case, Chen asserts a quiet title claim
11 against Judgment Debtor Wang, Ren and Judgment Creditor.

12 Chen first asserts that the Midland v. Wang requires
13 abstention under Younger v. Harris, 401 U.S. 37 (1971), because
14 there is an ongoing state judicial proceeding that implicates an
15 important state interest and provides a full and fair opportunity
16 to litigate Judgment Creditor's interest. However, Judgment
17 Creditor's Alameda County action does not involve an important
18 state interest, and Chen provides no authority to support a
19 Younger abstention argument fails as a matter of law. To the
20 extent Chen asserts that her Alameda County action requires
21 abstention under Younger, it was not an "ongoing state judicial
22 proceeding" because it was not filed until after Judge Vadas
23 entered the orders currently at issue.

24 Chen next asserts that abstention is required under Burford
25 v. Sun Oil Co., 319 U.S. 315 (1943). In the Ninth Circuit,
26 Burford abstention is justified when "(1) the state has
27 concentrated suits involving the local issue in a particular
28 court; (2) the federal issues are not easily separable from

1 complicated state law issues with which the state courts may have
2 special competence; and (3) federal review might disrupt state
3 efforts to establish a coherent policy.” Poulos v. Caesars World,
4 Inc., 379 F.3d 654, 671 (9th Cir. 2004) (internal quotation marks
5 omitted). Burford abstention is improper where state law provides
6 for judicial review in any state court of general jurisdiction
7 rather than concentrating review in a specialized court. See
8 Kirkbride v. Continental Casualty Co., 933 F.2d 729, 734 (9th Cir.
9 1991) (“[T]he fact that California has not established a
10 specialized court system to resolve disputes over insurance policy
11 coverage convinces us that application of the Burford doctrine to
12 this case is unwarranted.”). Here, the only state law issue is
13 whether Wang and Chen owned the Dublin property as community
14 property. Chen provides no evidence that there is a specialized
15 court system to resolve disputes over such issues. Accordingly,
16 Burford abstention is not warranted.

17 Chen also argues that abstention is required under Colorado
18 River Water Conservation District v. United States, 424 U.S. 800
19 (1976). Generally, federal courts have a “virtually unflagging
20 obligation” to exercise the jurisdiction conferred upon them. Id.
21 at 817. “Unlike . . . other forms of abstention, Colorado River
22 abstention is not based on weighty considerations of federal-state
23 relations. Rather, Colorado River abstention is designed to
24 promote ‘wise judicial administration.’ As a result, Colorado
25 River abstention should only be used in ‘exceptional’
26 circumstances.” American Int’l Underwriters, Inc. v. Cont’l Ins.
27 Co., 843 F.2d 1253 (9th Cir. 1988) (quoting Colorado River, 424
28 U.S. at 817-18). No such circumstances exist in this case.
Moreover, “wise judicial administration” calls for this Court to

1 rule on the issues that have already been briefed and adjudicated
2 before Judge Vadas in this case. Accordingly Chen's abstention
3 arguments fail as a matter of law.

4 C. Eighth Amendment Claim

5 Finally, Chen argues that the Southern District of New York
6 judgment is not enforceable against her because it constitutes an
7 excessive fine in violation of the Eighth Amendment. However,
8 Judgment Creditor does not seek to enforce the judgment against
9 Chen. Rather, it seeks to enforce the judgment against Judgment
10 Debtor Wang. Accordingly, Chen's Eighth Amendment claim fails as
11 a matter of law.

12 II. Orders Issued by Judge Vadas

13 Chen's only arguments in support of her objections to Judge
14 Vadas's reports and recommendations rely on her assertions that
15 (1) she was not married to Wang at the time that they took title
16 to the Dublin property in 2005; and either (a) she and Wang
17 entered into an agreement at the time they took title that
18 overrides the fact that they took title as husband and wife; or
19 (b) the 2008 deed of trust granting the property to Ren and Chen
20 precludes Judgment Creditor from obtaining the relief it seeks.
21 As discussed above, the Court does not credit Chen's evidence that
22 she and Wang were not married at the time they took title to the
23 Dublin property in 2005. Moreover, the Court does not credit
24 Chen's evidence that she entered into an agreement with Judgment
25 Debtor in 2005 that effectively overrides the fact that they took
26 title as husband and wife. Finally, California Code of Civil
27 Procedure section 697.390 provides that, if an interest in real
28 property that is subject to a judgment lien is transferred or
encumbered without satisfying or extinguishing the judgment lien,

1 the interest transferred or encumbered remains subject to the
2 lien. Accordingly, the 2008 deed of trust cannot extinguish the
3 lien on the property.

4 CONCLUSION

5 For the foregoing reasons the Court finds the Reports correct
6 and adopts the Recommendations. Accordingly, the Court orders as
7 follows:

8 (1) The United States Marshals Service, Northern District of
9 California (the Levying Officer) is hereby enjoined, until further
10 notice of this Court, from releasing, disposing, assigning, or
11 otherwise transferring the real property commonly known as 2956 W.
12 Castle Pines Terrace, Dublin, CA 94568 notwithstanding: (a) any
13 other order issued by this Court to date; or (b) the provisions of
14 Title 9 (Enforcements of Judgments Law) of Part 2 of the
15 California Code of Civil Procedure; and/or (c) that Third Party
16 Chen may file an undertaking pursuant to the concurrently issued
17 Order Sustaining Objection to Undertaking.

18 (2) The \$10,000.00 undertaking filed by Third Party Chen on
19 June 12, 2014 is determined to be insufficient.

20 On or before ten days from the date of this order, Third
21 Party Chen shall file a new undertaking in an amount sufficient to
22 bring the total undertaking to the sum of \$1,035,000.

23 Notwithstanding anything to the contrary herein and/or the
24 provisions of Title 9 (Enforcements of Judgments Law) of Part 2 of
25 the California Code of Civil Procedure, the order enjoining the
26 Levying Officer from releasing real property shall supersede the
27 terms of this order and the real property commonly known as 2956
28 W. Castle Pines Terrace, Dublin, CA 94568 shall not be released

1 from the levy upon the filing of the undertaking by Third Party
2 Chen as ordered herein.

3 (3) At the time Judgment Creditor Midland Innovations, NV
4 created a judgment lien on real property by recording an Abstract
5 of Judgment on January 14, 2008, the title to the real property
6 commonly known as 2956 W. Castle Pines Terrace, Dublin, CA 94568
7 held as "Wen Wang and Weiping Chen, Husband and Wife as Community
8 Property with Right of Survivorship," reflected the actual
9 ownership of and interests in the property. Judgment Creditor's
10 lien attached to said interests and its lien is superior to any
11 other interest acquired thereafter by Third Party Chen.
12 Accordingly, the Third Party Claim of Weiping Chen, with respect
13 to the real property commonly known as 2956 W. Castle Pines
14 Terrace, Dublin, CA 94568, is denied.

15 (4) The real property dwelling commonly known as 2956 W.
16 Castle Pines Terrace, Dublin, CA 94568, and legally described as
17 LOT 16 OF TRACT MAP 7137 FILED FEBRUARY 26, 2004, IN BOOK 275 OF
18 MAPS, PAGES 9 THROUGH 12, INCLUSIVE, OFFICIAL RECORDS OF ALAMEDA
19 COUNTY, AS FURTHER DESCRIBED ASSESSOR'S PARCEL NUMBER: 985-0050-
20 018, is not an exempt homestead. The Levying Officer is hereby
21 authorized and is directed to sell this property. The sale of the
22 Subject Property shall be governed by California Code of Civil
23 Procedure section 701.510 et seq. and shall not be subject to he
24 provisions of Article 4 (commencing with California Code of Civil
25 Procedure section 704.710) of Chapter 4.

26 Upon sale of the property, the Levying Officer shall deposit
27 the proceeds from the sale in the registry of the Court. The
28 Clerk is directed to make the following distributions in the
following priority to the extent funds are available: (1) the

1 Levying Officer's unadvanced costs; (2) Judgment Creditor's costs
2 and interest accruing after issuance of the writ of execution for
3 sale as claimed by Judgment Creditor; and (3) the amount due on
4 the judgment with costs and interest.

5 IT IS SO ORDERED

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8 Dated: November 21, 2014


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CLAUDIA WILKEN
United States District Judge