

United States District Court
Northern District of California

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

EUGENE RAH,
Plaintiff,
vs.
ASIANA AIRLINES INC., ET AL.,
Defendants.

CASE NO. 14-cv-05603-YGR

**ORDER RE: MOTIONS FOR ADJUDICATION
OF CLAIMS TO FUNDS DEPOSITED IN THE
COURT REGISTRY**

Re: Dkt. Nos. 61, 69.

In late 2017, plaintiff Eugene Rah and defendant Asiana Airlines Inc. (“Asiana”) reached an agreement by which Rah released all claims against all parties (“Settlement”). (Dkt. No. 52.) On February 5, 2018, the Court granted the joint motion filed by Rah and Asiana to deposit \$1,150,000 of the confidential Settlement amount into the Court Registry. (Dkt. No. 56.) The sum represents an amount adequate to protect the interest of lien holders who had claims disputed by Rah at the time of the deposit: (1) Yonggoo Kang and Yonggoo Kang, LLC (collectively, “Kang LLC”) for \$224,963.90 plus interest; and (2) Hana Financial, Inc. (“Hana”) for \$750,000. (Dkt. No. 55.) Now before the Court are motions by Kang LLC and Hana for adjudication of their respective claims to the deposited funds.¹ (Dkt. No. 61 (“Kang LLC Motion”); Dkt. No. 69 (“Hana Motion”).)

Having carefully reviewed the papers submitted, and for the reasons set forth more fully below, the Court **ORDERS** as follows:

1. The Court **GRANTS** Creditor Yonggoo Kang, LLC’s motion for adjudication of its judgment lien and **ORDERS** creditor Yonggoo Kang, LLC to be paid its money

¹ The Court has reviewed the papers submitted by the parties in connection with motions by Kang LLC and Hana to adjudicate their claims to funds deposited in the Court Registry. The Court has determined that the motions are appropriate for decision without oral argument, as permitted by Civil Local Rule 7-1(b) and Federal Rule of Civil Procedure 78. *See also Lake at Las Vegas Investors Group, Inc. v. Pacific Malibu Dev. Corp.*, 933 F.2d 724, 729 (9th Cir. 1991).

1 judgment in accordance with the judgment by the Superior Court of California for the
2 County of San Francisco in the amount of \$224,963.90 as well as interest accrued at
3 the rate of \$10% per year or \$50.73 per day from June 16, 2015 to the date of release of
4 the funds.

- 5 2. The Court **STAYS** Hana’s motion to adjudicate its claim to the funds deposited in the
6 Court Registry pending the resolution of state court matter *Eugene Rah v. Hana*
7 *Financial, Inc.*, Los Angeles County Superior Court Case No. BC715687.

8 **I. KANG LIEN**

9 **A. Factual Background**

10 Kang LLC seeks to enforce a judgment lien in the amount of \$224,963.90 with an interest
11 rate of 10% per year or currently \$50.73 per day. (Kang Motion at 2.) The basis of that judgment
12 is a promissory note for the sum of \$123,269.10 between borrowers Rah, Ximon & Ximon, Inc.
13 (“Ximon”), and KPMA, LLC (“KPMA”) and lender Yonggoo Kang, LLC (“Kang Note”). (*Id.*;
14 *see also* Dkt. No. 64, Ex. 1 at ECF 7.) On October 8, 2013, a Nevada state court entered, based on
15 the Kang Note plus interest, an amended judgment by default against Rah in the amount of
16 \$185,192.27 (“Kang Judgment”). (*Id.*; *see also* Dkt. No. 64, Ex. 2 at ECF 15.²) On June 16,
17 2015, the Kang Judgment was domesticated in the Superior Court of California for the County of
18 San Francisco, which issued a judgment, based on the Kang Judgment plus interest, in the amount
19 of \$224,963.90. (*Id.* at 3; *see also* Dkt. No. 64, Ex. 4 at ECF 25.³) The domesticated Kang
20 Judgment was served on Rah on July 29, 2015 at 8:20 a.m. at his home address in Las Vegas,
21 Nevada. (*Id.*; *see also* Dkt. No. 65 at ECF 16-19.)

22 **B. Analysis**

23 Federal Rule of Civil Procedure 69(a) requires that any “proceedings supplementary to and
24 in aid of judgment or execution” be in “accord with the procedure of the state where the court is
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26 ² *Yonggoo Kang, et al v. Eugene Rah, et al.*, Nevada’s Eighth Judicial District Court Case
27 No. A-12-656971-C (Oct. 8, 2013).

28 ³ *Yonggoo Kang, et al v. Eugene Rah*, Case No. CPF 15-514345 (Jun. 16, 2015).

1 located . . .” Fed. R. Civ. P. 69(a); *see also In re Levander*, 180 F.3d 114, 1121 (9th Cir. 1999).
2 As required by California Code of Civil Procedure Section 1710.25, on June 16, 2015, Kang LLC
3 obtained an entry of judgment based on a “sister state judgment.” (Kang Motion at 3.⁴) On
4 January 5, 2016, as required by California Code of Civil Procedure Section 708.410, Kang LLC
5 filed with this Court a notice of lien, along with a certified copy of the domesticated Kang
6 Judgment. (*Id.* at 3; *see also* Dkt. No. 64, Ex. 5.⁵)

7 As a preliminary matter, the parties do not dispute the existence of the Kang Note, the
8 Kang Judgment, or the California domestication thereof. Nor do they argue as to whether
9 payments have been made as to either the note or the judgment. Instead, Rah argues that
10 “extrinsic fraud” occurred in the execution of the Kang Note and in the filing and prosecution of
11 the Nevada lawsuit that resulted in the Kang Judgment. (Dkt. No. 70, (“Kang Opposition”) at 1.)
12 Rah also challenges Kang LLC’s standing to bring the instant motion. (*Id.*) In support of his
13 argument for extrinsic fraud, Rah asserts that Yonggoo Kang (1) previously represented that he
14 had no intention of pursuing the underlying note if another, concurrently executed note, was
15 properly paid by a third party, Billboard Korea; (2) regularly communicated with Rah and never
16 raised any issue as to the repayment of the underlying note; and (3) filed and pursued the
17 collection action in Nevada court knowing that Rah was out of the country and then incapacitated
18 due to the Asiana Airlines crash. (Kang Opposition at 11.) Yonggoo Kang denies each of these
19 allegations. (*See* Dkt. No. 77 (“Kang Decl.”) ¶¶ 5, 8-10.)

20 Rah’s argument hinges on whether Yonggoo Kang’s actions amount to “fraud on the
21 court” under Nevada state law and therefore render the Kang Judgment unenforceable.⁶ (*Id.* at 9-

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23 ⁴ *Yonggoo Kang, et al v. Eugene Rah.*, Case No. CPF 15-514345 (Jun. 16, 2015).

24 ⁵ The Court notes that the Notice of Lien was originally filed in the related case, *In re Air
25 Crash at San Francisco, California, on July 6, 2013*. (Case No. 4:13-md-02497, Dkt. No. 474.)

26 ⁶ Nevada Rule of Civil Procedure 60(b) requires that any motion to set aside a final
27 judgment on the basis of extrinsic or intrinsic fraud must be filed “not more than 6 months after
28 the proceeding was taken or the date that written notice of entry of the judgment or order was
served.” NRCP 60(b). For the six month time bar not to apply, as Rah now argues, his allegations
of “extrinsic fraud” must rise to the level of “fraud upon the court,” or “a species of fraud which
does, or attempts to, subvert the integrity of the court itself, or is a fraud perpetrated by officers of
the court so that the judicial machinery cannot perform in the usual manner its impartial task of

1 10 (citing Nevada Rule of Civil Procedure 60(b).) Fraud on the court is “a species of fraud which
2 does, or attempts to, subvert the integrity of the court itself, or is a fraud perpetrated by officers of
3 the court so that the judicial machinery cannot perform in the usual manner its impartial task of
4 adjudging cases” *DC-DSH, Inc.*, 218 P.3d at 858. Kang LLC initiated the Nevada lawsuit on
5 February 24, 2012, well before the Asiana Airlines crash on July 6, 2012. (Kang Decl. ¶ 11.) A
6 prove up hearing, at which Yonggoo Kang testified under oath, was noticed and held on January
7 22, 2012. (*Id.* ¶ 12.) Rah did not appear. (*Id.*) In 2014, Rah was personally served by a Nevada
8 process server with a copy of the Kang Judgment as well as an order requiring him to appear for a
9 judgment debtor examination hearing in February 2015. (*Id.* ¶ 15.) Rah did not appear for the
10 examination, and a bench warrant was issued by the Nevada court for his arrest. (*Id.* ¶ 16.) Rah
11 was subsequently arrested. (*Id.*) Rah does not contest any of these facts. (*See* Dkt. No. 85,
12 Plaintiff’s Objection to Reply Evidence; Dkt. No. 98, Plaintiff’s Supplemental Briefing in
13 Response to Court Order.)

14 Even taking Rah’s allegations as true,⁷ they fail to show that Kang LLC prevented Rah
15 “either from knowing about his rights or defenses, or from having a fair opportunity of presenting
16 them” *See Savage v. Salzman*, 88 Nev. 193, 195 (1972) (citing *Murphy v. Murphy*, 65 Nev.
17 264, 271 (1948)). Rah had an opportunity to appear at the judgment debtor examination hearing
18 and failed to do so. To date, and aside from his opposition to Kang’s instant motion, Rah has not
19 endeavored to challenge the validity of the Kang Judgment. Rah also had an opportunity to
20 challenge the California domestication of the Kang Judgment pursuant to California Code of Civil
21 Procedure Section 1710.30(a). The “Notice of Entry of Judgment on Sister-State Judgment,”

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adjudging cases” *DC-DSH, Inc. v. Garner*, 218 P.3d 853, 858 (Nev. 2009).

24 ⁷ Rah does not submit any evidence to support his allegations regarding Yonggoo Kang’s
25 actions, other than his own declaration. (*See* Dkt. No. 73 (“Rah Decl.”) ¶¶ 11, 14, 16.) Rah’s
26 failure to provide documentation or other evidence to support his allegations constitutes a separate
27 basis for denying his request to set aside the Kang Judgment. *See* NRCP 9(b) (providing that “in
28 all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated
with particularity”); *see also Savage*, 88 Nev. at 196 (holding that appellant’s allegation of a prior
agreement that would have obviated the default judgment in question is insufficient to survive a
motion to dismiss based on that judgment).

1 which was served on Rah on July 29, 2015, specifically stated that “[u]nless you file a motion to
2 vacate the judgment in this court within 30 days after service of this notice, this judgment will be
3 final.” (See Dkt. No. 65, Ex. 3 at ECF 16-19.) Rah did not file any such motion.⁸ (Rah Decl. ¶
4 21.) Additionally, Rah does not allege that Yonggoo Kang, or his counsel, attempted to mislead
5 or mis-use either the Nevada or California courts. Although Rah’s allegations may have provided
6 support for a defense against the claims brought against him in Nevada state court, they do not
7 support a finding that Kang LLC endeavored to “subvert the integrity of the court itself” and
8 therefore do not constitute a sufficient basis under Nevada state law to set aside the Kang
9 Judgment or the California domestication thereof.⁹ *DC-DSH, Inc.*, 218 P.3d at 858.

10 Additionally, the Court is unpersuaded by Rah’s argument regarding standing.¹⁰ Rah
11 alleges that Yonggoo Kang, LLC was dissolved on January 31, 2016 and therefore lacks standing
12 to bring the instant motion.¹¹ Yonggoo Kang, LLC has since revived its status and is only seeking

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14 ⁸ The Kang Judgment was served on Rah on July 29, 2015 at 8:20 a.m. at his home
15 address in Las Vegas, Nevada. (See Dkt. No. 65, Ex. 3 at ECF 16-19.) Although Rah received
16 this notice two years after the Asiana Airlines crash, at a time when Rah avers that he was still
17 focused on recovery, there is nothing in the record to suggest that the timing of this service
18 represents an effort by Kang LLC to prevent Rah from “knowing about his rights.” *Savage*, 88
19 Nev. at 195.

20 ⁹ The Court notes that Rah’s written response to the Court’s July 27, 2018 order largely
21 reiterates this fraud-on-the-court argument and does not provide any new information. (See Dkt.
22 No. 98.) Rah does note that he plans to initiate proceedings in Nevada state court to address the
23 purported fraud on the court that allegedly occurred there. (*Id.* at ECF 3-4.) However, given that
24 three years has elapsed since Rah’s received notice of the Kang Judgment and the domestication
25 thereof on July 29, 2015, the Court is not persuaded that the presence of the action Rah describes
26 in his response will alter the Court’s determination that Rah was not prevented “either from
27 knowing about his rights or defenses, or from having a fair opportunity of presenting them”
28 See *Savage*, 88 Nev. at 195 (internal citation omitted).

¹⁰ Kang LLC does not appear to contest Rah’s argument that because Yonggoo Kang, the
individual, was not a party to the underlying promissory note, he lacks standing to bring the
instant motion. (See Dkt. No. 76 (“Kang Reply”) at 3 (“The Request for adjudication of the lien
and release of the funds should be granted as to Yonggoo Kang, LLC only.”).)

¹¹ In connection with his opposition to Kang LLC’s motion, Rah requests that the Court
take judicial notice of three printouts from the website of the Nevada Secretary of State records for
Yonggoo Kang, LLC. (Dkt. No. 71.) This document is available publically on the Nevada
Secretary of State’s website. Accordingly, the Court **GRANTS** Rah’s request to take judicial notice
of this public record. See *Lee v. City of L.A.*, 250 F.3d 668, 688–89 (9th Cir. 2001) (noting “a
court may take judicial notice of matters of public record” and documents whose “authenticity . . .
is not contested” and upon which a plaintiff’s complaint relies) (internal quotation marks omitted)
(alterations in original).

1 judgment on its behalf.¹² Moreover, the dissolution occurred well after Kang LLC obtained
2 domestication of the Kang Judgment and filed that judgment with this Court in the instant action.
3 Thus, Kang LLC sought this Court’s intervention prior to the dissolution of Yonggoo Kang, LLC.

4 Accordingly, the Court **GRANTS** Kang LLC’s motion for adjudication of their judgment
5 lien and **ORDERS** creditor Yonggoo Kang, LLC to be paid its money judgment in accordance with
6 the judgment by the Superior Court of California for the County of San Francisco in the amount of
7 \$224,963.90 as well as interest accrued at the rate of \$10% per year or \$50.73 per day from June
8 16, 2015 to the date of release of the funds. *See Yonggoo Kang, et al v. Eugene Rah.*, Case No.
9 CPF 15-514345 (Jun. 16, 2015).

10 **II. HANA LIEN**

11 **A. Factual Background**

12 Hana moves to adjudicate its claim to \$750,000 of the proceeds of the Settlement on the
13 basis of a promissory note in the amount of \$750,000 between Rah and third-party Sean Chun, the
14 rights to which Chun subsequently assigned in full to Hana. (Hana Motion at 1.) On April 30,
15 2015, Rah executed a promissory note with Chun in which he “promise[d] to pay through an
16 Irrevocable Assignment of Proceeds the sum of \$750,000.00 upon the settlement or by way of
17 judgment of a lawsuit known as Eugene Rah v. Asiana Airlines, USDC Case No. 4:14-CV-05603
18 YGR . . . ” (“Chun Note”). (Hana Motion, Ex. 1 at 1.) On April 30, 2015, concurrently with the
19 execution of the Chun Note, Rah executed an Irrevocable Assignment of Proceeds, which assigned
20 to Chun \$750,000.00 of the proceeds from the Settlement amount (“Chun Assignment”). (*Id.*, Ex.
21 2 at 1.)

22 On November 30, 2015, Chun executed another Irrevocable Assignment of Proceeds
23 assigning to Hana his “right to receive the proceeds in the sum of \$750,000.00 . . . from the
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25 ¹² In connection with Kang LLC’s reply in support of its motion, Kang LLC requests that
26 the Court take judicial notice of three printouts from the website of the Nevada Secretary of State
27 records for Yonggoo Kang, LLC. (Dkt. No. 78.) This document is available publically on the
28 Nevada Secretary of State’s website. Accordingly, the Court **GRANTS** Kang LLC’s request to take
judicial notice of this public record. *See Lee v. City of L.A.*, 250 F.3d 668, 688–89 (9th Cir. 2001)
(noting “a court may take judicial notice of matters of public record” and documents whose
“authenticity . . . is not contested” and upon which a plaintiff’s complaint relies) (internal
quotation marks omitted) (alterations in original).

1 proceeds of settlement or judgment . . . arising out of an airplane crash known as Eugene Rah v.
2 Asiana Airlines, USDC Case No. 4:14-CV-05603 YGR” and attaching the assignment Chun had
3 received from Rah (“Hana Assignment”). (*Id.*, Ex. 3 at 1.) Hana filed notice of interest in
4 proceeds in the instant matter on October 26, 2017. (Dkt. No. 44.)

5 On July 27, 2018, Rah filed a summons and compliant against Hana in Los Angeles
6 Superior Court for declaratory relief.¹³ (*See* Dkt. No. 100, Ex. A, *Eugene Rah v. Hana Financial,*
7 *Inc.*, Los Angeles County Superior Court Case No. BC715687 (“LA State Case”.) Specifically,
8 Rah seeks a judicial determination and declaratory judgment that (i) he had no obligation under
9 the Chun Note, (ii) any obligation thereunder is invalid and unenforceable, (iii) the Chun Note is
10 void for lack of consideration, (iv) Hana has no right of recovery from Rah, and (v) Rah is entitled
11 to the distribution of \$1,100,000 which is currently held in escrow by this Court in the instant
12 action. (LA State Case 5-6.)

13 **B. Analysis**

14 In light of the lack of a money judgment regarding the Chun Note and the assignment
15 thereof and the pending litigation in Los Angeles Superior Court, the Court finds in favor of a stay
16 pending resolution of the matter before the state court. *See Landis v. N. Am. Co.*, 299 U.S. 248,
17 254 (1936) (noting that a trial court has broad discretion to stay proceedings pending the
18 resolution of independent proceedings elsewhere).

19 Accordingly, the Court **STAYS** Hana’s motion for adjudication of its claims to the funds
20 deposited in the Court Registry pending the resolution of state court matter *Eugene Rah v. Hana*
21 *Financial, Inc.*, Los Angeles County Superior Court Case No. BC715687.

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24 ¹³ In connection with Rah’s response to the Court’s July 27, 2018 order, Rah requests that
25 the Court take judicial notice of a summons and complaint for declaratory relief filed with the Los
26 Angeles Superior Court on July 27, 2018, against Hana Financial, Inc. entitled *Eugene Rah v.*
27 *Hana Financial, Inc.*, Los Angeles County Superior Court Case No. BC715687. (Dkt. No. 100.)
28 These court records have been filed with the State of California and are maintained on the court’s
website. Accordingly, the Court **GRANTS** Rah’s request to take judicial notice of this public court
record. *See Lee v. City of L.A.*, 250 F.3d 668, 688-89 (9th Cir. 2001) (noting “a court may take
judicial notice of matters of public record” and documents whose “authenticity . . . is not
contested” and upon which a plaintiff’s complaint relies) (internal quotation marks omitted)
(alterations in original).

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III. CONCLUSION


For the reasons above, the Court **ORDERS** as follows:

1. The Court **GRANTS** Creditor Yonggoo Kang, LLC’s motion for adjudication of its judgment lien and **ORDERS** that Yonggoo Kang, LLC be paid its money judgment in accordance with the judgment by the Superior Court of California for the County of San Francisco in the amount of \$224,963.90 as well as interest accrued at the rate of \$10% per year or \$50.73 per day from June 16, 2015 to the date of release of the funds.
2. The Court **STAYS** Hana’s motion to adjudicate its claim to the funds deposited in the Court Registry pending the resolution of state court matter *Eugene Rah v. Hana Financial, Inc.*, Los Angeles County Superior Court Case No. BC715687.
3. Accordingly, the Court **SETS** a compliance hearing on the Court’s **9:01 a.m.** calendar on **Friday, November 2, 2018**. By no later than **Friday, October 26, 2018**, Hana and Rah shall file either (a) a joint status report on the progress of the state court matter *Eugene Rah v. Hana Financial, Inc.*, Los Angeles County Superior Court Case No. BC715687; or (b) a one-page joint statement setting for an explanation regarding the failure to comply. If compliance is complete, the parties need not appear and the compliance hearing will be taken off calendar. Telephonic appearances will be allowed if the parties have submitted a joint statement in a timely fashion.

This Order terminates Docket Number 61.

IT IS SO ORDERED.

Dated: August 3, 2018


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE