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6 UNITED STATES DISTRICT COURT
7 SOUTHERN DISTRICT OF CALIFORNIA
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9 Case No.: 17-mc-0527

10 GATEWAY COMMERCIAL
11 FINANCE, LLC,
12
13 Plaintiff,

14 v.

15 NRG BUILDING & CONSULTING,
16 INC. and SANDRA J. FISHER,
17 Defendants.

**ORDER RE: THIRD PARTY CLAIM
OF WILLIAM W. FISHER TO
OWNERSHIP OF LEVIED
PROPERTY**

18 Before the Court is a third-party claim of William W. Fisher to ownership of
19 levied property, and an opposition by plaintiff/ judgment creditor Gateway
20 Commercial Finance, LLC (“Gateway”), to the third-party claim. (ECF No. 10.) The
21 parties filed supplemental briefs (ECF Nos. 15, 19, 20) and presented additional
22 evidence and argument at hearings on July 24, 2017, and July 31, 2017. For the
23 reasons discussed below, the Court finds that Mr. Fisher has established a valid
third-party claim to ownership of the levied funds.

24 **I. BACKGROUND**

25 On January 10, 2017, the United States District Court for the Southern
26 District of Florida entered a consent final judgment in favor of Gateway and against
27 NRG Building and Consulting, Inc. and Sandra J. Fisher in the amount of
28 \$75,256.89. On April 17, 2017, Gateway registered the judgment in this District

1 and began enforcement proceedings. (ECF No. 1.)

2 On June 1, 2017, the U.S. Marshal served a writ of execution on Chase
3 Bank, which in turn levied \$5,449.12 from a savings account held in the names of
4 William W. Fisher and Sandra J. Fisher. Gateway Opp. (ECF No. 10) at ¶ 2.

5 On June 15, 2017, the Marshal received a third-party claim from Mr. Fisher
6 in which he asserts that he, not Ms. Fisher, is the owner of the funds in the levied
7 account. See id. ¶ 3; Third-Party Claim of William W. Fisher (ECF No. 10 at 5).
8 He states in a supporting declaration that he is Ms. Fisher's 82-year-old father, that
9 the funds in the account are his, and that they consist of his income from odd jobs
10 and Social Security benefits deposited to a Chase checking account and
11 periodically transferred to the levied savings account. Id. ¶ 5. He says he added
12 his daughter's name to his accounts so she could help him manage his finances
13 when he became unable to do so himself. Id. ¶ 6.

14 On June 26, 2017, Gateway filed an opposition and petition for hearing on
15 the merits of Mr. Fisher's third-party claim, arguing that Mr. Fisher's evidence was
16 insufficient to show the levied funds were his. See Gateway Opp.

17 On July 24 and 31, 2017, the Court held hearings at which the parties
18 presented additional evidence and argument on the validity of Mr. Fisher's third-
19 party claim. Mr. Fisher testified that he added his daughter's name to the Chase
20 account in approximately 2009 because he was having debilitating health
21 problems and needed her help managing his finances. He reiterated his
22 declaration testimony that all of the funds deposited in the account were his, except
23 that in addition to the income from odd jobs and Social Security benefits, he said
24 the account also contained roughly \$4,600.00 that represented a portion of the
25 proceeds of the sale of a Kubota tractor. Pl.'s Exs. 1, 5. He testified that the tractor
26 had belonged to him, and that he sold it to a cash buyer in August 2016 for
27 \$5,000.00, with the help of Ms. Fisher, who posted a listing on her Craigslist account
28 on his behalf. Pl.'s Ex. 3, Invoice No. 300893; Pl.'s Ex. 7.

1 Ms. Fisher testified that she had never deposited money into the savings
2 account or withdrawn funds from it, and that she had only accessed her father's
3 account to pay his bills online when he was ill. She concurred that the Kubota
4 tractor belonged to her father, and said that although she helped him sell it using
5 her Craigslist account, neither she nor her company, judgment debtor NRG
6 Building & Consulting, Inc., had any ownership interest in it.

7 Gateway argued at the conclusion of the hearing that Mr. Fisher's evidence
8 was not credible and failed to meet his burden of proof to show the validity of his
9 claim. It argued Mr. Fisher's testimony that he earned income from odd carpentry
10 jobs should be discredited, since he lacked a contractor's license. Gateway also
11 called into question whether Mr. Fisher had credibly established ownership of the
12 Kubota tractor. It pointed out that he had not mentioned the tractor in his
13 declaration, and suggested the testimony that the tractor was sold in a cash
14 transaction was inherently suspicious. It also argued that because the tractor had
15 sat on Ms. Fisher's property for several years and was sold using her Craigslist
16 account, it may have actually belonged to Ms. Fisher.

17 **II. DISCUSSION**

18 Pursuant to Fed. R. Civ. P. 69(a), these judgment enforcement proceedings
19 are governed by California law. Fed. R. Civ. P. 69(a); Credit Suisse v. United
20 States Dist. Ct., 130 F.3d 1342, 1344 (9th Cir. 1997). California Code of Civil
21 Procedure §§ 720.010, et seq., establishes a claims procedure by which third
22 parties can assert a claim of ownership or interest in property levied upon under a
23 writ of execution. See Cal. Code Civ. Pro. § 720.110. The third party must file
24 with the levying authority a claim that includes (1) the name and address of the
25 claimant; (2) a description of the property; (3) a description of the interest claimed,
26 including the facts on which the claim is based; (4) an estimate of the market value
27 of the interest claimed, Cal. Code Civ. Pro. § 720.130(a), as well as a copy of any
28 writing on which the claim is based, § 720.130(b).

1 After a third-party claim is filed, the creditor may petition the court for a
2 hearing to determine the validity of the third-party claim and the proper disposition
3 of the property that is the subject of the claim. Cal. Code Civ. Pro. § 720.310(a).
4 At the hearing, the third party has the burden of proving an interest in the property
5 by a preponderance of the evidence. Cal. Code Civ. Pro. § 720.360; United Pac.
6 Energy Operations & Consulting, Inc. v. Gas & Oil Techs., Inc., No. 1:11-cv-00756-
7 OWW-SMS, 2011 U.S. Dist. LEXIS 112905, at *7 (E.D. Cal. Sept. 30, 2011). If the
8 third party presents evidence that it owns the property in question, the burden shifts
9 to the creditor to establish that the third-party's interest is invalid or inferior to the
10 creditor's interest in the property. Oxford Street Props., LLC v. Rehab. Assocs.,
11 LLC, 206 Cal. App. 4th 297, 307 (2012). At the conclusion of the hearing, the court
12 must determine the validity of the third-party claim and "may order the disposition
13 of the property or its proceeds in accordance with the respective interests of the
14 parties." Cal. Code Civ. Pro. § 720.390; Whitehouse v. Six Corp., 40 Cal. App. 4th
15 527, 534 (1995).

16 Mr. Fisher contends that even though the levied account bears his daughter's
17 name, he has a claim of ownership superior to Gateway's interest because all of
18 the funds deposited in the account were his. Generally speaking, "a judgment or
19 levy reaches only the interest of the debtor in the property because a judgment
20 creditor can acquire no greater right in the property levied upon than that of its
21 judgment debtor." Regency Outdoor Advertising, Inc. v. Carolina Lanes, Inc., 31
22 Cal. App. 4th 1323, 1330 (1995). "An account is nothing more than a contract of
23 deposit of funds between a depositor and a financial institution," Lee v. Yang, 111
24 Cal. App. 4th 481, 490 (2003). Multiple-party bank accounts are regulated by the
25 California Multiple-Party Accounts Law ("CAMPAL"), Part 2 of Division 5 of the
26 California Probate Code, § 5100, et seq. See Cal. Fin. Code § 6800. CAMPAL
27 contains provisions prescribing contractual language that should be used to create
28 particular types of multiple-party accounts. See, e.g., Cal. Probate Code § 5132

1 (identifying various types of multiple-party accounts), § 5203 (setting forth
2 contractual language to be set forth in the “signature card, passbook, contract, or
3 instrument evidencing an account” to create particular types of multiple-party
4 accounts).

5 Here, although Gateway characterizes the levied savings account as a “joint
6 account,” it is not clear from the evidence what type of account it was. Neither the
7 contract creating the account, nor the instrument by which Ms. Fisher was added
8 to it, are in evidence. See Cal. Probate Code § 5203 (providing that a joint bank
9 account is created by including the words “[t]his account or certificate is owned by
10 the named parties. Upon the death of any of them, ownership passes to the
11 survivor(s)” in the “signature card, passbook, contract, or instrument evidencing an
12 account”). Mr. Fisher testified “it was not a joint bank account.” Although the bank
13 statement attached to Mr. Fisher’s declaration identifies the account signatories as
14 “William W Fisher or Sandra J Fisher,” see Decl. Wm. Fisher, Ex. A, the use of the
15 word “or” between the names on a bank account does not presumptively create a
16 joint account. Manti v. Gunari, 5 Cal. App. 3d 442, 447 (1970) (“the use of the
17 word ‘or’ does not create a joint tenancy”); Estate of Fisher, 198 Cal. App. 3d 418,
18 427 (1988) (same).

19 Regardless of the type of account, however, under CAMPAL, “[a]n account
20 belongs, during the lifetime of all parties, to the parties in proportion to the net
21 contributions by each, unless there is clear and convincing evidence of a different
22 intent.” Cal. Probate Code § 5301(a); see Lee, 111 Cal. App. 4th at 490, 491
23 (noting that “at any point in time the sums on deposit in an account belong to a
24 party in proportion to his or her net contribution” and holding that the “creation of a
25 joint account does not result in a completed gift to the cotenant; rather, the gift
26 occurs when the nondepositing party makes a withdrawal from the account”).
27 Here, Mr. Fisher and his daughter both testified that all of the funds deposited in
28 the account were his, including the proceeds from the sale of the Kubota tractor;

1 that Ms. Fisher never made any of the deposits or withdrawals and only accessed
2 the account to pay her father's bills online; and that Mr. Fisher's intent in adding
3 her name to the account was merely to facilitate her management of his affairs
4 when he was incapacitated. Under § 5301(a), this undisputed evidence was
5 sufficient to establish Mr. Fisher's ownership of the levied account. See Banc of
6 America Leasing & Capital, LLC v. Sferas Inc., No. B224787, 2011 WL 1744943
7 (Cal. App. 2011) (unpublished) (trial court properly upheld third-party claim where
8 claimant showed he had contributed all funds held in an account he shared with
9 the judgment debtor).

10 Gateway relies on California Probate Code § 5134(b) in an effort to dispel
11 the conclusion that the account belonged to Mr. Fisher. Gateway Suppl. Br. (ECF
12 No. 20) at 2. Section 5134 defines "net contribution"—the term used in § 5301(a)—
13 and provides in pertinent part that:

14 (a) "Net contribution" of a party to an account as of any given time is the sum
15 of all of the following:

16 (1) All deposits thereto made by or for the party, less all withdrawals
17 made by or for the party that have not been paid to or applied to the use of
18 any other party.

19 (2) A pro rata share of any interest or dividends earned, whether or not
20 included in the current balance.

21 (3) Any proceeds of deposit life insurance added to the account by
22 reason of the death of the party whose net contribution is in question.

23 (b) In the absence of proof otherwise:

24 (1) Only parties who have a present right of withdrawal shall be
25 considered as having a net contribution.

26 (2) The net contribution of each of the parties having a present right of
27 withdrawal is deemed to be an equal amount.

28 Contrary to Gateway's argument, it is subsection (a) of § 5134, not subsection (b),

1 that applies here. Mr. Fisher’s evidence established that all of the deposits to, and
2 withdrawals from, the levied savings account were made by or for him. Under
3 § 5134(a)(1), this evidence established that all of the net contributions to the
4 account were his. Gateway relies on § 5134(b), arguing that because Ms. Fisher
5 testified she had the ability to withdraw money from her father’s savings account,
6 she had a “present right of withdrawal” and should be deemed to have an equal
7 share in the net contributions to the account. Yet Gateway’s reliance on § 5134(b)
8 is misplaced. Subsection (b) of § 5134 creates presumptions that apply only “[i]n
9 the absence of proof otherwise” of the actual amount of net contributions. Cal.
10 Probate Code § 5134(b) (emphasis added); see id., Law Revision Comm’n
11 Comments (subsection (b) “provides a clear rule concerning the amount of ‘net
12 contribution’ in the absence of proof of a different amount”) (emphasis added).
13 Here, there is no absence of proof regarding the source or amount of each of the
14 signatories’ net contributions to the account, so there is no evidentiary gap to fill
15 with the presumptions set forth in § 5134(b).

16 Because Mr. Fisher established ownership of the levied account, the burden
17 shifted to Gateway to establish it had a superior interest in it. Gateway tried to
18 meet its burden by questioning the credibility of Mr. Fisher’s evidence, but the
19 Court found its arguments unpersuasive. Gateway’s contention that Ms. Fisher
20 may have been the real owner of the tractor because the tractor sat on her property
21 for a period of time, and because she helped sell it using her Craigslist account,
22 amounted to speculation. The phone number provided in the Craigslist listing was
23 Mr. Fisher’s. The fact that the tractor was sold for cash is not inherently incredible,
24 particularly since Mr. Fisher was able to produce his copy of the invoice for the
25 transaction.

26 For the same reasons, Gateway failed to demonstrate that the Kubota
27 tractor was property of Ms. Fisher on which it had a secured lien. See Chrysler
28 Credit Corp. v. Superior Court, 17 Cal. App. 4th 1303, 1311 (1993) (“[T]he general

1 rule is that the secured party ... has the burden of tracing funds received from the
2 sales of collateral so as to show that they are in fact the identifiable proceeds of
3 those sales.”).

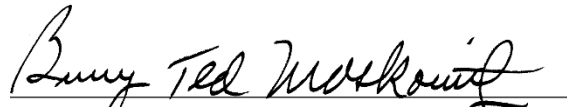
4 In sum, the Court finds that Mr. Fisher has proved by a preponderance of the
5 evidence that he is the owner of the funds in the levied account. Therefore, his
6 third-party claim is valid.

7 **III. CONCLUSION AND ORDER**

8 For the reasons discussed above, the Court finds that William W. Fisher has
9 a valid third-party claim and is entitled to the return of the levied funds. Three court
10 days after the entry of this order, assuming there are no objections, the Court will
11 issue an order directing the U.S. Marshal to return the funds to Mr. Fisher.

12 IT IS SO ORDERED.

13 Dated: August 7, 2017

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15 Barry Ted Moskowitz, Chief Judge
16 United States District Court
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