

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

PLAZA BANK, a California Corporation,

Plaintiff,

v.

ALAN GREEN FAMILY TRUST, a Nevada
trust, ALAN GREEN, an individual,

Defendants.

Case No. 2:11-cv-00130-MMD-VCF

ORDER

(Plf.'s Motion for Authorization to Register
Judgment in the United States District
Court for the District of Arizona
– dkt. no. 121)

I. SUMMARY

Before the Court is Plaintiff Plaza Bank's Motion for Authorization to Register Judgment in the United States District Court for the District of Arizona. (Dkt. no. 121.)

For the reasons discussed below, the Motion is denied.

II. BACKGROUND

The underlying facts of this case are set out more particularly in the Court's prior Orders. Pertinent to this Motion is that on December 26, 2012, the Court granted Plaintiff Plaza Bank's ("Plaintiff") Motion for Partial Summary Judgment against Defendants Alan Green Family Trust (the "Trust") and Alan Green ("Green") (collectively, "Defendants"). The Court determined that the Trust had fraudulently transferred the sale proceeds of an Arizona property (the "Coyote Road Property") to Green and that, consequently, Green was personally liable for the Trust's deficiency on a loan from Plaintiff. Plaintiff subsequently voluntarily dismissed its remaining claims, and final judgment was entered against Defendants on December 26, 2012. Defendants filed their Notice of Appeal on January 15, 2013.

1 The instant Motion seeks to register the Court’s judgment in the District of Arizona
2 because Plaintiff believes that Defendants’ assets, if any, are most likely located in
3 Arizona. Plaintiff’s belief is premised on the fact that the Coyote Road Property and two
4 other properties that were the subjects of the dismissed claims (respectively, the “Golf
5 Links Property” and the “Resort Way Property”) were all located in Arizona. However,
6 both the Coyote Road and Resort Way Properties have been sold (dkt. nos. 75, 81), and
7 another lender has foreclosed on the Golf Links Property (dkt. no. 124-2). Nonetheless,
8 Plaintiff “believes that any assets that may be available to satisfy the Judgment are likely
9 to be located – either now, or at some point in the future – in the District of Arizona.”

10 **III. DISCUSSION**

11 **A. Legal Standard**

12 Unless a stay is obtained, a prevailing party may seek enforcement of a final
13 order fourteen (14) days after its entry. Fed. R. Civ. P. 62(a). Where an appeal is
14 pending however, that judgment is only enforceable in the district in which it was
15 rendered, unless the judgment is registered in another district pursuant to a court order.
16 28 U.S.C. § 1963. A court may enter such an order upon a finding of “good cause.” *Id.*

17 “Good cause” is generally demonstrated by a showing that the judgment debtor
18 lacks assets in the judgment forum, but has substantial assets in the registration forum.
19 *Columbia Pictures Television, Inc. v. Krypton Broad. of Birmingham, Inc.*, 259 F.3d 1186,
20 1197-98 (9th Cir. 2001). A prevailing party need not conclusively prove the status of the
21 other parties finances as the standard is a “‘mere showing’ of good cause.” *Kowalski v.*
22 *Mommy Gina Tuna Res.*, CIV. Nos. 05-00679-BMK, 05-00787-BMK, 06-00182-BMK,
23 2009 WL 1322367, at *1 (D. Haw. May 8, 2009); *see also Branch Banking and Trust Co.*
24 *v. Maxwell*, No. 8:10-cv-2464-T-23AEP, 2012 WL 3069197 at *2 (M.D. Fla. July 26,
25 2012); *Hicks v. The Cadle Co.*, No. 04-cv-02616-ZLW-KLM, 2009 WL 189938 at *3 (D.
26 Colo. January 27, 2009). However, where the existence of assets is affirmatively
27 disputed, further inquiry may be necessary. *Kowalski*, 2009 WL 1322367 at *1.

28 ///

1 **B. Analysis**

2 The Court does not find that Plaintiff has demonstrated good cause. Although
3 there is no apparent dispute that Defendants lack sufficient assets in this District,
4 Defendants argue that they no longer hold any assets in Arizona. Consequently,
5 Plaintiff’s belief that Defendant *might* have assets in Arizona, “either now, or at some
6 point in the future,” is not a sufficient showing of good cause.

7 Plaintiff’s position relies on Defendants’ historical holdings of the properties in
8 Arizona that were the subjects of this lawsuit. However, the record establishes that none
9 of those properties remains in Defendants’ control. Plaintiff does not challenge the
10 testimony in the record establishing this fact or provide any evidence or argument that
11 Defendants have other real property or substantial personal property in Arizona. Plaintiff
12 therefore cannot demonstrate that Defendants have any, much less substantial, assets
13 in the registration forum.

14 In its Reply, Plaintiff asserts that any evidentiary insufficiency is due to
15 Defendants’ failure to produce the financial information required by the Court’s Order
16 Authorizing Examination (dkt. no. 114) and, further, that a mere showing of good cause
17 does not require it to prove Defendants’ finances. However, even though Defendants
18 may not have been as forthcoming with information as Plaintiff would have liked, Plaintiff
19 still has the obligation to provide a good faith basis for its belief that assets may
20 presently be found in the registration forum. This good faith basis need not constitute
21 conclusive proof of the existence and location of assets, but Plaintiff must nevertheless
22 provide some basis to support its assertions, especially given that Defendants have
23 affirmatively disputed the existence of assets. Reliance on historical data shown to be
24 outdated and inaccurate is not enough.


25 Finally, Plaintiff argues that good cause can also be inferred from the Defendants’
26 behavior. Specifically, Plaintiff argues that the very fact that Defendants opposed this
27 Motion suggests both that Defendants have assets — as they incurred the expense of
28 filing the opposition — and that the assets are located in Arizona — as Defendants would

1 suffer no prejudice from registration if no assets existed there. The Court, however, does
2 not agree with Plaintiff's inferences or underlying assumptions. The Court refuses to
3 adopt a rule where the mere act of opposing a motion for registration constitutes
4 evidence in support of the same motion – the phrase “heads I win, tails you lose” comes
5 to mind. Such a construction is fundamentally unsound because it punishes a party for
6 attempting to protect its own legal rights. The fact that Defendants filed an opposition is
7 not a demonstration of good cause.

8 **IV. CONCLUSION**

9 IT IS THEREFORE ORDERED that Plaintiff Plaza Bank's Motion for Authorization
10 to Register Judgment in the United States District Court for the District of Arizona is
11 DENIED.

12 DATED THIS 15th day of July 2012.

13 
14 _____
15 MIRANDA M. DU
16 UNITED STATES DISTRICT JUDGE
17
18
19
20
21
22
23
24
25
26
27
28