

United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

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| RICHARD W WEYEND | § | |
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| v. | § | Civil Action No. 4:06-CV-00343 |
| | § | Judge Mazzant |
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| HUBMAN FOUNDATION THE, TIM | § | |
| HUBMAN | § | |

MEMORANDUM OPINION AND ORDER

Pending before the Court is Annie Chapman and the Chapman Group II, LLC’s Application for *Writ of Scire Facias* to Renew Judgment (Dkt. #88). Having considered the motion, the Court finds the motion should be denied at this time.

BACKGROUND

On February 27, 2009, the Court entered judgment against Defendants Tim Hubman and the Hubman Foundation (Dkt. #87). To date, Defendants have not satisfied the judgment. On March 13, 2017, Annie Chapman and The Chapman Group II, LLC (“Interveners”), filed an Application for *Writ of Scire Facias*. Defendants did not file a response.

In the motion, Interveners ask the Court to (1) enter judgment and (2) renew judgment. The Court has already entered judgment in this case (Dkt. #87). However, the Court has not “renewed” judgment.

LEGAL STANDARD

Federal Rule of Civil Procedure 69(a) provides that the procedure on execution of a judgment must accord with the procedure of the state where the court is located. F. R. Civ. P. 69(a). Under Texas law, a dormant judgment is a judgment that is unsatisfied but not extinguished by lapse of time. *In re Fitzgerald*, 429 S.W.3d 886, 895 (Tex. App.—Tyler 2014,

no pet. h.). However, because the judgment has gone unexecuted for such a time, it must be revived before it can be executed. *Id.*

In order to prevent a judgment from becoming dormant, a writ of execution must issue within 10 years after the rendition of the judgment. *See* Tex. Civ. Prac. & Rem. Code Ann. § 34.001(a). A timely issued writ of execution extends the date the judgment becomes dormant to 10 years from the date of the execution of the writ. *See id.* § 34.001(b). Thus, a judgment creditor may renew the judgment “indefinitely by having a writ of execution issued within ten years of the previous writ.” *Cadle Co. v. Fahoum*, No. 2-06-459-CV, 2008 WL 754992, at *2 (Tex. App.—Fort Worth Mar. 20, 2008, no pet.) (mem. op).

Once the judgment is dormant, it may be revived by *scire facias* brought before the second anniversary of the dormant date. Tex. Civ. Prac. & Rem. Code Ann § 34.001(b). In determining whether to issue a writ of *scire facias*, the trial court considers the date of the underlying judgment, evidence of any writs of execution issued on the judgment, and the date of the motion to revive the judgment *scire facias*. *Calde Co. v. Rollins*, No. 01–09–00165–CV, 2010 WL 670561, at *2 (Tex. App.—Dallas July 6, 2001, no pet.) (mem. op.). If *scire facias* is issued in the two-year window, the trial court is without discretion and must revive the judgment. *Stedman v. Paz*, 511 S.W.3d 635, 637 (Tex. App.—Corpus Christi 2015, no pet h.).

ANALYSIS

Here, the date of the underlying judgment is February 27, 2009. Nothing in the record indicates that the Interveners ever filed for a writ of execution. Thus, the judgment becomes dormant on February 27, 2019. Because the judgment is not yet dormant, there is no judgment to “revive” via *scire facias*. *See Sobranes Recovery Pool I, LLC v. Todd & Hughes Const. Corp.*, 509 F.3d 216, 227 n. 39 (5th Cir. 2007). Interveners’ must seek enforcement of the judgment via

writ of execution. Execution is a method of enforcing a judgment. *See* Tex. R. Civ. P. 621; *In re Andrews*, 239 F.3d 708, 711 (5th Cir. 2001). To initiate an execution, a judgment creditor must obtain from a court a writ of execution that meets certain requirements and deliver it to a sheriff or constable. *See* Tex. R. Civ. P. 622, 629.

CONCLUSION

It is therefore **ORDERED** that Interveners Application for *Writ of Scire Facias* to Renew Judgment (Dkt. #88) is hereby **DENIED WITHOUT PREJUDICE**.

SIGNED this 14th day of July, 2017.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE