Tentative Rulings for April 22, 2025 Department 403

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) The above rule also applies to cases listed in this "must appear" section.

24CECG03894	Howell v. Select Portfolio Servicing, Inc. (Dept. 403)
24CECG02012	Garcia v. Hudson, Jr.

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

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Tentative Rulings for Department 403

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Tentative Ruling

Re:	Asset Acquisition Group, LLC v. Vega Superior Court Case No. 13CECG00820
Hearing Date:	April 22, 2025 (Dept. 403)
Motion:	by Assignee Perryville Recovery Corporation for Issuance of Earnings Withholding Order

Tentative Ruling:

To deny without prejudice.

Explanation:

Community property is liable for debt incurred by either spouse before or during marriage. (See Fam. Code §§ 760, 910(a); Dawes v. Rich (1997) 60 Cal.App.4th 24, 26.) Code Civ. Proc. § 695.020 provides:

(a) Community property is subject to enforcement of a money judgment as provided in the Family Code.

(b) Unless the provision or context otherwise requires, if community property that is subject to enforcement of a money judgment is sought to be applied to the satisfaction of a money judgment:

(1) Any provision of this division that applies to the property of the judgment debtor or to obligations owed to the judgment debtor also applies to the community property interest of the spouse of the judgment debtor and to obligations owed to the other spouse that are community property.

(2) Any provision of this division that applies to property in the possession or under the control of the judgment debtor also applies to community property in the possession or under the control of the spouse of the judgment debtor.

Code of Civil Procedure section 708.510, providing for assignment orders, is in the same division as section 695.020 regarding enforcement of money judgments.

A judgment creditor may apply for an earnings withholding order only if: a writ of execution has been issued to the county where the judgment debtor's (or spouse's) employer is to be served; and the writ has not been outstanding for more than 180 days. (Code Civ. Proc., § 706.102, subd. (a).)

Here, the writ of execution was issued on December 19, 2017 in Fresno County and returned October 15, 2020 wholly unsatisfied. Assignee Becharoff Capital Corporation applied for a renewal of the judgment on November 14, 2022 and the renewal was issued

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November 15, 2022. The debt was assigned again to Assignee Perryville Recovery Corporation on March 11, 2025. There is no active writ of execution issued for this judgment.

Pursuant to Code of Civil Procedure section 706.109, "An earnings withholding order may not be issued against the earnings of the spouse of the judgment debtor except by court order upon noticed motion." This provision "recognizes that despite the general rule that community property is liable for debts of a spouse (Fam. Code, § 910, subd. (a)), community property earnings are unique and may not be liable in some situations." (Legis. Com. com., Code Civ. Proc., § 706.109.) To fall within the provisions of section 706.109, a defendant must establish the existence of a valid marriage at the time of incurrence of the debt and community property earnings.

The evidence of the marriage consists of an interspousal grant deed recorded 3/29/06 from Frank Vega to Patricia Vega and attorney Lance Brewer's declaration that during the recent debtor's examination of Patricia Vega she confirmed she was married to Frank Vega at the time the judgment was issued and remains married to him as of the date of the examination. (RJN No. 1, Exh A; Brewer Decl., ¶¶ 4-5, Exh. C [Interspousal Transfer Deed].)

Declarations are hearsay and are generally inadmissible at trial, subject to several statutory exceptions. (Elkins v. Superior Court (2007) 41 Cal.4th 1337, 1345.) Code of Civil Procedure section 2009 creates an exception to the hearsay rule and authorizes the use of declarations and affidavits in motion proceedings. (United Community Church v. Garcin (1991) 231 Cal.App.3d 327, 344; North Beverly Park Homeowners Assn. v. Bisno (2007) 147 Cal.App.4th 762, 778.) But evidentiary declarations submitted in support of motions must meet all the statutory requirements for admissibility of evidence at trial. This means the declaration must be from a competent witness having personal knowledge of the facts stated therein. (Pajaro Valley Water Management Agency v. McGrath (2005) 128 Cal.App.4th 1093, 1107.) Counsels attestations of Patricia Vega's statements during examination are hearsay and insufficient to confirm the existence of a valid marriage.

Plaintiff has not sought a writ of execution before applying to the court for an order to garnish the wages of Patricia Vega, spouse of judgment debtor Frank Vega. (Code Civ. Proc., § 706.102, subd. (a).) Additional evidence, including relevant portions of the transcript from the debtor's exam can be provided to establish the existence of a valid marriage at the time the debt was incurred and that the earning to be withheld are community property. (Code Civ. Proc., § 706.109, subd. (a).)

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

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Issued By:	Img	on	4-17-25	
_	(Judge's initials)		(Date)	_