UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AMENDED CIVIL MINUTES - GENERAL

Case No.	CV11-01877 AHM (PJWx)	Date	October 26, 2012
Title	STUHLBARG, et al. v. UNITED STATES OF AMERICA, et al.		

Present: The Honorable	A. Howard Matz, U.S. District Judge	
Stephen Montes	N/A	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys NOT Present for Plaintiffs: Attorneys NOT Present for Defendants:

Proceedings: IN CHAMBERS (No Proceedings Held)

I. INTRODUCTION

Plaintiffs Emily Stuhlbarg and Richard Norene are co-conservators of the estate of Frank Parker, who was deemed incompetent in 2005. Plaintiffs have brought this action in interpleader against Defendants United States of America, the State of California, and Mark Boothby. Each Defendant is a creditor of Parker and claims a lien interest in the interpleaded funds. The interpleaded funds are insufficient to satisfy Parker's liability to every Defendant.

The United States has brought this Motion for Summary Judgment, arguing that the tax liens of the United States have priority of interest over the judgment lien of Boothby. The State of California does not join in the motion but has entered into a stipulation with the United States regarding the order of priority between those parties in the event that this Court grants the instant motion. (Dkt. 53.) The central question in dispute is whether and when Boothby's judgment lien was perfected.

For the following reasons, the Court DENIES the motion of the United States and finds that Boothby's lien has priority of interest.[1]

[1] Dkt. 56.

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II. BACKGROUND

Unless otherwise noted, the following facts are taken from the United States' Statement of Uncontroverted Facts and Conclusions of Law ("SUF"), Boothby's Response to the United States' SUF ("Response"), the United States' Request for Judicial Notice ("U.S. RJN"), and Boothby's Request for Judicial Notice ("Boothby RJN").[2]

In 1975, Parker purchased the real property at 4225 Huntley Ave, Culver City, CA 90230 ("Huntley property"). (SUF 1.) In 2004, Parker transferred the Huntley property to a revocable living trust ("Parker Family Trust"). (SUF 2.) Parker was named as the trustor, trustee and beneficiary of the Parker Family Trust. (SUF 30; U.S. RJN Exh. 28.) The Huntley property was eventually sold to a third party in 2009, and the proceeds from that sale constitute the interpleaded funds in this action. (SUF 40.)

On February 15, 2005, Boothby filed a lawsuit against Parker, the Parker Family Trust, and other parties for various contract and tort claims. (SUF 4.) While Boothby's lawsuit was pending, Parker was deemed incompetent, and a temporary conservatorship was established over Parker's estate. (SUF 6.) Boothby objected to the conservatorship appointment, but his objections were overruled, and the conservatorship became permanent on December 8, 2005. (SUF 7-8.) When it established the conservatorship, it appears that the probate court did not address whether the Parker Family Trust (and therefore the Huntley property) was part of the Parker conservatorship estate.

Boothby obtained a jury verdict for $725,000 in compensatory damages and $350,000 in punitive damages against Parker, the Parker Family Estate, and others. (SUF 10.) In California, a judgment creditor creates a judgment lien by recording an abstract of judgment with the county recorder. *See* Cal. Code Civ. Proc. § 697.310. On March 12, 2007, Boothby recorded an Abstract of Judgment in the amount of $1,075,000 against Parker and the Parker Family Trust.[3] (SUF 15.)

[2] The Court grants Defendant's undisputed request for judicial notice with respect to the documents it relies on in this Order.

[3] The award for compensatory damages was later reduced on appeal from $750,000 to $320,000. (SUF 56.)

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On August 21, 2008, Boothby attempted to collect on his judgment lien by filing a Writ of Execution and requesting a notice of sale of the Huntley property. (SUF 22-25.) Parker's court-appointed volunteer attorney then petitioned the probate court to deem the Huntley property part of the conservatorship and stay enforcement of Boothby's judgment pending further order.[4] (SUF 26-27.) The petition argued that because the Huntley property was part of the conservatorship, it was not subject to money judgments, and judgment creditors could only seek relief from the conservatorship under Cal. Probate Code § 2404.[5] (SUF 28.)

On September 25, 2008, the probate court issued an order finding that the Huntley property was "an asset of this conservatorship estate." (U.S. RJN Exh. 12, p. 2, ¶ 1.) The probate court restrained Boothby from enforcing his money judgment pending further order of the court. (U.S. RJN Exh. 12, p. 2, ¶ 3.)

Thereafter, on November 19, 2008, Boothby filed a petition under Cal. Probate Code § 2404, asking that the conservatorship be required to satisfy Parker's debt. (SUF 36.) While Boothby's § 2404 petition was pending, Boothby and the co-conservators agreed to sell the Huntley property, provided that Boothby's lien would be transferred to the net proceeds. (SUF 40-42.) On June 18, 2009, the conservators–who had also been appointed as trustees of the Parker Family Trust–filed a petition to transfer the Huntley property from the trust to the conservatorship in order to clear title for the sale. (Response 1; Boothby RJN Exh. 1 at 3.) The petition was granted (Response 2), and on July 31, 2009, the probate court approved the sale of the Huntley property for $490,000. (SUF 40.)

On May 15, 2010, the Internal Revenue Service ("IRS") of the United States recorded Notices of Federal Tax Liens against Parker in Los Angeles County for the income tax years 2004, 2007, and 2008. (SUF 73.) On August 19, 2010, the Franchise Tax Board ("FTB") of the State of California recorded Notices of State Tax Liens against Parker in Los Angeles County for the income tax years 2004, 2007, 2008, and 2009.

[4] The parties do not explain why the conservators or their representatives did not submit this petition in lieu of Parker's own attorney.

[5] Cal. Probate Code § 2404 provides that, upon petition or its own motion, a probate court may order the conservator of an estate to pay a debt lawfully owed by the conservatee.

(SUF 73.)

On July 28, 2010, the probate court requested that the IRS and the FTB appear before it to discuss "their positions regarding payment and, perhaps, compromise of those debts. If the IRS and/or the FTB voluntarily choose not to appear at the hearing, the Court may order the Conservator of the Estate to pay Mark Boothby, judgment debtor, and that order may deplete Conservatorship Assets such that there will be insufficient assets for the Conservator of the Estate to pay the IRS and/or FTB liabilities in full." (U.S. RJN Exh. 36 at 1.)

The United States refused to submit to the jurisdiction of the probate court, and on March 4, 2011, Plaintiffs filed the instant interpleader action. (SUF 68.) At that time, the probate court had not yet ruled on Boothby's § 2404 petition seeking payment from the conservator. (SUF 39.) It appears that that petition is still pending.

III. LEGAL STANDARD FOR SUMMARY JUDGMENT

Federal Rule of Civil Procedure 56(a) provides for summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." The moving party bears the initial burden of demonstrating the absence of a "genuine issue of material fact for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). A fact is material if it could affect the outcome of the suit under the governing substantive law. *Id.* at 248. The burden then shifts to the nonmoving party to establish, beyond the pleadings, that there is a genuine issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986).

"When the party moving for summary judgment would bear the burden of proof at trial, it must come forward with evidence which would entitle it to a directed verdict if the evidence went uncontroverted at trial. In such a case, the moving party has the initial burden of establishing the absence of a genuine issue of fact on each issue material to its case." *C.A.R. Transp. Brokerage Co., Inc. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (citations omitted). In contrast, when the non-moving party bears the burden of proving the claim or defense, the moving party can meet its burden by pointing out the absence of evidence from the non-moving party. The moving party need not disprove the

other party's case. *See Celotex*, 477 U.S. at 325. Thus, "[s]ummary judgment for a defendant is appropriate when the plaintiff 'fails to make a showing sufficient to establish the existence of an element essential to [his] case, and on which [he] will bear the burden of proof at trial.'" *Cleveland v. Policy Mgmt. Sys. Corp.*, 526 U.S. 795, 805-06 (1999) (citing *Celotex*, 477 U.S. at 322).

> Rule 56(c) provides:
>
> A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:
>
> (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
>
> (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Fed. R. Civ. P. 56(c)(1). Only admissible evidence may be considered in deciding a motion for summary judgment. *See* Fed. R. Civ. P. 56(c)(2); *Beyene v. Coleman Sec. Servs., Inc.*, 854 F.2d 1179, 1181 (9th Cir. 1988).

"[I]n ruling on a motion for summary judgment, the nonmoving party's evidence 'is to be believed, and all justifiable inferences are to be drawn in [that party's] favor.'" *Hunt v. Cromartie*, 526 U.S. 541, 552 (1999) (quoting *Anderson*, 477 U.S. at 255). But the non-moving party must come forward with more than "the mere existence of a scintilla of evidence." *Anderson*, 477 U.S. at 252. Thus, "[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (citation omitted).

IV. DISCUSSION

There are essentially no factual disputes in this case. The parties agree that (1) a conservatorship was established over Parker's estate in 2005, (2) Boothby recorded an abstract of judgment against Parker and the Parker Family Trust in 2007, and (3) the United States and the State of California recorded their tax liens in 2010. The key issue of dispute is legal: did the establishment of the conservatorship of Frank Parker invalidate Boothby's lien, either at its creation or at some later point?

In addition to their disagreements on the determinative issue, the parties raise several preliminary matters. Boothby contends that the United States lacks standing to contest the validity of his lien. For its part, the United States argues that this court lacks power to decide the merits of the dispute under the collateral estoppel or *Rooker-Feldman* doctrines

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A. The United States Has Standing to Challenge the Priority of Boothby's Lien

As a preliminary matter, the Court addresses Boothby's argument that the United States lacks standing to object to the validity of his lien. Boothby claims that only the co-conservators of Parker's estate have the right to object to his lien because the conservatorship "expressly" reserved the right to do so. (Opp. at 4.) Boothby provides virtually no authority in support of this proposition, and the Court therefore rejects it.[6] The fact that the conservators reserved the right to challenge the lien does not preclude the United States from doing so as well. The United States has asserted a lien interest over the interpleaded funds in this action and if it is successful in arguing that Boothby's lien is invalid, it will obviously benefit. It is therefore entitled to make that argument. Thus, the Court finds that the United States has standing to challenge the validity of Boothby's lien.

B. Neither Collateral Estoppel nor the *Rooker-Feldman* Doctrine Prevent This Court from Determining the Validity of Boothby's Lien

[6] The only case Boothby cites is *Gantman v. United Pac. Ins. Co.*, 232 Cal. App. 3d 1560, 1563 (Cal. App. 1991). But *Gantman* held that a homeowner who was not party to an insurance contract lacked standing to sue under that contract. *Id*. at 1563. That case is wholly inapposite here--the United States is not seeking to enforce a contract to which it is not a party.

The Court next addresses the United States' argument that the validity of Boothby's lien is an issue that has already been determined by the probate court and that the Court is therefore precluded from considering the issue under the doctrine of collateral estoppel. "In California, 'collateral estoppel precludes relitigation of issues argued and decided in prior proceedings.'" *Harmon v. Kobrin (In re Harmon)*, 250 F.3d 1240, 1245 (9th Cir. 2001) (quoting *Lucido v. Superior Court*, 51 Cal.3d 335, 341 (1990)). California courts will apply collateral estoppel only if the following five threshold requirements are met:

> First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding.

Id.

The United States contends that the probate court order of September 25, 2008 that quashed Boothby's notice of levy on the Huntley property precludes any different or contrary decision on the merits of this case. In that order, the probate court declared: "Pending further order of this Court, both the Judgment creditor MARK BOOTHBY ("Judgment Creditor") and the Levying Officer are restrained from enforcing, as against the Conservatee, that certain money judgment in the amount of $1,075,000.000 entered on May 4, 2007 ("Judgment") in the case entitled *Boothby v. Parker* . . . ." (U.S. RJN Exh. 12 at 2 (emphasis in original).)

The basis of the probate court's order was a finding that the Huntley property–part of the Frank Parker trust–was an asset of the conservatorship estate. (U.S. RJN Exh. 12 at 2.) Accordingly, Boothby could not collect his judgment through a writ of execution and levy on his judgment against Parker and the Parker Family Trust; instead, he was required to petition the probate court for payment under Cal. Probate Code § 2404. That section provides that where a conservator fails to pay a debt lawfully due by the conservatee, "the court shall, upon petition or upon its own motion, order the guardian or conservator to do so from the estate." Cal. Probate Code § 2404.

According to the United States, in this order the probate court ruled that (1) the Huntley property was an asset of the conservatorship as of 2005, when the conservatorship was first established, and (2) that Boothby's lien on the property is unenforceable. But this Court concludes the first asserted point is irrelevant for present purposes and that the second point is incorrect. As this Court's ensuing discussion of the merits shows, the date of the establishment of the Parker conservatorship has no bearing on the priority of interpleader Defendants' claims. Moreover, the probate court did not determine that Boothby's lien over the property was *invalid*—the court merely restrained Boothby from enforcing his judgment by way of levy "pending further order of the court." Because the probate court did not even consider the validity of Boothby's lien, that issue is not precluded by collateral estoppel.

Alternatively, the United States argues that this Court lacks jurisdiction to modify the probate court's order under the *Rooker-Feldman* doctrine. This argument is wholly without merit. As the Supreme Court has clarified, "The *Rooker-Feldman* doctrine . . . is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). In this case, Boothby has not yet "lost" in state court, nor was he the party who initiated this action. Thus, *Rooker-Feldman* does not apply.

C. Boothby's Lien Has Priority Because It Was Choate Before the United States Recorded Its Federal Tax Liens

The Court now reaches the question of which Defendant's lien became "choate" first. In an action for interpleader, federal law rather than state law governs the priority of competing liens where one of those liens is a tax lien asserted by the United States. *See Quality Loan Service Corp. v. 24702 Pallas Way, Mission Viejo, CA 92691*, 635 F.3d 1128, 1134 (9th Cir. 2011). Under federal law, priority is governed by the common-law principle that "the first in time is the first in right." *Id.* (quoting *United States v. McDermott*, 507 U.S. 447, 449 (1993)). The priority of a lien "must depend on the time it attached to the property in question and became choate." *United States v. City of New*

Britain, 347 U.S. 81, 86 (1954). Thus, the pertinent question in this action is which interpleader Defendant's lien became "choate" first.

A federal tax lien on real property that is already subject to a judgment lien becomes valid only after a notice of the tax lien is recorded within the county that the real property is situated. *See* 26 U.S.C. § 6323(a)-(f)(1)(A)(i). Here, the United States filed several Notices of Federal Tax Liens in Los Angeles County on May 15, 2010. Thus, in order for Boothby to have priority of interest, his judgment lien must have become "choate" before May 15, 2010.

Under federal law, a competing state lien is choate "for 'first in time' purposes only when it has been 'perfected' in the sense that'the identity of the lienor, the property subject to the lien, and the amount of the lien are established.'" *United States by & ex rel. IRS v. McDermott*, 507 U.S. 447, 449 (1993) (quoting *United States v. City of New Britain*, 347 U.S. 81, 84 (1954)). In *United States v. Security Trust & Sav. Bank*, 340 U.S. 47 (1950), for example, the Supreme Court held that an "attachment lien" in California was inchoate because, according to the applicable California statute, an attachment lien did not attach to real property until the holder of the lien obtained and recorded a judgment. *See id*. at 49-50 ("Numerous contingencies might arise that would prevent the attachment lien from ever becoming perfected by a judgment awarded and recorded.").

Under California law, a "judgment creditor may create a judgment lien by recording an abstract of judgment." *Diamond Heights Village Ass'n, Inc. v. Financial Freedom Senior Funding Corp.*, 196 Cal.App.4th 290, 302 (2011); *see* Cal. Code Civ. Proc. § 697.310 ("Except as otherwise provided by statute, a judgment lien on real property is created under this section by recording an abstract of a money judgment with the county recorder."). The parties agree that Boothby recorded an abstract of judgment against Parker and the Parker Family Trust on March 12, 2007 in Los Angeles County. Boothby's abstract of judgment identified him as the lienor, identified the Parker Family Trust and the Huntley property as the subject of the lien, and identified the amount of the judgment as $1,075,000. (U.S. RJN Exh. 8 at 1.)

Moreover, unlike the pre-judgment attachment lien in *Security Trust*, Boothby's post-judgment lien attached at the time of creation. *See* Cal. Code Civ. Proc. § 697.340

("A judgment lien on real property attaches to all interests in real property in the county where the lien is created (whether present or future, vested or contingent, legal or equitable) that are subject to enforcement of the money judgment against the judgment debtor pursuant to Article 1 (commencing with Section 695.010) of Chapter 1 at the time the lien was created . . . ."). Section 695.010 provides that "all property of the judgment debtor is subject to the enforcement of a money judgment," and although there are exceptions for, *inter alia*, non-transferable property and business licenses, there is no exception for conservatorship assets in the cited article. *See* §§ 695.010-695.070. Thus, under the plain language of § 697.310, Boothby's judgment lien attached–and therefore became choate–when he recorded the lien on March 12, 2007, more than three years before the United States recorded its federal tax liens.

The United States' central argument is that Boothby's lien could not and did not attach to the Huntley property because that property was part of the conservatorship estate. Such a rule flies in the face of the principle of "first in time, first in right." Although a judgment creditor is first in time, under the United States' theory he can never be first in right as long as the property in question is part of a conservatorship. There is no evidence that the California legislature intended such a sharp departure from the prevailing norms.

It is true, as the United States points out, that conservatorship property is not subject to the enforcement of a judgment through a writ of execution and notice of levy. Cal. Code Civ. Proc. § 709.030 ("Property in a guardianship or conservatorship estate is not subject to enforcement of a money judgment *by a procedure provided in this division* ..." (emphasis added)); *see also Neiman Marcus v. Tait*, 33 Cal. App. 4th 271, 273-74 (Cal. App. 1995). Instead, a judgment creditor is required to apply for an order requiring the conservator to pay the debt. *Nieman-Marcus*, 33 Cal. App. 4th at 273-274. But that does not make the lien inchoate. The Supreme Court's jurisprudence does not tie priority to the availability of particular enforcement mechanisms; rather, a lien is choate when "the identity of the lienor, the property subject to the lien, and the amount of the lien are established." *City of New Britain*, 347 U.S. at 84. Tellingly, the United States has not cited a single case in which a court held that a *judgment* lien was inchoate.

The dicta that the United States has cited from *Minnesota, Dept. of Revenue v. U.S.*, 184 F.3d 725 (8th Cir. 1999), and *U.S. v. Bond*, 279 F.2d 837 (4th Cir. 1960), is not

to the contrary. Neither case dealt with a judgment lien. In *Minnesota*, the Eighth Circuit noted that "[t]he test for choateness or perfection also requires that the creditor have the right to summarily enforce its lien," and cited to *United States v. Vermont*, 377 U.S. 351 (1964) as the source for this proposition. In *Vermont*, the Supreme Court made clear that a lien is "summarily enforceable" if it is "given the force of a judgment." *Id.* at 358-359, fn.12. Boothby's judgment lien clearly has the "force" of a judgment. In *Bond*, the Fourth Circuit simply reiterated the principle articulated in *New Britain* that a state-created lien must "be specific to the point that nothing further need be done to make the lien enforceable." 279 F.2d at 841-42. Neither *Minnesota* nor *Bond* stand for the proposition that a *judgment* lien is rendered inchoate simply because the creditor is required to apply to another court to enforce it.[7]

Therefore, at least for present purposes, Parker's conservatorship has no bearing on the validity or priority of Boothby's lien. Accordingly, the Court need not and will not address the parties' belabored arguments as to when the Huntley property became part of the conservatorship estate.

V. CONCLUSION

For the above reasons, the Court finds that Boothby's judgment lien has priority of interest over the federal tax liens of the United States. The Court therefore DENIES summary judgment for the United States.

The United States has requested that, in the event that the Court finds that Boothby's lien has priority of interest, the Court require Boothby to "present an accounting for the current balance due" under his judgment lien. (Mot. at 12, n.3.) At the appropriate time, the Court will do so. It appears, however, that the probate court has yet to rule on Boothby's § 2404 petition for payment from the conservator. As such, the Court ORDERS the parties to file a joint status report no later than November 5, 2012,

[7] The Court is also aware of the passage in *Security Trust* that describes an inchoate lien as one "contingent upon taking subsequent steps to enforce it." *Security Trust*, 340 U.S. at 114. But, as noted above, that case dealt with a *pre-judgment* lien, the amount of which had not been determined at the time it was recorded. Thus, the isolated dictum cannot be read as rendering inchoate a *judgment* lien, even if state law requires creditors to adhere to certain procedures to have it enforced.

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notifying the Court of the status of the litigation in probate court and their respective positions on how this case should proceed.

No hearing is necessary. Fed. R. Civ. P. 78; L.R. 7-15.

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Initials of Preparer SMO