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# **Appendix “A”**

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 17 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

In re: AGUINA AGUINA,

Debtor,

No. 22-60005

BAP No. 21-1163

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AGUINA AGUINA,

Appellant,

MEMORANDUM\*

v.

CHOONG-DAE KANG; et al.,

Appellees.

Appeal from the Ninth Circuit  
Bankruptcy Appellate Panel  
Faris and Lafferty III, Bankruptcy Judges, Presiding

Submitted January 9, 2023\*\*  
Pasadena, California

Before: CALLAHAN, R. NELSON, and H.A. THOMAS, Circuit Judges.

Chapter 7 debtor Aguina Aguina appeals from the Bankruptcy Appellate

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Panel for the Ninth Circuit (BAP), which affirmed the bankruptcy court's approval of a settlement agreement between the bankruptcy trustee, Karl T. Anderson, and Aguina's primary creditors: his ex-wife, Choong-Dae Kang, and her siblings (Kang Parties). *In re Aguina*, No. CC-21-1163, 2022 WL 325579, at \*1. We review the BAP's decision de novo and "apply the same standard of review that the BAP applied to the bankruptcy court's ruling"—here, abuse of discretion. *In re Ahaza Sys., Inc.*, 482 F.3d 1118, 1123 (9th Cir. 2007). We have jurisdiction pursuant to 28 U.S.C. § 158(d). We affirm.

1. "Only those persons who are directly and adversely affected pecuniarily by an order of the bankruptcy court . . . have standing to appeal that order." *Matter of Fondiller*, 707 F.2d 441, 442 (9th Cir. 1983). The trustee argues that Aguina lacks standing because "there is no reasonable possibility" that the bankruptcy estate, after satisfying all of its debts, will have a surplus available with which to pay Aguina. We disagree. If we were to reverse the BAP's decision and order that it vacate the bankruptcy court's approval of the settlement agreement, there would exist a possibility—however remote—that the family court would make determinations concerning community property and community debt that would, upon satisfaction of the bankruptcy estate's debts, produce a surplus for Aguina.

Because Aguina is thus not “hopelessly insolvent,” he has standing to appeal the BAP’s order. *See id.*

2. A bankruptcy court abuses its discretion either (i) by applying an incorrect legal rule for the sort of relief requested (an issue which we review de novo), or (ii) by applying the correct legal rule in a way that is “illogical, implausible, or without support in inferences that may be drawn from the facts in the record.” *In re Taylor*, 599 F.3d 880, 887–88 (9th Cir. 2010). Here, the bankruptcy court correctly applied the four-factor test set forth in *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986), to determine that the settlement agreement between the trustee and the Kang Parties was fair and equitable. That test requires a court reviewing a bankruptcy settlement agreement to consider “(a) [t]he probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.” *Id.* While reasonable minds might disagree about its conclusions, the bankruptcy court’s application of the *A & C Properties* test was logical, plausible, and supported by inferences that could be drawn from facts in the record. *See id.* (“The law favors compromise and not litigation for its own sake, . . . and as long as the bankruptcy court amply considered the various factors that determined the

reasonableness of the compromise, the court's decision must be affirmed.”)

(citation omitted).

First, the court considered the paramount interest of the creditors. *See id.* The court noted that the seven remaining claims in the bankruptcy case would be resolved by the agreement, five of them by voluntary withdrawal and two of them by using the funds the Kang Parties would give to the trustee as part of the settlement. Given that the agreement would resolve all of the remaining creditors' claims, the court did not abuse its discretion in concluding that that this factor supported approval of the agreement.

Second, the court considered the complexity of the litigation, as well as any related expense, inconvenience, and delay. *See id.* The court found that Aguina had been litigating with the Kang Parties for many years and that a rejection of the proposed agreement would potentially lead to many more years of litigation, adding expense, inconvenience, and delay for all concerned parties. Since the settlement would bring the litigation to an end, the court plausibly concluded that it would be “very wise” and “very advantageous” to approve the settlement.

Third, the court considered any difficulties to be encountered in collection, namely the collection of funds that would have to change hands in fulfillment of the settlement agreement. *See id.* On the record, counsel for the Kang Parties represented that he had all of the promised funds in a trust account and was

prepared to facilitate collection by the trustee. The court did not abuse its discretion in relying upon this representation to conclude that this factor also supported approval of the agreement.

Fourth and finally, the court considered the probability of success in the litigation over the dissolution of Aguina's and Choong-Dae Kang's marriage. *See id.* The court noted that the proposed agreement would result in a waiver of claims by the Kang Parties, including the waiver of any claims Choong-Dae Kang was pursuing in the dissolution action. Since the settlement would resolve the litigation without placing any new obligations on Aguina, it was logical for the bankruptcy court to conclude that the agreement was a preferable alternative to continuing litigation.

3. Aguina's objections to the bankruptcy court's ruling are without merit. Though not clearly articulated by Aguina, his strongest objection is that the settlement agreement should be reversed because it is not "in the best interests of the estate." *See In re Mickey Thompson Ent. Grp., Inc.*, 292 B.R. 415, 422 (9th Cir. BAP 2003). Aguina states that Choong-Dae Kang possesses "numerous properties and great wealth" which "most likely have a community property component," and that Kang therefore possesses "property belonging to Aguina and to the Bankruptcy Estate." He thus implies that (i) the trustee's calculations do not

account for these potential assets, and (ii) the proposed settlement is therefore unfair and inequitable. We reject these contentions.

In filing for bankruptcy, all of Aguina's legal and equitable interests, including all of Aguina's interests in community property, became the property of the bankruptcy estate. *See* 11 U.S.C. § 541(a). The bankruptcy court therefore came to have exclusive jurisdiction over all of Aguina's interests in community property, despite ongoing community property disputes in Aguina's dissolution proceedings with Choong-Dae Kang. *See In re Teel*, 34 B.R. 762, 763–64 (9th Cir. BAP 1983). And the trustee's primary responsibility was to administer the assets of the estate for the benefit of Aguina's creditors, *see In re DBSI, Inc.*, 869 F.3d 1004, 1016 (9th Cir. 2017), even if Aguina thought he could have "handled his financial affairs in a more advantageous way outside of bankruptcy."

The trustee explained to the court that after carefully considering the ongoing dissolution proceedings and reviewing various documents concerning the potential community property assets, he concluded that the proposed settlement was "in the best interest of the estate." In various filings, he also provided the bankruptcy court with reason to believe that the potential community property assets were not of significant value and that it would be both expensive and



impractical to liquidate them. The bankruptcy court did not abuse its discretion in relying on this information and discounting Aguina's objection.

Aguina also argues that the court was "obliged to consider, as part of [its] 'fair and equitable' analysis, whether any property of the estate that would be disposed of in connection with the settlement might draw a higher price through a competitive process and be the proper subject of a sale under 11 U.S.C. § 363." *In re Thompson*, 292 B.R. at 422. After learning of the proposed settlement agreement, Aguina offered the bankruptcy estate \$53,000—a "higher price" than the \$49,726.77 the Kang Parties were willing to pay the trustee in fulfillment of the settlement agreement. Aguina argues that his superior offer should have led the bankruptcy court to consider a sale under section 363 or that the court should have at least provided a "reasoned explanation" for choosing not to do so. *See In re Woodson*, 839 F.2d 610, 621 (9th Cir. 1988) ("Broad as the bankruptcy court's power may be, it may not completely ignore a nonfrivolous objection, at least without giving a reasoned explanation for doing so."). We are not persuaded that the settlement amounted to an asset sale under *In re Thompson*, given the mutual release of claims. *See In re Thompson*, 292 B.R. at 421 (concluding a proposed settlement where estate unilaterally released its claims amounted to an asset sale). To the extent that the bankruptcy court was required to consider Aguina's offer, its statement that Aguina failed to present a way to "extinguish or eliminate" the Kang

Parties' most significant claims against him as creditors was ample support for its decision to approve the trustee's proposed settlement, despite Aguina's offer.

Aguina's remaining objections also fail. The bankruptcy court did indeed mention the particular facts of this case in its order; though public policy is not one of the four *A & C Properties* factors, it nevertheless supports ending a dispute that has long been a drain on taxpayer money and judicial resources; and Aguina has failed to demonstrate that the settlement agreement is illegal or allows a party to take advantage of its wrongdoing.

**AFFIRMED**

# Appendix “B”

**FILED**

FEB 3 2022

**NOT FOR PUBLICATION**

SUSAN M. SPRAUL, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

**UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT**

In re:  
AGUINA AGUINA,  
Debtor.

BAP No. CC-21-1163-FLS

Bk. No. 6:17-bk-17472-WJ

AGUINA AGUINA,  
Appellant,  
v.  
CHOONG-DAE KANG; MYUNG-JA  
KANG; KWANG-SA KANG; KARL T.  
ANDERSON, Chapter 7 Trustee,  
Appellees.

**MEMORANDUM\***

Appeal from the United States Bankruptcy Court  
for the Central District of California  
Wayne E. Johnson, Bankruptcy Judge, Presiding

Before: FARIS, LAFFERTY, and SPRAKER, Bankruptcy Judges.

**INTRODUCTION**

Chapter 7<sup>1</sup> debtor Aguina Aguina has been embroiled in contentious dissolution proceedings and other state court litigation with his ex-wife,

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\* This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have, *see* Fed. R. App. P. 32.1, it has no precedential value, *see* 9th Cir. BAP Rule 8024-1.

<sup>1</sup> Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and all "Rule" references are to the Federal Rules of Bankruptcy Procedure.

appellee Choong-Dae Kang, for over thirteen years. He filed for bankruptcy protection, and the dispute continued in the bankruptcy court. Four years after he filed his bankruptcy petition, the bankruptcy court approved a compromise between the bankruptcy trustee and Ms. Kang and her siblings.

Mr. Aguina appeals the compromise order. We discern no error and AFFIRM.

## **FACTS**

### **A. Prepetition events**

Mr. Aguina and Ms. Kang were married in 1999. In 2008, Mr. Aguina filed an action for marital dissolution in state court. The parties finalized the divorce, but issues remained as to child and spousal support and property division.

The disputes engendered additional litigation in state court. Ms. Kang and her siblings, appellees Myung-Ja Kang and Kwang-Sa Kang (collectively, the “Kang Parties”), sued Mr. Aguina in state court on a loan that the Kang Parties’ late mother had made to Mr. Aguina. The state court entered judgment in favor of the Kang Parties and against Mr. Aguina in the amounts of \$497,500 for fraud and \$77,000 for breach of contract.

The dissolution proceedings were extremely contentious. Mr. Aguina accused Ms. Kang of failing to disclose all of her assets and of using various corporate entities to conceal community property. Among other things, Mr. Aguina claimed that an inheritance that Ms. Kang received in

2011 at her father's passing was community property.

Ms. Kang did not comply with some of the family court's orders, including an order to disclose her assets. In December 2016, the family court found that Ms. Kang had failed to comply with mandatory disclosure requirements, awarded monetary sanctions against her, and issued terminating sanctions preventing her from presenting evidence on issues about which she should have made disclosures.

In 2020, the family court stated, at least preliminarily, that some of the disputed assets were no longer within its jurisdiction, including four condominium units in Japan.

**B. Mr. Aguina's chapter 11 petition and conversion to chapter 7**

Meanwhile, in September 2017, while the divorce proceedings were ongoing, Mr. Aguina filed a chapter 11 petition. Soon thereafter, the bankruptcy court converted the case to one under chapter 7. Chapter 7 trustee Karl T. Anderson ("Trustee") was appointed trustee to administer Mr. Aguina's estate.

The Kang Parties filed five proofs of claim. The first three claims (Claim 9 filed by Myung-Ja Kang, Claim 10 filed by Kwang-Sa Kang, and Claim 11 filed by Ms. Kang) asserted a secured claim for \$781,454.51, based on the state court judgment described above.<sup>2</sup> (The judgment amount had

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<sup>2</sup> The bankruptcy court later determined that the fraud portion of the judgment that the Kang Parties had recovered against Mr. Aguina was nondischargeable under § 523(a)(2). The district court affirmed.

increased due to the accrual of postjudgment interest.) In Claim 12, Ms. Kang asserted a priority unsecured claim for \$9,762.80, based on a domestic support obligation. In Claim 13, Ms. Kang asserted a general unsecured claim for \$500,000, based on a pending state court lawsuit. Other creditors asserted general unsecured claims totaling about \$11,000.

In January 2019, the bankruptcy court granted limited relief from the automatic stay for the state court dissolution proceedings to continue. The stay relief order stated that the stay was lifted so that the family court could determine “the characterization only of the assets of the Debtor and Ms. Kang as community property, separate property of the Debtor, or separate property of Ms. Kang.” It specified that “[a]ll community property and separate property of the Debtor shall remain property of this bankruptcy estate and subject to the Trustee’s administration in this case.”

The Trustee joined the divorce proceedings as a party in interest and took the position that some of the assets at issue were community property and therefore were property of the estate. In a Rule 2004 examination, Ms. Kang provided documents and testimony to the Trustee supposedly establishing that the assets at issue were separate property. Ms. Kang began making monthly payments to the Trustee toward the family court sanctions.

### **C. The Trustee’s motion for compromise**

The Trustee filed a motion for an order approving settlement and compromise of disputes between the Trustee and the Kang Parties

("Compromise Motion"). The salient terms of the settlement agreement were as follows: (1) Ms. Kang would pay the Trustee \$49,726.77; (2) the Kang Parties would waive and withdraw all claims against the estate and would not receive any distribution in the bankruptcy case; (3) the parties would exchange releases concerning certain assets; and (4) the settlement agreement would not affect anything in the state court dissolution action other than the division of assets.

The Trustee asserted that the compromise agreement comported with the standard set forth in *Martin v. Kane (In re A & C Properties)*, 784 F.2d 1377, 1380-81 (9th Cir. 1986), and *Woodson v. Fireman's Fund Insurance Co. (In re Woodson)*, 839 F.2d 610, 620 (9th Cir. 1988).

Mr. Aguina opposed the Compromise Motion. He argued that he had cooperated with the Trustee but that the Trustee had never shared with him the information obtained from the Rule 2004 examination of Ms. Kang, and he had been unable to get necessary information about Ms. Kang's assets in any forum. He also contended that the Kang Parties' offer to withdraw and waive their proofs of claim was of little value to the estate.

Mr. Aguina offered to purchase the estate's interest in the community assets for \$53,000. He argued that, because this amount was more than the cash portion of the settlement, his proposal was superior.

Mr. Aguina also argued that it was unfair for Ms. Kang to hide her assets from the family court and the bankruptcy court and then seek to settle with the Trustee without ever having to disclose her assets.



Finally, he argued that the proposed settlement would interfere with proceedings in the state court. He pointed out that the bankruptcy court had granted partial stay relief and left to the family court all issues concerning the characterization of the parties' assets.

In a reply brief, the Trustee argued that Mr. Aguina did not refute his position that Rule 9019 weighs in favor of the compromise and did not address many of the considerations raised in *A & C Properties*. He contended that Ms. Kang had provided sufficient information demonstrating that the assets at issue were her separate property. He argued that the bankruptcy court had exclusive jurisdiction over estate property and did not need to abstain or defer to the family court.

Ms. Kang joined in the Trustee's reply brief. She attached her declaration in which she discussed her interests in the various assets at issue and explained how she had inherited most of those assets from her parents after she separated from Mr. Aguina. She also traced the ownership of the condos in Japan, as well as the fraud judgment against Mr. Aguina. She attached corporate documents of her business interests and documents concerning the condo units.

**D. The hearings and supplemental briefing on the Compromise Motion**

At the hearing on the Compromise Motion, Mr. Aguina objected that the Kang Parties' joinder introduced new arguments and evidence to which he had no opportunity to reply.

The bankruptcy court continued the hearing to allow Mr. Aguina an opportunity to respond. It also directed the settling parties to clarify some provisions of the proposed settlement agreement.

The Trustee filed a revised version of the settlement agreement, and the parties filed additional briefs.<sup>3</sup> Among other things, Mr. Aguina argued that the court should hold an evidentiary hearing. He did not address Ms. Kang's factual assertions concerning the assets.

At the continued hearing, the bankruptcy court granted the Compromise Motion. It analyzed each of the four *A & C Properties* factors and held that they favored the compromise. The bankruptcy court concluded that the compromise was "an elegant solution, a peaceful solution, a common solution." Mr. Aguina timely appealed.

### JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(2)(A). We have jurisdiction under 28 U.S.C. § 158.<sup>4</sup>

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<sup>3</sup> A few days before the hearing, Mr. Aguina filed objections to the Kang Parties' five proofs of claim. The bankruptcy court later overruled the objections as moot, given that it had approved the compromise and the Kang Parties had withdrawn their claims.

<sup>4</sup> The Trustee argues that Mr. Aguina lacks standing to prosecute this appeal, because there is no reasonable possibility of the estate having any surplus available to pay him. However, we cannot rule out the possibility that, if we reverse on appeal, the state court might recognize Mr. Aguina's interests in enough community property to pay all administrative claims, unsecured claims, and exemptions and result in a surplus. Thus, he is a "person aggrieved" who has standing to appeal. *Fondiller v. Robertson (In re Fondiller)*, 707 F.2d 441, 442 (9th Cir. 1983).

## ISSUE

Whether the bankruptcy court erred in approving the compromise between the Trustee and the Kang Parties.

## STANDARD OF REVIEW

“The bankruptcy court’s decision to approve a compromise is reviewed for abuse of discretion.” *Goodwin v. Mickey Thompson Ent. Grp., Inc. (In re Mickey Thompson Ent. Grp., Inc.)*, 292 B.R. 415, 420 (9th Cir. BAP 2003); see *In re A & C Props.*, 784 F.2d at 1380. Similarly, “[a] court’s decision whether to hold an evidentiary hearing is also reviewed for an abuse of discretion.” *Zurich Am. Ins. Co. v. Int’l Fibercom, Inc. (In re Int’l Fibercom, Inc.)*, 503 F.3d 933, 939-40 (9th Cir. 2007).

To determine whether the bankruptcy court has abused its discretion, we conduct a two-step inquiry: (1) we review de novo whether the bankruptcy court “identified the correct legal rule to apply to the relief requested” and (2) if it did, we consider whether the bankruptcy court’s application of the legal standard was illogical, implausible, or without support in inferences that may be drawn from the facts in the record. *United States v. Hinkson*, 585 F.3d 1247, 1262-63 & n.21 (9th Cir. 2009) (en banc).

## DISCUSSION

**A. The bankruptcy court properly identified the *A & C Properties* factors to evaluate the fairness and reasonableness of the compromise.**

Rule 9019(a) provides that, “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.”

“The bankruptcy court has great latitude in approving compromise agreements.” *In re Woodson*, 839 F.2d at 620. The Ninth Circuit has directed that the bankruptcy court must determine that the compromise is “fair and equitable” based on four factors:

In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider:

(a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

*In re A & C Props.*, 784 F.2d at 1381 (citation omitted). The law favors compromise, “and as long as the bankruptcy court amply considered the various factors that determined the reasonableness of the compromise, the court’s decision must be affirmed.” *Id.* (citations omitted).

“Each factor need not be treated in a vacuum; rather, the factors should be considered as a whole to determine whether the settlement

compares favorably with the expected rewards of litigation.” *Grief & Co. v. Shapiro (In re W. Funding Inc.)*, 550 B.R. 841, 851 (9th Cir. BAP 2016), *aff’d*, 705 F. App’x 600 (9th Cir. 2017). Ultimately, “[t]he trustee, as the party proposing the compromise, has the burden of persuading the bankruptcy court that the compromise is fair and equitable and should be approved.” *In re A & C Props.*, 784 F.2d at 1381.

Moreover, the bankruptcy court “need not rule upon disputed facts and questions of law, but only canvass the issues. A mini trial on the merits is not required.” *Burton v. Ulrich (In re Schmitt)*, 215 B.R. 417, 423 (9th BAP 1997) (citations omitted). Otherwise, “there would be no point in compromising; the parties might as well go ahead and try the case.” *Suter v. Goedert*, 396 B.R. 535, 548 (D. Nev. 2008) (citation and quotation marks omitted).

**B. The bankruptcy court did not err in applying the *A & C Properties* factors.**

**1. Probability of success**

The bankruptcy court properly considered the Trustee’s probability of success in the dissolution action. The Trustee represented that he had reviewed evidence and testimony from Ms. Kang that he thought likely established her assets as separate property. As a result, he was not confident that he could prevail in state court. The parties were highly combative, they had drawn out the dissolution litigation for over a decade, and any further litigation would likely require application of foreign law.

Given these uncertainties, it was not error for the bankruptcy court to find that this factor weighed in favor of the compromise.

Mr. Aguina argues that the court could not have properly assessed the probability of success because Ms. Kang never fully disclosed her assets. He faults the Trustee for failing to share with Mr. Aguina or the bankruptcy court the limited information that Ms. Kang had provided. He also complains that the Trustee's evaluation of the assets was insufficiently detailed.

While the Trustee could have provided more information to the bankruptcy court to support his assessment, we find no reversible error. The bankruptcy court needed only to canvass the issues and was not required to consider evidence and make factual findings as to the nature and value of each asset. *See id.*

It is also significant that, after Ms. Kang filed her declaration about her assets, the bankruptcy court continued the hearing so Mr. Aguina could respond. Inexplicably, Mr. Aguina did not take advantage of this opportunity.

Thus, the bankruptcy court did not err in relying on the Trustee's assessment as to the probability of success.

## **2. Difficulty of collection**

The bankruptcy court properly considered the difficulty of collecting any judgment from the Kang Parties if the Trustee prevailed. Their attorney represented that the settlement funds were in his account, so there

would be no difficulty in collecting the settlement from the Kang Parties. Conversely, the Trustee had argued that recovery in the state court litigation would likely be extremely difficult, given that most of the assets were located abroad. The bankruptcy court did not err.

Mr. Aguina argues that the bankruptcy court could not have properly evaluated the difficulty of collection because it needed Ms. Kang's disclosure as to her assets and interests. But the bankruptcy court did not need to hold a mini-trial on the compromise; for the reasons discussed above, we reject this argument.

### **3. Difficulty of continuing litigation**

Third, the bankruptcy court considered the litigation involved and the attendant expense, inconvenience, and delay. It noted that the contentious dissolution proceedings had been pending for many years and that Mr. Aguina would likely continue the litigation indefinitely if he could. Particularly in light of the parties' mutual animosity and the Trustee's estimate that it would cost at least \$50,000 to resolve the state court litigation (with doubtful chances of success), the bankruptcy court did not err in concluding that continued litigation would have been expensive and difficult.

Mr. Aguina fails to address any of the bankruptcy court's well-founded concerns. Rather, he simply concedes that the complexity, difficult, and expense "might be true as to the assets the Trustee identified" yet argues it might not be true as to unknown assets. The bankruptcy court

did not abuse its discretion when it credited the Trustee's views based on his investigation and rejected Mr. Aguina's speculation.

**4. Best interests of the creditors**

Finally, the bankruptcy court considered the best interests of the creditors. Although Mr. Aguina argued that he could pay more than what the Kang Parties offered in settlement, the Trustee pointed out that he offered nothing comparable to the Kang Parties' waiver of their sizeable claims. The bankruptcy court did not err in finding that the compromise was in the best interests of the creditors.

Mr. Aguina does not contest this factor.<sup>5</sup> Instead, he only complains that the compromise was unfair to him. As discussed below, this is not a relevant consideration, and the bankruptcy court was correct to ignore it.

Accordingly, the bankruptcy court did not abuse its discretion in evaluating the *A & C Properties* factors and holding that the compromise was reasonable.

**C. We reject Mr. Aguina's attempt to augment the *A & C Properties* factors.**

The bankruptcy court properly identified and applied the *A & C Properties* factors. Mr. Aguina incorrectly attempts to impose additional

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<sup>5</sup> In his reply brief, Mr. Aguina argues that the creditors did not benefit from the compromise because he had already paid all remaining creditors before the second hearing on the Compromise Motion. This argument ignores the fact that the Kang Parties were also creditors, with presumptively allowed claims based in large part upon a state court judgment. Mr. Aguina offered nothing on account of those claims.



requirements.

**1. Sale of estate assets under § 363**

Mr. Aguina argues that the bankruptcy court erred by failing to evaluate the compromise as a sale under the more rigorous standard of § 363. He is wrong.

We have held that a settlement agreement transferring estate assets must be evaluated both as a compromise under Rule 9019 and a sale under § 363. See *In re Mickey Thompson Ent. Grp., Inc.*, 292 B.R. at 421 (“[T]he disposition by way of ‘compromise’ of a claim that is an asset of the estate is the equivalent of a sale of the intangible property represented by the claim . . .”). However, we made this ruling because the claims in *Mickey Thompson* ran in only one direction:

[T]his settlement is in essence a sale of potential claims to the Settling Parties. While the Agreement purports to act as a mutual release of claims, no party has identified any claims which the Settling Parties could assert against the estate or Trustee. The record does not contain any evidence that a release of claims by the Settling Parties has value.

*Id.*

Conversely, in the present case, the Trustee and the Kang Parties agreed to execute a mutual release of claims, and each party had claims against the other. Cf. *Fuchs v. Snyder Tr. Enters. (In re Worldpoint Interactive, Inc.)*, 335 F. App’x 669, 670 (9th Cir. 2009) (“We are not persuaded by [appellant’s] contention that the settlement amounted to an asset sale

under [*Mickey Thompson*], because both parties to the settlement here released claims.”); *Morris v. Davis (In re Morris)*, BAP No. SC-15-1222-FJuKi, 2016 WL 1254357, at \*7 (9th Cir. BAP Mar. 29, 2016) (“[B]oth parties released claims, rendering the settlement a mutual compromise, rather than a sale. Accordingly, the court did not need to analyze the proposed settlement under § 363.”).

The Kang Parties held large claims against the estate. The claims had substance; some of them had already been reduced to judgment. The Kang Parties agreed to waive their claims in return for (among other things) the Trustee’s waiver of sanctions claims and the estate’s claims to the alleged community property. Because this settlement resolved mutual claims, it was not a sale requiring scrutiny under § 363.

## **2. Fairness to Mr. Aguina**

Mr. Aguina further argues that, in addition to the *A & C Properties* factors, the bankruptcy court was required to assess the fairness of the compromise to not only creditors, but also the debtor. There is no authority for this proposition because it would create an irreconcilable conflict of interest for trustees.

All litigation is risky. Plaintiffs settle cases to gain the certainty of recovering something and avoid the risk of recovering nothing. But when the plaintiff is a bankruptcy trustee, creditors and the debtor have different tolerance for litigation risk. The rewards and risks of litigation fall unequally on creditors and debtors, because creditors must get paid in full

before the debtor receives any distribution. Therefore, a settlement that produces money for creditors may be worthless to the debtor. This means that debtors often want the trustee to pursue risky litigation, rather than settle, in the hope that the recovery will be big enough to pay all creditor claims in full and leave something for the debtor. If the gamble does not pay off and the litigation is unsuccessful, the creditors have lost the benefit of the settlement, while the debtor is no worse off (the debtor would have gotten nothing under the settlement and still gets nothing when the litigation fails).

The bankruptcy court correctly understood that *A & C Properties* avoids this conflict. In the context of a settlement, the trustee and the court must consider the paramount interest of creditors and need not consider the debtor's interest.<sup>6</sup>

### 3. Public policy

Mr. Aguina also contends that the bankruptcy court failed to consider public policy when evaluating the compromise. He acknowledges that the Ninth Circuit authority does not require the bankruptcy court to examine this factor.

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<sup>6</sup> *DeBilio v. Golden (In re DeBilio)*, BAP No. CC-13-1441-TaPaKi, 2014 WL 4476585 (9th Cir. BAP Sept. 11, 2014), has nothing to do with fairness of a settlement to the debtor. Rather, we reversed in that case because the bankruptcy court "approved the settlement and sale motion at the hearing without reference to the *A & C* factors or any findings to support its decision." *Id.* at \*5. The bankruptcy court in this case explicitly addressed each of the *A & C Properties* factors.

Even if we were to consider public policy concerns, we would find no error. The law favors the peaceful resolution of disputes through compromise. This settlement promoted the amicable resolution of protracted and acrimonious litigation between Mr. Aguina and Ms. Kang. If anything, public policy favors the settlement over that wasteful and destructive course of action. Mr. Aguina argues that the settlement circumvented the public policy in favor of open disclosure of assets in dissolution proceedings and repeatedly references the family court's comments that "millions" in assets went missing under Ms. Kang's watch. But that was only a preliminary comment, it has never been substantiated, and the Trustee concluded after an investigation that he was satisfied with the disposition of the assets.

**D. The settlement agreement had adequate consideration.**

Mr. Aguina argues that the settlement agreement lacked sufficient consideration to constitute a binding contract, because Ms. Kang did not offer anything of value that she was not already obligated to provide. We are not persuaded by this argument.

As the Trustee pointed out, the Kang Parties were waiving about \$1.3 million in claims against the estate, most of which had already been reduced to judgment. This is more than enough consideration to support a contract.

Mr. Aguina's argument that the waiver was illusory is misguided. He claims that his objections to the Kang Parties' claims (filed a few days

relief from the stay permitted the family court to make certain determinations, but it did not remove any property from the estate or limit the bankruptcy court's jurisdiction.

In any event, the bankruptcy court did not make a final determination that the property at issue was Ms. Kang's separate property, nor did it need to. Rather, it canvassed the issues and determined that the compromise was fair and reasonable.

**F. The bankruptcy court did not err in declining to hold an evidentiary hearing.**

Finally, Mr. Aguina argues that the bankruptcy court erred in rejecting his request for discovery and an evidentiary hearing.

The bankruptcy court was within its discretion when it declined to draw out the proceedings any further with discovery and an evidentiary hearing. It was not required to make factual determinations on every disputed issue, which would defeat the point of settlement. *See In re Int'l Fibercom, Inc.*, 503 F.3d at 946 (holding that, where there was an adequate factual basis for the bankruptcy court's decision, an evidentiary hearing was unnecessary); *In re Kent*, Case No. 07-BK-03238-SSC, 2008 WL 5047821, at \*1 (Bankr. D. Ariz. July 25, 2008) ("Rule 9019 does not require an evidentiary hearing on every settlement agreement presented to the Court.").

**CONCLUSION**

The bankruptcy court did not abuse its discretion in approving the

compromise between the Trustee and the Kang Parties. We AFFIRM.

# Appendix “C”






3. The Motion is granted under 11 U.S.C. § 362(d)(1).
4. As to Movant, its successors, transferees and assigns, the stay of 11 U.S.C. § 362(a) is:
- a. ☐ Terminated as to the Debtor and the Debtor's bankruptcy estate.
  - b. ☐ Modified or conditioned as set forth in Exhibit \_\_\_\_\_ to the Motion.
  - c. ☐ Annulled retroactively to the bankruptcy petition date. Any postpetition acts taken by Movant to enforce its remedies regarding the nonbankruptcy action do not constitute a violation of the stay.
5. **Limitations on Enforcement of Judgment:** Movant may proceed in the nonbankruptcy forum to final judgment (including any appeals) in accordance with applicable nonbankruptcy law. Movant is permitted to enforce its final judgment only by (*specify all that apply*):
- a. ☐ Collecting upon any available insurance in accordance with applicable nonbankruptcy law.
  - b. ☐ Proceeding against the Debtor as to property or earnings that are not property of this bankruptcy estate.
6. This order is binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of the Bankruptcy Code.
7. ☐ The co-debtor stay of 11 U.S.C. § 1201(a) or § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the Debtor.
8. ☒ The 14-day stay prescribed by FRBP 4001(a)(3) is waived.
9. ☐ This order is binding and effective in any bankruptcy case commenced by or against the Debtor for a period of 180 days, so that no further automatic stay shall arise in that case as to the nonbankruptcy action.
10. ☐ This order is binding and effective in any future bankruptcy case, no matter who the debtor may be, without further notice.
11. ☒ Other (*specify*):

In addition to the relief granted in the *Order Granting Limited Relief From the Automatic Stay Under 11 U.S.C. § 362* ("Prior Order") entered on December 27, 2018, the automatic stay is lifted with respect to the nonbankruptcy action commenced in the Riverside Superior Court, Hemet Division, Case No. SWD 015783 (Family Court) specifically to allow the Family Court to make a determination as to the characterization only of the assets of the Debtor and Ms. Kang as community property, separate property of the Debtor, or separate property of Ms. Kang. The Family Court shall not divide any of the assets regardless of characterization but shall only decide on the characterization of each of the assets. All community property and separate property of the Debtor shall remain property of this bankruptcy estate and subject to the Trustee's administration in this case. Nothing herein shall grant any party the right to enforce any judgment, rights or remedies against property of the bankruptcy estate absent further order of the Court. All other terms set forth in the Prior Order shall remain in full force and effect.

###

Date: January 24, 2019

  
Wayne Johnson  
United States Bankruptcy Judge

# Appendix “D”

FILED & ENTERED

FEB 07 2020

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
BY gooch DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
RIVERSIDE DIVISION

In re:

AGUINA AGUINA, a.k.a. AGUINA,  
Debtor.

Case No.: 6:17-bk-17472-WJ

CHAPTER 7

Adv. No: 6:17-ap-01270-WJ

CHOONG-DAE KANG A.K.A. MITSUYO  
OKAMOTO A.K.A. KC KANG, MYUNG-  
JA KANG A.K.A. HIROKO OKAMOTO,  
AND KWANG-SA KANG A.K.A.  
MASASHI OKAMOTO,

Plaintiffs,

v.

AGUINA AGUINA, a.k.a. AGUINA,  
Defendant.

**PARTIAL SUMMARY JUDGMENT**

On February 6, 2020, the Court held a hearing regarding the second motion for summary judgment or partial summary adjudication [docket #94] ("MSJ") filed by the plaintiffs Choong-Dae Kang aka Mitsuyo Okamoto aka KC Kang, Myung-Ja Kang aka Hiroko Okamoto and Kwang-Sa Kang aka Masashi Okamoto (collectively, the "Plaintiffs") against the defendant Aguina Aguina ("Aguina"). The Court took the matter under submission and earlier today, the Court issued its memorandum of decision regarding the MSJ. Accordingly, pursuant to that decision, the Court hereby ORDERS:

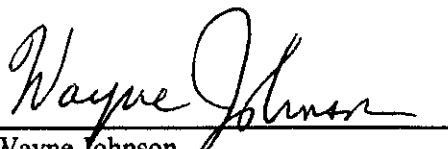
1. On January 29, 2014, the Superior Court of the State of California, County of Riverside issued a judgment in the matter of Kang et al v. Aguina, RIC10019528 ("State Court Action") entitled "Judgment on Jury Verdict" ("Judgment"). The Judgment awarded monetary damages of \$497,500 in favor of the Plaintiffs against Aguina for fraud. That award of \$497,500 and all interest, fees and costs arising upon that liability is nondischargeable in bankruptcy pursuant to 11 U.S.C. § 523(a)(2).

2. The remaining claims for relief by the Plaintiffs against Aguina will be tried on February 28, 2020.

IT IS SO ORDERED.

###

Date: February 7, 2020

  
Wayne Johnson  
United States Bankruptcy Judge



1 On July 6, 2021 at 3:00 p.m., the Court held a continued hearing regarding the trustee's  
2 "Motion for Order Approving Settlement and Compromise of Disputes by and Among Chapter 7  
3 Trustee and Choong-Dae Kang and Related Parties; Memorandum of Points and Authorities and  
4 Declaration of Karl T. Anderson in Support Thereof" ("Motion") filed by Karl T. Anderson, solely  
5 in his capacity as the chapter 7 trustee ("Trustee") for the bankruptcy estate of Aguina [docket  
6 number 281]. Melissa Davis Lowe appeared on behalf of the Trustee. Lazaro Fernandez appeared  
7 on behalf of the Kang parties. Derek May and Todd Curry appeared on behalf of the debtor,  
8 Aguina. No other appearances were made.

9 The Court, having considered the pleadings and the arguments of counsel at the hearings  
10 on the Motion, and good cause appearing based on the findings of fact and conclusions of law  
11 stated on the record at the original hearing on the Motion held on March 23, 2021 and at the  
12 continued hearing on the Motion held on July 6, 2021, hereby ORDERS as follows:

- 13 1. The Motion is granted for the reasons stated on the record.
- 14 2. The revised settlement agreement entered into by and among the Trustee and the  
15 Kang parties filed on May 27, 2021 [docket #315] is hereby approved.
- 16 3. The Trustee is authorized to execute any documents reasonably necessary and take  
17 all steps reasonably necessary to carry out the provisions of the settlement as contemplated in the  
18 agreement.
- 19 4. Claim 9, Claim 10, Claim 11, Claim 12, and Claim 13 filed by the Kang parties in  
20 this case are hereby deemed withdrawn and disallowed in their entirety.
- 21 IT IS SO ORDERED.

22 ###

23  
24  
25  
26 Date: July 7, 2021

  
Wayne Johnson  
United States Bankruptcy Judge

# **Appendix “F”**

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

CHOONG-DAE KANG et al.,

Plaintiffs and Respondents,

v.

AGUINA,

Defendant and Appellant.

E065768, E066587, E067169

(Super.Ct.No. RIC10019528)

OPINION

APPEAL from the Superior Court of Riverside County. Phillip J. Argento, James T. Warren, John D. Molloy, Judges.\* Affirmed in part; reversed in part with directions.

Aguina, in pro. per., for Defendant and Appellant.

Law Offices of John M. Siciliano and John M. Siciliano, for Plaintiffs and Respondents.

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\* Judge Argento is a retired judge from the Los Angeles Superior Court and Judge Warren is a retired judge from the Riverside Superior Court, both assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.



## 1. INTRODUCTION

In January 2014, following a September 2013 jury trial, a judgment for \$574,500, comprised of \$77,000 in contract damages and \$497,500 in fraud damages, was entered in favor of plaintiffs and respondents, Choong-Dae Kang (Kang), her two siblings, Myung-Ja Kang and Kwang-Sa Kang, and her father, Jae-Sung Kang (plaintiffs), on their complaint for breach of contract and fraud against defendant and appellant, Aguina, in Riverside County Superior Court case No. RIC10019528 (the civil action).

At the time of the trial and judgment, Aguina and Kang were husband and wife but were engaged in protracted marital dissolution proceedings in the family court in Riverside County Superior Court case No. SWD015783. They were disputing child and spousal support, attorney fees, and the character and division of their community estate, and Aguina was claiming the community estate had a net value of around \$8 million. In the family court on September 27, 2012, before the civil action was tried, Aguina and Kang orally stipulated through their counsel that (1) any judgment obtained in the civil action against Aguina would be "a community debt," and that (2) five real properties in Murrieta were Aguina's separate properties.

On April 2, 2014, the judge who presided over the trial in the civil action (Judge Argento) issued an order staying enforcement of the \$574,500 judgment against Aguina pending: (1) plaintiffs' presentation of sufficient evidence that they had standing to sue for the breach of contract and fraud claims they prosecuted in the civil action on behalf of

Kang's deceased mother; and (2) the family court's issuance of a judgment determining and dividing Kang and Aguina's community estate.

In these consolidated appeals, Aguina challenges three postjudgment orders of the court in the civil action (by Judge Molloy): (1) the February 10, 2016, order determining plaintiffs had standing to sue, or that the standing issue was *res judicata* in the civil action and could not be collaterally attacked following the judgment (case No. E065768); (2) the July 12, 2016, order lifting the April 2, 2014, stay order (by Judge Argento) (case No. E066587); and (3) the October 19, 2016, order invalidating the family court's April 16, 2016, order (by Judge Warren) removing the abstract of judgment or judgment lien, recorded on March 10, 2014, against Aguina's five real properties in Murrieta, securing payment of the \$574,500 judgment (case No. E067169).

Aguina claims the court in the civil action exceeded its authority in issuing these orders because the orders interfered with the family court's priority of jurisdiction to determine and divide his and Kang's community estate. We agree. The family court had priority of jurisdiction to characterize and divide Aguina and Kang's community estate because proceedings on these issues were pending in the family court when the civil action was filed. Thus, the court in the civil action exceeded its authority, or the scope of its concurrent subject matter jurisdiction with the family court, in lifting the April 2, 2014, order staying enforcement of the judgment and in invalidating or prohibiting the enforcement of the family court's August 29, 2016, order removing the abstract of judgment or judgment lien recorded against Aguina's five separate Murrieta real

properties. We reverse the July 12 and October 16, 2016, postjudgment orders, and remand the matter for further proceedings consistent with this opinion.

## II. FACTS AND PROCEDURE

### A. Background/Family and Civil Court Proceedings Predating the Challenged Orders

Aguina and Kang were married in 1999, and there are two children of the marriage. In September 2008, Aguina filed a petition to dissolve the marriage in *In re Marriage of Aguina and Kang*, Riverside County Superior Court case No. SWD015783.<sup>1</sup> (*Aguina I*, *supra*, E058806 [at p. 3].) Since the dissolution proceeding was filed, Aguina and Kang have been engaged in protracted litigation both in the family court and in this civil case. (*Ibid.*)

On March 23, 2015, the family court issued a “status only” judgment dissolving Aguina and Kang’s marriage effective February 6, 2015. (*Aguina II*, *supra*, E063571 [at p. 2].) The judgment did not adjudicate any other issues. (*Ibid.*) On February 6, 2015, Aguina and Kang appeared for trial in the family court. During a late 2014 trial readiness conference, Kang and Aguina agreed there were issues to try concerning child and spousal support, attorney fees, and the division of the community estate. (*Id.* [at pp. 4-5].) But at trial, Aguina was unrepresented by counsel and unprepared to proceed; Kang

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<sup>1</sup> On our own motion, we take judicial notice of this court’s opinion in *In re Marriage of Aguina Aguina and Choong-Dae Kang* (Dec. 15, 2016, E063571) [nonpub. opn.] (*Aguina II*). (Evid. Code, §§ 452, subd. (d), 459, subd. (a).) This court’s opinion in an earlier appeal in the family court case, *In re Marriage of Aguina Aguina and Choong-Dae Kang* (*Aguina I*) (Dec. 10, 2014, E058806) [nonpub. opn.], is part of the record on appeal. Thus, Aguina’s request for judicial notice of our opinion in *Aguina I*, filed on June 8, 2017, in case No. E067169, is moot.

was represented by counsel but still refused to call any witnesses or present any evidence. Kang claimed there were no longer any community assets to divide, and only asked the family court to dissolve the marriage. (*Id.* [at pp. 4-6].) The court dissolved the marriage effective February 6, 2015, but left its prior orders in effect and did not enter judgment on any support, attorney fee, or community estate issues. (*Ibid.*)<sup>2</sup>

Several years earlier, in October 2010, the plaintiffs in this civil action (Kang, her two siblings, and father) filed a complaint against Aguina alleging breach of contract and fraud. Plaintiffs claimed Aguina owed them over \$1.135 million for loans that Kang's mother—who died in 2008 while a resident of Japan—made to Aguina in 2004 to enable him to invest in several developable parcels of land in LaCresta or Murrieta. (*Aguina I, supra*, E058806 [at pp. 3-4].) Plaintiffs alleged they were the heirs at law of Kang's mother under Japanese law, and thus had standing to sue for the claims of Kang's mother or her estate. When the civil action was filed, Kang's siblings and father were residents of Japan, and Aguina and Kang lived in Murrieta. (*Id.* [at p. 3].) Before the civil action was tried, Kang's father died. Kang testified at trial in the civil action that she was responsible for settling her mother's estate and representing her immediate family members in the civil trial.

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<sup>2</sup> In *Aguina II*, Aguina appealed the status-only judgment claiming it was void, and this court rejected that claim and upheld the judgment. (*Aguina II, supra*, E063571 [at p. 2].)

In February 2011, the court in the civil action issued a prejudgment right to attach order and writs of attachment against five real properties held solely in Aguina's name, as security for plaintiffs' breach of contract claim against Aguina. Later that month, the court stayed the civil action for six months pending the resolution by the family court of whether the loans from Kang's mother were separate or community debts. The stay expired without a ruling by the family court on this question. (*Aguina I, supra*, E058806 [at pp. 5-6].)

In May 2011, Aguina moved the family court to order Kang to pay \$25,000 of his attorney fees incurred in the family court proceedings, or to order the amount paid from "any of the various items of community property or other disputed property" in the family court proceedings. In the motion, Aguina asked the family court to set aside at least one of the writs of attachment so he could sell at least one of the Murrieta properties and pay his attorney fees, and to consolidate the civil case with the family court case because he and Kang continued to dispute the community or separate property character of the loans from or debts owed to Kang's mother. Aguina claimed he had very little income and was insolvent, but Kang earned substantial income, had "complete control" over the parties' "joint businesses and assets," and owned and controlled additional assets in the United States and Japan. Aguina claimed his five Murrieta real properties were worth \$1,425 to \$1,875 million, substantial portions of the loans from Kang's mother had been repaid, and Kang was hiding substantial assets. (*Aguina I, supra*, E058806 [at p. 6].)

On October 31, 2011, the family court ordered Kang and Aguina to list the five Murrieta properties for sale and to “cooperate in the removal of any writ of attachment(s) in order for the sale [of the properties] to be consummated.” (*Aguina I, supra*, E058806 [at p. 7].) This order directed that the proceeds from the first parcel to be sold were to be split evenly between Aguina and Kang, and the family court reserved jurisdiction to characterize the parcels and their proceeds as community or separate assets. (*Ibid.*) Then, during a September 27, 2012 family court hearing, Kang and Aguina stipulated that (1) the five Murrieta real properties were Aguina’s separate properties, and (2) any judgment plaintiffs obtained against Aguina in the civil action would be a “community debt.” On May 14, 2013, the family court issued an order discharging the writs of attachment against Aguina’s five Murrieta real properties. (*Aguina I, supra*, E058806 [at pp. 2, 7-8].)<sup>3</sup> The record on the current appeals indicates that the Murrieta real properties have not been sold and that Aguina still holds title to them solely in his name.

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<sup>3</sup> In *Aguina I*, Kang appealed the family court’s order discharging the writs of attachment, claiming the family court lacked jurisdiction to discharge them. (*Aguina I, supra*, E058806 [at pp. 7-8].) In *Aguina I*, this court held that the family court had “priority jurisdiction” to discharge the writs (*Levine v. Smith* (2006) 145 Cal.App.4th 1131, 1135), and that by issuing the writs, the civil court exceeded its authority and interfered with the family court’s exclusive jurisdiction concerning the characterization and division of Kang and Aguina’s community estate (*Aguina I, supra*, E058806 [at pp. 12-14], citing *Askew v. Askew* (1994) 22 Cal.App.4th 942, 961 [“After a family law court acquires jurisdiction to divide community property in a dissolution action, no other department of a superior court may make an order adversely affecting that division.”])).

In September 2013, the civil action against Aguina was tried to a jury, with Judge Argento presiding. On September 27, 2013, the jury returned a verdict for plaintiffs of \$574,500, comprised of \$77,000 in breach of contract damages and \$497,500 in damages for fraud. On January 29, 2014, the court in the civil case (Judge Argento) entered judgment on the \$574,500 jury verdict, and a notice of entry of the judgment was served and filed on March 18, 2014. Aguina did not appeal the judgment, and it is final.

On October 16, 2013, before the judgment in the civil action was entered,<sup>4</sup> the court in the civil action (Judge Argento) issued an order to show cause (OSC) why the enforcement of the judgment should not be stayed on either or both of two grounds: (1) plaintiffs' presentation of sufficient evidence of their *standing to sue* on behalf of Kang's deceased mother or her estate, and (2) the family court's determination and division of Kang and Aguina's community assets and debts. Both sides briefed these issues, and submitted competing evidence concerning plaintiffs' standing and lack of standing.

On March 10, 2014, while the OSC was pending, plaintiffs recorded an abstract of judgment in Riverside County on the \$574,500 judgment, thus encumbering Aguina's five real properties in Murrieta with a judgment lien. (Code Civ. Proc., § 697.310, subd. (a).) On April 2, 2014, following a March 27 hearing on its OSC, the court in the civil action (Judge Argento) issued an order staying enforcement of the \$574,500 judgment on

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<sup>4</sup> The civil court's four-month delay in entering the judgment until January 29, 2014, was inadvertent; in his April 2, 2014, decision and ruling, Judge Argento wrote that he thought he had signed plaintiffs' proposed judgment shortly after the jury verdict was rendered on September 27, 2013.

each of the grounds underlying the OSC—the question of plaintiffs’ standing to sue and the pending family court proceedings.<sup>5</sup>

On the standing issue, the court ruled that plaintiffs did not adduce sufficient evidence of their standing to sue Aguina for breach of contract and fraud on behalf of Kang’s deceased mother, either at trial or in response to the OSC, because plaintiffs did not show that Kang’s mother, a Korean national, was a Japanese citizen at the time of her death. If she had been, the court ruled, her husband and children (plaintiffs) would have automatically succeeded to her claims against Aguina, under Japanese law, without the need for probate proceedings or a court order authorizing them to sue. Thus, the court stayed enforcement of the judgment on this ground pending plaintiffs’ presentation of “satisfactory evidence” of their standing, that is, that Kang’s mother was a Japanese citizen at the time of her death.

On the issue of the family court’s priority of jurisdiction, the court ruled that its judgment enforcement “processes” would be wrongfully used if the judgment could be enforced against any community property before the family court determined and divided the community estate. The court explained: “It would be wrong . . . for Plaintiff Kang to attach assets that are hers and Aguina’s as part of the community; she would be attaching

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<sup>5</sup> We grant Aguina’s unopposed request for judicial notice of the civil court’s April 2, 2014, notice of decision and findings (by Judge Argento). (Evid. Code, §§ 452, subd. (d), 459, subd. (a).)



against her own interest in community property. That scenario is one reason why, before this Court authorizes enforcement processes, the Family Law Court should decide whether (i) only Aguina's separate property or (ii) the community property, or (iii) both are chargeable with debt in the form of the Judgment's contract damages [\$77,000], tort damages [\$497,500], either, or both[.]” (*In re Marriage of Bell* (1996) 49 Cal.App.4th 300, 309 [\$150,000 payment to settle tort claim against wife for embezzlement chargeable against community estate where community benefited from the embezzled funds]; Fam. Code, § 2625.)

The court further ruled that it “lack[ed] jurisdiction” to decide several issues within the jurisdiction of the family court, including (1) whether the September 27, 2012, “stipulation or purported stipulation reached between Kang and Aguina . . . was lawful”; (2) if so, whether Kang was collaterally estopped from asserting that the contract and tort damages in the civil case were not a community debt; and (3) regardless of the stipulation or purported stipulation, whether the community benefited from Aguina's breach of contract and fraud.

The court further ruled that its stay order did not apply “to any separate property of Aguina's that the parties have already stipulated to as his separate property *by signed stipulation* that is not being challenged in the Family Law Court,” and that its stay order

did not apply “to property already found to be Aguina’s separate property, if any,” by the family court. (*Italics added.*)<sup>6</sup>

In June 2015, the civil action was assigned to Judge Molloy. In July 2015, plaintiffs filed a second civil action against Aguina (Riverside County Superior Court case No. MCC1500292) for fraudulent conveyance based on Aguina’s November 2013 issuance of a \$500,000 deed of trust against his Murrieta real properties and his attempts to sell his remaining interest in the properties. Plaintiffs sought to impose a constructive trust on the properties to prevent Aguina from further encumbering or selling them. The fraudulent conveyance action was consolidated with the (first) civil action.

Shortly after they filed the fraudulent conveyance action, plaintiffs applied for a temporary restraining order and preliminary injunction in that action, prohibiting Aguina from transferring or selling his remaining interest in the Murrieta properties. Plaintiffs claimed the April 2, 2014, stay order was giving Aguina “a window of opportunity to fraudulently circumvent” paying the \$574,500 judgment, and Aguina “appear[ed] to be attempting to transfer his real properties before the family law court [could] issue a

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<sup>6</sup> This portion of the April 2, 2014, stay order is inconsistent with the portion indicating the family court had to determine whether the \$574,500 judgment, or any part of it, was chargeable solely against Aguina’s separate property or Kang and Aguina’s community property. Even so, the record in the current appeals does not show that Kang and Aguina have entered into any such *signed stipulation*, or, moreover, that the family court has to date determined that the \$574,500 judgment, or any part of it, is chargeable solely against Aguina’s separate property and not against any community property.

remaining judgment regarding community property and other matters.”<sup>7</sup> The temporary restraining order was granted, and the hearing on the preliminary injunction application was held on October 27, 2015. Meanwhile, Aguina filed a motion to “reverse” the \$574,500 judgment or order it “unenforceable” based in part on plaintiffs’ lack of standing, and this motion was heard with the preliminary injunction application on October 27.

At the October 27, 2015, hearing, the court (Judge Molloy) denied plaintiffs’ application for the preliminary injunction, reasoning in part that the family court acquired jurisdiction to characterize and divide the community estate when the marital dissolution petition was filed, and on October 31, 2011, the family court ordered the Murrieta properties to be sold and the writs of attachment against them removed in order to allow the properties to be sold. The court also noted that the April 2, 2014, order staying enforcement of the judgment was issued so that the family court could determine whether the judgment, or any part of it, was a community debt chargeable against community property, or a separate debt chargeable against Aguina’s separate property.

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<sup>7</sup> This allegation was ironic, given that Kang had every opportunity to prove the extent, if any, of the community assets and debts at the February 6, 2015, trial in the family court. As observed in *Aguina II*, issues concerning permanent child and spousal support, attorney fees, and the determination and division of the community estate came on for trial in the family court on February 6, 2015, but both Aguina and Kang refused to call any witnesses or present any evidence on these issues. (*Aguina II, supra*, E063571 [at pp. 3-4].) The family court thus ordered that its prior orders would remain in effect and reserved jurisdiction to characterize and divide the community estate. (*Id.* [at p. 6].)

The court also ruled plaintiffs had not demonstrated a likelihood of prevailing on their fraudulent conveyance claim because they had never adduced sufficient evidence of their standing to sue on behalf of Kang's mother during the 19 months since the April 2, 2014, stay order was issued.<sup>8</sup> At the conclusion of the October 27 hearing, the court set a further OSC to allow plaintiffs *another* opportunity to prove they had standing, and on that basis satisfy the *first part* of the April 2, 2014, stay order.

*B. The Challenged Postjudgment Orders*

1. The February 10, 2016, Order Determining Plaintiffs Had Standing (E065768)

On February 10, 2016, following a February 5 hearing, the civil court (Judge Molloy) discharged the first part or standing issue portion of the April 2, 2014, stay order on the ground the standing issue was res judicata and could not be collaterally attacked in postjudgment proceedings. The court expressly disagreed with Judge Argento's April 2, 2014, decision to stay enforcement of the judgment on the ground plaintiffs had adduced insufficient evidence of standing at trial, and in the posttrial proceedings on the OSC.

The court explained: "The notion that the trial did not dispose of [the standing] issue is contrary to any interpretation of what a trial is supposed to be. . . . [T]he only way to attack what happened at trial was by . . . a [motion for] judgment notwithstanding the

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<sup>8</sup> The court also noted that it "appear[ed]" Aguina's current attempts to sell the Murrieta properties was an attempt to comply with the family court's "valid" October 31, 2011, order, rather than an attempt to defraud plaintiffs. Counsel for Kang pointed out that Aguina's recent issuance of the \$500,000 deed of trust against the properties violated the family court's October 31, 2011, order, and Aguina should have given half of that borrowed amount, or \$250,000, to Kang.

verdict, a motion for a new trial, or appeal [based on] insufficiency of the evidence . . . .”<sup>9</sup>

Aguina then told the court that Kang testified at the September 2013 trial that her mother was a citizen of Japan—the element Judge Argento ruled was necessary to establish plaintiffs’ standing. Aguina claimed he had adduced posttrial evidence showing that Kang’s testimony “was a lie.” At that point, the court said it was “absolutely satisfied” that the standing issue was *res judicata*, and quoted from *Pico v. Cohn* (1891) 91 Cal. 129, 133, where it was held that a judgment could not be set aside based on fraudulent trial testimony, because fraudulent trial testimony is not “extrinsic or collateral to the questions examined and determined in the action.”<sup>10</sup>

The court also ruled that the April 2, 2014, stay order would remain in effect, but ordered further briefing on whether the plaintiffs other than Kang (Kang’s two siblings and her deceased father), who were not parties to the marital dissolution proceedings, should be stayed from enforcing the \$494,500 fraud portion of the \$574,000 judgment

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<sup>9</sup> Aguina moved for a judgment notwithstanding the verdict following the trial in the civil action, but in it he did not claim plaintiffs presented insufficient evidence of their standing to sue. In any event, this motion was denied and Aguina did not appeal the judgment.

<sup>10</sup> In the quoted portion, the *Pico* court explained that, when a judgment may be set aside based on fraud, “[i]n all such instances the unsuccessful party is really prevented, by the fraudulent contrivance of his adversary, from having a trial; *but when he has a trial, he must be prepared to meet and expose perjury then and there.* He knows that a false claim or defense can be supported in no other way; that the very object of the trial is, if possible, to ascertain the truth from the conflict of the evidence, and that, necessarily, the truth or falsity of the testimony must be determined in deciding the issue. The trial is his opportunity for making the truth appear. If, unfortunately, he fails, being overborne by perjured testimony, and if he likewise fails to show the injustice that has been done him on motion for a new trial, and the judgment is affirmed on appeal, he is without remedy.” (*Pico v. Cohn, supra*, 91 Cal. at p. 134, italics added.)

against Aguina. The standing issue, however, was “satisfied” by the February 10, 2016, order, which ruled that plaintiffs had standing to sue because the issue was *res judicata*, and which discharged the OSC (and stay order) “as to the standing issue only.”

2. The July 12, 2016, Order Lifting the April 2, 2014, Stay Order (E066587)

At a March 4, 2016, hearing, the court in the civil case (Judge Molloy) ruled that the April 2, 2014, stay order would remain in effect for the entire judgment based on the family court’s priority of jurisdiction to determine whether all or any part of the judgment was a community debt (*In re Marriage of Bell, supra*, 49 Cal.App.4th at p. 309), and based on the civil court’s inability to apportion the judgment among Kang and the other plaintiffs. On May 12, 2016, the court ordered the parties to brief whether Aguina’s appeal from the court’s February 10, 2016, order (in case No. E065768) required all further proceedings in the consolidated civil actions to be stayed.

On July 12, 2016, following a June 23 hearing, the court in the civil case (Judge Molloy) lifted the April 2, 2014, stay order. The court explained: “The Court doesn’t feel that the enforcement of the judgment should be stayed pending the appeal. Notwithstanding . . . that Mr. Aguina has convinced the Court of Appeal[] that he can appeal the ruling as to standing.”

3. The October 19, 2016, Order *Invalidating* the Family Court's August 29, 2016, Order Removing the Judgment Lien Against the Murrieta Real Properties (E067169)<sup>11</sup>

On August 29, 2016, the family court (Judge Warren) issued an order removing the abstract of judgment or judgment lien, recorded on March 10, 2014, against Aguina's five Murrieta real properties, so that Kang could use, encumber, and transfer those properties. (Fam. Code, §§ 2040, subd. (a)(2), 2010, subd. (e).) Then, on October 19, 2016, following an October 11 hearing, the court in the civil action (Judge Molloy) granted plaintiffs' motion for injunctive relief and issued an order invalidating or prohibiting the enforcement of the family court's August 29, 2016, order removing the abstract of judgment or judgment lien.

The court (Judge Molloy) reasoned that, in removing the abstract and judgment lien, the family court interfered with the court's jurisdiction in the civil action to enforce the judgment. The court recognized that the family court had jurisdiction to characterize and divide the community estate, but noted that the civil action was brought by "multiple plaintiffs" other than Kang, who were not parties to the dissolution proceedings, and that Aguina could "[p]resumably . . . seek reimbursement from Kang [f]or payments made by

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<sup>11</sup> Given our consolidation of Aguina's appeals in case Nos. E065768, E066587, and E067169, and given that the remaining portions of his requests for judicial notice in these appeals are limited to court records filed in the civil action and family court case, we grant the remaining requests to the extent the court documents are not already part of the record in these appeals. (Evid. Code, §§ 452, subd. (d), 459, subd. (a).) All of these court records are relevant to these appeals in a broad sense, and we discern no prejudice to Kang by their admission. (Cf. *People v. Townsel* (2016) 63 Cal.4th 25, 42, fn. 2 [judicial notice of irrelevant documents cannot be taken].)





[Aguina] in satisfaction of the judgment should the family court determine that the judgment is a community debt.”

The court observed that the other plaintiffs would lose their security interest in the Murrieta properties by the removal of the judgment lien, and that they might be unable to collect the judgment if the judgment lien were removed. The court also noted that Aguina made “several motions” to remove the judgment lien, that all of those motions had been denied and not appealed, and that the court itself no longer had jurisdiction to remove the judgment lien. On November 17, 2016, the family court (Judge Warren) imposed a terminating sanction against Kang and struck her responsive pleading in the family court case, thus authorizing the family court to determine and divide Kang and Aguina’s community estate by default and without Kang’s participation. By this order, the family court expressed concern that “millions of dollars in financial community property assets, of which [Aguina] has a vested interest, have gone missing while under [Kang’s] care and control. For example, the parties owned several condominiums in Japan. [Kang] has testified on numerous occasions that those condominiums were lost due to legal action in Japan and were purchased by Astoria, Inc. in Hong Kong. It was not until [Kang’s] 2015 tax filings were received that [Kang’s] sole ownership of Astoria, Inc. was discovered.”

### III. DISCUSSION

Aguina challenges the February 10, July 12, and October 19, 2016, orders (by Judge Molloy) in the civil action. Together, the February 10 and July 12 orders lifted the



April 2, 2014, order (by Judge Argento) staying enforcement of plaintiffs' \$574,500 judgment against Aguina, and the October 19 order invalidated the family court's August 19, 2016, order (by Judge Warren) removing the judgment lien against Aguina's five Murrieta real properties, imposed by the March 10, 2014, abstract of judgment. Aguina claims each of these orders must be reversed because they interfered with the family court's priority of jurisdiction to determine and divide Aguina and Kang's community estate, and the civil court (Judge Molloy) thus exceeded its jurisdiction or authority in issuing the orders. We agree.

A. *The Standing Issue*

We begin with the issue of plaintiffs' standing to sue Aguina in the civil action for breach of contract and fraud on behalf of Kang's deceased mother based on the mother's alleged loans to Aguina in 2004. By its February 10, 2016, order,<sup>12</sup> the court determined that the issue of plaintiffs' standing was adjudicated in favor of plaintiffs during the

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<sup>12</sup> Notwithstanding this court's June 17, 2016, order in case No. E065768 that the February 10, 2016, order was appealable, it is now apparent that the order was not appealable, separate from the July 12, 2016, order lifting the April 2, 2014, order staying enforcement of the judgment. Not all postjudgment orders are appealable, despite the broad language of Code of Civil Procedure section 904.1, subdivision (a)(2) (allowing appeal "[f]rom an order made after a judgment . . ."), and even though it has generally been said that "[a]n order *regarding* enforcement of a judgment is immediately appealable" (*Housing Group v. United Nat. Ins. Co.* (2001) 90 Cal.App.4th 1106, 1110, fn. 3, *italics added*). Indeed, postjudgment orders that do not make a final determination of the rights or obligations of the parties, and that anticipate or are preparatory to later proceedings, are not immediately appealable. (*Roden v. AmerisourceBergen Corp.* (2005) 130 Cal.App.4th 211, 213-216.) The February 10 order is not a separately appealable order. By itself, it did not lift the April 2, 2014, stay order and did not finally determine the parties' rights regarding the lifting of the stay. That determination was made by the July 12, 2016, order lifting the stay. Nonetheless, the February 10 order is reviewable on Aguina's consolidated appeal from the July 12 order.

September 2013 trial and could not be collaterally attacked. Aguina claims the February 10 order was in error because he adduced indisputable evidence during posttrial proceedings, conclusively showing that plaintiffs did not have standing because Kang's mother was not a Japanese citizen.

Assuming plaintiffs' standing turned solely on whether Kang's mother was a Japanese citizen at the time of her death in 2008, and assuming further that Aguina adduced indisputable or conclusive evidence that she was not a Japanese citizen, the court (Judge Molloy) correctly ruled that the issue of plaintiffs' standing was or should have been adjudicated during the September 2013 trial and could not be collaterally attacked. (See 8 Witkin, Cal. Procedure (5th ed. 2008) Attack on Judgment in Trial Court, § 7, pp. 590-591 [nonjurisdictional error cannot be raised in collateral attack, and insufficiency of evidence is nonjurisdictional error]; *Pico v. Cohn*, *supra*, 91 Cal. at p. 134 [perjured testimony must be exposed as such during trial or motion for new trial].)

#### *B. The Family Court's Priority of Jurisdiction*

We next consider Aguina's claim that the court in the civil action, by its July 10 and October 19, 2016, orders, exceeded its jurisdiction in lifting the April 2, 2014, stay order and in prohibiting enforcement of the family court's August 29, 2016, order removing the abstract of judgment or judgment lien from Aguina's Murrieta real properties.

Our state Constitution establishes one superior court comprised "of one or more judges" in each county. (Cal. Const., art. VI, § 4.) Because a superior court is but one

tribunal, its judges “hold but one and the same court” and the jurisdiction they exercise in any cause is that of the court and not the individual judge or department. (*Williams v. Superior Court* (1939) 14 Cal.2d 656, 662.) Under the doctrine of “priority of jurisdiction,” the first judge or department to assume and exercise jurisdiction in a cause or matter acquires *exclusive jurisdiction* in the matter until it is disposed of. (*Levine v. Smith, supra*, 145 Cal.App.4th at p. 1135; *Williams v. Superior Court, supra*, at p. 662; *Glade v. Glade* (1995) 38 Cal.App.4th 1441, 1449-1450.)

The doctrine of priority of jurisdiction avoids “conflicting adjudications of the same subject-matter” by different departments of the same superior court (*Williams v. Superior Court, supra*, 14 Cal.2d at p. 662) or by superior courts of different counties (*Ford v. Superior Court* (1986) 188 Cal.App.3d 737, 742; see also *People ex rel. Garamendi v. American Autoplan, Inc.* (1993) 20 Cal.App.4th 760, 769-776 [if invoked by appropriate pleading, the rule of “exclusive concurrent jurisdiction” requires stay of second action filed in different county pending disposition of first action]).

As explained in *Williams*: “[W]here a proceeding has been duly assigned for hearing and determination to one department of the superior court . . . and the proceeding so assigned has not been finally disposed of . . . it is beyond the jurisdictional authority of another department of the same court to interfere with the exercise of the power of the department to which the proceeding has been so assigned. [Citation.] . . . If such were not the law, conflicting adjudications of the same subject-matter by different departments of the one court would bring about an anomalous situation and doubtless lead to much

confusion. [Citation.]” (*Williams v. Superior Court*, *supra*, 14 Cal.2d at p. 662.) We also observe that the “family court” is not a separate part of the superior court with special jurisdiction or separate subject matter jurisdiction; it is ““instead the superior court performing one of its general duties.”” (Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2017) ¶ 3:3.10, p. 3-3; *In re Chantal S.* (1996) 13 Cal.4th 196, 201.)

The priority of jurisdiction doctrine has been applied to invalidate superior court orders that *may* conflict or interfere with the family court’s priority of jurisdiction to characterize and divide a community estate. (*Askew v. Askew*, *supra*, 22 Cal.App.4th at pp. 961-962 [civil department of superior court had no authority to consider husband’s civil suit against wife for fraud based on wife’s “false statements of love and sexual desire” given wife’s previously-filed dissolution proceeding and family court’s exclusive jurisdiction to characterize and divide community estate]; *In re Marriage of Schenk* (1991) 228 Cal.App.3d 1474, 1482-1484 [civil law and motion department had no authority to order sale of family home to pay husband’s support arrearages when family court had retained jurisdiction to divide community interests in the home].)

The priority of jurisdiction doctrine has also been applied to restrain superior court orders in favor of the third party judgment creditor of one spouse, when the orders may interfere with the family court’s jurisdiction and authority to characterize and divide the spouse’s community estate with the nondebtor spouse. (*In re Marriage of Van Hook* (1983) 147 Cal.App.3d 970, 980-982 [third party judgment creditor of wife restrained

from executing on community bank account and stock shares where family court had yet to enter judgment dividing community estate]; *Glade v. Glade*, *supra*, 38 Cal.App.4th at pp. 1449-1450, 1455-1456 [foreclosure action by husband's parents on community home stayed pending determination and division of community estate].)

*Glade* is particularly instructive. In *Glade*, the husband's parents, as trustees of their intervivos trust, held a note secured by a deed of trust against the husband and wife's home. After the wife petitioned to dissolve the marriage, the parents filed a foreclosure action and obtained summary judgment in that action against the husband and wife. (*Glade v. Glade*, *supra*, 38 Cal.App.4th at pp. 1445-1448.) Before the order granting the summary judgment was issued, the family court, on the wife's motion, joined the trust in the marital dissolution proceeding and stayed the foreclosure action. The wife argued that if the parents reconveyed the home to the husband following the foreclosure, the husband might obtain relief not otherwise available to him in the family court "upon division of the community estate." (*Id.* at pp. 1446-1448.)

The *Glade* court held that the family court had "priority of jurisdiction" and that the judge in the foreclosure action therefore "lacked jurisdiction to award summary judgment" to the parents for the home. (*Glade v. Glade*, *supra*, 38 Cal.App.4th at pp. 1450, 1457.) The summary judgment for the parents interfered with the family court's priority of jurisdiction to determine and divide the husband and wife's community estate. (*Id.* at p. 1455; *Askew v. Askew*, *supra*, 22 Cal.App.4th at p. 961 ["After a family law

court acquires jurisdiction to divide community property in a dissolution action, no other department of a superior court may make an order adversely affecting that division.”].)

Here, the July 10 and October 19, 2016, orders interfered with the family court’s priority of jurisdiction to determine and divide Kang and Aguina’s community estate. In lifting the April 2, 2014, order staying enforcement of the judgment, and in purporting to invalidate the family court’s August 29, 2016, order removing the judgment lien from Aguina’s Murrieta real properties, the court in the civil action allowed plaintiffs to satisfy the judgment by levying on and selling the Murrieta real properties. This could have allowed Kang to recover relief from Aguina not otherwise available to her in the family court proceedings. (*Glade v. Glade, supra*, 38 Cal.App.4th at pp. 1446-1450.)

Indeed, in the family court on September 27, 2012, Kang and Aguina orally stipulated, through their counsel, that any judgment plaintiffs obtained in the pending civil action for fraud and breach of contract would be “a community debt.” This suggested that the community estate benefited from the loans from Kang’s mother *and also benefited* from Aguina’s fraud and breach of contract in connection with those loans, as plaintiffs were alleging in the civil action. (*In re Marriage of Bell, supra*, 49 Cal.App.4th at p. 309.) Whether the community estate in fact did benefit from Aguina’s breach of contract and fraud, and whether there were any community assets to divide, was an issue for the family court to decide. At the time of the most recent consolidated appeal in case No. E067169, the family court had yet to determine these questions.



#### IV. DISPOSITION

The February 10, 2016, order determining that the issue of plaintiffs' standing was adjudicated during the September 2013 trial is affirmed. The July 12, 2016, order lifting the April 2, 2014, order staying the enforcement of plaintiffs' \$574,500 judgment against Aguina in the civil action, and the October 19, 2016, order invalidating or prohibiting the enforcement of the family court's August 29, 2016, order removing the abstract of judgment or judgment lien against Aguina's five Murrieta real properties, are reversed. The matter is remanded to the superior court in case No. RIC10019528 for further proceedings consistent with this opinion.

Appellant is awarded his costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

FIELDS  
J.

We concur:

RAMIREZ  
P. J.

MILLER  
J.

# **Appendix "G"**

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1116(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1116(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1116.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION TWO**

CHOONG-DAE KANG et al.,

Plaintiffs and Respondents,

v.

AGUINA,

Defendant and Appellant.

E068756

(Super.Ct.No. RIC10019528)

OPINION

APPEAL from the Superior Court of Riverside County. Daniel A. Ottolia, Judge.

Reversed.

Aguina, in pro. per., for Defendant and Appellant.

Law Offices of John M. Siciliano and John M. Siciliano for Plaintiffs and  
Respondents.

## I. INTRODUCTION

Defendant and appellant Aguina and plaintiff and respondent Choong-Dae Kang are formerly husband and wife. On March 23, 2015, the family court in Aguina and Kang's marital dissolution proceeding, Riverside County Superior Court case No. SWD015783, issued a status only judgment dissolving the marriage, effective February 6, 2015; but it did not enter a judgment determining or dividing Kang and Aguina's community estate. (*Aguina v. Kang* (Dec. 15, 2016, E063571) [nonpub. opn.] (*Aguina II*).)<sup>1</sup> The record in this appeal does not indicate that the family court has since issued a judgment determining or dividing Kang and Aguina's community estate.

On March 3, 2015, the family court awarded Aguina \$3,500 in monetary sanctions against Kang and her attorney, John M. Siciliano. (Code Civ. Proc., § 2034.250, subd. (d).)<sup>2</sup> In January 2014, the court in this civil action entered a judgment in the principal amount of \$574,500 against Aguina and in favor of plaintiffs and respondents, Kang; her two siblings, Myung-Ja Kang and Kwang-Sa Kang; and her father, Jae-Sung Kang. (*Aguina III*, *supra*, E065768 [at p. 1].) The judgment is based on plaintiffs'

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<sup>1</sup> On our own motion, we take judicial notice of our decisions in three prior appeals involving Kang and Aguina: (1) *In re the Marriage of Aguina Aguina and Choong-Dae Kang* (Dec. 10, 2014, E058806) [nonpub. opn.] (*Aguina I*); (2) *Aguina II*, *supra*, E063571; and (3) *Choong-Dae Kang et al. v. Aguina* (Jan. 16, 2019, E065768, E066587, E067169) [nonpub. opn.] (*Aguina III*). (Evid. Code, §§ 452, subd. (d), 459, subd. (a).)

<sup>2</sup> Undesignated statutory references are to the Code of Civil Procedure.

complaint in this civil action against Aguina for fraud and breach of contract concerning loans that Kang's mother made to Aguina in 2004. (*Ibid.* [at p. 5].)<sup>3</sup>

At a September 27, 2012 hearing in the family court, Aguina, Kang, and the other plaintiffs in this civil action stipulated, through their counsel, that any judgment plaintiffs may obtain in this civil action against Aguina would be a "community debt," and the family court accepted the stipulation. The stipulation was made so that plaintiffs could proceed with their suit against Aguina in this civil action, which resulted in the \$574,500 judgment against Aguina. On June 27, 2017, the court in this civil action issued an order (the assignment/offset order), crediting Aguina's right to collect the \$3,500 in sanctions against the \$574,500 judgment against Aguina. (§ 708.510.)

Aguina appeals from the June 27, 2017 assignment/offset order,<sup>4</sup> claiming that the court in this civil action did not have jurisdiction or was not authorized to issue the assignment/offset order because the order interfered with the family court's priority of jurisdiction to determine and divide Kang and Aguina's community estate. We agree. By crediting the \$3,500 in sanctions against the \$574,500 judgment, the court in this civil action effectively enforced the judgment solely against Aguina. This interfered with the family court's priority of jurisdiction to determine and divide Kang and Aguina's community estate, which includes a determination of whether there are sufficient

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<sup>3</sup> Kang's mother died in 2008, and Kang's father died before the civil case was tried in 2013. (*Aguina III, supra*, E065768 [at p. 5].)

<sup>4</sup> On March 2, 2018, this court issued an order staying the proceedings in this appeal, but the stay was lifted on December 17, 2020.

community assets to pay the judgment, a community debt, and if not, the extent to which Kang and Aguina are each liable to pay the judgment.

## II. ADDITIONAL BACKGROUND

As noted, on March 23, 2015, the family court issued a status only judgment, terminating the marriage of Kang and Aguina effective February 6, 2015. (*Aguina II, supra*, E063571 [at pp. 6-7].) At that time, the family court did not enter a judgment concerning any other issues, including (1) whether the parties have any community assets, or (2) whether the \$574,500 judgment against Aguina, a community debt, is to be satisfied in whole or in part from the parties' community assets, if any. Instead, the family court ordered that its previous orders would remain in effect and effectively reserved jurisdiction to determine and divide the parties' community estate. (*Ibid.*)

On November 17, 2016, the family court imposed a terminating sanction against Kang, and struck her responsive pleading in the family court case, thus authorizing the family court to determine and divide Kang and Aguina's community estate by default and without Kang's participation. (*Aguina III, supra*, E065768 [at p. 19].) And, as noted, the record in this appeal does not indicate if the family court has issued a judgment determining and dividing Kang and Aguina's community estate.

On May 25, 2017, Kang filed a motion in this action for the assignment/offset order. Kang asked the court to direct Aguina to "assign[] or otherwise offset[]" his right to collect the \$3,500 in sanctions, including interest, from Kang and Siciliano, against the \$574,500 judgment. The motion was made pursuant to section 708.510, which provides: "(a) Except as otherwise provided by law, upon application of the judgment creditor on

noticed motion, the court may order the judgment debtor to assign to the judgment creditor . . . all or part of a right to payment due or to become due, whether or not the right is conditioned on future developments . . . .”

The motion did not mention the parties’ September 27, 2012 stipulation in the family court that any judgment entered against Aguina in this action would be a “ ‘community debt,’ ” which would be “split evenly” between Kang and Aguina, and the parties’ further stipulation that five real properties, located in Murrieta, were Aguina’s separate properties. (*Aguina III, supra*, E065768 [at p. 8].) Instead, the motion represented that Aguina was solely responsible for paying the \$574,500 judgment. No part of the judgment had been satisfied, and Aguina was attempting to enforce the \$3,500 sanctions order.

Aguina filed an opposition to the motion. Aguina pointed out that he, Kang, and the other plaintiffs in this action (Kang’s family members) had stipulated in the family court that the \$574,500 judgment was a “community debt” that he and Kang would share “50/50.” He also noted that the family court had not issued a judgment determining and dividing his and Kang’s community estate, and he indicated that his liability on the \$574,500 judgment would be limited to half of the amount of the judgment, which could not be satisfied from his and Kang’s community assets.

At a June 27, 2017 hearing, the court granted the motion, ruling as follows: “The court finds that the history of the [\$3,500] monetary sanctions is irrelevant to this court’s determination on this motion. The fact that the sanctions order is against both Mr. Siciliano and Kang is also irrelevant because the right to payment is conferred on

Aguina. Aguina's right to payment is assignable to plaintiffs to do whatever they see fit in enforcing it. *The fact that there is no final judgment in the family law proceedings has no bearing on the enforceability of the sanctions order or the judgment.* [¶] The fact that Aguina and Kang stipulated that any debt owed in this action is community property in the family law proceeding has no bearing on the enforceability of the \$574,[500] judgment by the plaintiffs in this action. The stipulation is for purposes of the distribution of assets in the family law proceedings only. The judgment was in favor of not only Kang, but the rest of the plaintiffs. [¶] Therefore, the motion is granted. The court orders [Aguina] to assign to plaintiffs all of the rights to payment due under the order dated March 3, 2015, issued by the family law court in case number SWD015783 to offset the judgment entered in this action." (Italics added.)

### III. DISCUSSION

Aguina essentially claims that the court in this civil action lacked jurisdiction and was therefore not authorized to issue the June 27, 2017 assignment/offset order because the order interfered with the family court's priority of jurisdiction to determine and divide Kang and Aguina's community estate. We agree.<sup>5</sup>

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<sup>5</sup> Aguina alternatively claims that the June 27, 2017 assignment/offset order violated section 916, subdivision (a), because the consolidated appeals in *Aguina III* were pending when the assignment/offset order was made. Section 916, subdivision (a), provides that "the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order . . . ." It is unnecessary to address this alternative claim, given our conclusion that the assignment/offset order interferes with the family court's priority of jurisdiction.



We applied the priority of jurisdiction doctrine in *Aguina I* and *Aguina III*. In *Aguina I*, Kang appealed from the family court's May 14, 2013 order discharging several prejudgment writs of attachment, which the court in this civil action issued on February 14, 2011, against five real properties located in Murrieta, and that Aguina was claiming were his separate properties, but that Kang was claiming belonged to the community. (*Aguina I, supra*, E058806 [at pp. 1-2, 6, 9-10, 17].) Kang argued that the family court lacked jurisdiction to discharge the writs because the family court lacked the " 'superior jurisdiction necessary to invalidate the orders of another department of the superior court.' " (*Ibid.* [at p. 14].) We rejected this claim based on the family court's priority of jurisdiction to determine the separate or community character of Kang's and Aguina's assets and to divide Kang and Aguina's community estate. (*Ibid.* [at pp. 14-18].)

We explained: " 'In practice, the superior court exercising jurisdiction under the Family Code is known as the "family court" (or "family law court"). But there is no separate "family court" per se. Rather, "family court" refers to the activities of superior court judicial officers handling litigation arising under the Family Code. The "family court" is not a separate court with special jurisdiction, but is instead the superior court performing one of its general duties.' (Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2014) ¶ 3:3.10, p. 3-3, quoting *In re Chantal S.* (1996) 13 Cal.4th 196, 200 . . . .) [¶] . . . 'Even though a superior court is divided into branches or departments, pursuant to *California Constitution, article VI, section 4*, there is only one superior court in a county and jurisdiction is therefore vested in that court, not in any

particular judge or department. Whether sitting separately or together, the judges hold but one and the same court. [Citation.] Because a superior court is but one tribunal, “[a]n order made in one department during the progress of a cause can neither be ignored nor overlooked in another department . . . .” [Citation.]’ (*Glade v. Glade* (1995) 38 Cal.App.4th 1441, 1449.)

“ ‘Under the doctrine of *priority jurisdiction*, the first superior court to assume and exercise jurisdiction in the case acquires exclusive jurisdiction until the matter is disposed of. [Citations.] The doctrine avoids the risk of simultaneous proceedings or conflicting decisions. [Citation.]’ (*Levine v. Smith* (2006) 145 Cal.App.4th 1131, 1135 . . . ; *Glade v. Glade*, *supra*, 38 Cal.App.4th at p. 1450 [“[T]he first court of equal dignity to assume and exercise jurisdiction over a matter acquires exclusive jurisdiction.” ’ (Italics omitted.)].) Thus, it is beyond the jurisdictional authority of any other superior court department to interfere with or invalidate a ruling made by the department first to acquire jurisdiction over the matter, until judgment in that matter has become final. (*Levin v. Smith*, *supra*, at p. 1135; Hogoboom & King, Cal. Practice Guide: Family Law, *supra*, 3:22, p. 3-13.)

“Here, the dissolution proceeding was filed in 2008, before the civil case was filed in 2010. Thus, the family court was the first department of the superior court to assume jurisdiction to determine and direct the disposition of Kang and Aguina’s community property estate, and had exclusive jurisdiction, under the doctrine of priority jurisdiction, to rule on matters *concerning* the division and disposition of the parties’ community estate. (*Askew v. Askew* (1994) 22 Cal.App.4th 942, 961 . . . [‘After a family law court

acquires jurisdiction to divide community property in a dissolution action, no other department of a superior court may make an order adversely affecting that division.’].)

“By issuing the right to attach order and the order for issuance of the writs on February 14, 2011, the court in the civil case interfered with the family court’s exclusive jurisdiction in matters concerning the division and disposition of Kang and Aguina’s community estate. At the time the writs were issued, Kang and Aguina were disputing whether the Murrieta real properties were community property assets or Aguina’s separate properties. By allowing Kang and her coplaintiffs to encumber the properties with the writs, pending judgment in the civil case, the court in the civil case directly interfered with the family court’s exclusive jurisdiction to make orders concerning the disposition, in the dissolution proceeding, of what Kang was then claiming were community assets. [¶] Thus, *the family court was not without jurisdiction* to issue its October 31, 2011, order directing Kang and Aguina to cooperate in the removal of the writs or its May 14, 2013, order discharging the writs—notwithstanding the February 14, 2011, right to attach order and order for the issuance of the writs in the civil case. Our conclusion is unaffected by the fact the civil case was not consolidated with the dissolution case and involved parties other than Kang and Aguina, namely, Kang’s coplaintiffs.” (*Aguina I, supra*, E058806 [at pp. 14-18].)

In *Aguina III, supra*, E065768, we again invoked the priority of jurisdiction doctrine in reversing two postjudgment orders issued by the court in this civil action following the entry of the \$574,500 judgment in January 2014: (1) the civil court’s July 12, 2016 order lifting the trial judge’s (the Hon. Phillip Argento) April 2, 2014 order

staying execution of the judgment, and (2) the civil court's October 19, 2016 order invalidating the family court's August 29, 2016 order, removing the abstract of judgment, or judgment lien, recorded on March 10, 2014, against Aguina's Murrieta properties to secure the payment of the \$574,500 judgment. (*Aguina III, supra*, E065768 [at pp. 2, 16-26].) We agreed with Aguina that the court in this civil action exceeded its authority in issuing the July 12 and October 19, 2016 postjudgment orders because those orders allowed the plaintiffs in this civil action, including Kang, to enforce the \$574,500 judgment solely against Aguina. We concluded that the orders "interfered with the family court's priority of jurisdiction to determine and divide Kang and Aguina's community estate." (*Ibid.* [at pp. 3, 25-26].)

Echoing our decision in *Aguina I, supra*, E058806, we noted in *Aguina III, supra*, E065768, that, under the doctrine of priority of jurisdiction, "the first judge or department to assume and exercise jurisdiction in a cause or matter acquires *exclusive jurisdiction* in the matter until it is disposed of. [Citations.] [¶] The doctrine of priority of jurisdiction avoids 'conflicting adjudications of the same subject matter' by different departments of the same superior court [citation] or by superior courts of different counties." (*Aguina III, supra*, E065768 [at p. 22].)

We noted that the doctrine "has been applied to invalidate superior court orders that *may* conflict or interfere with the family court's priority of jurisdiction to characterize and divide a community estate. (*Askew v. Askew, supra*, 22 Cal.App.4th at pp. 961-962 [civil department of superior court had no authority to consider husband's civil suit against wife for fraud based on wife's 'false statements of love and sexual

desire' given wife's previously-filed dissolution proceeding and family court's exclusive jurisdiction to characterize and divide community estate]; *In re Marriage of Schenck* (1991) 228 Cal. App. 3d 1474, 1482-1484 . . . [civil law and motion department had no authority to order sale of family home to pay husband's support arrearages when family court had retained jurisdiction to divide community interests in the home].)" (*Aguina III*, *supra*, E065768 [at pp. 23-24].)

Further, we noted that the priority of jurisdiction doctrine had been applied "to restrain superior court orders in favor of the third party judgment creditor of one spouse, when the orders may interfere with the family court's jurisdiction and authority to characterize and divide the spouse's community estate with the nondebtor spouse. (*In re Marriage of Van Hook* (1983) 147 Cal.App.3d 970, 980-982 . . . [third party judgment creditor of wife restrained from executing on community bank account and stock shares where family court had yet to enter judgment dividing community estate]; *Glade v. Glade*, *supra*, 38 Cal.App.4th at pp. 1449-1450, 1455-1456 [foreclosure action by husband's parents on community home stayed pending determination and division of community estate].)" (*Aguina III*, *supra*, E065768 [at p. 24].)

In *Aguina III*, we concluded that, "The family court had priority of jurisdiction to characterize and divide Aguina and Kang's community estate because proceedings on these issues were pending in the family court when the civil action was filed. Thus, the court in the civil action exceeded its authority, or the scope of its concurrent subject matter jurisdiction with the family court, in lifting the April 2, 2014, order staying enforcement of the judgment and in invalidating or prohibiting the enforcement of the

family court's August 29, 2016, order removing the abstract of judgment or judgment lien recorded against Aguina's five separate Murrieta real properties." (*Aguina III*, *supra*, E065768 [at pp. 3-4].) We also observed that, "[i]n lifting the April 2, 2014, order staying enforcement of the judgment, and in purporting to invalidate the family court's August 29, 2016, order removing the judgment lien from Aguina's Murrieta real properties, the court in the civil action allowed plaintiffs to satisfy the judgment by levying on and selling [Aguina's] Murrieta real properties. This could have allowed Kang to recover relief from Aguina not otherwise available to her in the family court proceedings. (*Glade v. Glade*, *supra*, 38 Cal.App.4th at pp. 1446-1450.)" (*Aguina III*, *supra*, E065768 [at p. 25].)

Here, too, the June 27, 2017 assignment/offset interfered with the family court's priority of jurisdiction to determine and divide Kang and Aguina's community estate. Like the July 12 and October 19, 2016 orders that we reversed in *Aguina III* as interfering with the family court's priority of jurisdiction, the June 27, 2017 assignment/offset order allows the plaintiffs in this civil action, including Kang, to enforce the \$574,500 judgment solely against Aguina. But the judgment is a community debt, and the family court has yet to determine whether Kang and Aguina have sufficient community assets to pay the judgment in full and, more generally, to determine and divide Kang and Aguina's community estate. It is the family court, not the civil court, which must determine how much of the community debt Aguina must pay. As noted, on November 17, 2016, the family court imposed a terminating sanction against Kang, and thus authorized the family court to determine and divide Kang and Aguina's community estate by default and

without Kang's participation. (*Aguina III, supra*, E065768 [at p. 19].) The assignment/offset order effectively allows the plaintiffs in this action, including Kang, to circumvent the family court's November 17, 2016 terminating sanction against Kang. The order may also allow Kang to recover relief from Aguina that she may not otherwise be able to obtain in the family court proceedings. (*Glade v. Glade* (1995) 38 Cal.App.4th 1441, 1446-1450.)

In issuing the June 27, 2017 assignment/offset order, the court in this civil action incorrectly observed that the community property character of the \$574,500 judgment, and the fact that no final judgment had been issued in the family law proceeding, had "no bearing" on the enforceability of the judgment by the plaintiffs in this civil action, including Kang. The court correctly noted that the \$574,500 judgment was also in favor of plaintiffs besides Kang, but incorrectly noted that the September 27, 2012 family court stipulation that the judgment was a community debt was "for purposes of the distribution of assets in the family law proceedings only."

As we explained in *Aguina III*, the priority of jurisdiction doctrine does not allow nonparties to a marital dissolution proceeding (e.g., the plaintiffs in this civil action, other than Kang) to circumvent the family court's priority of jurisdiction to determine and divide the parties' community estate, by enforcing a community property judgment against one of the parties to the marital dissolution proceeding, before the family court in the proceeding has determined and divided the parties' community estate. (*Aguina III, supra*, E065768 [at p. 23]; *Askew v. Askew* (1994) 22 Cal.App.4th 942, 961-962; *In re Marriage of Schenck* (1991) 228 Cal.App.3d 1474, 1482-1484.)

Plaintiffs maintain that Aguina has not met his burden of showing that the assignment/offset order is invalid and must be reversed. They point out that section 708.510 allows Aguina's right to payment of the \$3,500 sanctions order to be credited against Aguina's obligation to pay the \$574,500 judgment because the statute allows a judgment debtor's "right to payment due or to become due," to be assigned to the judgment creditor "whether or not the [judgment debtor's] right [to payment] is conditioned on future developments." (§ 708.510, subd. (a).)

Indeed, Aguina's right to payment of the \$3,500 in sanctions is not conditioned upon any future developments. In issuing the March 3, 2015 sanctions order, the family court ordered Kang and Siciliano to pay the \$3,500 sum within 30 days. As plaintiffs acknowledge, the \$3,500 sanction order was a "separate, independent judgment" against Kang and Siciliano.

But as we have explained, by crediting Aguina's right to payment of the \$3,500 in sanctions against the \$574,500 judgment, the court in this civil action interfered with the family court's priority of jurisdiction to determine and divide Kang and Aguina's community estate. Section 708.510, subdivision (a), applies "[e]xcept as otherwise provided by law." Under the priority of jurisdiction doctrine, plaintiffs' right to enforce the judgment solely against Aguina, which plaintiffs have agreed is a community debt, is



subject to the family court's pending determination and division of Kang and Aguina's community estate.<sup>6</sup>

Regarding Aguina's claim that the court in this civil action lacked jurisdiction to issue the assignment/offset order, plaintiffs claim that a similar jurisdictional challenge was rejected in *Weingarten Realty Investors v. Chiang* (2012) 212 Cal.App.4th 163 (*Weingarten*). We disagree. *Weingarten* has no bearing on this case.

The trial court in *Weingarten* assigned a judgment debtor's interest in properties that had escheated to the state to the judgment creditor. (*Weingarten, supra*, 212 Cal.App.4th at p.166.) When the judgment creditor filed claims for the properties with the state controller (former § 1540, subd. (a); Stats. 2005, ch. 706, §15), the controller denied the claims, asserting that only an " 'owner,' " who had a legal right to the properties *before* the properties escheated to the state (former § 1540, subd. (d)) could recover the escheated properties from the state under former section 1540. (*Weingarten*, p. 166.)

*Weingarten* rejected the controller's argument. It interpreted former section 1540, subdivision (a), which generally allowed "[a]ny person" who claimed an interest in

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<sup>6</sup> Plaintiffs claim that Aguina "appears to argue" that *plaintiffs' right to payment of the judgment* "is conditioned on future developments" regarding the resolution of community assets in the family court proceeding. Plaintiffs claim this argument is incorrect because "such future developments do not preclude an assignment" under section 708.510, subdivision (a). Plaintiffs are confusing their right to payment of the judgment with Aguina's right to payment of the \$3,500 sanctions order. Section 708.510 allows *a judgment debtor's right to payment* to be assigned to a judgment creditor, regardless of whether the right to payment is conditioned on future developments, but the statute does not concern whether the judgment creditor's right to payment of *the judgment* is conditioned on future developments.

property paid or delivered to the controller to file a claim to the property with the controller, as allowing the judgment creditor to claim the judgment debtor's escheated properties that the trial court had assigned to the judgment creditor. (*Weingarten, supra*, 212 Cal.App.4th at pp. 169-170.) *Weingarten* held that claimants under former section 1540, subdivision (a), were not limited to " 'owners,' " as defined in section 1540, subdivision (d). (*Weingarten*, at p. 170.)<sup>7</sup>

Plaintiffs point out that, on appeal in *Weingarten*, the controller argued that the trial court in *Weingarten* "lacked jurisdiction over the property and the controller," and that the *Weingarten* court rejected this claim. (*Weingarten, supra*, 212 Cal.App.4th at pp. 166-170.) Here, too, plaintiffs argue that the court in this civil action "clearly had jurisdiction over [Aguina] as a defendant" in this civil action and "thus had the power to issue the assignment." We agree that the court in this civil action had jurisdiction over Aguina as a defendant, and the court also had subject matter jurisdiction over plaintiffs' fraud and breach of contract claims against Aguina in this civil action. Again, however, the court exceeded its authority and interfered with the family court's priority of jurisdiction by crediting Aguina's right to payment of the \$3,500 sanctions order against

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<sup>7</sup> Effective January 1, 2014, former section 1540 was amended to provide that "(a) Any person . . . who claims *to have been the owner, as defined in subdivision (d) of property paid or delivered to the Controller . . . may file a claim to the property . . .*" (Stats. 2013, ch. 128, § 1, italics added.) Former section 1540, subdivision (a), provided that "Any person . . . who claims *an interest in property paid or delivered to the Controller . . . may file a claim to the property.*" (*Weingarten, supra*, 212 Cal.App.4th at p. 168, italics added.) The 2013 legislation also amended subdivisions (b) and (c) of section 1540 and rewrote subdivision (d) to clarify that, "Only an owner, as defined in this subdivision, may file a claim with the Controller pursuant to this article." (Stats. 2013, ch. 128, § 1.)

the judgment, which all of the parties in this civil action have agreed is a community debt of Kang and Aguina's community estate.

### III. DISPOSITION

The June 27, 2017 assignment/offset order is reversed. The matter is remanded to the superior court with directions that the allocation and responsibility for payment of the community debt, specifically, the \$574,500 judgment, shall be determined by the family court. Aguina shall recover his costs on appeal. (Cal. Rules of Court, rule 8.278.)

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

FIELDS

J.

We concur:

RAMIREZ

P. J.

MILLER

J.

# Appendix “H”

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
Superior Court of California

Minute Order/Judgment

CASE NO: RJC10019528    DATE: 04/02/14    DEPT:01  
CASE NAME: KANG VS AGUINA  
CASE CATEGORY: Damages

HEARING:    Ruling on Matter Submitted 03/27/14 RE: Motion to Enforce Stay

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Honorable Judge Phillip J Argento, Presiding

Clerk: D. Clements

Court Reporter: None

Court subsequently rules on matter taken under submission on  
03/27/14.

Notice of Decision and Findings re: OSC:

Decision on Order to Show Cause Why the Judgment Entered January 29,  
2014 Should Not be Stayed Pursuant to the Inherent Powers of the  
Court: Enforcement of the Judgment is stayed until one or more  
Plaintiffs provide satisfactory evidence of standing in addition to  
that presented at trial and until the Riverside Superior Family Law  
Court in Aguina v. Kang SWD015783 has fully determined what property  
within its jurisdiction is separate or community and has divided the  
community property between Aguina and Kang.

Notice of Decision filed

Notice to be given by clerk.

Notice sent to JOHN M. SICILIANO on 4/02/14

Notice sent to AGUINA on 4/02/14.

Notice sent to MITTELMAN LAW FIRM on 4/02/14

Notice sent to COURT OF APPEALS FOURTH DISTRICT on 4/02/14

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## NOTICE OF DECISION AND FINDINGS RE OSC

- A. Decision on Order to Show to Show Cause Why the Judgment Entered January 29, 2014 Should Not be Stayed Pursuant to the Inherent Powers of the Court: Enforcement of the Judgment is stayed until one or more Plaintiffs provide satisfactory evidence of standing in addition to that presented at trial and until the Riverside Superior Family Law Court in *Aguina v. Kang* SWD015783 has fully determined what property within its jurisdiction is separate or community and has divided the community property between Aguina and Kang.
- B. This Court specifically finds that, in order to properly supervise, control, and administer enforcement of judgment processes, it needs the Family Law Court's final orders distributing of all the property within its jurisdiction to the respective parties in *Aguina v. Kang* SWD015783 so that this Court's enforcement processes are applied only Aguina's property as finally determined by the Family Law Court. This Finding B does not apply to any separate property of Aguina's that the parties have already stipulated to as his separate property by signed stipulation that is not being challenged in the Family Law Court; this Finding B also does not apply to property already found to be Aguina's separate property, if any by the Family Law Court.
- C. Additionally, this Court finds that it lacks jurisdiction to decide the following issues because they are within the jurisdiction of the Family Law Court; judicial economy weighs in favor of them being resolved there prior to authorizing enforcement process against Aguina here because prior resolution will avoid enforcement of the civil Judgment entered on January 29, 2014 here against community property, against which this Judgment may be chargeable as determined by the Family Law Court.
- (1) Whether the stipulation or purported stipulation reached between Kang and Aguina on September 27, 2012 was lawful? And, if lawful, then:
  - (2) Does its scope include contract damages awarded in this civil action as debt of the community?
  - (3) Does its scope include tort damages awarded in this civil action as debt of the community?
  - (4) Is Kang collaterally estopped by the stipulation or purported stipulation from asserting that the contract damages awarded in this civil action are not debt of the community?
  - (5) Is Kang collaterally estopped by the stipulation or purported stipulation from asserting that the tort damages awarded in this civil action are not debt of the community?

- (6) Irrespective of the role of the stipulation or purported stipulation, did the community benefit, not benefit, or partially benefit from the contract money received, non- payment of which is contract damages awarded in this civil action?
- (7) Irrespective of the role of the stipulation or purported stipulation, did the community benefit or not benefit from the money obtained by the fraudulently induced loan that is the subject of Plaintiff Kang's fraud cause of action.

Phillip J. Argento, Assigned Judge March 28, 2014

#### MEMORANDUM OPINION OF MARCH 28, 2014

Today's Decision and Findings set forth A.-C above are substantially the same as those set forth in the Tentative Decision Re OSC served upon the parties earlier this month. The Tentative Decision assumed that Defendant Aguina's Motion for Judgment Notwithstanding the Verdict (MJNOV) would be denied. It has been denied. In the interest of time, the discussion of the OSC Re Stay below continues to read that a denial of the MJNOV was assumed. *Pursuant to paragraph A, if one or more Plaintiffs establish standing satisfactorily for purposes of enforcement of the Judgment Entered on January 29, 2014, then stay shall be vacated as to such Plaintiff or who may then enforce that Judgment according to law as against Defendant Aguina's separate property as finally decided by the Family Law Court.*

#### I. INTRODUCTION

On September 27, 2013, a jury in this civil action found in favor of Plaintiffs including Plaintiff Choong-Dae Kang (Plaintiff Kang) and against Defendant Aguina in the amount of \$574,500 representing \$77,000 in damages for breach of contract and \$497,500 for fraud. On September 30, 2013, this Court *sua sponte* set its Order to Show Cause (OSC) hearing on October 16, 2014 regarding whether the Judgment entered on September 27, 2013 should not be stayed. On January 29, 2014, it became clear to the Court that a judgment had not been entered on September 27, 2013. The hearing of January 29 is described below. The OSC and opinion served on the parties by mail on October 2, 2013 shows that it was intended to address whether enforcement of a judgment actually entered should be stayed, not whether entry of judgment should be stayed. Here is the Ruling served October 2, 2013.

#### RULING

The Court is setting an Order to Show Cause (OSC) hearing for October 16, 2013 on whether the Judgment entered on September 27, 2013 should not be stayed on either or both of the following prospective grounds:

- A. Pursuant to CCP section 918.5, enforcement of the Judgment would be stayed until Aguina's disputed monetary claims against Plaintiff Choong-Dae Kang in their dissolution proceeding are no longer pending, that is, until there is the trial court's final judgment of dissolution as to their monetary claims.
- B. Pursuant to the inherent powers of the Court, enforcement of judgment would be stayed until Plaintiff Choong-Dae Kang furnishes this Court with satisfactory evidence that she and the other Plaintiffs were authorized under Japanese law to bring this action in California; "satisfactory evidence" would be presented in a motion to vacate this Stay B; satisfactory evidence would include but is not limited to certified copies of Japanese public documents officially authorizing Plaintiff Choong-Dae Kang and the other Plaintiffs to prosecute this action on behalf of the estate of Plaintiff Choo-Dae Kang's mother, a legal opinion by an attorney licensed to practice law in either Japan or the United States, or both nations, with professional qualifications concerning the applicable Japanese law; satisfactory evidence would also be constituted by any other method approved by the Court.

#### Memorandum Opinion Re Setting the Hearing OSC

As to prospective Stay A, Section 918.5 clearly contemplates a stay upon a proper showing of the existence of other disputed monetary claims and factors set forth by the statute involving a judgment debtor and a creditor involved in other litigation.

As to prospective Stay B, pro-per Defendant Aguina's failure to negate Plaintiffs capacity to bring this suit due to his mistakes in the discovery process and unfamiliarity with rules of procedure and evidence do not prevent this Court from protecting the integrity of its processes in this post-judgment phase. It would be a patent wrong for this court to allow enforcement of a judgment of over a half-million dollars by a plaintiff with a lack of capacity to bring suit. Plaintiff's testimony, to the Court's recollection, regarding such capacity amounted to her belief or understanding or both about the Japanese law that purportedly authorized the bringing of this suit along with the other named Plaintiffs. Ordinarily, a belief or understanding or both are insufficient proof of capacity. Her belief or understanding or both had to have been based on hearsay; no certified public document from a Japanese court or other proper tribunal was presented to establish capacity.

It may well be that her belief or understanding is correct and accurate as to Japanese law. But, independent of Defendant's errors in presenting a



defense, this Court has inherent power to protect the integrity of its processes. Indeed, this inherent power is also recognized in part by CCP section 128(a)(8).

Thus, Plaintiff would be given the opportunity to provide satisfactory evidence of capacity in order to vacate Stay B if such Stay were ordered.

With regard to other issues concerning the legal sufficiency and meaning of the jury verdicts, my research indicates that it is up to the parties to raise such issues by proper motion.

Given the short-time frame between service by mail on October 2 and the October 16 hearing, the parties presented only oral responses. Upon request, the Court granted the parties additional time to prepare written responses so that a more informed hearing could take place. That hearing was set for January 29, 2013.

In preparation for that hearing, on December 16, 2013, Plaintiffs filed their Plaintiffs' Responsive Memorandum Re: OSC Why Judgment Entered on 9/27/13 Should Not be Stayed (PROSC -I). On January 14, 2014, Aguina filed his Defendant's Reply to Why Judgment Entered 9/27/13 Should be Stayed (DROSC-I). On January 16, Plaintiffs filed their Plaintiffs' Reply to Defendant's Reply to Why Judgment Entered 9/27/13 Should Be Stayed (PROSC- II).

Again, at the hearing of January 29, it became clear that, due to apparent inadvertence on the Court's part, a Proposed Judgment prepared by Plaintiffs had neither been signed nor entered. The Court apologizes for the resulting delay. Following colloquy and after Defendant's attorney for limited appearance on January 29, Mr. Mittelman, was given an opportunity to compare its content with the Jury's Verdicts, the Court signed the Judgment as proposed. The Court then ordered it entered on January 29, 2014, not *nunc pro tunc* to an earlier date. Aguina's Ex-Parte Motion for Shortening Time for Hearing of a Motion for Judgment Notwithstanding the Verdict (MJNOV) was denied. Aguina would timely re-file his MJNOV. The Court decided to take the OSC under submission and to furnish a Tentative Decision that would be subject to additional hearing on the same day as Defendant's refiled MJNOV would be heard.

## II. PARTIES' CONTENTIONS IN SHORT

For a number of reasons Plaintiffs contend that this Court lacks authority to order a stay on either of the OSC's two prospective grounds. Alternatively, without waiving their objections to those grounds, Plaintiffs have furnished the Court with what they contend is satisfactory proof as requested by this Court in the OSC, namely a letter from an attorney licensed to practice law in California and Japan.

Defendant Aguina asserts that the Court has authority to issue a stay and has furnished the Court with a contrary declaration by an attorney licensed to practice law in Japan based upon assertions of fact supplied by Defendant Aguina.

These issues are discussed more fully below.

Note: Portions of the text below track the syntax of sentences actually written by Plaintiffs' attorney Siciliano and by Defendant Aguina. This was done in the interest of time. Other material submitted by the parties is more conventionally quoted.

III. ALTHOUGH PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 918.5 THIS COURT HAS AUTHORITY TO STAY ENFORCEMENT OF THE JUDGMENT UPON A PROPER SHOWING, DEFENDANT AGUINA HAS FAILED TO SUBMIT TO THE COURT EVIDENCE THAT WOULD SUPPORT A PROPER SHOWING UNDER SECTION 918.5.

In response to the Court's positing Code of Civil Procedure (CCP) section 918.5, Plaintiffs stated that this prospective ground appears based on the expectation that the Family Law Court will somehow divide Plaintiffs' Judgment between Plaintiff Choong-Dae Kang and Defendant Aguina as community property debt. Plaintiffs asserted the Family Law Court has no authority to do so. The Judgment was largely for fraud in the amount of \$497,500. The Verdicts were entered against Defendant Aguina only, and it is his sole liability, Plaintiffs contend. The Family Law Court lacks authority to adjudicate tort claims, especially ones for fraud. (*Sosnick v. Sosnick* (1999) 71 Cal. App. 4<sup>th</sup> 1335, 1339.)

*Sosnick* itself is not so absolute in its limitation of a family law court's jurisdiction; jurisdiction extends to a tort action when it is properly consolidated with the family law proceeding.

However, a tort claim can be consolidated with a pending dissolution action under suitable circumstances. (See *In re Marriage of McNeill* (1984) 160 Cal. App. 3d 548, 557 [206 Cal. Rptr. 641], overruled on other grounds in *In re Marriage of Fabian* (1986) 41 Cal. 3d 440, 451, fn. 13 [224 Cal. Rptr. 333, 715 P.2d 253].) Section 1048 provides the authority for consolidation: "When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay." (*Id.*)

(*Sosnick, supra* at p. 1339.)

Plaintiffs restated that Defendant Aguina's previous attempts to consolidate this civil action with the pending family law case, *Aguina v. Kang*, Case No. SWD015783, were all rejected by previous judicial officers. The Court through the present judge (Argento), adopting the previous decisions of the prior judicial officers as presumptively correct, also rejected Aguina's request for consolidation before a jury was empanelled in this civil case.

The Court is not attempting to consolidate this action with the pending family law case; it has been considering staying enforcement of the Judgment under its inherent powers and under section 918.5 which in its entirety reads:

§ 918.5. Stay to protect possible set-off

(a) The trial court may, in its discretion, stay the enforcement of a judgment or order if the judgment debtor has another action pending on a disputed claim against the judgment creditor.

(b) In exercising its discretion under this section, the court shall consider all of the following:

(1) The likelihood of the judgment debtor prevailing in the other action.

(2) The amount of the judgment of the judgment creditor as compared to the amount of the probable recovery of the judgment debtor in the action on the disputed claim.

(3) The financial ability of the judgment creditor to satisfy the judgment if a judgment is rendered against the judgment creditor in the action on the disputed claim.

Applying this statute, Defendant Aguina has another action pending on disputed claims against Choong-Dae Kang in the family law case. But in his DPROSC-I, Aguina did not argue any of section 918.5(b)'s three express factors. Aguina did not furnish this Court with any evidence regarding the likelihood of him prevailing in the family law case. Similarly, Aguina furnished no evidence as to the amount of the probable recovery by him in the family law case. In the colloquy of October 16, 2013, he merely stated under oath that about \$3 million is at stake there.

Although those section 918.5 factors must be considered, they are not all inclusive. But because the Legislature has expressly identified their consideration as mandatory, they must presumptively be regarded as among the most important ones. Thus, there is before the Court insufficient evidence for it to stay enforcement of the Judgment pursuant to section 918.5.

IV. THE COURT'S AUTHORITY TO ISSUE A STAY PURSUANT TO ITS INHERENT POWERS IS NOT LIMITED TO CODE OF CIVIL PROCEDURE 128(a)(8); SECTION 128(a) IS EXPRESS LEGISLATIVE RECOGNITION OF SOME INHERENT POWERS, NOT AN ALL INCLUSIVE LISTING OF THEM.

The courts of this state have a broad inherent power to control, supervise, and administer matters before them. Although this power is partially codified in Code of Civil Procedure section 128, it is not limited by the statute and derives from the

state Constitution, as based upon the historic powers of the courts. (*Bauguess v. Paine* (1978) 22 Cal.3d 626, 635-636 [150 Cal.Rptr. 461, 586 P.2d 942].) Courts are thus authorized to fashion new remedial procedures when it is advisable to do so, in order to deal with new issues or protect the rights of the parties. (*Cottle v. Superior Court* (1992) 3 Cal.App.4th 1367, 1377 [5 Cal.Rptr.2d 882].)

(*Board of Supervisors v. Superior Court* (1994) 23 Cal. App. 4th 830, 847-848.)

Thus, this Court's authority for the second prospective ground of inherent power is not limited to CCP section 128(a)(8) or even to section 128 in its entirety. As stated in the September 30 2013 Ruling: "Indeed, this inherent power is also recognized in part by CCP section 128(a)(8)." Also, the scope of the first sentence of section 128(a)(8) is not limited to the circumstances involved in the second sentence and its subparagraphs, which apply to appellate courts only.

Here the Court has been considering use of its inherent power to control, supervise, and administer the enforcement processes by staying enforcement until Plaintiffs submit a stronger factual and legal basis of standing than they did at trial. The Court is concerned with the integrity of its enforcement processes, not whether a stay of enforcement incidentally benefits Defendant Aguina.

V. ASSUMING THAT A MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT HAS BEEN DENIED BECAUSE EVIDENCE OF PLAINTIFFS' STANDING IS SUFFICIENT, THIS COURT MAY STILL IMPOSE A STAY UPON ENFORCEMENT UNTIL IT HAS RECEIVED ADDITIONAL EVIDENCE OF PLAINTIFFS' STANDING IN ORDER TO PROTECT THE INTEGRITY OF ITS PROCESSES.

As has recently become clear, the Court in its Ruling of September 27, 2013 confused capacity to sue with standing. "[T]he question of standing to sue is different from that of capacity. Incapacity is merely a legal disability such as infancy or insanity that deprives a party of the right to come into court. The right to relief, on the other hand, goes to the existence of a cause of action." (*Parker v. Bowron* (1953) 40 C.2d 344, 351.) "This objection is not waived by failure to raise it by demurrer or answer, and may be raised at any point in the proceedings. (Code Civ. Proc., § 434.)" (*Id.*) Section 434 is now section 430.80(a) which excepts from waiver by failure to object "an objection that the court has no jurisdiction of the subject of the cause of action alleged in the pleading or an objection that the pleading does not state facts sufficient to constitute a cause of action." Thus, standing is an issue that may be considered at this post-trial stage of the proceedings.

For purposes of determining whether it should stay enforcement of the Judgment, this Court has assumed that Defendant Aguina's MJNOV has been denied. If that motion is granted, there would be no need for a stay. Here, the assumption is that the evidence at

trial was sufficient to support Plaintiffs' allegations of the Second Amended Complaint (SAC) concerning standing.

The SAC in paragraph 10 alleges: "On or about January 18, 2008 YAE-YANG SHIM a/k/a YOSHIKO OKAMOTO passed away in Japan, her country of citizenship and residence. Under the laws of Japan, an individual's surviving spouse and children automatically inherit the deceased's assets without the necessity of probate or any official court proceedings." Paragraph 11 alleges that Plaintiffs Myung-Ja Kang a/k/a Hiroko Okamoto and Choong-Dae Kang a/k/a Mituyo Okamoto are the biological daughters of the deceased and are the lawful heirs/successors in interest to all assets and debts owned to their mother. Paragraph 12 alleges that Plaintiff Kwang-Sa Kang a/k/a Masashi Okamoto is her son. Paragraph 13 alleges that Jae-Sung Kang a/k/a Kouhei Okamoto was the lawfully wedded husband of the other Plaintiffs' mother. Plaintiffs had the burden of proof as to these allegations.

Plaintiff Kang gave testimony relevant to standing. In the Trial Transcript of September 24 and 25 (Tr-I), Kang testified on direct that she is acting as a representative of her family unit to try and collect debts that they perceive are due to their mother. (Tr-I at p. 2.) That responsibility arose from her being one of the children of her mother and she is "the heir of [her] mother's estate." (Tr-I at p. 2.) She is charged with the responsibility of trying to settle the mother's estate. (Tr-I at p. 3.) In cross-examination, she testified that her authorization to represent her family and the estate was acquired when her mother passed away because it automatically came to her mother's surviving immediate family members registered in the public record in city hall Japan. (Tr-I at pp. 25-26.) When her mother died, her dad was still alive. (Tr-I at p. 26.) She testified the property would not go to her father alone but by law would go to immediate family members, spouse and children included. She stated it was "equal authorization to a surviving spouse and children." (Tr. I at p. 26.) There may be additional admitted evidence relevant to standing that the Court has missed.

Neither party at trial objected to the above testimony of Plaintiff Kang. It is noted here that the Court granted all of Plaintiffs' motions in limine in full or in part due to Aguina's failures to comply with discovery statutes. Thus, for example, excluded from admission was evidence supporting Aguina's affirmative defenses (Mot. in Lim. No. 1) and evidence of Plaintiff Kwang-Sa Kang's mental condition (Mot. in Lim. No. 8). Aguina's Amended Answer to the Second Amended Complaint (AASAC) asserts as its Second Affirmative Defense that "Plaintiffs lack standing to bring the causes of actions and claims stated in the Complaint [SAC]." (AASAC at p. 2.) However, Aguina did not have the burden of proving that Plaintiffs have lacked standing; instead, Plaintiffs had burden of proving facts that gave them the right to sue.

As stated, it is assumed here that Aguina's MJNOV has been denied on the ground that the evidence admitted at trial was sufficient to support the Verdicts and Judgment. Under California law, there would ordinarily be a determination by a probate court that certain persons or entities are authorized on behalf of a decedent's estate to sue upon decedent's cause of action for breach of contract and her cause of action for fraud.

In contrast, here Plaintiff Kang without demonstrated expertise in Japanese law or in its application to her situation -- but with a substantial personal financial interest in pursuing the claims testified without objection at trial to the effect that she has authority to bring this action in California pursuant to California law on behalf of an estate, administration of which is governed by Japanese law.

Thus, even if the evidence at trial is found sufficient to justify denial of the JNOV, the evidence at trial on standing falls short objectively of the kind of trustworthy documentary evidence and expert testimony that would ordinarily tend to ensure the integrity of court process used to enforce the Judgment. Thus, if the Court denies Defendant's MJNOV, it intends to require persuasive additional evidence of the Plaintiffs' respective rights to sue.

As of the date of these tentative determinations, Plaintiffs have provided some evidence in response to the OSC invitation to do so. Defendant has provided contrary assertions. These are discussed next.

**VI. AFTER WEIGHING PLAINTIFFS' ADDITIONAL EVIDENCE CONCERNING JAPANESE LAW AND REJECTING DEFENDANT AGUINA'S CONTRARY ASSERTIONS AS INADMISSIBLE EVIDENCE, THE COURT CONCLUDES THAT PLAINTIFFS HAVE NOT FURNISHED SATISFACTORY EVIDENCE OF STANDING TO JUSTIFY THEIR USE OF COURT PROCESSES TO ENFORCE THE JUDGMENT.**

Initially, the Court acknowledges that Plaintiffs furnished additional evidence without waiving any procedural objections to the two prospective grounds for a stay set forth in the OSC.

Plaintiffs did produce evidence regarding Japanese law: a declaration under penalty of perjury from attorney Yumiko (Takaki) Oshikubo, Esq., who is licensed to practice law in both the State of California and the country of Japan. That attorney declared: "Under the Japanese civil code, spouse and children of the deceased automatically become heir without court involvement regardless of the amount of the estate (Article 887 and 890 of Japanese civil code)." (PROSC-I, Ex. A (Oshikubo Decl.) at pp. 1-2.) "If there are issues among the heirs, the heirs need to go to the court to settle them, but otherwise, the court procedure is not required." (Oshikubo Decl. at p. 2.) "The surviving heirs inherit all rights and duties to the estate of the deceased comprehensively (Article 896 of Japanese civil code)." (Oshikubo Decl. at p. 2.)

In response, Defendant filed a declaration by his attorney in Japan, Naoki Higashihara, stating that the Japanese law cited by Oshikubo relates only to Japanese citizens, not persons of Korean nationality such as Choong-Dae Kang and the other Plaintiffs.

On January 16, Plaintiffs filed their Reply to Defendant's Reply to Why Judgment Entered 9/27/13 Should Be Stayed (PROSC- II). Plaintiffs asserted that allegations of fact received by Naoki Higashihara, Esq., are inadmissible; Plaintiffs objected to Higashihara's declaration, and requested the Court to strike it in its entirety. The Court is

not striking it in its entirety, but is rejecting his conclusion that, according to Japanese law, Korean law applies to Plaintiffs who are of Korean nationality.

According to his declaration, Naoki Higashihara Esq is a licensed attorney in Japan since 2007 (License No. 35339). He represented Defendant Aguina's interest against Choong-Dae Kang in case filed in the Kobe District Court, involving Aguina's demand to return [alleged] unjustly obtained money that she had received in response to a tax return deal with Defendant Aguina's residential tax in Japan. The case eventually settled following an appeal by both parties. (DROSC, Ex. C (Higashihara Decl.) at pp. 1-2.) Higashihara may declare such facts from his personal knowledge.

In contrast to personal knowledge, Higashihara began his legal opinion by assuming what Defendant Aguina had told him, namely that Mr. Jae-Sung Kang a/k/a Kouhei Okamoto and Mrs. Jae-Yuang Shim a/k/a Yoshiko Okamoto are of Korean nationality. This statement relied upon by Higashihara is hearsay—an out of court statement made by Aguina offered for the truth of the assertion. Plaintiff Choong-Dae Kang at trial testified she is Korean “by blood” but that she was born and raised in Japan. (Tr-1 at p. 71.) That she was Korean “by blood” is a metaphor for stating that her ethnicity is Korean; it does not establish her Korean citizenship. That she was born in Japan is relevant to establishing that she is a Japanese citizen, assuming the law of Japan is similar to the law of the United States on acquisition of citizenship by birth within U.S. territory. Defendant Aguina produced no admissible documentation to show that Mr. Jae-Sung Kang a/k/a Kouhei Okamoto and Mrs. Jae-Yuang Shim a/k/a Yoshiko Okamoto are of Korean nationality. Their Korean names and testimony by Plaintiff Kang supports an inference of Korean nationality understood as ethnicity, but not Korean citizenship.

Higashihara explained that, according to Article 36 of the Act on General Rules for Application of Laws, “unless there are special circumstances (such as they designated in their wills that Japanese law is to be applied for their inheritance, or that they became naturalized Japanese citizens while they were alive), the Civil Code of South Korea will be applied for their case.” “Therefore, the assertion of Ms. Choong-Dae Kang a/k/a Mitsuyo Okamoto that the Japanese Civil Code is to be applied in her parent's inheritance is not correct.” (Higashihara Decl. at p. 2.)

Higashihara's opinion may correctly lay out Japanese law as to when Korean law would apply to administration of an estate of a deceased person who is of Korean nationality in the sense of citizenship or other status that would trigger under Japanese law the application of Korean law ethnicity as distinct from the decedent's alleged Japanese citizenship and residency. (SAC, ¶ 10.)

But the central point here is that under California law there must be evidence put before the court in proper form – under oath by a person with personal knowledge of facts or the evidentiary equivalent such as certified public records of citizenship in Korean or other presumptively trustworthy evidence to support the inference that in fact the deceased mother's estate should according to Japanese law be administered pursuant to the law of Korea. No such evidence was properly provided by Defendant Aguina. Consequently, Higashihara's conclusion that the law of Korea relevant to administering estates should apply is rejected.

Though not relevant to standing, Higashihara also states that there is reason to believe the other Plaintiffs are not mentally competent. Again, his opinions are based upon information from Defendant Aguina; as such they are hearsay to the extent they are asserted for their truth. For example, Aguina told him that when Plaintiff Kang's mother died, her father "was hospitalized in a facility for dementia." (Higashihara Decl. at p. 3.) Again, this is inadmissible hearsay as to its truth, as Plaintiffs assert. Even assuming such information were true, it would be relevant to capacity, not standing. Even if true, its contents does not establish dementia but would be a circumstance relevant to whether the father had dementia, but not dispositive of dementia because the hospital may treat cases other than dementia, and the father could have been hospitalized there for another reason.

Thus, for lack of admissible evidence relevant to the asserted Korean "nationality" even were it understood as Korean citizenship of one or more of the Plaintiffs, this Court rejects the conclusion that, according to Japanese law, Korean law applies to determination of standing as to one or more of the Plaintiffs for purposes of deciding whether to stay enforcement of the Judgment.

As to Plaintiffs' additional evidence, Oshikubo, as an attorney licensed to practice in Japan and California, supported the legal effect of Plaintiff's Kang's testimony that, under Japanese law, upon the death of her mother, she and her siblings and father inherited the deceased's rights. However, Plaintiffs pleaded that Japan was the deceased's "country of citizenship and residence." (SAC ¶ 10.) It thus appears that the deceased's Japanese citizenship is a fact necessary to prove standing. The Court does not recall, nor thus far has it located in the transcripts submitted admitted evidence that strongly supports an inference that the deceased was a Japanese citizen at the time of death. Also, was her husband a Japanese citizen or a Korean citizen, or both, at the time of his death, such that his portion of his wife's estate would in turn be passed on to their children upon his death by way of Japanese law, or Korean law, if he was a Korean citizen, and not a Japanese citizen?

There is still lacking satisfactory admissible evidence of the deceased's citizenship and that of her deceased husband along perhaps with other evidence relevant to their standing to justify the use of this Court's processes to enforce the Judgment.

VI. INDEPENDENT OF ITS CONCERNS OVER STANDING, THE COURT NOW SEES OTHER REASONS WHY ENFORCEMENT OF THE JUDGMENT SHOULD BE STAYED PURSUANT TO THE INHERENT POWERS OF THE COURT.

These additional reasons came into focus or clearer focus after reading PROSC-I, DROSC, and PROSC-II.

A. The Court's Inherent Power May Be Used to Prevent Wrongful Use of Process.



Although the power to amend and control process has limits, those limits include, according to our Supreme Court: "the prevention of the wrongful use of process rightfully issued. (see *Spellens v. Spellens* (1957) 49 Cal.2d 210, 230-233.)" (*Bloniarz v. Roloson* (1969) 70 Cal. 2d 143, 148.) It would be wrong, for example, for Plaintiff Kang to attach assets that are hers and Aguina's as part of the community; she would be attaching against her own interest in community property. That scenario is one reason why, before this Court authorizes enforcement processes, the Family Law Court should decide whether (i) only Aguina's separate property or (ii) the community property, or (iii) both are chargeable with debt in the form of the Judgment's contract damages, tort damages, either, or both. The Family Law Court's findings of whether property is separate or community and its subsequent division of community property and debt among Aguina and Kang decided first will avoid this Court prematurely authorizing enforcement of the Judgment against as yet undivided community property. Here, it is only Aguina's property that is subject to enforcement of the Judgment against him.

Similarly, to allow other Plaintiffs to prematurely enforce the Judgment against community property not yet divided by the Family Law Court would be to allow those sibling Plaintiffs to enforce the Judgment against their Co-Plaintiff Kang's community interest when it is only against Aguina's property that the Judgment may be enforced. Clarification of ownership issues there in Family Court will facilitate proper enforcement of the Judgment by the Civil Court.

B. Whether Aguina's Liability for Fraud May Be Chargeable Exclusively to Aguina as the Tortfeasor Spouse Is an Issue for the Family Law Court.

Plaintiffs asserted that Defendant Aguina's liability for fraud is chargeable exclusively to the tortfeasor spouse even though the community may have benefitted from it. (*In re Marriage of Bell* (1996) 49 Cal. App. 4<sup>th</sup> 300, 309; also see Family Code § 2625[Notwithstanding Sections 2625 ["Notwithstanding Sections 2620 to 2624, inclusive, all separate debts, including those debts incurred by a spouse during marriage and before the date of separation that were not incurred for the benefit of the community, shall be confirmed without offset to the spouse who incurred the debt."].)

The Family Law Court must decide whether Defendant's tort is exclusively chargeable to Aguina. *Bell* cited Family Code section 1000(b) stating that liability of a married person is to be satisfied from separate or community property depending upon whether the act or omission "occurred while the married person was performing an activity for the benefit of the community." Similarly, Family Code section 2625 looks to whether a debt "incurred was for the benefit of the community."

The *Bell* court then utilized two cases for guidance: *In re Marriage of Stitt* (1983) 147 Cal. App. 3d 579 and *In re Marriage of Hirsch* (1989) 211 Cal. App. 3d 104. In *Stitt*, "the offense was an intentional tort and the court found there was no evidence of a benefit to the community, while in *In Hirsch* ... there was evidence of no more than gross negligence and evidence also that the community benefitted from the acts that led to the liability." (*Bell, supra* at p. 309.)

"Applying the principles of the cited cases" (*Id*) to the facts before it, the *Bell* court concluded:

[T]he trial court correctly decided that the wife alone should be held liable for the attorney fees required for her defense in both the civil and the criminal actions, and that she should be liable also for the state and federal tax liability arising out of the embezzlement, including interest and penalties. Wife engaged in intentional tortious and criminal activity and knowingly accepted the risk that she would be caught and would have to face the consequences. Husband, who knew nothing of the risk and could do nothing to avoid it, should not in fairness bear the same burden once it did go wrong. In this regard our decision here follows the ruling in *Stitt*.

(*Id.*)

In contrast: "As to the \$ 150,000 civil settlement, however, we find the considerations are different. Wife was still engaged in an intentional tort, and Husband still knew nothing about it. Here, however, there was uncontradicted testimony that the community received the benefit of the embezzlement." (*Id* at p. 310.)

Determination of whether Aguina alone, as Plaintiffs here assert, is chargeable with the tort damages as liability or debt is an important issue for the Family Law Court. Were the Family Law court to find that Aguina is solely chargeable for the tort liability, then, for example, real property found by that court to be Aguina's separate property becomes subject to attachment by all Plaintiffs including Plaintiff Kang. Similarly, bank accounts finally found to be his separate property become subject to levy by Plaintiffs including Plaintiff Kang. But, if the Family Law Court were to find that the community is all or in part chargeable for Defendant Aguina's tort, then allowing enforcement of the Judgment prior to the community debts and assets being divided between them would put Plaintiff Kang in the position of enforcing judgment against assets within the community, which community assets are her own as well as Aguina's. Similarly, without such family law decisions having been made, Plaintiffs other than Plaintiff Kang could prematurely attach or levy, etc., property of Co-Plaintiff Kang's within the community even though the Judgment is against Aguina only.

Thus, enforcement of this Judgment should be stayed until Plaintiffs can identify to the satisfaction of this Court that the assets with respect to which the Judgment is to be enforced are only Aguina's assets as determined by the Family Law Court.

C. Because of Its Substantial Relevance to Whether Aguina is Solely Chargeable, the Legality, Meaning, and Scope of the "Stipulation" or "Purported Stipulation" of September 27, 2012 Should Be Decided By the Family Law Before This Civil Court Allows Enforcement of Judgment to Proceed.

The stipulation or purported stipulation is relevant to the issue of whether the community property is chargeable for all or part or none of the debt that is the Judgment entered January 29, 2014. On September 27, 2012 in a Family Court hearing, Plaintiff Kang's

attorney described this civil matter: "was the money borrowed, and if so, was it paid back?" He acknowledged the family law court's jurisdiction to determine whether or not the debt, the borrowed money from the mother, is community or separate. (DROSC, Ex. C [9/27/12 Transcript (Tr.-II)], at pp. 26 -27.) Later, he offered this stipulation: "My client will stipulate that the sums of money, which are the subject of the civil lawsuit, are community property debt." (Tr-II at p. 30.) After further colloquy, opposing counsel stated: "So the answer is no. But if counsel was suggesting that we agree any debt exists at all, the answer is no. If he's suggesting if there is a debt owed - we stipulate it is community - the answer is yes." (Tr-II at p. 37.) The Court then states: "Okay." Later, Plaintiff Kang's attorney clarified in regard to the future: "In the event monies are owed, my client will stipulate that the sum of monies owed is a community property debt." (Tr-II at p. 37.) As of that date, the SAC was apparently asserting that the \$995,000 claimed to be owed was for breach of an oral contract and also that representations relevant to formation of the oral loan contract were fraudulent.

Plaintiffs recently asserted "the purported stipulation as to a community debt was made regarding contractual loan debts, not a verdict for fraud." (Emphasis in original.) (PROSC-II at p. 2.) This is one of a number of legal issues for The Family Law Court. It has sole jurisdiction in deciding whether that stipulation was lawful in whole or in part, whether its language -- "stipulate that the sums of money, which are the subject of the civil lawsuit, are community property debt" -- includes the fraud sums of money and/or contractual sums owed, or both? If the stipulation is found by the Family Law Court to include the fraud sums as community debt, then Plaintiff Kang may have stipulated that this civil Judgment for both the contract and the tort damages are chargeable to the community, assuming, as *Bell* indicates, that in some factual scenarios torts of a spouse are chargeable to the community when the community has benefitted.

Therefore, at least as to Plaintiff Kang, it seems reasonable to stay enforcement of the civil judgment until the Family Law Court has decided the issue of whether Aguina's tort is solely chargeable to him and the related issues concerning the "stipulation" or "purported" stipulation. That such issues should be resolved first as to Kang and Aguina in the Family Law Court would avoid any issue of Plaintiff Kang enforcing judgment against community assets before the Family Law Court has fully resolved these issues.

We applied the priority of jurisdiction doctrine in *Aguina I* and *Aguina III*. In *Aguina I*, Kang appealed from the family court's May 14, 2013 order discharging several prejudgment writs of attachment, which the court in this civil action issued on February 14, 2011, against five real properties located in Murrieta, and that Aguina was claiming were his separate properties, but that Kang was claiming belonged to the community. (*Aguina I, supra*, E058806 [at pp. 1-2, 6, 9-10, 17].) Kang argued that the family court lacked jurisdiction to discharge the writs because the family court lacked the " 'superior jurisdiction necessary to invalidate the orders of another department of the superior court.' " (*Ibid.* [at p. 14].) We rejected this claim based on the family court's priority of jurisdiction to determine the separate or community character of Kang's and Aguina's assets and to divide Kang and Aguina's community estate. (*Ibid.* [at pp. 14-18].)

We explained: " 'In practice, the superior court exercising jurisdiction under the Family Code is known as the "family court" (or "family law court"). But there is no separate "family court" per se. Rather, "family court" refers to the activities of superior court judicial officers handling litigation arising under the Family Code. The "family court" is not a separate court with special jurisdiction, but is instead the superior court performing one of its general duties.' (Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2014) ¶ 3:3.10, p. 3-3, quoting *In re Chantal S.* (1996) 13 Cal.4th 196, 200 . . . .) [¶] . . . 'Even though a superior court is divided into branches or departments, pursuant to *California Constitution, article VI, section 4*, there is only one superior court in a county and jurisdiction is therefore vested in that court, not in any

particular judge or department. Whether sitting separately or together, the judges hold but one and the same court. [Citation.] Because a superior court is but one tribunal, “[a]n order made in one department during the progress of a cause can neither be ignored nor overlooked in another department . . . .” [Citation.]’ (*Glade v. Glade* (1995) 38 Cal.App.4th 1441, 1449.)

“ ‘Under the doctrine of *priority jurisdiction*, the first superior court to assume and exercise jurisdiction in the case acquires exclusive jurisdiction until the matter is disposed of. [Citations.] The doctrine avoids the risk of simultaneous proceedings or conflicting decisions. [Citation.]’ (*Levine v. Smith* (2006) 145 Cal.App.4th 1131, 1135 . . . ; *Glade v. Glade*, *supra*, 38 Cal.App.4th at p. 1450 [“[T]he first court of equal dignity to assume and exercise jurisdiction over a matter acquires exclusive jurisdiction.” ’ (Italics omitted.)].) Thus, it is beyond the jurisdictional authority of any other superior court department to interfere with or invalidate a ruling made by the department first to acquire jurisdiction over the matter, until judgment in that matter has become final. (*Levin v. Smith*, *supra*, at p. 1135; Hogoboom & King, Cal. Practice Guide: Family Law, *supra*, 3:22, p. 3-13.)

“Here, the dissolution proceeding was filed in 2008, before the civil case was filed in 2010. Thus, the family court was the first department of the superior court to assume jurisdiction to determine and direct the disposition of Kang and Aguina’s community property estate, and had exclusive jurisdiction, under the doctrine of priority jurisdiction, to rule on matters *concerning* the division and disposition of the parties’ community estate. (*Askew v. Askew* (1994) 22 Cal.App.4th 942, 961 . . . [‘After a family law court

acquires jurisdiction to divide community property in a dissolution action, no other department of a superior court may make an order adversely affecting that division.’].)

“By issuing the right to attach order and the order for issuance of the writs on February 14, 2011, the court in the civil case interfered with the family court’s exclusive jurisdiction in matters concerning the division and disposition of Kang and Aguina’s community estate. At the time the writs were issued, Kang and Aguina were disputing whether the Murrieta real properties were community property assets or Aguina’s separate properties. By allowing Kang and her coplaintiffs to encumber the properties with the writs, pending judgment in the civil case, the court in the civil case directly interfered with the family court’s exclusive jurisdiction to make orders concerning the disposition, in the dissolution proceeding, of what Kang was then claiming were community assets. [¶] Thus, *the family court was not without jurisdiction* to issue its October 31, 2011, order directing Kang and Aguina to cooperate in the removal of the writs or its May 14, 2013, order discharging the writs—notwithstanding the February 14, 2011, right to attach order and order for the issuance of the writs in the civil case. Our conclusion is unaffected by the fact the civil case was not consolidated with the dissolution case and involved parties other than Kang and Aguina, namely, Kang’s coplaintiffs.” (*Aguina I, supra*, E058806 [at pp. 14-18].)

In *Aguina III, supra*, E065768, we again invoked the priority of jurisdiction doctrine in reversing two postjudgment orders issued by the court in this civil action following the entry of the \$574,500 judgment in January 2014: (1) the civil court’s July 12, 2016 order lifting the trial judge’s (the Hon. Phillip Argento) April 2, 2014 order

staying execution of the judgment, and (2) the civil court's October 19, 2016 order invalidating the family court's August 29, 2016 order, removing the abstract of judgment, or judgment lien, recorded on March 10, 2014, against Aguina's Murrieta properties to secure the payment of the \$574,500 judgment. (*Aguina III, supra*, E065768 [at pp. 2, 16-26].) We agreed with Aguina that the court in this civil action exceeded its authority in issuing the July 12 and October 19, 2016 postjudgment orders because those orders allowed the plaintiffs in this civil action, including Kang, to enforce the \$574,500 judgment solely against Aguina. We concluded that the orders "interfered with the family court's priority of jurisdiction to determine and divide Kang and Aguina's community estate." (*Ibid.* [at pp. 3, 25-26].)

Echoing our decision in *Aguina I, supra*, E058806, we noted in *Aguina III, supra*, E065768, that, under the doctrine of priority of jurisdiction, "the first judge or department to assume and exercise jurisdiction in a cause or matter acquires *exclusive jurisdiction* in the matter until it is disposed of. [Citations.] [¶] The doctrine of priority of jurisdiction avoids 'conflicting adjudications of the same subject matter' by different departments of the same superior court [citation] or by superior courts of different counties." (*Aguina III, supra*, E065768 [at p. 22].)

We noted that the doctrine "has been applied to invalidate superior court orders that *may* conflict or interfere with the family court's priority of jurisdiction to characterize and divide a community estate. (*Askew v. Askew, supra*, 22 Cal.App.4th at pp. 961-962 [civil department of superior court had no authority to consider husband's civil suit against wife for fraud based on wife's 'false statements of love and sexual

desire' given wife's previously-filed dissolution proceeding and family court's exclusive jurisdiction to characterize and divide community estate]; *In re Marriage of Schenck* (1991) 228 Cal. App. 3d 1474, 1482-1484 . . . [civil law and motion department had no authority to order sale of family home to pay husband's support arrearages when family court had retained jurisdiction to divide community interests in the home].)" (*Aguina III, supra*, E065768 [at pp. 23-24].)

Further, we noted that the priority of jurisdiction doctrine had been applied "to restrain superior court orders in favor of the third party judgment creditor of one spouse, when the orders may interfere with the family court's jurisdiction and authority to characterize and divide the spouse's community estate with the nondebtor spouse. (*In re Marriage of Van Hook* (1983) 147 Cal.App.3d 970, 980-982 . . . [third party judgment creditor of wife restrained from executing on community bank account and stock shares where family court had yet to enter judgment dividing community estate]; *Glade v. Glade, supra*, 38 Cal.App.4th at pp. 1449-1450, 1455-1456 [foreclosure action by husband's parents on community home stayed pending determination and division of community estate].)" (*Aguina III, supra*, E065768 [at p. 24].)

In *Aguina III*, we concluded that, "The family court had priority of jurisdiction to characterize and divide Aguina and Kang's community estate because proceedings on these issues were pending in the family court when the civil action was filed. Thus, the court in the civil action exceeded its authority, or the scope of its concurrent subject matter jurisdiction with the family court, in lifting the April 2, 2014, order staying enforcement of the judgment and in invalidating or prohibiting the enforcement of the



family court's August 29, 2016, order removing the abstract of judgment or judgment lien recorded against Aguina's five separate Murrieta real properties." (*Aguina III*, *supra*, E065768 [at pp. 3-4].) We also observed that, "[i]n lifting the April 2, 2014, order staying enforcement of the judgment, and in purporting to invalidate the family court's August 29, 2016, order removing the judgment lien from Aguina's Murrieta real properties, the court in the civil action allowed plaintiffs to satisfy the judgment by levying on and selling [Aguina's] Murrieta real properties. This could have allowed Kang to recover relief from Aguina not otherwise available to her in the family court proceedings. (*Glade v. Glade*, *supra*, 38 Cal.App.4th at pp. 1446-1450.)" (*Aguina III*, *supra*, E065768 [at p. 25].)

Here, too, the June 27, 2017 assignment/offset interfered with the family court's priority of jurisdiction to determine and divide Kang and Aguina's community estate. Like the July 12 and October 19, 2016 orders that we reversed in *Aguina III* as interfering with the family court's priority of jurisdiction, the June 27, 2017 assignment/offset order allows the plaintiffs in this civil action, including Kang, to enforce the \$574,500 judgment solely against Aguina. But the judgment is a community debt, and the family court has yet to determine whether Kang and Aguina have sufficient community assets to pay the judgment in full and, more generally, to determine and divide Kang and Aguina's community estate. It is the family court, not the civil court, which must determine how much of the community debt Aguina must pay. As noted, on November 17, 2016, the family court imposed a terminating sanction against Kang, and thus authorized the family court to determine and divide Kang and Aguina's community estate by default and

without Kang's participation. (*Aguina III, supra*, E065768 [at p. 19].) The assignment/offset order effectively allows the plaintiffs in this action, including Kang, to circumvent the family court's November 17, 2016 terminating sanction against Kang. The order may also allow Kang to recover relief from Aguina that she may not otherwise be able to obtain in the family court proceedings. (*Glade v. Glade* (1995) 38 Cal.App.4th 1441, 1446-1450.)

In issuing the June 27, 2017 assignment/offset order, the court in this civil action incorrectly observed that the community property character of the \$574,500 judgment, and the fact that no final judgment had been issued in the family law proceeding, had "no bearing" on the enforceability of the judgment by the plaintiffs in this civil action, including Kang. The court correctly noted that the \$574,500 judgment was also in favor of plaintiffs besides Kang, but incorrectly noted that the September 27, 2012 family court stipulation that the judgment was a community debt was "for purposes of the distribution of assets in the family law proceedings only."

As we explained in *Aguina III*, the priority of jurisdiction doctrine does not allow nonparties to a marital dissolution proceeding (e.g., the plaintiffs in this civil action, other than Kang) to circumvent the family court's priority of jurisdiction to determine and divide the parties' community estate, by enforcing a community property judgment against one of the parties to the marital dissolution proceeding, before the family court in the proceeding has determined and divided the parties' community estate. (*Aguina III, supra*, E065768 [at p. 23]; *Askew v. Askew* (1994) 22 Cal.App.4th 942, 961-962; *In re Marriage of Schenck* (1991) 228 Cal.App.3d 1474, 1482-1484.)

Plaintiffs maintain that Aguina has not met his burden of showing that the assignment/offset order is invalid and must be reversed. They point out that section 708.510 allows Aguina's right to payment of the \$3,500 sanctions order to be credited against Aguina's obligation to pay the \$574,500 judgment because the statute allows a judgment debtor's "right to payment due or to become due," to be assigned to the judgment creditor "whether or not the [judgment debtor's] right [to payment] is conditioned on future developments." (§ 708.510, subd. (a).)

Indeed, Aguina's right to payment of the \$3,500 in sanctions is not conditioned upon any future developments. In issuing the March 3, 2015 sanctions order, the family court ordered Kang and Siciliano to pay the \$3,500 sum within 30 days. As plaintiffs acknowledge, the \$3,500 sanction order was a "separate, independent judgment" against Kang and Siciliano.

But as we have explained, by crediting Aguina's right to payment of the \$3,500 in sanctions against the \$574,500 judgment, the court in this civil action interfered with the family court's priority of jurisdiction to determine and divide Kang and Aguina's community estate. Section 708.510, subdivision (a), applies "[e]xcept as otherwise provided by law." Under the priority of jurisdiction doctrine, plaintiffs' right to enforce the judgment solely against Aguina, which plaintiffs have agreed is a community debt, is

subject to the family court's pending determination and division of Kang and Aguina's community estate.<sup>6</sup>

Regarding Aguina's claim that the court in this civil action lacked jurisdiction to issue the assignment/offset order, plaintiffs claim that a similar jurisdictional challenge was rejected in *Weingarten Realty Investors v. Chiang* (2012) 212 Cal.App.4th 163 (*Weingarten*). We disagree. *Weingarten* has no bearing on this case.

The trial court in *Weingarten* assigned a judgment debtor's interest in properties that had escheated to the state to the judgment creditor. (*Weingarten, supra*, 212 Cal.App.4th at p.166.) When the judgment creditor filed claims for the properties with the state controller (former § 1540, subd. (a); Stats. 2005, ch. 706, §15), the controller denied the claims, asserting that only an " 'owner,' " who had a legal right to the properties *before* the properties escheated to the state (former § 1540, subd. (d)) could recover the escheated properties from the state under former section 1540. (*Weingarten*, p. 166.)

*Weingarten* rejected the controller's argument. It interpreted former section 1540, subdivision (a), which generally allowed "[a]ny person" who claimed an interest in

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<sup>6</sup> Plaintiffs claim that Aguina "appears to argue" that *plaintiffs' right to payment of the judgment* "is conditioned on future developments" regarding the resolution of community assets in the family court proceeding. Plaintiffs claim this argument is incorrect because "such future developments do not preclude an assignment" under section 708.510, subdivision (a). Plaintiffs are confusing their right to payment of the judgment with Aguina's right to payment of the \$3,500 sanctions order. Section 708.510 allows *a judgment debtor's right to payment* to be assigned to a judgment creditor, regardless of whether the right to payment is conditioned on future developments, but the statute does not concern whether the judgment creditor's right to payment of *the judgment* is conditioned on future developments.

property paid or delivered to the controller to file a claim to the property with the controller, as allowing the judgment creditor to claim the judgment debtor's escheated properties that the trial court had assigned to the judgment creditor. (*Weingarten, supra*, 212 Cal.App.4th at pp. 169-170.) *Weingarten* held that claimants under former section 1540, subdivision (a), were not limited to " 'owners,' " as defined in section 1540, subdivision (d). (*Weingarten*, at p. 170.)<sup>7</sup>

Plaintiffs point out that, on appeal in *Weingarten*, the controller argued that the trial court in *Weingarten* "lacked jurisdiction over the property and the controller," and that the *Weingarten* court rejected this claim. (*Weingarten, supra*, 212 Cal.App.4th at pp. 166-170.) Here, too, plaintiffs argue that the court in this civil action "clearly had jurisdiction over [Aguina] as a defendant" in this civil action and "thus had the power to issue the assignment." We agree that the court in this civil action had jurisdiction over Aguina as a defendant, and the court also had subject matter jurisdiction over plaintiffs' fraud and breach of contract claims against Aguina in this civil action. Again, however, the court exceeded its authority and interfered with the family court's priority of jurisdiction by crediting Aguina's right to payment of the \$3,500 sanctions order against

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<sup>7</sup> Effective January 1, 2014, former section 1540 was amended to provide that "(a) Any person . . . who claims *to have been the owner, as defined in subdivision (d) of property paid or delivered to the Controller . . . may file a claim to the property . . .*" (Stats. 2013, ch. 128, § 1, italics added.) Former section 1540, subdivision (a), provided that "Any person . . . who claims *an interest in property paid or delivered to the Controller . . . may file a claim to the property.* (*Weingarten, supra*, 212 Cal.App.4th at p. 168, italics added.) The 2013 legislation also amended subdivisions (b) and (c) of section 1540 and rewrote subdivision (d) to clarify that, "Only an owner, as defined in this subdivision, may file a claim with the Controller pursuant to this article." (Stats. 2013, ch. 128, § 1.)

the judgment, which all of the parties in this civil action have agreed is a community debt of Kang and Aguina's community estate.

### III. DISPOSITION

The June 27, 2017 assignment/offset order is reversed. The matter is remanded to the superior court with directions that the allocation and responsibility for payment of the community debt, specifically, the \$574,500 judgment, shall be determined by the family court. Aguina shall recover his costs on appeal. (Cal. Rules of Court, rule 8.278.)

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

FIELDS  
J.

We concur:

RAMIREZ  
P. J.

MILLER  
J.

# **Appendix “I”**

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF RIVERSIDE

In Re Marriage of

Petitioner: AGUINA

and

Respondent: CHOONG-DAE KANG

CASE NO.: SWD015783

STATEMENT OF DECISION

API: Hon. James T. Warren  
DEPT: H2  
HEARING: 11/4/2016

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

On July 22, 2016, Petitioner filed a Request for Order seeking the imposition of sanctions pursuant to Family Code § 2107 based on allegations that Respondent has failed to comply with her mandatory disclosure requirements under Family Code § 2015. Petitioner's motion requested terminating sanctions under Family Code § 2107(b)(2) and monetary sanctions under Family Code § 2106(c).

The matter was initially set for hearing on September 28, 2016. Petitioner appeared with his attorney, Andrew L. Westover, CFLS at the hearing. Respondent did not appear but was represented by her attorney, Allison Tilton. After hearing from both counsel, the Court granted Respondent's request for a continuance based on specific conditions. Those conditions, among

- 1 -

In re Marriage of AGUINA & KANG  
Case No. SWD015783

STATEMENT OF DECISION

EXHIBIT 4 25AA.522



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8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF RIVERSIDE

10  
11 In Re Marriage of

12 Petitioner: AGUINA

13 and

14 Respondent: CHOONG-DAE KANG  
15

CASE NO.: SWD015783

**STATEMENT OF DECISION**

APJ: Hon. James T. Warren  
DEPT: H2  
HEARING: 11/4/2016

16 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

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20 terminating sanctions under Family Code § 2107(b)(2) and monetary sanctions under Family Code  
21 § 2106(c).  
22

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24 attorney, Andrew L. Westover, CFLS at the hearing. Respondent did not appear but was  
25 represented by her attorney, Allison Tilton. After hearing from both counsel, the Court granted  
26 Respondent's request for a continuance based on specific conditions. Those conditions, among  
27

1 other things, required Respondent to pay all previously ordered monetary sanctions that had not  
2 been paid to date. The September 28, 2016 hearing was thereupon continued to November 4, 2016.  
3 On October 5, 2016, Petitioner filed, and served, a brief listing all outstanding fee and sanction  
4 orders. On October 24, 2016, Respondent substituted out her attorney of record and attorney Nieves  
5 Osaba substituted in as counsel on a limited scope.

6 On October 25, 2016, Respondent filed a Request for Order seeking a continuance of the  
7 November 4, 2016 hearing and an order shortening time. The order shortening time was denied and  
8 the Request for Order was set on November 4, 2016. On November 4, 2016 the Request for Order  
9 seeking a continuance was denied as moot.

10 On November 4, 2016, Petitioner and his attorney appeared. Respondent did not appear at  
11 the hearing but was represented by her attorney of record. The Court heard the argument of counsel  
12 and considered the various pleadings of the parties.

13 Respondent's Declaration regarding her 2015 tax returns, filed on October 24, 2016, was  
14 admitted into evidence without objection. Throughout 2015 and 2016, Respondent has submitted  
15 sworn declarations, under penalty of perjury, to the court alleging she had no assets, no income, and  
16 no business interests. Respondent's tax return forms establish that Respondent is the sole  
17 shareholder in the following international corporations, none of which were disclosed by  
18 Respondent in her prior financial disclosures:

- 19 • One Direction, Ltd., a British Virgin Islands Corporation;
- 20 • Live Bridge, Inc., a Japanese Corporation, with \$211,238 in gross receipts during the  
21 2015 tax year and over \$2.1 million in assets (\$67,196 as "Cash on hand and in banks");
- 22 • Astoria Enterprises Ltd., a Hong Kong Corporation, with \$925,106 in assets  
23 (\$925,088 as Buildings and Land);

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2 been paid to date. The September 28, 2016 hearing was thereupon continued to November 4, 2016.  
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20 Respondent in her prior financial disclosures:

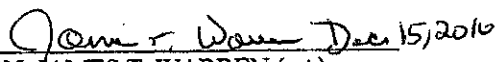
- 21  
22 • **One Direction, Ltd**, a British Virgin Islands Corporation;  
23 • **Live Bridge, Inc.**, a Japanese Corporation, with \$211,238 in gross receipts during the  
24 2015 tax year and over \$2.1 million in assets (\$67,196 as "Cash on hand and in banks");  
25 • **Astoria Enterprises Ltd.**, a Hong Kong Corporation, with \$925,106 in assets  
26 (\$925,088 as Buildings and Land);  
27

- 1 • **Sweet Smile Holdings, Inc.**, a British Virgin Islands Corporation, with \$363,617 in  
2 cash assets.

3 Based on the evidence presented at the hearing, and the argument of both counsel, the Court  
4 finds that Respondent has failed to comply with the mandatory disclosure requirements under  
5 Family Code § 2105. Respondent was given a prior opportunity to correct this deficiency in the  
6 court's January 28, 2016 order but she has still not complied. Respondent also failed to comply  
7 with the September 28, 2016 order that she pay all outstanding sanctions. It is clearly apparent to  
8 the Court that Respondent has intentionally refused to disclose the existence of these assets to hide  
9 their existence from Petitioner. Further, the Court is concerned that millions of dollars in financial  
10 community property assets, of which Petitioner has a vested interest, have gone missing while under  
11 Respondent's care and control. For example, the parties owned several condominiums in Japan.  
12 Respondent has testified on numerous occasions that those condominiums were lost due to legal  
13 action in Japan and were purchased by Astoria, Inc. in Hong Kong. It was not until Respondent's  
14 2015 tax filings were received that Respondent's sole ownership of Astoria, Inc. was discovered.  
15

16 Therefore, the court orders terminating sanctions against Respondent pursuant to Family  
17 Code § 2107. Respondent is barred from presenting any evidence on issues that should have been  
18 covered in the declaration of disclosure pursuant to the authority of Family Code § 2107(b)(2).  
19 Respondent's response is stricken and Petitioner shall be allowed to move forward via default.  
20 Petitioner's request for mandatory monetary sanctions under Family Code § 2107(c) is granted in  
21 the amount of \$ 30,000, which is payable forthwith by Respondent.  
22

23  
24 **IT IS SO ORDERED**

25  
26   
27 HON. JAMES T. WARREN (ret.)  
Judge of the Superior Court

-3-

- Sweet Smile Holdings, Inc., a British Virgin Islands Corporation, with \$363,617 in cash assets.

Based on the evidence presented at the hearing, and the argument of both counsel, the Court finds that Respondent has failed to comply with the mandatory disclosure requirements under Family Code § 2105. Respondent was given a prior opportunity to correct this deficiency in the court's January 28, 2016 order but she has still not complied. Respondent also failed to comply with the September 28, 2016 order that she pay all outstanding sanctions. It is clearly apparent to the Court that Respondent has intentionally refused to disclose the existence of these assets to hide their existence from Petitioner. Further, the Court is concerned that millions of dollars in financial community property assets, of which Petitioner has a vested interest, have gone missing while under Respondent's care and control. For example, the parties owned several condominiums in Japan. Respondent has testified on numerous occasions that those condominiums were lost due to legal action in Japan and were purchased by Astoria, Inc. in Hong Kong. It was not until Respondent's 2015 tax filings were received that Respondent's sole ownership of Astoria, Inc. was discovered.

Therefore, the court orders terminating sanctions against Respondent pursuant to Family Code § 2107. Respondent is barred from presenting any evidence on issues that should have been covered in the declaration of disclosure pursuant to the authority of Family Code § 2107(b)(2). Respondent's response is stricken and Petitioner shall be allowed to move forward via default. Petitioner's request for mandatory monetary sanctions under Family Code § 2107(c) is granted in the amount of \$ 30,000, which is payable forthwith by Respondent.

IT IS SO ORDERED

  
HON. JAMES T. WARREN (ret.)  
Judge of the Superior Court

- 3 -

In re Marriage of AGUINA & KANG  
Case No. SWD015783

STATEMENT OF DECISION

EXHIBIT 4<sup>25AA.524</sup>

# Appendix “J”

## Civil Minutes

Calendar

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Case Type:  Select a Court:   
Case Number:  Search

Case SWD015783 - AGUINA VS KANG

Action: 

HEARING RE: EVIDENTIARY HEARING FOR JOINDER

Date	Time	Department
10/27/2012	1:30 PM	DEPT. H2

### Minutes

HONORABLE JUDGE JAMES T WARREN PRESIDING.

CLERK: L. DELATORRE

COURT REPORTER: K. ERNST

AGUINA AGUINA PRESENT IN COURT REPRESENTED BY P. TIMOTHY PITTULLO.

CHOONG-DAE KANG PRESENT IN COURT REPRESENTED BY CHRISTINE GREER, JOHN SICILIANO.

AT 2:01 THE FOLLOWING PROCEEDINGS WERE HEARD:

BOTH PARTIES SWORN AND EXAMINED.

ISSUES DISCUSSED WITH THE COURT.

ARGUMENT PRESENTED BY BOTH PARTIES

COURT IS AT RECESS

AT 3:20 P.M. COURT RESUMES

ALL PARTIES PREVIOUSLY PRESENT ARE PRESENT IN COURT

ATTORNEY SICILIANO STATES ON THE RECORD, IF THERE IS A DEBT OWED, THE PARTIES WILL STIPULATE THE

DEBT OWED IS A COMMUNITY DEBT.

COURT MAKES THE FOLLOWING ORDERS:

COURT ACCEPTS THE PARTIES STIPULATION OF DEBT ALLEGED AND/OR DETERMINED A DEBT IS A COMMUNITY

DEBT.

<http://riv-jal/JA/civil/civilminutes.asp?courtcode=F&casenumber=015783...> 10/16/2014

0269

PETITIONER TO FILE BRIEF/POSITION AS TO CONSOLIDATION AND JOINDER (RE: CIVIL CASE) BY  
10-18-12. RESPONDENT (ATTY SICILIANO) TO RESPOND BY 10-31-12.  
ALL CONDITIONS HERETOFORE ORDERED NOT IN CONFLICT REMAIN IN FULL FORCE AND EFFECT.  
HEARING RE: CONSOLID OF CIVIL CASE, JOINDER 3 PLAINTIFFS (CIVIL) SET 11/18/12 AT 01:30 DEPT H2  
PRINT MINUTE ORDER



# **Appendix (K)**

**From:** Questions CA09Operation [questions@ca9.uscourts.gov](mailto:questions@ca9.uscourts.gov)  
**Subject:** RE: REQUEST TO PUBLISH MEMORANDUM  
**Date:** February 14, 2023 at 9:43 AM  
**To:** Aguina Aguina [777aguina@gmail.com](mailto:777aguina@gmail.com)

---

Please see the following entry from the docket:

02/10/2023      43      Filed order (CONSUELO M. CALLAHAN, RYAN D. NELSON and HOLLY A. THOMAS): Appellant has filed a motion requesting publication of the memorandum disposition in this case. Dkt. No. [41]. This filing is rejected for noncompliance with Federal Rule of Appellate Procedure 32(d), which states that if a party is represented, any paper filed with the court must be signed by the party's attorneys. [12650574] (Fung, Allison) [Entered: 02/10/2023 10:00 AM]

1 pg, 99.48 KB

-----Original Message-----

From: Aguina Aguina <[777aguina@gmail.com](mailto:777aguina@gmail.com)>  
Sent: Monday, February 13, 2023 4:57 PM  
To: Questions CA09Operation <[questions@ca9.uscourts.gov](mailto:questions@ca9.uscourts.gov)>  
Subject: Re: REQUEST TO PUBLISH MEMORANDUM

CAUTION - EXTERNAL:

Thank you for the reply, my mistake, the correct #22-60005 Inadvertently missed one of the (0)

Please respond

> On Feb 13, 2023, at 4:47 PM, Questions CA09Operation <[questions@ca9.uscourts.gov](mailto:questions@ca9.uscourts.gov)> wrote:  
>  
> It looks like the case number you gave is missing a digit. The Court of Appeals case numbers look like this: 22-#####.  
>  
> Please resubmit this request with the proper case number so we may look at the docket and see what is going on in the case.  
>  
> Thank you.

> -----Original Message-----

> From: Aguina Aguina <[777aguina@gmail.com](mailto:777aguina@gmail.com)>  
> Sent: Monday, February 13, 2023 3:44 PM  
> To: Questions CA09Operation <[questions@ca9.uscourts.gov](mailto:questions@ca9.uscourts.gov)>  
> Subject: REQUEST TO PUBLISH MEMORANDUM  
>  
> CAUTION - EXTERNAL -