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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

GLASER, WEIL, FINK, HOWARD, AVCHEN & SHAPIRO, LLP, Plaintiff and Respondent, v. GERALD GOLDSTEIN, Defendant and Appellant.	B285198 (Los Angeles County Super. Ct. No. BC527647)

APPEAL from orders of the Superior Court of Los Angeles County, Edward Moreton, Jr., Judge Affirmed.

Klapach & Klapach and Joseph S. Klapach for Defendant and Appellant.

Krane & Smith and Daniel L. Reback for Plaintiff and Respondent.

INTRODUCTION

This appeal involves the intersection of several remedies by which civil judgments in California may be enforced. Judgment debtor Gerald Goldstein (Goldstein) is the person against whom a judgment has been rendered. Judgment creditor Glaser, Weil, Fink, Howard, Avchen & Shapiro, LLP (Glaser Weil) is the entity in whose favor a judgment has been rendered. Pursuant to the Code of Civil Procedure, Glaser, Weil formally examined Goldstein to discover property it could seize to satisfy its money judgment. After the judgment debtor examination, Glaser Weil then applied for three remedies to take control of Goldstein's assets to satisfy the judgment: a writ of execution, an assignment order, and a turnover over. The assignment and turnover orders are the subject of this appeal.

Goldstein appeals from the trial court's orders (1) assigning his right to receive payments from two corporations to judgment creditor Glaser Weil; and (2) directing him to turn over to the levying officer all share certificates and documents evidencing his ownership interest in three corporations.

Goldstein makes two claims of procedural error: (1) the turnover order is invalid because Glaser Weil failed to satisfy the statutory prerequisites in Code of Civil Procedure section 699.040;[1] and (2) the trial court was authorized to issue an assignment order or a turnover order, but not both. Goldstein additionally contends that even if the orders were procedurally proper, the evidence is insufficient to support either order.

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[1] Further undesignated statutory references are to the Code of Civil Procedure.

Glaser Weil has moved to dismiss Goldstein's appeal under the disentitlement doctrine, arguing that Goldstein has not complied with the turnover and other court orders and so should not be permitted to appeal.[2]

We deny the motion to dismiss. We affirm the trial court's assignment and turnover orders.

BACKGROUND

In February 2016, Glaser Weil obtained a judgment against Goldstein in the amount of $868,464.45 plus interest. Goldstein did not voluntarily pay the judgment.

In June 2017, after more than a year of only partially successful efforts to identify Goldstein's assets, Glaser Weil filed a motion for alternative orders (1) assigning to itself Goldstein's interest in and right to payments from TMC Music, Inc. (TMC) and Far Out Productions, Inc. (Far Out); or (2) directing Goldstein to turn over to the levying officer his share certificates in TMC, Far Out, and a third corporation, The Last Experience, Inc. (Last Experience).

Glaser Weil's motion was based almost entirely on Goldstein's testimony at an April 10, 2017, judgment debtor's examination pursuant to section 708.110. Goldstein testified he owned all the shares of Far Out, a record production company whose assets consist of master recordings of several thousand songs. Far Out has distribution agreements with Universal for the U.S. and Canada, and with BMG for the rest of the world.

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[2] Glaser Weil filed a motion for judicial notice concurrently with its motion to dismiss. On July 16, 2018, we granted Glaser Weil's judicial notice motion and took judicial notice of five trial court orders, a bench warrant, and an ex parte application for orders to show cause re contempt. (Evid. Code, §§ 452, 453, 459.)

Far Out received advance payments as part of the distribution agreements and its earnings under these agreements generally went directly to Universal and BMG to repay the advances. However, Goldstein "may have" received payments from Far Out in 2016. The source of any payments would have been the Universal distribution agreement, which contains a pass-through provision allowing Far Out to receive a small percentage of the total earnings. There was no pass-through provision in the BMG agreement.

Goldstein also testified he owned all the shares of TMC, a music publishing company whose assets consist of about 500 musical compositions. TMC's income in 2016 was "around a million dollars." A declaration by Glaser Weil's counsel states Goldstein testified he " 'might have received some money' from [TMC] in the last year. (*Id.* at p. 50.)"[3]

The record on appeal does not include testimony from the judgment debtor's examination about Last Experience. In its motion, Glaser Weil attached a copy of an unpublished opinion from Division 2 of this court stating that Last Experience is a corporation formed no later than 2010 solely to hold Goldstein's film rights to footage of Jimi Hendrix's 1969 concerts. (*Experience Hendrix, LLC v. The Last Experience, Inc.* (May 8, 2017, B268414).) In the trial court, Goldstein did not dispute his ownership of Last Experience.

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[3] The declaration states that relevant pages from the judgment debtor's examination are attached to the motion as an exhibit. The copy in the record on appeal does not include page 50. The record does not contain an objection by Goldstein to the missing page.

Due to Goldstein's failure to produce documents, the judgment debtor's examination could not be completed on April 10, 2017. The trial court ordered Goldstein to produce the requested documents by April 27, 2017 and return for further examination on May 4, 2017.

On May 4, 2017, Goldstein's counsel filed a declaration in which he stated that Goldstein was in poor health and would not attend the debtor's examination. Counsel attached a letter from Goldstein's doctor recommending that Goldstein not make any court appearances for 60 days. Goldstein did not produce documents, and the court set a contempt hearing for May 18, 2017. The court also continued the debtor's examination to that date.

Goldstein did not appear on May 18, 2017. His counsel appeared with a letter from Goldstein's doctor stating that Goldstein was suffering from high blood pressure and other health problems and should not engage in stressful activities for 60 days. The court found Goldstein in contempt for failing to produce any documents by April 27, 2017 as previously ordered. The court ordered Goldstein to produce documents by July 10, 2017, and to appear for his examination on July 17, 2017.

On June 12, 2017, Glaser Weil filed its motion for an assignment order or, alternatively, a turnover order. The hearing for the motion was set for July 17, 2017. It also applied for issuance of a writ of execution. On July 5, 2017, a writ of execution issued.

Goldstein produced some documents on July 10, 2017. He did not appear for his judgment debtor's examination on July 17, 2017. That same day, the court heard Glaser Weil's motion for an assignment or turnover order and issued both orders. The

turnover order required Goldstein to turn over all share certificates in TMC, Far Out and Last Experience, and all documents evidencing ownership interest in those corporations, within seven days. Goldstein did not comply with the turnover order.

On September 11, 2017, the court issued a bench warrant for Goldstein's arrest for his failure to appear at the July 17, 2017 judgment debtor's examination. The record does not show when or if Goldstein was served with this warrant. It does indicate that the fee for service of the warrant was paid on September 14, 2017.

On September 15, 2017, Goldstein filed a notice of appeal from the trial court's assignment and turnover orders.

On February 8, 2018, the court granted Goldstein's motion for nonsuit on the contempt charge related to his failure to appear at the July 17, 2017 debtor's examination. At Glaser Weil's request, the court continued the hearing on an order to show cause re contempt for Goldstein's failure to comply with the turnover order and with the document production order. On May 21, 2018, the hearing on the OSC was again continued to July 23, 2018. There is no further information in the record about the OSC.[4]

DISCUSSION

I. Motion For Disentitlement

Glaser Weil contends we should dismiss Goldstein's appeal under the disentitlement doctrine because Goldstein has willfully

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[4] On our own motion, we take judicial notice of the February 8, 2018, and May 21, 2108, minute orders attached as exhibits to the Friedman declaration. (Evid. Code, §§ 452, 453, 459.)

ignored orders of the trial court, has been held in contempt of court, has refused to comply with the turnover order which is the subject of this appeal, and is a "fugitive." We do not find disentitlement to be an appropriate sanction in this case and decline to dismiss the appeal.

A. Disentitlement Is Discretionary.

"An appellate court has the inherent power, under the 'disentitlement doctrine' to dismiss an appeal by a party that refuses to comply with a lower court order." (*Stoltenberg v. Ampton Investments, Inc.* (2013) 215 Cal.App.4th 1225, 1229.) Disentitlement is not a jurisdictional doctrine, but a " ' "discretionary tool that may be applied when the balance of the equitable concerns makes it a proper sanction." " (*Id*. at p. 1230.) A formal judgment of contempt is not a prerequisite to disentitlement. We may dismiss an appeal " 'where there has been willful disobedience or obstructive tactics.' " (*Ibid,* italics omitted.)

"The disentitlement doctrine 'is particularly likely to be invoked where the appeal arises out of the very order (or orders) the party has disobeyed.' (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2014) ¶ 2:340, p. 2-203.) Moreover, the merits of the appeal are irrelevant to the application of the doctrine. (See *Stone v. Bach* (1978) 80 Cal.App.3d 442, 448 [145 Cal.Rptr. 599] [rejecting defendant's claim that dismissal was not warranted because the orders he violated were 'invalid'].)" (*Ironridge Global IV, Ltd. v. ScripsAmerica, Inc.* (2015) 238 Cal.App.4th 259, 265 (*Ironridge*); cf. *Imperial Bank v. Pim Electric, Inc.* (1995) 33 Cal.App.4th 540, 545 (*Imperial Bank*) [considering appeal from turnover order by debtor who did not comply with turnover order].)

At the same time, the right to an appeal " 'must not be lightly forfeited, and where a doubt exists as to a litigant's conduct being contumacious or wilful, an appellate court will tolerate temporarily the acts which were disruptive of the judicial process. We always prefer to resolve a cause on its merits; once the rights of the parties have been determined with finality, then the thwarted authority and offended dignity of the court may be assuaged with condign sanctions to the extent of the affront.' " (*Stoltenberg v. Ampton Investments, Inc.*, *supra*, 215 Cal.App.4th at pp. 1231–1232, quoting *Tobin v. Casaus* (1954) 128 Cal.App.2d 588, 592.)

B. Disentitlement Is Not Warranted In This Case.

Glaser Weil's description of Goldstein makes him appear to be an ideal candidate for the application of the disentitlement doctrine. The record, however, shows only one instance in which Goldstein was held in contempt of court. That occurred in May 2017 for failing to produce documents. Although application of the disentitlement doctrine does not require a finding of contempt, it does require a showing that the appellant engaged in willful disobedience or obstructive tactics. The record on appeal raises a doubt that Goldstein has deliberately or willfully ignored court orders since the May 2017 contempt finding.

1. Document production orders

It is undisputed that Goldstein produced some documents after the May 2017 contempt proceedings. Glaser Weil contends the production was "woefully insufficient" and "wholly inadequate." It points to meet and confer correspondence between the parties which suggests that Goldstein has not produced all responsive documents. In opposition to the motion to dismiss, however, Goldstein's counsel filed a declaration

stating that he "assisted Mr. Goldstein in gathering and producing the financial records responsive to Glaser Weil's document requests. Mr. Goldstein produced all of the responsive financial records that he had in his possession or control." We have no ability to weigh these competing factual claims, but Goldstein's counsel's declaration raises a doubt whether Goldstein's failure to produce documents was willful.[5]

2. Debtor's examination

After failing to appear several times at the judgment debtor's examination, Goldstein produced medical excuses for his failure to appear on May 4, 2017 and May 18, 2017. There is no information in the record explaining Goldstein's failure to appear for examination on July 17, 2017. The court initially issued a bench warrant for Goldstein based on his failure to appear for the July 17 examination, but on February 8, 2018, the court granted Goldstein's motion for a nonsuit on the OSC re contempt for

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[5] The record before us is extremely limited, but even on this record, genuine factual disputes appear. For example, Glaser Weil seeks tax filings for any business in which Goldstein holds an ownership interest from June 2013 to the present and complains that Goldstein did not produce any such documents. These certainly are documents which a business would be expected to possess. At his judgment debtor's examination, however, Goldstein testified that Far Out (and Audio Visual Entertainment, another company he owned) had last filed taxes in 2011. If true, no tax filings would exist for the period of 2013 to the present.

failing to appear at the examination.[6] Goldstein's counsel stated in his declaration that the trial court "reasoned that Glaser Weil had failed to present any evidence that Mr. Goldstein had the ability to comply with the orders directing him to appear at the judgment debtor's examinations." The trial court's nonsuit raises a doubt whether Goldstein's failure to appear was willful.

3. Turnover order

Generally, turnover orders are enforceable by contempt proceedings. (§ 699.040, subd. (c); see *Imperial Bank*, *supra*, 33 Cal.App.4th at p. 550.) Although the court granted Glaser Weil's ex parte application for an order to show cause re contempt against Goldstein related to the turnover order, the court has continued the trial of that matter several times since the initial hearing date of February 8, 2018. Thus, there is no finding in the record that Goldstein has the present ability to comply with the turnover order, but has willfully failed to do so.

We find the circumstances of the case raise a doubt whether Goldstein's failure to comply with the turnover order was willful. Goldstein's testimony at the judgment debtor's examination showed that Far Out had substantial debt, and that Goldstein's own financial circumstances were precarious. The unpublished opinion proffered by Glaser Weil showed Last Experience had just concluded costly litigation. These circumstances are consistent with a lender demanding some form of security for its loan. Goldstein's attorney filed a declaration in

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[6] Glaser Weil asserts the bench warrant is still outstanding and Goldstein is a fugitive. Given that the trial court found Goldstein not in contempt for failing to appear at the debtor's examination, it is unclear why the warrant was not recalled. We cannot attach any significance to this state of affairs.

opposition to the motion for disentitlement in which he states that Goldstein presented evidence in the trial court that he does not have possession of any of the stock certificates at issue because they have already been pledged as security for third party senior lenders. Although we do not agree that Goldstein succeeded in producing competent documentary evidence, the declaration is an indication Goldstein believes (even if mistakenly) that pre-existing agreements prevent him from reclaiming and/or turning over his share certificates. These circumstances raise a doubt that Goldstein's failure to comply with the turnover order was willful.[7]

II. Appeal

Goldstein elected to proceed without a reporter's transcript of the hearing on Glaser Weil's motion for the assignment and turnover orders. Goldstein's two procedural claims present questions of law, and we can consider those claims based solely on the filings before the trial court. Accordingly, we consider his claims. (See *Chodos v. Cole* (2012) 210 Cal.App.4th 692, 699.) His two other remaining claims necessarily involve evidentiary rulings and our review of those claims is limited by the absence of a reporter's transcript. None of the four claims has merit.

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[7] While the circumstances may raise a doubt sufficient to escape disentitlement, they do not excuse Goldstein's continued failure to comply with the turnover order. If Goldstein no longer has possession or control of the share certificates, he must provide competent evidence of that fact to the trial court.

A. The Record On Appeal Limits The Scope Of Our Review.

"[I]t is settled that: 'A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.' " (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) It is appellant's burden on appeal to produce a record " 'which overcomes the presumption of validity favoring [the] judgment.' " (*Webman v. Little Co. of Mary Hospital* (1995) 39 Cal.App.4th 592, 595.)

The presumption of correctness " 'has special significance when . . . the appeal is based upon the clerk's transcript.' [Citation.] 'It is elementary and fundamental that on a clerk's transcript appeal the appellate court must conclusively presume that the evidence is ample to sustain the findings . . . .' " (*National Secretarial Service, Inc. v. Froehlich* (1989) 210 Cal.App.3d 510, 521–522.) Our review is limited to determining whether any error "appears on the face of the record." (*Id.* at p. 521; see Cal. Rules of Court, rule 8.163.) [8]

Unless an error appears on the face of the record, an appellant's " '[f]ailure to provide an adequate record on an issue requires that the issue be resolved against [appellant].' " (*Foust*

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[8] California Rules of Court, rule 8.163 provides: "The reviewing court will presume that the record in an appeal includes all matters material to deciding the issues raised. If the appeal proceeds without a reporter's transcript, this presumption applies only if the claimed error appears on the face of the record."

v. San Jose Construction Co., Inc. (2011) 198 Cal.App.4th 181, 187; see *Wagner v. Wagner* (2008) 162 Cal.App.4th 249, 259 ["The absence of a record concerning what actually occurred at the hearing precludes a determination that the court abused its discretion."].)

B. Goldstein's Two Procedural Claims Fail.

Goldstein contends that Glaser Weil's motion for a turnover order was premature and therefore should have been denied. He also contends the trial court lacked authority to issue both an assignment order and a turnover order.

1. A writ of execution was timely issued.

Goldstein contends the turnover order is invalid because Glaser Weil applied for a turnover order before a writ of execution had been issued, in violation of Code of Civil Procedure section 699.040. He argues that even though a writ of execution had been issued by the time the turnover order was granted, strict compliance with the statutory language is required.

Glaser Weil applied for a turnover order under section 708.205 as well as section 699.040. The trial court's order does not specify the section or sections on which the trial court relied. Section 708.205 does not require a writ of execution. (*Imperial Bank*, *supra*, 33 Cal.App.4th at p. 549 [rejecting appellants' claim that issuance of a writ of execution must precede issuance of a turnover order under section 708.205].) Goldstein does not argue on appeal that a turnover order under section 708.205 was premature.

Assuming for the sake of argument that the turnover order was issued under section 699.040, we find the order valid. Section 699.040, subdivision (a) provides "If a writ of execution is issued, the judgment creditor may apply to the court . . . for an

order directing the judgment debtor to transfer [property] to the levying officer." This section contemplates that a writ of execution will be issued before an application for a turnover order is made, and that should be the norm. A writ of execution is necessary for a turnover order under section 699.040 to issue. (See *Imperial Bank*, *supra*, 33 Cal.App.4th at p. 553 ["A section 699.040 turnover order is a 'turnover order in aid of execution.' "].) Applying for a turnover order before successfully obtaining such a writ risks wasting the time and resources of the parties and the court.

Nothing in section 699.040 suggests, however, that a turnover order is invalid as a matter of law when the writ of execution issues after an application is made but before the order issues. (See *Imperial Bank*, *supra*, 33 Cal.App.4th at p. 546, fn. 7 [noting it was not clear whether judgment creditor complied with section 699.404 since record did not show "whether a writ of execution was outstanding at the time of the turnover order"]; *Palacio Del Mar Homeowners Assn., Inc. v. McMahon* (2009) 174 Cal.App.4th 1386, 1391, fn. 5 [noting section 699.040 "authorizes a turnover order only when 'a writ of execution is issued' " and finding the judgment creditor could not rely on previously issued but expired writ of execution].)

Goldstein's reliance on *Landstar Global Logistics, Inc. v. Robinson & Robinson, Inc.* (2013) 216 Cal.App.4th 378 (*Landstar*) is misplaced. Section 708.510 permits a judgment creditor to obtain a restraining order after he obtains an assignment order or concurrently with that order. The creditor in *Landstar* obtained only a restraining order, which alone was not valid. (*Landstar*, at p. 390.) The equivalent factual situation would have occurred in this case had the trial court issued a turnover

order under section 699.040 in the absence of a writ of execution. That did not happen. Here, a valid writ of execution was issued before the turnover order was granted. There is no procedural error.

2. Goldstein had adequate notice of the request for dual orders.

Goldstein next contends that because Glaser Weil, in its notice of motion and motion, requested an assignment order or, alternatively, a turnover order, the trial court had authority to issue only one order. We do not agree.

First, the record is silent as to why the court issued both orders. On this record, we presume the trial court's order is correct. (*Denham v. Superior Court*, *supra*, 2 Cal.3d at p. 564.)

Second, "[a] basic tenet of motion practice is that the notice of motion must state the grounds for the order being sought [citations], and courts generally may consider only the grounds stated in the notice of motion." (*Kinda v. Carpenter* (2016) 247 Cal.App.4th 1268, 1277.) "The purpose of the notice requirements 'is to cause the moving party to "sufficiently define the issues for the information and attention of the adverse party and the court." ' [Citation.] Sometimes this purpose is met notwithstanding deficient notice. For example, it may be sufficient that the supporting papers contain the grounds for the relief sought, even if the notice does not. [Citations.] It also may be sufficient if the omitted issue, or ground for relief, was raised without objection before the trial court. (*Fredrickson v. Superior Court* (1952) 38 Cal.2d 593, 598 [241 P.2d 541] ['accepting petitioner's claim that the notice of motion was insufficient, the grounds were raised without objection in the trial court at the hearing on the motion'].)" (*Kinda v. Carpenter*, at p. 1277.)

Where, as here, a moving party requests two forms of relief in the alternative, the opposing party is on notice that it must respond to both forms of relief. Goldstein in fact responded to and opposed Glaser Weil's request for an assignment order and its request for a turnover order. The record before us does not reveal whether Goldstein objected to the notion that the two orders, if issued together, were legally incompatible as mutually exclusive.[9] On the face of this record, and because Goldstein fully briefed the propriety of and objected to each order, we find no error.

C. Sufficient Evidence Supports The Assignment And Turnover Orders.

Glaser Weil sought an assignment order pursuant to section 708.510, which permits assignment rights to "payment due or to become due, whether or not the right is conditioned on future developments . . . ." Payments include commissions, royalties and payments from copyrights. (§ 708.510. subd. (a).)

Glaser Weil sought a turnover order under either section 699.040 or 708.205. "Section 708.205 does not limit the type of property to which a turnover order may be applied." (*Imperial Bank*, *supra*, 33 Cal.App.4th at p. 555.) It may be granted at the

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[9] The premise of Goldstein's argument appears to be that issuing both orders at one time constitutes different relief from the alternative orders requested in the notice of motion. (See., e.g., *People v. American Surety Ins. Co.* (1999) 75 Cal.App.4th 719, 726 [where party requests specific type of relief, court cannot grant different relief].) It is possible that two forms of relief could interact and result in a completely different and unforeseen outcome than would be expected from either form of relief alone. Goldstein, however, has not provided argument or authority showing that such is the case here.

conclusion of a judgment debtor examination. Section 699.040, subdivision (a)(2), authorizes turnover of "documentary evidence of title." Under both section 699.040 and section 708.205, a turnover order may properly reach stock certificates. (Ahart, Cal. Practice Guide: Enforcing Judgments and Debts (The Rutter Group 2018) ¶¶6:359–360, p. 6D-18.) Both sections require proof that the property which is the subject of the turnover order be in possession of the person to whom the order is addressed or under his control. (See *Palacio Del Mar Homeowners Assn., Inc. v. McMahon*, *supra*, 174 Cal.App.4th at p. 1390.)

There is no error on the face of the record in the trial court's issuance of these two orders. Glaser Weil sought an assignment of Goldstein's interests in and rights to payments from TMC and Far Out; this type of assignment is authorized under section 708.510. Glaser Weil also sought a turnover order for Goldstein's share certificates in TMC, Far Out and Last Experience; a turnover order for share certificates is authorized under both sections 708.205 and 699.040. That the judgment debtor examination may have never "formally concluded" because Goldstein failed to produce documents as requested is immaterial under these circumstances. We conclusively presume the existence of evidence to support these orders.

Setting aside the presumption, we also find the evidence in support of the orders sufficient. In support of the assignment order, Glaser Weil offered Goldstein's testimony from his judgment debtor's examination that he had or might have received payments from TMC and Far Out in the year preceding the examination. In support of the turnover order, Glaser Weil offered Goldstein's testimony from the same examination that he was the sole owner of TMC and Far Out.

In support of the turnover over as to the third corporation, Last Experience, Glaser Weil produced an unpublished opinion wherein Goldstein and Last Experience, on the one hand, and the Hendrix Experience, on the other hand, sued the other over a 2010 contract to produce a film about the Jimi Hendrix Experience. The opinion relates that Last Experience was formed solely to hold Goldstein's film rights, which were at issue in that action. Evidence Code section 451 permits a court to take judicial notice of " '(h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.' " (*Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1568, italics omitted [a litigant should not be bound by the court' s inclusion in a court order of an assertion of fact that such litigant has not had the opportunity to contest or dispute].) In that action, Goldstein successfully litigated shoulder-to-shoulder alongside Last Experience to protect his film rights. Goldstein could have repudiated any connection to Last Experience; instead, he fought on. Moreover, he did not dispute his ownership of Last Experience in the trial court; indeed he argued only that his Last Experience stock certificates were pledged to other secured creditors. Goldstein's ownership of Last Experience was not reasonably subject to dispute in his prior lawsuit, was not subject to dispute in the trial court in this action, and is not subject to dispute now.

Goldstein asserted in the trial court that any royalties due to TMC and Far Out were assigned to third parties before judgment was entered in this case, and so no payments were due or about to become due to him or those corporations. He also contended that his corporate shares were pledged to third parties

before judgment was entered in this case, and so he could not turn over the share certificates. Goldstein did not provide a declaration in support of these allegations. He attempted to support his claims by attaching three unauthenticated and incomplete documents to his Opposition. These documents are not competent evidence. (Evid. Code, § 1401, subd. (a) ["Authentication of a writing is required before it may be received in evidence."]; see *Fowler v. Ross* (1983) 142 Cal.App.3d 472, 480.)[10]

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[10] Even if the documents had been authenticated, they would not have assisted Goldstein. Each of the three documents is incomplete on its face. Each refers to additional documents which are part of the overall agreement, but are not attached to the Opposition. None of the isolated attached documents support Goldstein's claims. The loan agreement between INSBank and TMC attached as Exhibit B contemplates annual payments of $38,000 per year plus interest, which would have been less than half of TMC's income in 2016. The Har-Bronson promissory note Goldstein attached as Exhibit A shows that the loan was due in full on May 4, 2015, before the assignment order was entered in this case. The SF Holding promissory note attached as Exhibit C, shows a maturity date of June 20, 2016, also before the assignment order was issued in this case. Further, Far Out and TMC do not appear to be parties to this note.

Goldstein also contends that the orders are improper because they will be considered an event of default under the various agreements mentioned above. This is not a bar to the orders. If there is an event of default, it will be the result of Goldstein's conduct in accruing debt and then failing to pay that debt. He cannot avoid responsibility for paying his debts to Glaser Weil by arguing that payment will, in effect, breach his agreement with third parties to remain solvent.

DISPOSITION

Respondent's motion to dismiss is denied. The trial court's assignment and turnover orders are affirmed. Appellant to bear costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

STRATTON, J.

We concur:

GRIMES, Acting P. J.

DUNNING, J.*

* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.