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File No. 51,542

13 Attorneys for Plaintiff
14 FREDRIC GOLDMAN, an individual, and
as personal representative of the Estate of Ronald Lyle Goldman, Deceased

15 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
16 COUNTY OF LOS ANGELES: SANTA MONICA COURTHOUSE
17 UNLIMITED CIVIL JURISDICTION

18 FREDRIC GOLDMAN, an individual,)	CASE NO. SC 036340
19 and as personal representative of the)	
20 Estate of Ronald Lyle Goldman,)	
Deceased,)	APPLICATION FOR ISSUANCE OF ORDER
)	DIRECTING SHERIFF TO SELL
21 Plaintiff,)	INTANGIBLES PURSUANT TO C.C.P. §
)	699.070(a)
22 vs.)	
23)	
24 ORENTHAL JAMES SIMPSON,)	Date: March 13, 2007
)	Time: 8:30 a.m.
25 Defendants.)	Dept.: A
)	Judge: Gerald Rosenberg

26 COMES NOW Plaintiff FREDRIC GOLDMAN, an individual, and as personal
27 representative of the Estate of Ronald Lyle Goldman, Deceased, who hereby moves this court for
28

CONFIRMED COPY
MAR 09 2007
John A. Chatterjee, Executive Officer/Clerk

MAR 09 2007

John A. Chatterjee, Executive Officer/Clerk

John A. Chatterjee, Executive Officer/Clerk

1 an order directing that the Sacramento County Sheriff sell all right, title and interest of
2 ORENTHAL JAMES SIMPSON in and to that certain contract dated May 8, 2006 by and
3 between Lorraine Brooke Associates, Inc. and HarperCollins Publishers, Inc., and all rights
4 therein, pursuant to C.C.P. § 699.070(a).

5 DATED: March 1, 2007

COOK, PERKISS & LEW, P.L.C.

By: _____

DAVID J. COOK, ESQ.

Attorneys for Plaintiff
FREDRIC GOLDMAN, an individual, and as
personal representative of the Estate of Ronald Lyle
Goldman, Deceased

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26 COUNTY OF LOS ANGELES: SANTA MONICA COURTHOUSE
27 UNLIMITED CIVIL JURISDICTION

28 FREDRIC GOLDMAN, an individual,)
and as personal representative of the)
Estate of Ronald Lyle Goldman,)
Deceased,)
Plaintiff,)
vs.)
ORENTHAL JAMES SIMPSON,)
Defendants.)

CASE NO. SC 036340
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
APPLICATION FOR ISSUANCE OF ORDER
DIRECTING SHERIFF TO SELL
INTANGIBLES PURSUANT TO C.C.P. §
699.070(a)
Date: March 13, 2007
Time: 8:30 a.m.
Dept.: A
Judge: Gerald Rosenberg

CONFIRMED COPY
OF OFFICIAL FILED
Los Angeles Superior Court

MAR 09 2007

John A. Claitor, Executive Officer/Clerk

By S. Lunk, Deputy

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I. INTRODUCTION.

Plaintiff FREDRIC GOLDMAN, an individual, and as personal representative of the Estate of Ronald Lyle Goldman, Deceased, has obtained judgment against the Defendant ORENTIAL JAMES SIMPSON ("SIMPSON") arising out of the horrific murders of Nicole Brown Simpson and Ronald Lyle Goldman, and a copy of the Application for Renewal and Renewal thereof which is attached hereto marked *Exhibit "A"* and incorporated by reference.¹ The total outstanding amount now exceeds \$39,000,000 and is principally unpaid, despite substantial efforts by which to generate some type of recovery in the last 90 days. Plaintiff's efforts continue.

Well known is the Defendant's recent efforts to capitalize on his fame through the gruesome murders of Nicole Brown Simpson and Ronald Lyle Goldman, in the book and related media deal commonly known as *If I Did It* (the "Book Deal"). SIMPSON executed through the nominee of Lorraine Brooke Associates, Inc. ("LBA") a contract with HarperCollins, a copy of which is attached hereto marked *Exhibit "B"* and incorporated by reference. This contract has been authenticated by Brett Saxon of Transactional Marketing Partners, the broker, along with HarperCollins itself. The contract dated May 8, 2006 provides for the publication and related media project seeking to capitalize on these murders.

Recent press reports which are confirmed, indicates that HarperCollins aborted the Book Deal by recalling all, or virtually all of the books, and declining otherwise to proceed with the related media broadcast. Confirmed reports also indicate that SIMPSON has received individually somewhere in the \$780,000 range which he claims to have spent.

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II. LEVY.

Plaintiff has repeated levied on HarperCollins, including the levy of February 13, 2007, a copy of which is attached hereto marked *Exhibit "C"* and incorporated by reference. The subject matter of the levy is the Book Deal, in which the response is set forth by way of *Exhibit "D"* and

¹ All exhibits are attached to the Declaration of David J. Cook, Esq. which is filed contemporaneously herein.

1 incorporated by reference. David J. Cook, Esq. has been in contact with the Sacramento County
2 Sheriff, who has declined to proceed with a sale, absent a court order. Specifically, the Sheriff
3 indicated that the Sheriff will not proceed absent a court order.

4 **III. ABILITY OF THE COURT TO ORDER THE SHERIFF TO SELL PROPERTY.**

5 The court has broad-based plenary power to order the Sheriff to proceed with the sale of
6 property, the subject of the levy. C.C.P. § 699.070(a) provides as follows:

7 “§ 699.070.

8 (a) The court may appoint a receiver or order the levying officer to take any action
9 the court orders that is necessary to preserve the value of property levied upon,
10 including but not limited to selling the property, if the court determines that the
11 property is perishable or will greatly deteriorate or greatly depreciate in value or
12 that for some other reason the interests of the parties will be best served by the
13 order. An order may be made under this subdivision upon application of the
14 judgment creditor, the judgment debtor, or a person who has filed a third-party
15 claim pursuant to Division 4 (commencing with Section 720.010). The application
16 shall be made on noticed motion if the court so directs or a court rule so requires.
17 *Otherwise, the application may be made ex parte.*” (Emphasis added)

18 C.C.P. § 699.070 gives the court plenary power to direct a Sheriff to take any appropriate
19 action on the basis that the order will serve the “interest of the parties.” In this case, the “book
20 rights” as set forth in the May 8, 2006 contract, would permit the owner of those rights to publish
21 the book in question, and have ancillary rights such as the related intellectual property.
22 Conceivably, these rights could be worth millions, the application of which would substantially
23 ameliorate the terrible losses sustained by the Plaintiff throughout the entirety of this case.
24 Granted, Plaintiff is moving this court for an assignment of such monies due under the May 8,
25 2006 contract; however, Plaintiff faces the perilous risk that SIMPSON could take his book
26 contract overseas, enter into a new contract, and have the funds diverted to an offshore bank
27 account. Compelling the Sheriff to sell the May 8, 2006 contract and ancillary intellectual
28 property would permit this Plaintiff to realize upon the debtor’s assets, and specifically liquidating
those assets.

LBA might well complain that the property of LBA has been the subject of a levy. This is
correct and permissible under C.C.P. § 700.170 (see below) in that a judgment creditor may levy
upon assets of the judgment debtor even though cloaked in the name of a third party. In this case,

1 Plaintiff has levied upon the right, title and interest of SIMPSON, even though the property is the
2 name of LBA. C.C.P. § 700.170(b) provides in part:

3 “(b) If a levy is made under subdivision (a) and payments on the account
4 receivable or general intangible are made to a person other than the judgment
5 debtor (whether pursuant to a security agreement, assignment for collection,
6 or otherwise), the levying officer shall, if so instructed by the judgment
7 creditor, personally serve a copy of the writ of execution and a notice of levy
8 on such third person.” (Emphasis added)

9 From the return of service, Plaintiff properly levied on LBA.

10 **IV. EX PARTE RELIEF IS REQUIRED IN THE FACE OF SIMPSON’S STATED**
11 **INTENT THAT HE WILL NEVER PAY PLAINTIFF.**

12 Plaintiff likewise is entitled to proceed ex parte as C.C.P. § 699.070 does not mandate the
13 standard 16 court-day motion cycle required by C.C.P. § 1005. Ex parte relief is particularly
14 appropriate as SIMPSON (and LBA, his surrogate) retains the right to sell the Book Deal,
15 consisting of the May 8, 2006 contract with HarperCollins to an overseas publisher and pocket the
16 proceeds. Given the expressed intent of SIMPSON in refusing to meet his financial responsibility
17 to the Mr. Goldman and his resolution that he intends to proceed with some type of book or other
18 media venture, prompt action in compelling the sale would be the only method to insure that the
19 Book Deal does not leap overseas and foreclose any possible prospect of recovery.

20 **V. LEVY HAS BEEN PROPERLY EFFECTUATED.**

21 Plaintiff properly effectuated the levy pursuant to C.C.P. § 700.170 which likewise
22 provides as follows:

23 “§ 700.170.

24 (a) Unless another method of levy is provided by this article, to levy upon an
25 account receivable or general intangible, the levying officer shall personally serve a
26 copy of the writ of execution and a notice of levy on the account debtor.

27 (b) If a levy is made under subdivision (a) and payments on the account receivable
28 or general intangible are made to a person other than the judgment debtor (whether
 pursuant to a security agreement, assignment for collection, or otherwise), the
 levying officer shall, if so instructed by the judgment creditor, personally serve a
 copy of the writ of execution and a notice of levy on such third person.

 Service of the copy of the writ and notice of levy on such third person is a levy on
 any amounts owed to the judgment debtor by such third person.”

1 The May 8, 2006 contract is the classic general intangible, which would generate a
2 significant financial recovery for the holder. As an asset of SIMPSON, this would be subject to
3 classic levy and execution, and the only issue is fashioning a remedy. C.C.P. §699.710 provides
4 that all property is subject to levy and execution, as follows:

5 "Except as otherwise provided by law, all property that is subject to enforcement of
6 a money judgment pursuant to Article 1 (commencing with section 695.010 of
7 Chapter 1) is subject to a levy under a writ of execution to satisfy a money
8 judgment."

9 Property which has been fraudulently conveyed is subject to levy and execution. C.C.P. §
10 3437.07(c) provides as follows:

11 "(c) If a creditor has obtained a judgment on a claim against the debtor, the creditor may
12 levy execution on the asset transferred or its proceeds."

13 VI. STATUS OF SIMPSON.

14 SIMPSON himself would have no standing by which to object to the sale of the book
15 rights. SIMPSON fraudulently conveyed his intellectual property consisting of the publication to
16 LBA. SIMPSON accordingly would have no right to reclaim the book rights, whether through
17 LBA or otherwise. Under *Slater v. Bielsky*, 183 Cal.App.2d 523, the court stated as follows:

18 "Predicating their first claim of error--that the evidence does not support the lower
19 court's finding that the Brooks Avenue property was not transferred to plaintiff to
20 defraud creditors--upon plaintiff's testimony that in 1948 his furniture business
21 needed money and decedent suggested he transfer the property to her for
22 'convenience sake', and the testimony of Jean Finn that plaintiff thought her
23 suggestion that he transfer the property to his wife 'in the event any creditor went
24 after' him, was a good idea, appellants argue that the evidence of fraud is clear and
25 *the general rule that a conveyance in fraud of creditors vests title to the property
26 transferred in the grantee except as against the creditors of the grantor (Estate of
27 Xydias, 92 Cal.App.2d 857; Ramirez v. Hartford Acc. & Indem. Co., 29
28 Cal.App.2d 193; Tognazzi v. Wilhelm, 6 Cal.2d 123) applies.*" (Page 526)
(Emphasis added)

29 In the *Estate of Zydias*, 92 Cal.App.2d 857 (860 to 861) (1949), the court stated as
30 follows:

31 "There is another reason why appellant cannot prevail. At the time of the
32 conveyance from Anthony to Marina, Anthony was indebted to a former wife for
33 the support of his minor children by that marriage. His former wife had secured a
34 decree of divorce which ordered him to pay monthly sums for the support of the
35 children. Several orders had been issued directing Anthony to show cause why he
36 should not provide for the children. An action was brought in the Municipal Court
37 of Los Angeles in which the former wife sought to recover for the support of the
38

1 children. A judgment was rendered therein in her favor on February 4, 1937, for
2 \$435. Anthony testified in the present action that his primary object in transferring
3 Lot 10 to Marina was to put it beyond the reach of his former wife. *No rule of law*
4 *is more strictly adhered to than the rule that one who has conveyed his property*
in order to defraud his creditors, under circumstances such as are present here,
cannot thereafter recover from his grantee that which he has conveyed.”
(Emphasis added)

5 Accordingly, a fraudulent conveyer cannot unilaterally claim the property from the
6 fraudulent conveyee, and the conveyee is deemed in full force and effect. This is further
7 supported by the fact that only a creditor has standing to set aside a fraudulent conveyance under
8 either Civ.C. § 3439.04(a) or Civ.C. § 3439.05, giving creditors the sole status to set aside the
9 transfer. Civil Code Section 3439.05 provides as follows:

10 “A transfer made or obligation incurred by a debtor is fraudulent *as to a creditor*
11 *whose claim* arose before the transfer was made or the obligation was incurred if
12 the debtor made the transfer or incurred the obligation without receiving a
13 reasonably equivalent value in exchange for the transfer or obligation and the
debtor was insolvent at that time or the debtor became insolvent as a result of the
transfer or obligation.” (Emphasis added)

14 Civil Code Section 3439.04(a) provides as follows:

15 “(a) A transfer made or obligation incurred by a debtor is fraudulent *as to a*
16 *creditor*, whether the creditor’s claim arose before or after the transfer was made or
the obligation was incurred, if the debtor made the transfer or incurred the
obligation as follows:

17 (1) With actual intent to hinder, delay, or defraud any creditor of the debtor.

18 (2) Without receiving a reasonably equivalent value in exchange for the transfer or
obligation, and the debtor either:

19 (A) Was engaged or was about to engage in a business or a transaction for which the
remaining assets of the debtor were unreasonably small in relation to the business or
transaction.

20 (B) Intended to incur, or believed or reasonably should have believed that he or she
would incur, debts beyond his or her ability to pay as they became due.” (Emphasis
added)” (Emphasis added)

21 **VII. NO CLAIM OF EXEMPTION.**

22 SIMPSON would not be able to assert any claim of exemption as to property which he has
23 fraudulently conveyed. First, as to SIMPSON (as opposed to his creditors), he would no longer be
24 the owner of the property and therefore disables himself from asserting any type of exemption
25 rights. Only an individual is entitled to asserting a claim of exemption under C.C.P. § 703.020(a),
26 which provides as follows:
27
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1 (3) A description of the interest claimed, including a statement of the facts upon
which the claim is based.

2 (4) An estimate of the market value of the interest claimed.

3 (b) A copy of any writing upon which the claim is based shall be attached to the
third-party claim. At a hearing on the third-party claim, the court in its discretion
4 may exclude from evidence any writing a copy of which was not attached to the
third-party claim.”

5 Plaintiff as the Judgment Creditor would be able to proceed with a hearing pursuant to
6 C.C.P. § 720.360, which likewise provides as follows:

7 “At a hearing on a third-party claim, the third person has the burden of proof.”

8 Plaintiff or the adverse side would be entitled to judgment pursuant to C.C.P. § 720.390 et
9 seq., and subject to an appeal under C.C.P. § 720.420 et seq. LBA might even be entitled to live
10 testimony, a trial, and ultimately, due process, as the case may be. See *ROBERT M. CASSEL v.*
11 *THEODORE A. KOLB et al.*, 72 Cal.App.4th 568, 84 Cal.Rptr.2d 878 (Cal.App.1 Dist. 1999) in
12 which the court stated as follows:

13 “Third party claims are, by nature, summary proceedings. They are not so
14 summary, however, that the parties are denied the right to a trial with all of its due
process protections.^[7] Nor should they be so summary as to deny a party a right to
15 a fair trial. In this instance, Union Bank's third party claim facially complied with
the statutory requirements that it be signed under oath. Once Cassel objected that
16 the claim was not based upon the declarant's personal knowledge, the bank should
have been given an opportunity to respond. (Evid. Code, § 702, subd. (b) [A
17 witness's personal knowledge of a matter may be shown by any otherwise
admissible evidence, including his own testimony.]) Under the circumstances,
18 proof of the declarant's personal knowledge, or lack thereof, was easily obtained,
without any delay or continuance.^[8] The witness was present in court, and the
19 foundational questions would have taken a few minutes. There was no reasonable
basis for denying the bank that opportunity.” (P. 580)

20 In summary, LBA would be entitled to have its “day in court.” Conversely, this creditor is
21 entitled to have the book rights sold, and the vehicle of the Sheriff of the County of Sacramento
22 would be the appropriate venue, in light of the levy itself.

23 **IX. MECHANISM WHEN PROPERTY HAS DEBTOR'S PROPERTY**
24 **HAS BEEN TRANSFERRED BUT SUBJECT TO LEVY.**

25 This is well tread territory in which a debtor has committed a fraudulent conveyance of his
property and in which the creditor seeks to apply the property in satisfaction of the judgment. The
26 leading, if not seminal case, is *Whitehouse v. Six Corp.*, 40 Cal.App.4th 527, 48 Cal.Rptr.2d 600
27 (1995), in which the court ruled that a Third Party Claim could be the appropriate forum to resolve
28

1 a fraudulent conveyance. Faced with a fraudulent conveyance, the creditor levied on the property
2 and faced a Third Party Claim by the transferee. The court stated at page 533 as follows:

3 "A writ of attachment allows a plaintiff, in certain prescribed instances, to obtain a
4 pretrial seizure of the property of a defendant-debtor. (*Randone v. Appellate*
5 *Department* (1971) 5 Cal.3d 536, 543 [96 Cal.Rptr. 709].) A plaintiff who suspects
6 that the defendant-debtor has fraudulently transferred assets in order to become
7 judgment proof may also enforce its claim against the transferred property by way
8 of a writ of attachment. (Civ. Code, § 3439.07, subs. (a) (2), (b); see also
9 Schwartz & Ahart, Cal. Practice Guide: Enforcing Judgments and Debts 1 (The
10 Rutter Group 1994) ¶ 3:342, p. 3-70.5; *id.*, ¶ 4:96, p. 4-20.)

11 The transferee of the attached property may protect its interest by filing a third
12 party claim. (§ 720.110 et seq.; *Regency Outdoor Advertising, Inc. v. Carolina*
13 *Lanes, Inc.* (1995) 31 Cal.App.4th 1323 [37 Cal.Rptr.2d 552].) The property may
14 be personal or real. (§ 720.110, subs. (a), (b).) Upon the filing of this claim, the
15 attachment will be automatically released unless the creditor either: (1) posts a
16 sufficient undertaking (§ 720.160); or (2) petitions the court for a hearing and
17 applies for an ex parte restraining order (§§ 720.310, 720.380, subd. (b))."

18 The court also stated as to other options as follows at pages 534 to 535:

19 "This contention overlooks the plain meaning of the statute: the judgment of the
20 trial court *conclusively* established which of the parties had the right to ultimately
21 dispose of the properties. (Italics added.) Section 720.390 provides: "At the
22 conclusion of the hearing, the court shall give judgment determining the validity of
23 the third-party claim and may order the disposition of the property or its proceeds
24 in accordance with the respective interests of the parties.... [T]he judgment is
25 *conclusive between the parties to the proceeding.*" (Italics added; see also *Regency*
26 *Outdoor Advertising, Inc. v. Carolina Lanes, Inc.*, *supra*, 31 Cal.App.4th 1323,
27 1329; Schwartz & Ahart, Cal. Practice Guide: Enforcing Judgments and Debts 2,
28 *supra*, ¶ 6:1688, p. 611-17.)

The trial court could not make a conclusive determination as to the validity of
appellants' third party claim of ownership without deciding American's contention
that the transfers were fraudulent and should therefore be set aside. In short, once
American raised the specter of Hill Top's duplicitous transfers, the trial court could
not avoid deciding the ultimate issue of ownership.

The third party claim proceeding is an arena within which a variety of legal issues
may be decided according to a variety of legal theories. A creditor wishing to
pursue a fraudulent transfer theory may not escape the burden of proving its claim
merely because the contest is played out in a third party claim proceeding.

The third party claimant is required to introduce evidence that it owns the attached
property. (*Lawler v. Solus* (1951) 101 Cal.App.2d 816, 818 [226 P.2d 348].) Once
the third party accomplishes this, the burden shifts to the creditor to establish that
the transfers represented by the deeds were fraudulent. (*Chrysler Credit Corp. v.*
Superior Court, *supra*, 17 Cal.App.4th at pp. 1313-1314.) Because here the trial
court did not shift the burden of proof to the creditor, we must reverse."

The court also stated at page 536 as follows:

1 “We need not resolve this intriguing issue because appellants chose the third party
2 claim procedure. Appellants selected this expeditious and relatively inexpensive
3 procedure to clear title in preference to other equitable and legal remedies, e.g., an
4 action to quiet title, injunctive relief, declaratory relief, a suit for damages, or a suit
to recover possession of the property. (See *Regency Outdoor Advertising, Inc. v. Carolina Lanes Inc.*,
supra, 31 Cal.App.4th at p. 1329; Schwartz & Ahart, Cal. Practice Guide: Enforcing Judgments and Debts 2,
supra, ¶ 6:1607, p. 6H-2.)”

5 Therefore, any concern that LBA might or might not have an interest in the Book Deal is not
6 determined in this proceeding, or by the Sheriff proceeding with sale itself. LBA is free to take
7 any action, including the filing of a Third Party Claim, as it may wish.

8 **X. THIS IS THE BEST REMEDY.**

9 SIMPSON should be, and probably has been expecting this result. Plaintiff recovered now
10 nearly \$39,000,000 based on the murder of his son at the hands of OJ SIMPSON in one of the
11 great criminal tragedies of the century. SIMPSON sold his story to HarperCollins in anticipation
12 of a huge payout worth millions, but in which the Book Deal was stalled. SIMPSON still owns
13 that asset which is capable of being sold. The only real impediment is authorizing the Sheriff to
14 sell the asset.

15 SIMPSON’s remedies are very clear. He can advertise the sale, bring in bidders, or pay
16 off the judgment. This setting is no different than any other Sheriff’s sale.

17 **XI. CONCLUSION.**

18 SIMPSON has an asset, consisting of his rights to publish a book entitled *If I Did It*, and
19 the related ancillary intellectual property. This is a non-exempt asset, readily subject to being
20 turned into cash to satisfy the judgment in part.

21 The Sheriff levied on this assets. Defendant cloaked this asset in the name of LBA, now
22 clearly for the purpose, as can be seen, of obstructing the Plaintiff in realizing value from this
23 asset through a Sheriff’s sale. Plaintiff is entitled to an order compelling the sale which, absent
24 the fact that the property is a “general intangible,” the Sheriff, without judicial intervention, would
25 have sold some time ago. Judicial intervention is required to facilitate the sale itself.

26 To the extent that LBA has an interest in the Book Deal, LBA has a whole host of
27 established and recognized remedies, such as the filing of a third party claim, which is even
28

1 encouraged by *Whitehouse vs. Six, supra.*, praising the remedy as economical and efficient.²

2 Plaintiff needs a court order to compel a sale. Anyone can bid. SIMPSON does not have a
3 claim of exemption, and selling this asset might ameliorate the losses sustained by the Plaintiff.

4 DATED: March 1, 2007

COOK, PERKISS & LEW, P.L.C.

5 By:

6 DAVID J. COOK, ESQ
Attorneys for Plaintiff
7 FREDRIC GOLDMAN, an individual, and as
8 personal representative of the Estate of Ronald Lyle
Goldman, Deceased

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24 ² This is extremely expedited remedy, requiring a full trial in 20 days. However, a trial on
a third party claim does not preclude, and might even require, live testimony. See **ROBERT M.**
25 **CASSEL v. THEODORE A. KOLB et al.**, in which the court stated at page 580 as follows:

26 “Third party claims are, by nature, summary proceedings. They are not so
summary, however, that the parties are denied the right to a trial with all of its due
27 process protections. ¹⁷¹ Nor should they be so summary as to deny a party a right to
a fair trial. In this instance, Union Bank's third party claim facially complied with
28 the statutory requirements that it be signed under oath.”