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4 IN THE UNITED STATES DISTRICT COURT
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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8 J & J SPORTS PRODUCTIONS, INC.,

No. C 09-4906 CW

9 Plaintiff,

ORDER GRANTING
PLAINTIFF'S
MOTION FOR
APPOINTMENT OF
RECEIVER OF
LIQUOR LICENSE
(Docket No. 26)

10 v.

11 JORGE ALBERTO HUEZO and VILMA ARELY
12 HUEZO, individually and dba LOS
GALLITOS RESTAURANT,

13 Defendants.
14 _____/

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16 Plaintiff J & J Sports Productions, Inc. moves for the
17 appointment of a receiver of Defendants' liquor license, bearing
18 number 457819, used by Defendants in the operation of their
19 business, Los Gallitos Restaurant, located at 3005 Willow Pass
20 Road, Suite C, Bay Point, California 94565. Defendants, who have
21 notice of this motion (docket no. 27), have not filed an
22 opposition. The matter was taken under submission and decided on
23 the papers. Having considered all the papers filed by Plaintiff,
24 the Court grants the motion.

25 DISCUSSION

26 On July 2, 2010, a default judgment in the amount of \$7,200
27 was entered in Plaintiff's favor against Defendants Jorge Albert
28 Huezo and Vilma Arely Huezo, individually and dba Los Gallitos

1 Restaurant. (Docket No. 19). The judgment is final and no payment
2 has been made. Cook Dec. ¶ 2. The liquor license is an asset of
3 Defendants which has significant value. In support of its motion,
4 Plaintiff cites Federal Rule of Civil Procedure 69(a) and
5 California Code of Civil Procedure §§ 708.610, 708.620 and 708.630.

6 Federal Rule of Civil Procedure 69(a) provides that a money
7 judgment obtained in federal court is enforced by a writ of
8 execution and the procedure on execution must generally accord with
9 the procedure of the state where the court is located, but federal
10 statutes govern to the extent they apply. Under Federal Rule of
11 Civil Procedure 66, a receiver may be appointed by the court.
12 However, Rule 66 does not provide the specifics for appointing a
13 receiver to sell a liquor license in satisfaction of a money
14 judgment. See Office Depot Inc. v. Zuccarini, 596 F.3d 696, 701
15 (9th Cir. 2010) (Rule 66 does not specify proper location for
16 appointment of a receiver; therefore, state law governs this
17 issue). Because no federal statute applies to the appointment of a
18 receiver for the sale of a liquor license, Rule 69(a) dictates that
19 state law is followed in this instance. See In re Levander, 180
20 F.3d 1114, 1121 (9th Cir. 1999) (Rule 69(a) allows judgment-
21 creditors to use state law to collect on their debts).

22 Under California law, § 708.610 of the California Code of
23 Civil Procedure provides that the provisions of Chapter 5,
24 commencing with Code of Civil Procedure § 564, governs the
25 appointment, qualifications, powers, rights and duties of a
26 receiver. Wells Fargo Fin. Leasing, Inc. v. D & M Cabinets, et
27 al., 177 Cal. App. 4th 59, 70 (2009). Section 564(3) provides that

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1 a receiver may be appointed by the court after judgment, to carry
2 the judgment into effect. Section 568 provides that the receiver
3 has, under the control of the court, the power to take and keep
4 possession of the property, to make transfers, and generally to do
5 such acts respecting the property as the court may authorize.
6 Section 568.5 provides that a receiver may, pursuant to an order of
7 the court, sell real or personal property in the receiver's
8 possession, upon notice and in the manner prescribed by Article 6,
9 commencing with Code of Civil Procedure § 701.510. The sale is not
10 final until confirmed by the court. Id. Section 701.810 provides
11 for the order of distribution of the proceeds of sale.

12 California Code of Civil Procedure § 708.620 provides:

13 The court may appoint a receiver to enforce the judgment
14 where the judgment creditor shows that, considering the
15 interest of both the judgment creditor and the judgment
16 debtor, the appointment of a receiver is a reasonable
17 method to obtain the fair and orderly satisfaction of the
18 judgment.

19 The legislative comment to § 708.620 indicates that, under
20 this section, a receiver may be appointed where a writ of execution
21 would not reach certain property and other remedies appear
22 inadequate. California Code of Civil Procedure § 699.720 provides
23 that an alcoholic beverage license is not subject to levy of
24 execution.

25 Section 708.630 of the California Code of Civil Procedure
26 provides:

27 (a) The judgment debtor's interest in an alcoholic
28 beverage license may be applied to the satisfaction of a
money judgment only as provided in this section.

(b) The Court may appoint a receiver for the purpose of
transferring the judgment debtor's interest in an

1 alcoholic beverage license . . .

2 The legislative comment to § 708.630 indicates that, because
3 alcoholic beverage licenses are not subject to levy under a writ of
4 execution and because the Alcoholic Beverage Control Act,
5 California Business and Professions Code §§ 23000 et seq., provides
6 detailed procedures for the sale of alcoholic beverage licenses,
7 use of a receiver is appropriate for the sale of such a license to
8 satisfy a money judgment.

9 Plaintiff indicates that it has contacted Defendants on
10 multiple occasions after the entry of judgment in an effort to
11 obtain payment of the judgment, but Defendants have ignored
12 Plaintiff's communications. Plaintiff also indicates that it has
13 sent post-judgment discovery requests in an attempt to identify and
14 locate Defendants' assets with which to satisfy the judgment, but
15 Defendants have ignored these discovery demands and
16 interrogatories. Plaintiff indicates that installing a "keeper" at
17 Defendants' place of business would be burdensome and expensive,
18 making it an onerous method of securing satisfaction of the
19 judgment.

20 For the following reasons, Plaintiff has shown good cause for
21 the appointment of a receiver. Defendants have not appeared in
22 this case at all--they did not answer the complaint or oppose the
23 motion for a default judgment and they have not responded to
24 Plaintiff's request for payment or for discovery regarding other
25 assets that might satisfy Plaintiff's judgment. Therefore,
26 Plaintiff has no recourse but to seek satisfaction of its judgment
27 from any of Defendants' assets that it can liquidate. Plaintiff

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1 indicates that the sale of Defendants' alcoholic beverage license
2 is the least burdensome procedure for obtaining satisfaction of its
3 judgment. Defendants have not opposed Plaintiff's motion for the
4 sale of their liquor license, even though they have received notice
5 of it. Under California law, which controls in this instance, the
6 appointment of a receiver is necessary for the sale of a liquor
7 license to satisfy a money judgment. Therefore, the Court grants
8 Plaintiff's motion to appoint a receiver for the purpose of taking
9 possession of and selling Defendants' alcoholic beverage license.
10 Furthermore, as requested by Plaintiff, the Court orders the
11 following:

12 (A) the Court appoints Michael G. Kasolas as receiver, to
13 perform the duties and responsibilities listed below, and to be
14 compensated at the expense of Defendants, by a percentage to be
15 determined based upon the amount recovered from the sale of the
16 alcoholic beverage license.

17 (B) the receiver shall have the following duties and powers
18 under Federal Rule of Civil Procedure 66 and California Code of
19 Civil Procedure § 708.630:

20 1. to take possession and control of Defendants' alcoholic
21 beverage license, pursuant to the applicable state statutes and
22 regulations of the California Department of Alcoholic Beverage
23 Control.

24 2. to file with the California Department of Beverage Control
25 the surrender of the alcoholic beverage license under California
26 Administrative Code tit. 4, § 65.

27 3. to retain the services of a business opportunity broker who
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1 will place the liquor license on the market for purposes of a
2 competitive sale, if the receiver deems that such a person is
3 necessary.

4 4. to retain the services of an attorney and an accountant, if
5 necessary, to assist in the sale of the liquor license.

6 5. to hold the proceeds of the sale in trust, pending further
7 order of the Court.

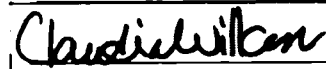
8 Furthermore, Defendants are prohibited from the sale, transfer
9 or other disposition of their alcoholic beverage license pending
10 action of the receiver and they are restrained from interfering
11 with the receiver's efforts to sell the license.

12 CONCLUSIONS

13 For the foregoing reasons, the Court grants Plaintiff's motion
14 to appoint a receiver to sell Defendants' alcoholic beverage
15 license to satisfy the judgment awarded in this case.

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17 IT IS SO ORDERED.

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19 Dated: 3/25/2011



CLAUDIA WILKEN

United States District Judge

United States District Court
For the Northern District of California

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