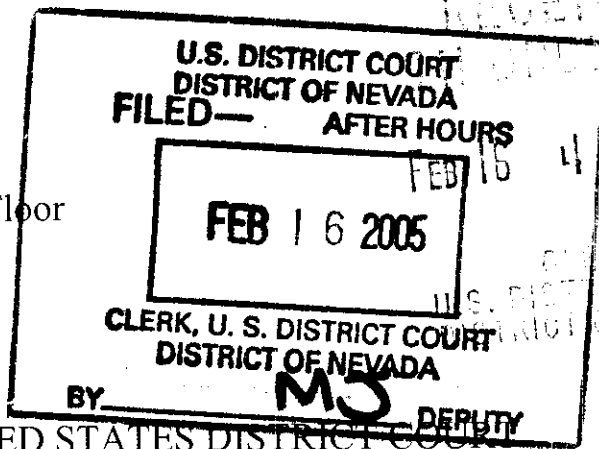


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5 Attorneys for Defendant



6 UNITED STATES DISTRICT COURT

7 DISTRICT OF NEVADA

8 UNITED STATES OF AMERICA,

CASE NO.: CV-S-04-1401-RLH/LRL

9 Plaintiff,

10 vs.

**REPLY TO PLAINTIFF'S RESPONSE TO
DEFENDANT'S EMERGENCY MOTION
FOR ORDER TO SET ASIDE ORDER
FOR SUPPLEMENTARY PROCEEDINGS
OF JUDGMENT DEBTOR
EXAMINATION AND PLAINTIFF'S
MOTION TO VACATE JUDGMENT
DEBTOR EXAMINATION**

11 CAROLYN A. SHARP a/k/a CAROLYN
12 HARLEY,

13 Defendant.

14
15 Defendant, Carolyn A. Sharp a/k/a Carolyn Harley ("Defendant"), by and through
16 counsel, the law firm of Gordon & Silver, Ltd., hereby submits her Reply (the "Reply") to
17 Plaintiff's Response to Defendant's Emergency Motion for Order To Set Aside Order for
18 Supplementary Proceedings of Judgment Debtor Examination and Plaintiff's Motion To Vacate
19 Judgment Debtor Examination (the "Response") submitted by the United States Attorney on
20 behalf of the United States of America ("Plaintiff").

21 This Reply is made and based upon the papers and pleadings on file herein, the following
22 Memorandum of Points & Authorities, and any oral argument the Court may permit at the

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1 hearing on this matter.

2 Dated this 16th day of February, 2005.

3 GORDON & SILVER, LTD.

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10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I.**

12 **INTRODUCTION**

13 Plaintiff's action is based on a twelve-year old judgment from another state, which is
14 dormant and unenforceable. In its Response, Plaintiff acknowledges that such order is dormant
15 and that there is no need for this Court to remain involved at this time. Plaintiff requests an
16 Order vacating the Supplementary Proceedings of Judgment Debtor Examination of Defendant
17 until further proceedings are undertaken in the state court which issued the original Judgment.
18 For the reasons discussed below, however, this matter should be dismissed, rather than vacated
19 indefinitely pending further proceedings in another state.

20 **II.**

21 **STATEMENT OF FACTS**

22 The Judgment upon which this action is based was entered in an Ohio state court in 1993
23 (the "Ohio Judgment"), a true and correct copy of which is attached to Defendant's Emergency
24 Motion for Order To Set Aside Order for Supplementary Proceedings of Judgment Debtor
25 Examination (the "Emergency Motion") as Exhibit A. Based on an ex parte motion, Plaintiff
26 obtained an Order from this Court on October 13, 2004, setting the judgment debtor examination
27 for November 24, 2004. Pending further investigation into the matter at the request of
28 Defendant, Plaintiff obtained an Order from this Court rescheduling the examination of judgment

1 debtor for January 25, 2005.

2 Having received no report from Plaintiff's counsel concerning its investigation,
3 Defendant then filed her Emergency Motion, pointing out that the Ohio Judgment is dormant and
4 unenforceable under Ohio law and that the debt was previously discharged through bankruptcy.
5 Plaintiff's Response acknowledges that the Ohio Judgment is dormant and unenforceable unless
6 somehow revived under Ohio law.

7 III.

8 LEGAL ARGUMENT

9 Plaintiff obtained a copy of the Ohio Judgment on August 17, 2004 and filed a certified
10 copy with the Nevada District on September 29, 2004, a true and correct copy of which is
11 attached to the Emergency Motion as Exhibit B. The Judgment, however, was entered in 1993.
12 Under Section 2329.107 of the Ohio Revised Code, if no execution or certificate of judgment is
13 issued and filed within five years of the date of the judgment or within five years of the date of
14 the issuance of the last execution or certificate of judgment, the judgment becomes dormant. A
15 dormant judgment may not be enforced and is without legal effect, unless revived under Section
16 2325.15 of the Ohio Revised Code.

17 In its Response, Plaintiff acknowledges that the Ohio Judgment is dormant and that there
18 is no need for this Court to remain involved at this time. Plaintiff requests an Order vacating the
19 Supplementary Proceedings of Judgment Debtor Examination of Defendant pending further
20 proceedings in the Ohio state court. Plaintiff indicates that arrangements are being made for the
21 United States Attorneys Office in Nevada to return the case to the Department of Health and
22 Human Services in Washington D.C. for its re-routing to the United States Attorneys Office in
23 Columbus, Ohio for revival of the original Judgment.

24 The Plaintiff's position, however, does not go far enough. It maintains that this matter
25 should simply be vacated indefinitely pending proceedings in an Ohio state court where revival
26 of the Ohio Judgment may or may not be obtained. Simply vacating the proceedings in this case
27 would leave this action open, but the action was not proper in the first place and must be
28 dismissed. Under Ohio law, the Ohio Judgment is dormant and "is without legal effect." Ohio

1 Revised Code 2325.15. The Ohio Judgment is defective for purposes of domestication in
2 Nevada and it is defective for purposes of holding a judgment debtor examination in Nevada. As
3 such, the Ohio Judgment is defective for purposes of maintaining an action in this Court.
4 Because this matter is improperly before the Court, it should be dismissed.

5 **IV.**

6 **CONCLUSION**

7 For the foregoing reasons, Defendant respectfully requests that the Court enter an Order
8 dismissing this matter and granting any other relief it deems just and proper.

9 Dated this 16th day of February, 2005.

10 GORDON & SILVER, LTD.

11 

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Attorneys for Defendant


17 **CERTIFICATE OF SERVICE**

18 The undersigned, an employee of Gordon & Silver, Ltd., hereby certifies that on the
19 _____ day of February, 2005, she served a copy of the **REPLY TO PLAINTIFF'S**
20 **RESPONSE TO DEFENDANT'S EMERGENCY MOTION FOR ORDER TO SET**
21 **ASIDE ORDER FOR SUPPLEMENTARY PROCEEDINGS OF JUDGMENT DEBTOR**
22 **EXAMINATION AND PLAINTIFF'S MOTION TO VACATE JUDGMENT DEBTOR**
23 **EXAMINATION**, by faxing, and by placing said copy in an envelope, postage fully prepaid, in

24 ...
25 ...
26 ...
27 ...
28 ...

1 the U.S. Mail at Las Vegas, Nevada, said envelope addressed to:

2 Daniel G. Bogden
3 Office of United States District Attorney, District of Nevada
4 333 Las Vegas Blvd. So., Suite 5000
5 Lloyd George Federal Building
6 Las Vegas, NV 89101
7 Fax: (702) 388-6296
8 Attorney for Plaintiff

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Vicki Thomas, an employee of
GORDON & SILVER, LTD.