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Case No. 01-CV-0142

Dept. No. II

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DOUGLAS COUNTY
DISTRICT COURT CLERK

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IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

LORRAINE H. WEIKEL, Individually
and as Executrix of the ESTATE
OF MAURICE M. WEIKEL, also
known as MAURICE MARCEL WEIKEL,
Deceased,

Plaintiffs,

vs.

ORDER

PAUL R. DEMPSEY, STAR JORDAN-
DEMPSEY and DOES I through X,

Defendants.

THIS MATTER comes before the Court upon Defendant Star
Jordan-Dempsey's (Jordan) Motion for Summary Judgment. For the
reasons set forth below, the Motion is GRANTED.

The underlying facts of this case have previously been
stated in detail; hence, the court repeats only salient factors
in explaining its decision. Plaintiff/Counterdefendant,
Lorraine H. Weikel, individually, and as Executrix of the
Estate of Maurice Weikel (Weikel) is seeking to execute a
judgment obtained against Defendant Paul R. Dempsey (Dempsey)
by tracing community property funds expended on the Riven Rock
Property. Dempsey succeeded in having the United States

1 Bankruptcy Court approve a settlement agreement between the
2 Bankruptcy Estate's Trustee and Dempsey in which that property
3 was excluded from the bankruptcy estate as the sole, separate
4 property of Jordan.

5 As recognized in previous motions, Weikel is bound by the
6 agreement reached by her representative, the Trustee. She
7 could have objected to the settlement and appealed an adverse
8 ruling, but did not. Consequently, she is barred by the
9 doctrines of res judicata or issue preclusion from relitigating
10 the nature of the Riven Rock Property. *Dominelli, et al. v.*
11 *Steinfeld Holding B.V.*, 820 F.2d 313, 317 (9th Cir. 1987),
12 *Farmers Nat'l Bank v. Shirey*, 878 P.2d 762, 769-771 (Idaho
13 1994).

14
15 Weikel argues that the court under certain circumstances
16 may still trace community property funds expended on separate
17 property, citing a family law case, *Malmquist v. Malmquist*, 106
18 Nev. 231 (1990). In *Malmquist, supra*, the Nevada Supreme Court
19 noted that Cal. Civ. Code Section 4800.2 specifies how separate
20 property contributions to community property can be measured
21 and reimbursed in a divorce action. The court then adopts the
22 same approach for community property contributions to separate
23 property, again, in the context of marital dissolution. *Id.* at
24 249. Nowhere, however, does Weikel direct the court to
25 precedent allowing a plaintiff to go after a non-party to a
26 judgment to satisfy that judgment from alleged contributions to
27 separate property owned in total by that non-party. Generally,
28

1 only the judgment debtor's percentage of community property
2 still possessed by the community can be levied for execution.
3 Even then, the intervention of bankruptcy proceedings may
4 thwart the pursuit of those assets. *Norwest Financial v.*
5 *Lawver*, 109 Nev. 242, 244 (1993). Weikel ought to be able to
6 collect on her judgment despite Dempsey's adroit feats of legal
7 prestidigitation; nevertheless, the court remains unpersuaded
8 that even in a light most favorable to the non-moving party,
9 there remain any issues of material fact; Defendant is entitled
10 to judgment as a matter of law. *Borgerson v. Scanlon*, 117 Nev.
11 Ad. Op. No. 21 at 5 (2001). Unfortunately for Weikel, the
12 United States Bankruptcy Court declared the Riven Rock Property
13 to be Jordan's separate property. Jordan was not sued for
14 fraud by Weikel; she did not suffer an adverse judgment
15 resulting in a damage award. It is not within the court's
16 power, therefore, to attach property of a non-judgment debtor
17 to equitably off-set a paucity in assets subject to execution
18 against a judgment debtor. Hence,

21 **Good cause appearing therefor, the Motion for Summary**
22 **Judgment is GRANTED.** Should Plaintiff choose to pursue this

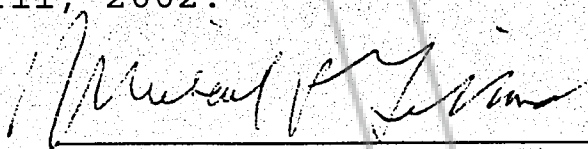
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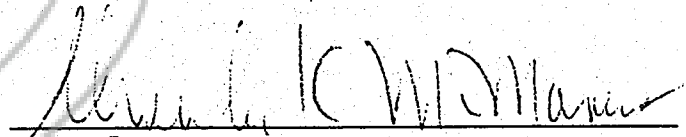
1 matter further, she must seek redress from the Nevada Supreme
2 Court.

3 IT IS SO ORDERED.

4 Dated this 18 day of April, 2002.

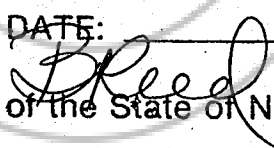
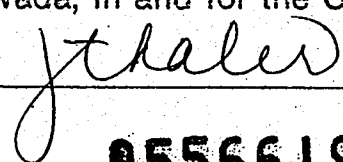
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7 MICHAEL P. GIBBONS
8 District Judge

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11 Copies served by mail this 18 day of April, 2002, to:
12 Scott J. Heaton, Esq., P. O. Box 605, Carson City, NV 89702;
13 John F. Murtha, Esq., P. O. Box 2311, Reno, NV 89505.

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15 Ursula K. McManus

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23 **CERTIFIED COPY**

24 The document to which this certificate is attached is a
25 full, true and correct copy of the original on file and of
26 record in my office.

26 DATE: 11/1/02 **SEAL**
27  Clerk of the 9th Judicial District Court
28 of the State of Nevada, In and for the County of Douglas,
By  Deputy

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