IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:10-CV-25-FL

SAS INSTITUTE, INC.,	)	
	)	
Plaintiff / Judgment Creditor,	)	MEMORANDUM OPINION
	)	and ORDER
v.	)	UNDER SEAL[1]
	)	
WORLD PROGRAMMING LIMITED,	)	
	)	
Defendant / Judgment Debtor.	)	

This matter returns to the court's attention on a number of motions including: 1) motion for

relief under the All Writs Act, 28 U.S.C. § 1651, ("AWA") and Rule 60 of the Federal Rules of Civil

Procedure (DE 809-5) by plaintiff and judgment creditor SAS Institute Inc. ("SAS"); 2) oral motion

for modification of injunction made in open court March 4, 2019, by defendant and judgment debtor

World Programming Limited ("WPL'); and 3) unopposed motions to seal (DE 860, 868, 872) by

WPL. For the following reasons, SAS's motion is granted, WPL's oral motion is denied as moot,

and its motions to seal are granted. Reasoning for the court's February 15, 2019, order that no sum

collected or to be collected by the judgment creditor in the United States is subject to payment to

the judgment debtor on the basis of the United Kingdom Protection of Trading Interests Act 1980

("PTIA"), also is set forth herein.

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[1] The court's analysis relies, in part, on documents filed under seal. Within 14 days, the parties jointly shall
return to the court by U.S. Mail, addressed to the case manager, a copy of this order marked to reflect any perceived
necessary redactions. Upon the court's inspection and approval, a redacted copy of this sealed order will be made a part
of the public record.

BACKGROUND

Reference is made to prior orders of this court and the opinion of the United States Court of Appeal for the Fourth Circuit in <u>SAS Inst., Inc. v. World Programming Ltd.</u>, 874 F.3d 370 (4th Cir. 2017), which detail the background and procedural history of this case up to this court's judgment entered July 15, 2016,[2] and appeal therefrom. The court turns its attention more particularly below to the judgment creditor's efforts to enforce its judgment against the judgment debtor, WPL, a competitor of SAS, based in the United Kingdom. Judgment enforcement activities are complex. At present they involve this court and courts in California and the United Kingdom.

A. Judgment Enforcement

On November 9, 2016, this court granted WPL's emergency motion for temporary stay of execution of the court's judgment pending resolution of motion for stay pending appeal, premised in part upon WPL's deposit into an escrow account maintained in the United States of "80% of all revenues received by WPL in relation to licensing of WPS in the [US]." (DE 633-1; <u>see</u> Order (DE 668) at 2). On February 9, 2017, the court granted the judgment debtor's motion for stay of execution pending appeal, conditioned upon judgment debtor's filing of proof of supersedeas bond

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[2] All references herein to the "judgment" or "court's judgment," unless otherwise specified, are to the court's July 15, 2016, judgment, which amended and superseded a prior judgment entered October 16, 2015. The court's judgment also is incorporated by reference in amended judgment entered December 8, 2017, and second amended judgment entered May 3, 2018. Judgment is premised upon summary judgment rulings and jury verdict findings that WPL breached a license agreement for SAS's software product, the SAS Learning Edition License Agreement, by using it to produce and market a competing software product, World Programming System ("WPS"), resulting in compensatory damages in the amount of $26,376,635. The court also premised its judgment upon jury verdict finding that WPL fraudulently induced SAS to enter into the license agreement, and that this conduct violated the North Carolina Unfair and Deceptive Trade Practices Act ("UDPA"), resulting in the same compensatory damages, which was trebled to $79,129,905.00 in accordance with the UDPA. The court denied, in pertinent part, SAS's claims for copyright infringement and injunction. With respect to that denial, SAS had moved after the jury verdict to enjoin WPL permanently from "marketing, selling, or licensing (including renewal or relicensing) of WPL's World Programming System for use in the United States." (Mot. & Prop. Order (DE 536-1) at 2). This court's reasons for denial of SAS's motion for permanent injunction are set forth in memorandum opinion and order entered June 17, 2016. (<u>See</u> Order (DE 601) (Faber, J.)).

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in the amount of $2,191,770.00, and continued maintenance of the aforementioned escrow account

modified to accumulate 100% of revenues based on sales in the United States, estimated to total

approximately ███████ in a one-year period. (Order (DE 696) at 8-10). Upon conclusion of

appeal activities in favor of the judgment creditor, the clerk of court released the escrow amount to

SAS and the bond amount also was paid to the judgment creditor.

In December 2017, SAS commenced execution upon the judgment by initiating enforcement

proceedings in California and the United Kingdom. The court highlights below activities in each

forum and continuing developments impacting the case before this court.

1.   California case

On December 28, 2017, SAS commenced a judgment enforcement action in the United States

District Court for the Central District of California (hereinafter, the "California court"), by

registering the judgment, and the California court thereafter issued a writ of execution against WPL.

See SAS Institute Inc. v. World Programming Ltd., 2:18-CV-603-VAP (C.D. Cal.) (hereinafter the

"California case"). Upon renewed motion for assignment order filed by SAS, the California court

entered order September 5, 2018, providing for direct assignment to SAS of rights to payment from

specified WPL customers located anywhere in the world, except in the United Kingdom, until this

court's judgment is satisfied. (California case, Docket 98 (hereinafter the "September 5, 2018,

assignment order")). In particular, the California court ordered:

> The Court assigns to SAS WPL's right to payments from entities identified on SAS's
> Customer List, as supplemented by Hewitt's Schedule 1-1, as customers with
> accounts receivable, active customers, and customers with recently expired licenses.
> All of WPL's rights and interest, whether or not the right is conditioned on future
> developments, to payment due or to become due from these companies shall be and
> hereby are assigned to SAS until such a time as the North Carolina judgment in the
> amount of $79,129,905.00 is fully satisfied or until further order of the Court.

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> The Court DENIES IN PART the Motion to the extent it seeks assignment of WPL's right to payments by resellers of its software and by "non-customers," i.e., the entities identified in paragraph 8 of the Robinson Declaration. As SAS withdrew its request for assignment of WPL's right to payments from customers located in the United Kingdom, those customers are excluded from this Order.

(Id. at 9) (emphasis added). The "Customer List" referenced in the September 5, 2018, assignment order includes 155 customers with billing addresses in the United States and 258 customers with billing addresses outside of both the United States and the United Kingdom (See California case, Docket 74-1 (Ex Parte) at 4-11 ("Schedule 1-1")).

On September 11, 2018, WPL filed notice of appeal of the September 5, 2018, assignment order to the United States Court of Appeals for the Ninth Circuit. In the California case, WPL also filed that day motion to stay that part of the assignment order pertaining to customers outside of both the United States and the United Kingdom. WPL filed a similar motion before this court to stay execution of the judgment for customers outside of both the United States and the United Kingdom pending completion of United Kingdom judgment-recognition proceedings.

Two days later, on September 13, 2018, the California court "defer[red] to the Eastern District of North Carolina to rule on this matter." (California case, Docket 111). This court denied WPL's motion to stay execution of the judgment holding: "[WPL] has not demonstrated a meritorious argument in support of stay of all non-[United States] execution of the judgment pending [United Kingdom] judgment-recognition proceedings." (Order (DE 786)).[3]

On September 13, 2018, the California court entered an amended assignment order, directing WPL to assign its rights to payments to SAS from all customers worldwide, except those in the

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[3] The court also stated: "Moreover, issues raised by those portions of the motion that concern the manner and form of demand plaintiff has made upon customers, as allowed by the September 5, 2018, order of the United States District Court for the Central District of California, including argument that plaintiff has exceeded the scope of that order, more properly are addressed by such court." (Order (DE 786)).

United Kingdom. (See California case, Docket 110, at 9). Seven days later, on September 20, 2018, the California court vacated its September 13, 2018, order and restored the September 5, 2018, assignment order, reasoning that it lacked jurisdiction to amend its order on appeal. However, in its September 20, 2018, order, the California court indicated it would be "inclined to issue" the September 13, 2018, order directing WPL to assign its rights to payments to SAS from all customers worldwide, except those in the United Kingdom if the court of appeals allowed a limited remand. (See California case, Docket 118).[4]

On October 12, 2018, the California court denied SAS's ex parte application for an order directing WPL to turn over all income received from customers located worldwide, except in the United Kingdom, due to lack of jurisdiction pending appeal. (See California case, Docket 123). However, on November 14, 2018, the California court entered a second indicative ruling stating that it would grant SAS's ex parte application for a turn over order if the court of appeals allowed limited remand. (See California case, Docket 127).

SAS then moved for limited remand based upon the California court's two indicative rulings. Decision on that motion by the United States Court of Appeals for the Ninth Circuit was stayed upon request of SAS, acting at the command of the court in the United Kingdom upon penalty of fine, asset seizure, and/or arrest. SAS also was forbidden by the United Kingdom High Court of Justice, Business and Property Courts of England and Wales Commercial Court (QBD) (the "UK court") to communicate reason for its stay request. This is discussed more particularly below.

      2.   United Kingdom case

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[4] Federal Rule of Civil Procedure 62.1 provides a mechanism for a district court to enter an "Indicative Ruling on a Motion for Relief That Is Barred by a Pending Appeal" where the district court states "that it would grant the motion if the court of appeals remands for that purpose."

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