

#39.100

4/26/73

Memorandum 73-29

Subject: Study 39.100 - Enforcement of Sister State Money Judgments

Attached to this memorandum are two copies of a revised version of the tentative recommendation relating to enforcement of sister state money judgments. The draft the Commission considered at the April meeting has been substantially revised in accordance with the Commission's decisions, particularly that residents and nonresidents should be treated differently. It is hoped that the Commission will be able to approve this recommendation so that it may be sent out for comment. Mark your suggested editorial changes on one copy and turn it in to the staff at the May meeting.

Respectfully submitted,

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TENTATIVE

## RECOMMENDATION OF THE CALIFORNIA

## LAW REVISION COMMISSION

relating to

ENFORCEMENT OF SISTER STATE MONEY JUDGMENTS

The full faith and credit clause of Article IV, Section 1, of the United States Constitution requires states to enforce<sup>1</sup> the valid money judgments<sup>2</sup> of the courts of sister states subject to certain defenses.<sup>3</sup> In California, the

1. "Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State." U.S. Const., Art. IV, § 1 (in part). The manner of enforcing sister state money judgments is not specified by the federal Constitution or statutes but rather is determined by the law of the forum state. Restatement (Second) of Conflict of Laws § 99 (1971).
2. Restatement (Second) of Conflict of Laws § 100 & Introductory Note §§ 99-102 (1971); Milwaukee County v. M.E. White Co., 296 U.S. 268 (1935). The United States Supreme Court has not yet decided whether or not judgments ordering the performance of an act other than the payment of money--e.g., orders to convey land--are required by the full faith and credit clause to be enforced. Restatement (Second) of Conflict of Laws § 102, Comment c (1971). California courts have allowed the enforcement of sister state decrees to convey land. Rozan v. Rozan, 49 Cal.2d 322, 317 P.2d 11 (1957) (dictum); Spalding v. Spalding, 75 Cal. App. 569, 243 P. 445 (1925); Redwood Inv. Co. v. Exley, 64 Cal. App. 455, 221 P. 973 (1923). Restatement (Second) of Conflict of Laws § 102, Reporter's Notes to Comments c and d (1971). This recommendation is limited to consideration of a procedure for enforcing money judgments entitled to full faith and credit.
3. Defenses to enforcement include the following: the judgment is not final and unconditional; the judgment was obtained by extrinsic fraud; the judgment was rendered in excess of jurisdiction; the judgment is not enforceable in the state of rendition; misconduct of the plaintiff; the judgment has already been paid; suit on the judgment is barred by the statute of limitations in the state where enforcement is sought. 5 B. Witkin, California Procedure Enforcement of Judgment § 194 at 3549-3550 (2d ed. 1971); Restatement (Second) of Conflict of Laws §§ 103-121 (1971).

exclusive way to enforce a sister state money judgment is to bring an action on the judgment in a California court; when a domestic judgment is obtained, then execution may issue.<sup>4</sup> This traditional manner of enforcing judgments of sister states requires all the normal trappings of an original action. The judgment creditor must file a complaint. There must be judicial jurisdiction. The creditor may want to seek a writ of attachment, if available, until such time as the judgment has been established. A trial (however summary) must be held in order to establish the sister state judgment at which time the judgment debtor may raise any defenses to the validity of the judgment that he may have. Only after the entry of the domestic judgment may the judgment creditor seek execution on the debtor's assets in the state.

The formal, traditional process of enforcing sister state judgments understandably has been the subject of criticism.<sup>5</sup> A simpler and more efficient method of enforcing sister state judgments is offered by a registration system similar to the procedure enacted by Congress in 1948 for the enforcement of federal district court judgments in other districts<sup>6</sup> and the revised Uniform

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4. 5 B. Witkin, California Procedure Enforcement of Judgment § 193 at 3548 (2d ed. 1971); Restatement (Second) of Conflict of Laws § 99, Comment b; § 100, Comment b (1971); cf. Code Civ. Proc. §§ 337.5(3), 1913.
  5. See, e.g., Kulzer, The Uniform Enforcement of Foreign Judgments Act and The Uniform Enforcement of Foreign Judgments Act (Revised 1964 Act), State of New York Judicial Conference, 13th Annual Report 248 (1968); Report of the Standing Committee on Jurisprudence and Law Reform, 52 A.B.A. Report 292 (1927); Jackson, Full Faith and Credit--The Lawyer's Clause of the Constitution, 45 Colum. L. Rev. 1 (1945); Paulsen, Enforcing the Money Judgment of a Sister State, 42 Iowa L. Rev. 202 (1957).
  6. 28 U.S.C. § 1963 (1970); see Stanford v. Utley, 341 F.2d 265 (8th Cir. 1965); Juneau Spruce Co. v. International Longshoremen's & Warehousemen's Union, 128 F. Supp. 697 (D. Hawaii 1955); Matanuska Valley Lines, Inc. v. Molitor, 365 F.2d 358 (1966), cert. denied, 386 U.S. 914 (1967). Registration systems have long been used successfully in other countries with federated states, e.g., Australia. See Yntema, The Enforcement of Foreign Judgments in Anglo-American Law, 33 Mich. L. Rev. 1129 (1935); Leflar, The New Uniform Foreign Judgments Act, 24 N.Y.U. L.Q. Rev. 336, 343-345 (1949); Morison, Extra-Territorial Enforcement of Judgments Within the Commonwealth of Australia, 21 Aust. L.J. 298 (1947).

Enforcement of Foreign Judgments Act of 1964.<sup>7</sup> The registration system of the Uniform Act has been adopted in the major commercial states of New York and Pennsylvania and also in Wisconsin, Arizona, Colorado, Kansas, Oklahoma, North Dakota, and Wyoming.<sup>8</sup>

The Law Revision Commission recommends that a registration system for the enforcement of sister state judgments be enacted in California. Under this system, the judgment creditor files an application for the entry of a domestic judgment on the basis of the sister state judgment along with an authenticated copy of the sister state judgment in a California superior court. The clerk enters the judgment as he would a judgment of the superior court. Between 10 and 15 days thereafter he sends notice of entry of the judgment to the judgment debtor<sup>9</sup> who may raise any defenses that he may have to the enforcement of the judgment by noticed motion. In addition, the judgment creditor is required to serve notice in the manner provided for service of summons. The judgment creditor may obtain a writ of execution and have it levied prior to notice of entry of judgment where the judgment debtor is a nonresident individual, a corporation which has not qualified to do business in California, a partnership which has not designated an agent for service of process in California, or any person where extraordinary circumstances are shown. However, in such cases, assets levied upon may not be sold (except where the property

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7. 9A Uniform Laws Ann. 488 (1965).

8. In addition, an earlier act--the Uniform Enforcement of Foreign Judgments Act of 1948--which provides a summary judgment procedure, has been adopted in Illinois, Missouri, Oregon, Washington, Nebraska, and Arkansas. 9A Uniform Laws Ann. 475 (1965); National Conference of Commissioners on Uniform State Laws, Handbook (1970).

9. The 10- to 15-day delay in sending notice of the filing to the judgment debtor is intended to allow time for the judgment creditor to obtain a writ of execution and have it levied on property of a nonresident debtor or a resident debtor in extraordinary circumstances.

is perishable) or distributed to the creditor until at least 20 days after either the clerk mailed notice of entry or the creditor served notice of entry on the judgment debtor. In all other cases, the judgment creditor may not obtain a writ of execution unless he provides proof of 10 days' notice to the judgment debtor of entry of judgment.

The recommended registration procedure offers several distinct advantages over the traditional enforcement process. The registration system is speedy, efficient, and inexpensive to utilize. It offers savings in time and money to both courts and creditors. The procedure is fair to the judgment debtor since his opportunity to attack the enforcement of the sister state judgment is preserved. The registration procedure avoids the necessity under current law of obtaining a writ of attachment during the time suit is brought to establish the sister state judgment.

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The Commission's recommendation would be effectuated by the enactment of the following measure:

An act to amend Sections 674, 1713.1, and 1713.3 of, to amend the heading of Title 11 of Part 3 of, to add Chapter 1 (commencing with Section 1710.10) to Title 11 of Part 3 of, and to repeal Section 1915 of, the Code of Civil Procedure, relating to enforcement of judgments.

The people of the State of California do enact as follows:

Section 1. Section 674 of the Code of Civil Procedure is amended to read:

674. An abstract of the judgment or decree of any court of this State, including a judgment entered pursuant to Chapter 1 (commencing with Section 1710.10) of Title 11 of Part 3, or a judgment of any court sitting as a

small claims court, or any court of record of the United States, the enforcement of which has not been stayed on appeal, certified by the clerk, judge or justice of the court where such judgment or decree was rendered, may be recorded with the recorder of any county and from such recording the judgment or decree becomes a lien upon all the real property of the judgment debtor, not exempt from execution, in such county, owned by him at the time, or which he may afterward and before the lien expires, acquire. Such lien continues for 10 years from the date of the entry of the judgment or decree unless the enforcement of the judgment or decree is stayed on appeal by the execution of a sufficient undertaking or the deposit in court of the requisite amount of money as provided in this code, or by the statutes of the United States, in which case the lien of the judgment or decree, and any lien or liability now existing or hereafter created by virtue of an attachment that has been issued and levied in the action, unless otherwise by statutes of the United States provided, ceases, or upon an undertaking on release of attachment, or unless the judgment or decree is previously satisfied, or the lien otherwise discharged. The abstract above mentioned shall contain the following: title of the court and cause and number of the action; date of entry of the judgment or decree; names of the judgment debtor and of the judgment creditor; amount of the judgment or decree, and where entered in judgment book, minutes or docket in the justice court.

Comment. Section 674 is amended to make clear that a judgment entered pursuant to Section 1710.10 et seq. may be recorded and become a lien pursuant to Section 674. See Section 1710.10 et seq. and Comments.

Sec. 2. Section 1713.1 of the Code of Civil Procedure is amended to read:

1713.1. As used in this chapter:

(1) "Foreign state" means any governmental unit other than the United States, or any state, district, commonwealth, territory, insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, ~~or the Ryukyu Islands;~~

(2) "Foreign judgment" means any judgment of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine or other penalty, or a judgment for support in matrimonial or family matters.

Comment. Section 1713.1(1) is amended to reflect the return to Japan of administrative rights over the Ryukyu Islands effective May 15, 1972. See Agreement Between Japan and the United States of America Concerning the Ryukyu Islands and the Daito Islands, June 17, 1971, art. I, para. 1, art. V, paras. 1 & 2 (effective May 15, 1972).

Sec. 3. Section 1713.3 of the Code of Civil Procedure is amended to read:

1713.3. Except as provided in Section 1713.4, a foreign judgment meeting the requirements of Section 1713.2 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. The foreign judgment is enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit, except that it may not be enforced pursuant to the provisions of Chapter 1 (commencing with Section 1710.10).

Comment. The amendment of Section 1713.3 makes clear that the procedure for filing sister state judgments provided by Chapter 1 (commencing with Section 1710.10) is not available for the enforcement of foreign nation money judgments. See Section 1710.10 and Comment.

Sec. 4. Section 1915 of the Code of Civil Procedure is repealed.

~~1915. -- Except as provided in Chapter 2 (commencing with Section 1713) of Title 11 of Part 3 of this code, a final judgment of any other tribunal of a foreign country having jurisdiction, according to the laws of such country, to pronounce the judgment, shall have the same effect as in the country where rendered, and also the same effect as final judgments rendered in this state.~~

Comment. Section 1915 is repealed because it has been largely ignored by the courts and has served no useful purpose. See A. Ehrenzweig, Conflict of Laws § 45 at 163, n.25 (1962) ("Being much too sweeping in its language. . . . this provision has remained ineffective."). See also Ryder v. Ryder, 2 Cal. App.2d 426, 37 P.2d 1069 (1935); DeYoung v. DeYoung, 27 Cal.2d 521, 165 P.2d 457 (1946); Harlan v. Harlan, 70 Cal. App.2d 657, 161 P.2d 490 (1945); Sohnlein v. Winchell, 230 Cal. App.2d 508, 41 Cal. Rptr. 145 (1964).

Section 1915 apparently was enacted in nearly its present form in 1907 with an eye to the doctrine of reciprocity to assure the foreign execution of judgments entered in California against insurance companies in foreign nations, primarily Germany, involving claims arising out of the 1906 earthquake and fire. However, the section failed to achieve its basic historical purpose when in 1909 the imperial court of Germany refused to permit the execution of California judgments rendered by default against German insurance companies. See Lorenzen, The Enforcement of American Judgments Abroad, 29 Yale L.J. 188,

§ 1915

202-205 (1919). Since that time, the meaning and effect of Section 1915 have been a source of confusion. See, e.g., Scott v. Scott, 51 Cal.2d 249, 254, 331 P.2d 641, \_\_\_ (1958)(Traynor, J., concurring); Ryder v. Ryder, supra; Comment, Recognition of Foreign Country Divorces: Is Domicile Really Necessary?, 40 Cal. L. Rev. 93 (1952). Section 1915 became of even less possible use with the enactment of the Uniform Foreign Money-Judgments Recognition Act (Sections 1713-1713.8) in 1967, which removed foreign nation money judgments entitled to recognition under that act from the effect of Section 1915. With the repeal of Section 1915, the enforcement of foreign nation judgments is a matter of other statutory provisions and decisions of the courts under principles of the common law and private international law. See Sections 1713-1713.8; Scott v. Scott, supra (Traynor, J., concurring); Restatement (Second) of Conflict of Laws § 98, Comment b (1971); Smit, International Res Judicata and Collateral Estoppel in the United States, 9 U.C.L.A. L. Rev. 44 (1962).

Sec. 5. The heading of Title 11 of Part 3 of the Code of Civil Procedure is amended to read:

TITLE 11. ~~OF PROCEEDINGS IN PROBATE COURTS~~

FOREIGN MONEY JUDGMENTS

Sec. 6. Chapter 1 (commencing with Section 1710.10) is added to Title 11 of Part 3 of the Code of Civil Procedure, to read:

Chapter 1. Enforcement of Sister State

Money Judgments

§ 1710.10. "Sister state judgment"

1710.10. As used in this chapter, "sister state judgment" means that part of any judgment, decree, or order of a court of a state of the United States requiring the payment of money which is entitled to full faith and credit in this state.

Comment. Section 1710.10 is based on Section 1 of the revised Uniform Enforcement of Foreign Judgments Act of 1964. 9A Uniform Laws Ann. 488 (1965). However, unlike the Uniform Act which applies to all state and federal judgments entitled to full faith and credit, Section 1710.10 is limited to sister state judgments which require the payment of money. It should be noted that "sister state judgment" is defined as a judgment or part of a judgment requiring the payment of money. Hence, if a judgment of a sister state requires both the payment of money and the performance of some other act, only the part requiring the payment of money is considered a "sister state judgment" under this chapter and is thereby enforceable by its filing provisions. See Section 1710.20. Section 1710.80 prevents the filing of a "sister state judgment" pursuant to this chapter if an action has been brought or judgment previously rendered based on the "sister state judgment." In view of the definition of "sister state judgment" to include part of a judgment requiring the payment of money, if a judgment creditor has brought an action on the part of the judgment of the sister state which requires performance of an act other than the payment of money but has not brought an action on the part of the judgment for money damages, then the judgment creditor is not precluded by Section 1710.80 from filing under this chapter in order to enforce the part of the judgment for the payment of money (that is, the "sister state judgment"). Similarly, if

the creditor has filed a "sister state judgment" as defined in this section, he is not precluded by subdivision (b) of Section 1710.90 from bringing an action on the nonmoney damages part of his judgment.

Section 1710.10 also requires that the sister state money judgment be one that is "entitled to full faith and credit in this state," a matter determined by the decisions interpreting the full faith and credit clause of the United States Constitution. See U.S. Const., Art. IV, § 1. See also 5 B. Witkin, California Procedure Enforcement of Judgment § 194 at 3549-3550 (2d ed. 1971); Restatement (Second) of Conflict of Laws §§ 100, 102, Comment c and Reporter's Note (1971).

Federal money judgments may be registered in California federal district courts pursuant to federal procedures. 28 U.S.C. § 1963 (1970).

Nothing in this chapter affects the right of a judgment creditor to bring an action in California to enforce a sister state, federal, or foreign nation money judgment except that enforcement of a "sister state judgment" may not be had both by an action and under this chapter. See Sections 1710.20(b)(4), 1710.80, and 1710.90.

§ 1710.15. "Judgment creditor"

1710.15. As used in this chapter, "judgment creditor" means the person or persons who could bring an action to enforce a sister state judgment.

Comment. Section 1710.15, defining "judgment creditor," is intended to incorporate the law relating to which judgment holders may enforce the judgment where there are multiple judgment creditors. See Code Civ. Proc. §§ 378, 389, and 578. See also Code Civ. Proc. § 17 (singular includes the plural).

§ 1710.20. Application for enforcement; filing; contents

1710.20. (a) A judgment creditor may apply for the enforcement of a sister state judgment by filing an application with the superior court for the county designated by Section 1710.30.

(b) The application shall be executed under oath and shall include all of the following:

(1) A statement that the sister state judgment is [presently enforceable and is not barred by the statute of limitations in the state of rendition.] [valid and subsisting in the state of rendition.]

(2) A statement whether to the applicant's knowledge and belief a stay of enforcement has been granted in the state of rendition.

(3) A statement of the amount remaining unpaid under the judgment.

(4) A statement that no action based on the sister state judgment is currently pending in any court of this state and that no judgment based on such sister state judgment has previously been entered in any proceeding in this state.

(5) Where the judgment debtor is an individual, a statement setting forth the name and last known residence address of the judgment debtor. Where the judgment debtor is a corporation, a statement of the corporation's name, place of incorporation, and whether the corporation, if foreign, has qualified to do business in this state under the provisions of Chapter 3 (commencing with Section 6403) of Part 11 of Division 1 of Title 1 of the Corporations Code. Where the judgment debtor is a partnership, a statement of the partnership's name, place of domicile, and whether the partnership, if foreign, has filed a designation pursuant to Section 15700 of the Corporations Code. A statement

required by this paragraph may be made on the basis of the judgment creditor's information and belief.

(6) A statement setting forth the name and address of the judgment creditor.

(c) A properly authenticated copy of the sister state judgment shall be attached to the application.

Comment. Section 1710.20 requires an application for relief under this chapter to be filed with a superior court and prescribes the contents of the application. Use of the procedure provided by this chapter should not be so frequent as to be burdensome, and the consolidation of all such proceedings in the superior court should promote efficient and uniform operation. Although normally claims of not more than \$1,000 are heard in justice court (Code Civ. Proc. § 112) and claims of not more than \$5,000 are heard in municipal court (Code Civ. Proc. § 89), proceedings under this chapter to enforce sister state money judgments take place in superior court regardless of amount.

The statement required by paragraph (1) of subdivision (b) is intended to show clearly that the sister state judgment is, to the knowledge of the judgment creditor, properly enforceable in California. This paragraph follows the federal rule that registration of federal money judgments under 28 U.S.C. § 1963 (1970) is permissible "notwithstanding that the time for issuance of execution had expired, provided that revival was a matter of course and that the statute of limitations had not run as to the judgment itself in the state of rendition." Juneau Spruce Corp. v. International Longshoremen's & Warehousemen's Union, 128 F. Supp. 697, 704 (D. Hawaii 1955). Hence, a "dormant" judgment may be registered "if the facts show 'dormancy' derived from a time

limitation upon execution patterned on the ancient writ of scire facias, and does not involve discretionary revival of the judgment itself . . . ." Id. (citing inter alia 164 East 72nd St. Corp. v. Ismay, 65 Cal. App.2d 574, 151 P.2d 29 (1944)). But, if the "revival of the judgment itself may be denied in the discretion of the court of origin it is not a presently subsisting judgment and cannot be registered under 28 U.S.C. § 1963." Id. at 705.

The statement required by paragraph (2) of subdivision (b) is intended to provide information upon which the court may grant a stay pursuant to Section 1710.70. The fact that a stay of enforcement has been granted in the sister state will not prevent the filing and entry of a judgment in California, but will stay execution of the judgment pending the outcome of any appeal or new trial in the sister state.

The statement required by paragraph (3) of subdivision (b) is intended to prevent double recovery.

The statement required by paragraph (4) of subdivision (b) reflects the substantive requirement of Section 1710.80.

The statement required by paragraph (5) of subdivision (b) permits an initial check as to proper venue. See Section 1710.30 and Comment. It also provides information necessary to determine whether a writ of execution may issue before notice of entry is given the judgment debtor. See Section 1710.65 and Comment.

The application is, of course, subject to the general rules for papers filed in a superior court. See Section 1710.30 and Comment. Hence, in addition to the matters required by this section, the application will also include the name and address of the judgment creditor's attorney. See Cal. Rules of Court 201(c).

Subdivision (c) requires that a properly authenticated copy of the sister state judgment be attached to the application. Section 1738 of Title 28 of the United States Code requires that full faith and credit be given to judgments authenticated in the manner there set forth and thereby provides certain maximum restrictions. For California provisions relating to authentication of judgments, see, e.g., Evid. Code §§ 1452, 1453, 1530(a).

The limitations period for applications filed pursuant to this chapter are provided by Title 2 of Part 2 of this code. Paragraph (3) of Section 337.5 prescribes a basic 10-year period for commencement of an action upon a sister state judgment. See Code Civ. Proc. § 363 ("action" includes special proceeding). However, a lesser period may be applicable under the borrowing provision of Section 361. Biewind v. Biewind, 17 Cal.2d 108, 109 P.2d 701 (1941); Parhm v. Parhm, 2 Cal. App.3d 311, 82 Cal. Rptr. 570 (1969); Weir v. Corbett, 229 Cal. App.2d 290, 40 Cal. Rptr. 161 (1964); Stewart v. Spaulding, 72 Cal. 264, 13 P. 661 (1887). But cf. Mark v. Safren, 227 Cal. App.2d 151, 38 Cal. Rptr. 500 (1964). On the other hand, the 10-year period is tolled while the judgment debtor is absent from the state. See Code Civ. Proc. § 351; Cvecich v. Giardino, 37 Cal. App.2d 394, 99 P.2d 573 (1940). If the judgment is made payable in installments, the statute of limitations for each installment runs from the time each payment falls due. Biewind v. Biewind, supra; DeUprey v. DeUprey, 23 Cal. 352 (1863); Mark v. Safren, supra.

§ 1710.30. Application for enforcement; venue

1710.30. Subject to the power of the court to transfer the proceeding pursuant to Title 4 (commencing with Section 392) of Part 2, the application shall be filed in the office of the clerk of the superior court for:

- (a) The county in which any judgment debtor resides; or
- (b) If no judgment debtor is a resident, any county in this state.

Comment. Section 1710.30 makes clear the venue requirements for proceedings under this chapter. The application must be filed in the county where the judgment debtor resides. See Section 1710.20(b)(5) (application shall set forth judgment debtor's last known residence address). In the case of a domestic corporation or a foreign corporation which has designated its principal office within the state under Corporations Code Section 6403, "residence" for venue purposes is the principal place of business. See Code Civ. Proc. § 395.5; Walker v. Wells Fargo Bank, 8 Cal.2d 447, 65 P.2d 1299 (1938); Bohn v. Better Biscuits, 26 Cal. App.2d 61, 78 P.2d 117 (1938); Easton v. Superior Court, 12 Cal. App.3d 243, 90 Cal. Rptr. 642 (1970). Venue for a foreign corporation which has not designated its principal office is any county in the state. Easton v. Superior Court, supra. Where a judgment creditor errs in his application, the judgment debtor may request a transfer of the proceeding. A transfer will not, however, affect the validity of actions already taken.

§ 1710.40. Entry of judgment

1710.40. Upon the filing of the application, the clerk shall enter a judgment based upon the application. Entry shall be made in the same manner as entry of a judgment of the superior court.

Comment. Section 1710.40 is similar to Section 2 of the revised Uniform Enforcement of Foreign Judgments Act of 1964. 9A Uniform Laws Ann. 488 (1965). Section 2 requires the clerk to file a sister state judgment and treat it in the same manner as a judgment of his state. Section 1710.40 accomplishes the same end by requiring entry of a judgment on the basis of the judgment creditor's application (attached to which is an authenticated copy of the sister state judgment).

§ 1710.45. Judgment creditor's notice of entry; clerk's notice of entry

1710.45. (a) Notice of entry of judgment shall be served [promptly] by the judgment creditor upon the judgment debtor in the manner provided for service of summons by Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2.

(b) Not less than 10 nor more than 15 days after entry of judgment, the clerk shall mail notice of entry of judgment to the judgment debtor at the address set forth in the judgment creditor's application. The clerk shall execute a certificate of such mailing and place it in the court's file in the case.

Comment. The dual notice provision of Section 1710.45 is similar to Section 3 of the revised Uniform Enforcement of Foreign Judgments Act of 1964, 9A Uniform Laws Ann. 488, 489 (1965), except that the clerk's notice is delayed at least 10 days and the creditor's notice is not optional. The judgment creditor is required by subdivision (a) to promptly serve notice of entry on the judgment debtor in accordance with the provisions for service of summons (Code Civ. Proc. § 415.10 et seq.), however, he may obtain a writ of execution before he gives notice where the judgment debtor is one described by subdivision (a) of Section 1710.65. See Section 1710.65 and Comment. In all other cases, proof of 10 days' notice is required before a writ may issue. See Section 1710.60 and Comment. Under subdivision (b), the clerk's notice of entry is delayed for at least 10 days in order that the judgment creditor may have time to obtain a writ of execution and the levying officer may have time to levy upon the debtor's property before notice. See Section 1710.65 and Comment. If a writ of execution is levied on property of the judgment debtor, he may receive notice of the judgment creditor's enforcement activities before he

§ 1710.45

receives either the creditor's notice under subdivision (a) or the clerk's notice under subdivision (b) since the levying officer is required by the statutory form to serve a copy of the writ of execution on the judgment debtor at the time of levy or to mail a copy to him after levy. Code Civ. Proc. § 682.1.

§ 1710.50. Effect of judgment; enforcement; defenses

1710.50. (a) Except as otherwise provided in this chapter, a judgment entered pursuant to Section 1710.40 shall have the same effect as a money judgment of a superior court of this state and may be enforced or satisfied in like manner.

(b) The judgment debtor may raise any defense to the [entry or] enforcement of the judgment which could be made in an action to enforce the sister state judgment by a noticed motion to vacate the judgment.

Comment. Subdivision (a) of Section 1710.50 provides that a sister state money judgment when filed under this chapter is to be treated as a judgment of the superior court for purposes of enforcement. Hence, for example, Code of Civil Procedure provisions regarding judgment liens (Section 674), execution (Section 681 et seq.), and supplemental proceedings (Section 714 et seq.) all apply to the judgment. However, some variations exist between the enforcement procedures of this chapter and those generally applicable. See, e.g., Sections 1710.60 and 1710.65. The judgment may be renewed for purposes of execution or other enforcement after 10 years as provided by Section 685. However, the same sister state judgment may not serve as the basis for entry of a California judgment more than once. See Sections 1710.80 and 1710.90 and Comments.

Subdivision (b) provides for the manner of raising defenses to the enforcement of the sister state judgment in California. General provisions concerning motions apply. See, e.g., Code Civ. Proc. §§ 1004 (motions made in court where action is pending), 1005 (10 days' notice of motion unless shortened by court), 1006 (transfer of motion). The court may find it necessary to

harmonize the 10-day notice of motion requirement with the provisions of this chapter. Hence, where it appears that a writ of execution may be issued or levied pursuant to Section 1710.60 before the 10-day notice of motion period has run, the court may either shorten the time of notice under Section 1005 or grant a stay of enforcement under Section 1710.70 in order to prevent execution before the judgment debtor's defenses can be heard.

Common defenses to enforcement of sister state judgments include the following: the judgment is not final and unconditional (finality here means no further action by the court rendering the judgment is necessary to resolve the matter litigated); the judgment was obtained by extrinsic fraud; the judgment was rendered in excess of jurisdiction; the judgment is not enforceable in the state of rendition; misconduct of the plaintiff; the judgment has already been paid; suit on the judgment is barred by the statute of limitations in the state where enforcement is sought. 5 B. Witkin, *California Procedure Enforcement of Judgment* § 194 at 3549-3550 (2d ed. 1971); *Restatement (Second) of Conflict of Laws* §§ 103-121 (1971).

§ 1710.60. Execution after notice; proof of service

1710.60. Except as provided in Section 1710.65, a writ of execution based on a judgment entered pursuant to this chapter shall not issue until at least 10 days after service of notice of entry of judgment on the judgment debtor, proof of which has been made in the manner provided by Article 5 (commencing with Section 417.10) of Chapter 4 of Title 5 of Part 2.

Comment. Section 1710.60 makes clear that, where a judgment creditor seeks to enforce by writ of execution a judgment filed pursuant to this chapter, he may not obtain issuance of the writ until the resident judgment debtor has had 10 days' notice of the entry of the sister state judgment in California. That the debtor will have 10 days' notice is assured by the requirement that the judgment creditor provide proof of service in accordance with the provisions for service of summons before he can obtain a writ of execution. See Code Civ. Proc. § 417.10 et seq. However, where the judgment creditor is described in Section 1710.65(a), the provisions of this section do not apply, and notice is then not required before execution. It should be noted that, where Section 1710.60 applies, there is no 20-day delay of sale or distribution as there is where the writ of execution is issued and levied prior to notice of entry to the judgment debtor. See Section 1710.60(5)(b). Instead, the general provisions concerning execution apply. See Code Civ. Proc. § 681 et seq.

§ 1710.65. Execution before notice; types of judgment debtors; delay of sale or distribution

1710.65. (a) A writ of execution may be issued before notice against [the property of] any judgment debtor who is one of the following:

(1) An individual who does not reside in this state.

(2) A foreign corporation not qualified to do business in this state under the provisions of Chapter 3 (commencing with Section 6403) of Part 11 of Division 1 of Title 1 of the Corporations Code.

(3) A foreign partnership which has not filed a designation pursuant to Section 15700 of the Corporations Code.

(4) Any person [not described in paragraph (1), (2), or (3) of this subdivision] upon an ex parte showing to the court that great or irreparable injury would result to the judgment creditor if issuance of the writ of execution were delayed as provided in Section 1710.60.

(b) Property of a judgment debtor described in subdivision (a) of this section levied upon under a writ of execution issued on a judgment entered pursuant to this chapter shall not be sold or distributed before 20 days after the clerk mails notice of entry of the judgment to the judgment debtor, or the judgment creditor serves notice of entry of the judgment upon the judgment debtor, whichever is earlier. However, if property levied upon is perishable, it may be sold in order to prevent its destruction or loss of value, but the proceeds of the sale shall not be distributed to the judgment creditor before the date sale is permissible for nonperishables.

Comment. Subdivision (a) of Section 1710.65 provides for issuance of a writ of execution before the clerk of court sends notice or the judgment creditor serves notice of entry of judgment. See Section 1710.40(b) and (c).

Of course, the judgment creditor need not apply for a writ of execution until after notice of entry is given to the judgment debtor, but it will be to his advantage to apply before notice to prevent any transfer or concealment of assets. However, under subdivision (b), the sale or distribution of property levied upon is delayed for 20 days after the clerk mails notice or the creditor serves notice, whichever is earlier. See Section 1710.40(b)-(c). This 20-day period provides the judgment debtor with an opportunity to raise any defenses he may have to the enforcement of the sister state judgment in California. See also Code Civ. Proc. § 692 (notice to debtor 10 days before sale of personal property and 20 days before sale of real property).

Subdivision (a) permits the issuance and levy of a writ of execution before notice against the assets of three types of nonresident debtors (paragraphs (1)-(3)) and any other debtor in extraordinary circumstances (paragraph (4)). Extraordinary circumstances will be found to exist if the judgment creditor shows that great or irreparable injury would result if he were required to give notice before obtaining a writ of execution. It should be noted that, although the clerk may issue writs of execution against the debtors described in paragraphs (1)-(3), the creditor must make an ex parte showing of extraordinary circumstances to the court before a writ of execution may issue under paragraph (4). The clerk should have no trouble making the factual determinations of residence of individuals (paragraph (1)), the qualification of a foreign corporation under specified sections of the Corporations Code (paragraph (2)), or whether a foreign partnership has filed a designation under Section 15700 of the Corporations Code (paragraph (3)) since this information is required in the application for filing of sister state judgment. See Section 1710.20(b)(5). However, the determination of the existence of extraordinary circumstances is a judicial function.

§ 1710.70. Stay of enforcement; grounds; procedure; undertakings

1710.70. (a) The court shall grant a stay of enforcement where:

(1) An appeal from the sister state judgment is pending or will be taken in the state which originally rendered the judgment. Under this paragraph, enforcement shall be stayed until the appeal is concluded or the time for appeal has expired.

(2) A stay of enforcement has been granted in the state which originally rendered the judgment. Under this paragraph, enforcement shall be stayed until the sister state stay of enforcement expires or is vacated.

(3) The judgment debtor has made a motion to vacate pursuant to subdivision (b) of Section 1710.50. Under this paragraph, enforcement shall be stayed until the judgment debtor's motion to vacate is determined.

(4) Any other circumstance exists where the interests of justice require a stay of enforcement.

(b) The court shall grant a stay of enforcement under this section on such terms and conditions as are just. The court may grant a stay on its own motion, on ex parte motion, or on such notice of motion as justice requires. The court may require an undertaking in an amount it thinks just, but the amount of the undertaking shall not exceed double the amount of the judgment creditor's claim. If a writ of execution has been issued, the court may order that it remain in effect. If property of the judgment debtor has been levied upon under a writ of execution, the court may order the levying officer to retain possession of the property capable of physical possession and to maintain the levy on other property.

Comment. Section 1710.70 gives broad discretion to the court to grant stays of enforcement in the interests of justice. Where the court has

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adequate information, it may grant the stay on its own motion. Otherwise, it will be up to the judgment debtor to show a need for the stay on ex parte or noticed motion. Subdivision (b) gives the court broad discretion in fashioning the terms of the stay in order to adequately protect the interests of both the judgment creditor and the judgment debtor. The matter of undertakings is left up to the court which may consider factors such as the probability of a successful defense, the propensity of the debtor to conceal or transfer his assets, that the debtor has already given a bond on appeal in the sister state, or that the debtor prefers having his property held subject to levy rather than giving an undertaking.

§ 1710.80. Limitation to one filing or proceeding

1710.80. No sister state judgment may be filed pursuant to this chapter if an action based on such judgment is currently pending in any court of this state or if a judgment based on such judgment has previously been entered in any proceeding in this state.

Comment. Section 1710.80, together with subdivision (b) of Section 1710.90, precludes a judgment creditor from using his sister state judgment as the basis for more than one California judgment. See Section 1710.10 and Comment. The creditor may either secure enforcement pursuant to this chapter or bring a separate action to enforce his sister state judgment, but he may not do both, nor may he apply more than once under this chapter on the same sister state judgment as defined in Section 1710.10. If, for example, the judgment creditor has a judgment requiring both the payment of money and performance of some other act, the filing pursuant to this chapter of the part of the judgment relating to money damages does not preclude a separate action on the nonmoney part of the judgment. See Section 1710.10 and Comment. The judgment creditor may, of course, renew the California judgment pursuant to Section 685.

§ 1710.90. Optional procedure

1710.90. (a) Except as provided in subdivision (b), nothing in this chapter affects any right a judgment creditor may have to bring an action to enforce a sister state judgment.

(b) No action to enforce a sister state judgment may be brought where a judgment based on such sister state judgment has previously been entered pursuant to this chapter.

Comment. Subdivision (a) of Section 1710.90 is similar to Section 6 of the revised Uniform Enforcement of Foreign Judgments Act of 1964. 9A Uniform Laws Ann. 488, 489 (1965). The enactment of this chapter is not intended to restrict the traditional means of enforcing sister state money judgments which require the judgment creditor to bring an independent action in this state. See 5 B. Witkin, California Procedure Enforcement of Judgment § 193 at 3548-3549 (2d ed. 1970); Restatement (Second) of Conflict of Laws §§ 99, 100, Comment b (1971); Restatement of Judgments § 47, Comment e (1942). However, subdivision (b) makes clear that the judgment creditor must choose between the methods of enforcement offered. He may not obtain two judgments in this state based on one sister state judgment as defined in Section 1710.10 by using the two different procedures. See Sections 1710.10 and 1710.80 and Comments.