

#39.70

1/3/75

Second Supplement to Memorandum 75-5

Subject: Study 39.70 - Prejudgment Attachment

Attached to this supplementary memorandum is a letter from Mr. Ferdinand F. Fernandez concerning the staff draft of a recommendation amending the Attachment Law.

The examples posed by Mr. Fernandez in his discussion of Section 483.010 illustrate the difficulty in applying the words "engaged in a trade, business, or profession." Mr. Fernandez is of the opinion that an auto mechanic employed by an auto dealer or any employee is not so engaged. The staff has assumed a much broader meaning of these words--one that would include employees. As Mr. Fernandez's comments illustrate, the meaning given "engaged in a trade, business, or profession" depends in part on one's view of the purpose of the Attachment Law. Mr. Fernandez would limit attachment to "commercial" situations by which he means against corporations, partnerships, owners of businesses, and independent contractors. The staff does not believe such a limitation was intended by the use of the words "trade, business, or profession," but the susceptibility of these words to widely differing interpretations supports the recommendation that they be eliminated.

It should be noted that in the examples put forward by Mr. Fernandez--the tools of a person employed as a mechanic, the automobile used primarily for commuting to work by an employee, clothing--the property would in the vast majority of cases be exempt from attachment. Even where this is not the case, the staff sees no reason to allow attachment of the automobile of an independent contractor while not allowing attachment of the automobile of an employee of the contractor. Should the automobile of an attorney in practice for himself which is used primarily to commute be subject to attachment while that of an attorney employed by the state is not?

Respectfully submitted,

Stan G. Ulrich  
Legal Counsel

ALLARD, SHELTON & O'CONNOR  
ATTORNEYS AT LAW

100 POMONA MALL WEST, SIXTH FLOOR  
POMONA, CALIFORNIA 91766  
(714) 822-1041 AND (213) 964-2393

LEONARD A. SHELTON  
MAURICE O'CONNOR  
FERDINAND F. FERNANDEZ  
THOMAS C. BRAYTON  
PAUL M. MAHONEY  
TERRENCE J. BRUTOCAO  
WYNNE S. FURTH

JOSEPH A. ALLARD  
(1987-1988)  
ROLAND J. BROWNSBERGER  
OF COUNSEL

December 30, 1974

Mr. John H. DeMouilly  
California Law Revision Commission  
School of Law, Stanford University  
Stanford, California 94305

Dear Mr. DeMouilly:

I am in receipt of your Memorandum 75-5, and the attachments, both relating to modification of the Prejudgment Attachment Law.

Although I have been Chairman of the State Bar's Ad Hoc Committee on Attachments, this letter is not an official letter from the Committee, but rather my personal thoughts regarding the recommendation:

1. Section 482.060.--As you know, the Committee and the State Bar have consistently opposed calling the duties under the Attachment Law "subordinate judicial duties." For my part, I would like to reiterate opposition to that proposal.

2. Section 483.010.--You propose that the language "engaged in a trade, business, or profession," be stricken as unnecessary, in view of the later language "used primarily for personal, family or household purposes."

It strikes me that the proposal will not simply eliminate a redundancy. As I understand it, the purpose of the law is to limit attachments to individuals who are actually engaged in business in the ordinary commercial sense--for example, corporations, partnerships, and owners of business enterprises. It seems to me that those words are a more restrictive concept than the notion of property used primarily for personal, family, or household purposes.

For example, if an individual is an auto mechanic employed by an auto dealer, but owns his own tools, will he be subject to

Mr. John H. DeMouilly  
Page Two  
December 30, 1974

attachment for any claim arising out of the purchase of tools? As a further example, if an individual buys an automobile primarily for the purpose of traveling to and from work, will that subject the individual to attachments for claims arising out of the sale of the automobile? The same question can be applied in the area of clothing, and other items. Thus, many purchases by mere employees could give rise to a possibility of attachment.

Perhaps I am overlooking some definitional sections that clarify the above problems (for example, Civil Code §1802.1). However, it should be noted that there have been numerous disputes in the income tax area, relating to whether expenses are "personal" or "business" in nature, where income tax deductions have been involved.

If the "trade business or profession" language is eliminated, I hope that the comment will at least make it clear that there is no intent to subject all employees to attachment regarding items that they may use in their work.

Thank you for your consideration of this letter.

Yours truly,



Ferdinand F. Fernandes

FFF:kig