

## Memorandum 76-32

Subject: Study 39.100 - Enforcement of Sister State Judgments (Recovery of interest and filing fee)

We have received a letter from Mr. Robert P. Gordon (see Exhibit I) reporting two problems with the procedure for enforcing sister state money judgments under Code of Civil Procedure Sections 1710.10 et seq., enacted in 1974 on recommendation of the Commission. (A copy of the statute is attached hereto.)

1. Recovery of interest on sister state judgment between initial entry and entry in California.

Mr. Gordon reports that the superior court in Los Angeles is "reluctant to provide interest on the unsatisfied judgment through the date of entry thereof in California." He suggests amendments to permit accrued interest on the sister state judgment based on that state's legal rate.

The staff agrees that there is a problem here that was apparently overlooked when the statute was drafted. The remedy suggested by Mr. Gordon reflects the general rule regarding the rate of interest applicable in an action in one state on the judgment of another state, although the cases and authorities are not unanimous. Ehrenzweig states: "Whether or not interest will be allowed, and at what rate, on sister state judgments has generally been held to be governed by the law of the judgment state." However, there are cases applying the law of the forum. (See A. Ehrenzweig, Conflict of Laws § 195 (1962).) Similarly the Restatement holds that a valid judgment for the payment of money will be enforced in other states only in the amount for which it is enforceable in the state where it was rendered. (Restatement (Second) of Conflict of Laws § 101 (1971).)

On the other hand, in contract cases the law of the forum has generally determined the amount of damages (which would include interest). (See 2 B. Witkin, California Procedure, Actions § 54 at 929-930 (1970).) And for some purposes a judgment is considered as a contract, e.g., where a statute providing for a cause of action on a contract was deemed to include a cause of action on a judgment. (See 1 B. Witkin, Summary of California Law, Contracts § 2 at 29-30 (1973).)

The staff concludes that, although the general rule is that the law of the sister state would determine the entitlement to and the amount of interest, the rule is not so fixed that the Commission should feel bound by it. Consequently, the staff recommends that Sections 1710.15 and 1710.25 be amended to provide that the legal interest rate in California applies to the judgment from the time it is entered in the sister state. (See the attached copy of Section 1710.10 et seq., for the text of the proposed amendments.)

The recommended rule would have the virtue of simplicity and would further the purpose of avoiding judicial hearings except where there is a substantive dispute. It may be argued that in a situation where the interest rate in the sister state is higher than 7% this proposal is unfair to the judgment creditor and where it is lower than 7% it is unfair to the judgment debtor. The staff has not taken the time to find out the range of legal interest rates throughout the United States, but for the moment we assume that the disparity is not too great and that the benefit gained from the efficiency of the procedure outweighs the possible gain to one side or the other from a more complex system.

The staff notes three alternative procedures which, while quite feasible, would require hearings in a greater number of cases:

First, as Mr. Gordon suggests, it could be provided that the sister state interest rate is applicable during the time between original entry and registration in California. The difficulty with this suggestion is that the clerk will not know what the rate should be and it may therefore necessitate some sort of judicial hearing to determine the applicable interest rate. This hearing would be for the purpose of taking judicial notice of the sister state provisions.

Second, the Commission may wish to recommend a procedure where the judgment creditor merely asserts in his application the applicable rate since, after all, he asserts the amount of the sister state judgment remaining unpaid. This could be supported by a copy of the sister state statute. Then if the judgment debtor wishes to dispute the sister state rate stated in the application, he may do so by means of the motion to vacate provided in Section 1710.40

A third alternative would be to provide that the legal rate of interest in California applies unless either party proves that the sister state would apply a different rate. This sort of provision would be reminiscent of the doctrine continued in Evidence Code Section 311 to the effect that, if the law of another state cannot be determined, the court may apply California law, except where it would be unconstitutional to do so. (See Nesbit v. MacDonald, 203 Cal. 219, 223, 263 P.1007 (1928): "In the absence of pleading or proof as to what the law of the state of Pennsylvania is, we are required to indulge the presumption that the rate of interest there is the same as the rate in this state.")

2. Inclusion of filing fee in California judgment.

Mr. Gordon also writes that he has not been able to have the fee for filing the judgment in California included in the judgment. Such fees would certainly be recoverable if an action were brought on a sister state judgment.

The staff recommends that Section 1710.25 be amended to provide that the amount of the judgment as entered in California shall include the fee for filing the application. (See attached copy of the statute.)

Respectfully submitted,

Stan G. Ulrich  
Staff Counsel

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EXHIBIT I

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RONALD K. LIPSTONE  
ROBERT F. GORDON

January 22, 1976

Judicial Council of the State of California  
100 Library and Courts Building  
Sacramento, California 95814

Re: California Code of Civil Procedure,  
Section 1710.10 et seq., Sister State Money Judgments

Gentlemen:

I have experienced what is basically an inequity in the current sister state money judgments provisions of the California Code of Civil Procedure, Secs. 1710.10 through 1710.65, inclusive.

The problem is that the Los Angeles Superior Court appears to be reluctant to provide interest on the unsatisfied judgment through the date of entry thereof in California, and there is no way of picking up the costs of the filing fee in the Superior Court for the Application and Entry of Judgment.

The Superior Court Clerk apparently in this matter in California has indicated that if we want to obtain our accrued interest on the unsatisfied sister state judgment, that it will be necessary to make an express noticed motion therefor. I would suggest that C.C.P., §§1710.15 and 1710.25 be accordingly amended so as to allow accrued interest on the sister state judgment based upon that state's provision of interest on unsatisfied judgments. Further, 1710.25 of the Code of Civil Procedure, should be amended so as to allow entry of Judgment on the unpaid balance of the sister state judgment together with accrued interest as well as the filing fee in the Superior Court for the application and entry of the sister state judgment.

It is clear under this legislative enactment that all sister state judgments of any size to be enforced in California require a Superior Court Judgment, and this should, however, include accrued interest and local costs. This sum can be considerable, and there is no just reason why the judgment creditor should not obtain his accrued interest and the cost of obtaining judgment on the sister state judgment in California.

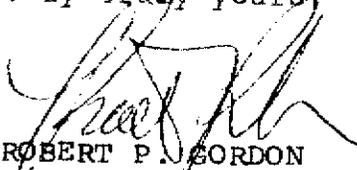
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The whole idea of C.C.P., §1710.10 et seq., was to simplify procedures. The effect at present is to create a nonreimbursable cost of substance as well as waiver of accrued interest on the sister state judgment. I would suggest that you give this matter your consideration for purpose of amendment to cure these deficiencies in the statutes as they now read.

Very truly yours,



ROBERT P. GORDON

RPG:eg

Memorandum 76-32

Enforcement of Sister State Money Judgments, Code Civ. Proc. §§ 1710.10-1710.65

§ 1710.10 Definitions

As used in this chapter:

(a) "Judgment creditor" means the person or persons who can bring an action to enforce a sister state judgment.

(b) "Judgment debtor" means the person or persons against whom an action to enforce a sister state judgment can be brought.

(c) "Sister state judgment" means that part of any judgment, decree or order of a court of a state of the United States, other than California, which requires the payment of money, but does not include a support order as defined in subdivision (k) of Section 1653.

(Added by Stats.1974, c. 211, p. 405, § 3.)

§ 1710.15 Application for entry; statement; contents

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

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

(1) A statement that an action in this state on the sister state judgment is not barred by the applicable statute of limitations.

(2) A statement, based on the applicant's information and belief, that no stay of enforcement of the sister state judgment is currently in effect in the sister state.

(3) A statement of the amount remaining unpaid under the sister state judgment and the amount of interest accrued thereon at the legal rate of interest applicable in this state .

(4) A statement that no action based on the sister state judgment is currently pending in any court in this state and that no judgment based on the 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 name of the partnership, whether it is a foreign partnership, and, if it is a foreign partnership, whether it has filed a statement pursuant to Section 15700 of the Corporations Code designating an agent for service of process. Except for facts which are matters of public record in this state, the statements 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.

(Added by Stats.1974, c. 211, p. 406, § 3.)

**§ 1710.20 Filing of application; place**

(a) The application shall be filed in the office of the clerk of the superior court for:

(1) The county in which any judgment debtor resides; or

(2) If no judgment debtor is a resident, any county in this state.

(b) The court may transfer proceedings under this chapter pursuant to Title 4 (commencing with Section 392) of Part 2.

(Added by Stats.1974, c. 211, p. 406, § 3.)

**§ 1710.25 Entry of judgment**

Upon the filing of the application, the clerk shall enter a judgment based upon the application for the amount shown therein to be remaining unpaid under the sister state judgment, and for the amount of interest accrued on the sister state judgment at the legal rate applicable in this state and the amount of the fee for filing the application for entry of the sister state judgment. Entry shall be made in the same manner as entry of a judgment of the superior court.

(Added by Stats.1974, c. 211, p. 406, § 3.)

**§ 1710.30 Notice of entry; procedure**

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. Notice shall be in a form prescribed by the Judicial Council and shall inform the judgment debtor that he has 30 days within which to make a motion to vacate the judgment.

(Added by Stats.1974, c. 211, p. 406, § 3.)

**§ 1710.35 Effect of entry; enforcement**

Except as otherwise provided in this chapter, a judgment entered pursuant to this chapter 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.

(Added by Stats.1974, c. 211, p. 407, § 3.)

**§ 1710.40 Vacation of judgment; motion**

(a) A judgment entered pursuant to this chapter may be vacated on any ground which would be a defense to an action in this state on the sister state judgment.

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(b) Not later than 30 days after service of notice of entry of judgment pursuant to Section 1710.30, 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, the judgment debtor, on written notice to the judgment creditor, may make a motion to vacate the judgment under this section.

(Added by Stats.1974, c. 211, p. 407, § 3.)

**§ 1710.45 Writ of execution; resident and nonresident debtors, sale or distribution of property**

(a) Except as otherwise provided in this section, a writ of execution on a judgment entered pursuant to this chapter shall not issue until at least 30 days after the judgment creditor serves notice of entry of the judgment upon 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.

(b) A writ of execution may be issued before service of the notice of entry of judgment if the judgment debtor is any 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 statement pursuant to Section 15700 of the Corporations Code designating an agent for service of process.

(c) The court may order that a writ of execution be issued before service of the notice of entry of judgment if the court finds upon an ex parte showing that great or irreparable injury would result to the judgment creditor if issuance of the writ were delayed as provided in subdivision (a).

(d) Property levied upon pursuant to a writ issued under subdivision (b) or (c) shall not be sold or distributed before 30 days after the judgment creditor serves notice of entry of the judgment upon 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. 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 of nonperishable property is permissible.

(Added by Stats.1974, c. 211, p. 407, § 3.)

**§ 1710.50 Stay of enforcement**

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

- (1) An appeal from the sister state judgment is pending or may be taken in the state which originally rendered the judgment. Under this paragraph, enforcement shall be stayed until the proceedings on appeal have been concluded or the time for appeal has expired.
- (2) A stay of enforcement of the sister state judgment has been granted in the sister state. Under this paragraph, enforcement shall be stayed until the sister state stay of enforcement expires or is vacated.

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(3) The judgment debtor has made a motion to vacate pursuant to Section 1710.40. 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 may grant a stay of enforcement under this section on its own motion, on ex parte motion, or on noticed motion.

(c) The court shall grant a stay of enforcement under this section on such terms and conditions as are just including but not limited to the following:

(1) The court may require an undertaking in an amount it determines to be just, but the amount of the undertaking shall not exceed double the amount of the judgment creditor's claim.

(2) If a writ of execution has been issued, the court may order that it remain in effect.

(3) 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.

(Added by Stats.1974, c. 211, p. 408, § 3.)

§ 1710.55 Restrictions on entry of judgment

No judgment based on a sister state judgment may be entered pursuant to this chapter in any of the following cases:

(a) A stay of enforcement of the sister state judgment is currently in effect in the sister state.

(b) An action based on the sister state judgment is currently pending in any court in this state.

(c) A judgment based on the sister state judgment has previously been entered in any proceeding in this state.

(Added by Stats.1974, c. 211, p. 408, § 3.)

§ 1710.60 Right of action to enforce judgment; exception

(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.

(Added by Stats.1974, c. 211, p. 408, § 3.)

§ 1710.65 Right of action for other than payment of money

The entry of a judgment based on a sister state judgment pursuant to this chapter does not limit the right of the judgment creditor to bring an action based on the part of a judgment of a sister state which does not require the payment of money, nor does the bringing of such an action limit the right of the judgment creditor to obtain entry of judgment based on the sister state judgment pursuant to this chapter.

(Added by Stats.1974, c. 211, p. 408, § 3.)