

First Supplement to Memorandum 83-95

Subject: Study D-302 - Creditors' Remedies (Enforcement of Condominium Assessment Liens)

At the September meeting, the Commission decided to consider proposing legislation that would permit foreclosure of condominium assessment liens in municipal and justice courts. The text and amendment necessary to accomplish this proposal are attached to this supplementary memorandum as Exhibit 1. If approved, this material will be included in the Recommendation Relating to Creditors' Remedies which is attached to Memorandum 83-95.

Respectfully submitted,

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Exhibit 1

Enforcement of Condominium Assessment Liens

Condominium owners may be assessed for the cost of insurance, maintenance of common areas, taxes, and other items.¹ If the assessments are not paid, a notice of assessment may be recorded with the county recorder to create a lien on the condominium.² Should the managing body find it necessary to bring an action to foreclose the lien, it appears that the action must be brought in the superior court,³ even though in most cases the amount is likely to be relatively small.

The Commission recommends that the jurisdiction of municipal and justice courts be expanded to include actions to enforce and foreclose condominium assessment liens where the amount of the lien does not exceed \$15,000. It is appropriate to include condominium assessment liens along with the existing jurisdiction over enforcement of liens of mechanics, materialmen, and laborers.⁴ Condominium assessment liens would be subject to the same provision for aggregating liens against the same property to determine the jurisdictional amount.

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1. See Civil Code § 1356.
 2. Civil Code § 1356. The lien expires one year after recordation of the notice of assessment, but may be renewed for one additional year by recordation of an extension. Id.
 3. See Code Civ. Proc. § 86 (jurisdiction of municipal and justice courts); *Holbrook v. Phelan*, 121 Cal. App. Supp. 781, 783, 6 P.2d 356 (1931) (municipal court without jurisdiction to foreclose liens on real property except liens of mechanics, materialmen, artisans and laborers).
 4. Code Civ. Proc. § 86(a)(6).

SEC. Section 86 of the Code of Civil Procedure is amended to read:

86. (a) Each municipal and justice court has original jurisdiction of civil cases and proceedings as follows:

(1) In all cases at law in which the demand, exclusive of interest, or the value of the property in controversy amounts to fifteen thousand dollars (\$15,000) or less, except cases which involve the legality of any tax, impost, assessment, toll, or municipal fine, except the courts have jurisdiction in actions to enforce payment of delinquent unsecured personal property taxes if the legality of the tax is not contested by the defendant.

(2) In actions for dissolution of partnership where the total assets of the partnership do not exceed fifteen thousand dollars (\$15,000); in actions of interpleader where the amount of money or the value of the property involved does not exceed fifteen thousand dollars (\$15,000).

(3) In actions to cancel or rescind a contract when the relief is sought in connection with an action to recover money not exceeding fifteen thousand dollars (\$15,000) or property of a value not exceeding fifteen thousand dollars (\$15,000), paid or delivered under, or in consideration of, the contract; in actions to revise a contract where the relief is sought in an action upon the contract if the court otherwise has jurisdiction of the action.

(4) In all proceedings in forcible entry or forcible or unlawful detainer:

(A) In actions to recover possession of real property where rent is charged, and the amount of the last rental charged is one thousand dollars (\$1,000) per month or less, and the whole amount of damages claimed is fifteen thousand dollars (\$15,000) or less.

(B) In all other actions to recover possession of real property where the rental value is one thousand dollars (\$1,000) per month or less, and the whole amount claimed is fifteen thousand dollars (\$15,000) or less.

(5) In all actions to enforce and foreclose liens on personal property where the amount of the liens is fifteen thousand dollars (\$15,000) or less.

(6) In all actions to enforce and foreclose liens of mechanics, materialmen, artisans, laborers, and of all other persons to whom liens are given under the provisions of Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3 of the Civil Code

or
to enforce and foreclose an assessment lien on a
condominium created pursuant to Section 1356 of the
Civil Code, where

the amount of the liens is fifteen thousand dollars (\$15,000) or less. However, where an action to enforce the lien is pending in a municipal or justice court, and affects property which is also affected by a similar action pending in a superior court, or where the total amount of the liens sought to be foreclosed against the same property by action or actions in a municipal or justice court aggregates an amount in excess of fifteen thousand dollars (\$15,000) the municipal or justice court in which any such action, or actions, is, or are, pending, upon motion of any interested party, shall order the action or actions pending therein transferred to the proper superior court. Upon the making of the order, the same proceedings shall be taken as are provided by Section 399 with respect to the change of place of trial.

(7) In actions for declaratory relief when brought by way of cross-complaint as to a right of indemnity with respect to the relief demanded in the complaint or a cross-complaint in an action or proceeding otherwise within the jurisdiction of the municipal or justice court.

(8) To issue temporary restraining orders and preliminary injunctions, to take accounts, and to appoint receivers where necessary to preserve the property or rights of any party to an action of which the court has jurisdiction; to appoint a receiver and to make any order or perform any act, pursuant to Title 9 (commencing with Section 680.010) of Part 2 (enforcement of judgments); to determine title to personal property seized in an action pending in such court.

(9) In all actions under Article 3 (commencing with Section 708.210) of Chapter 6 of Division 2 of Title 9 of Part 2 for the recovery of an interest in personal property or to enforce the liability of the debtor of a judgment debtor where the interest claimed adversely is of a value not exceeding fifteen thousand dollars (\$15,000) or the debt denied does not exceed fifteen thousand dollars (\$15,000).

(b) Each municipal and justice court has jurisdiction of cases in equity as follows:

(1) In all cases to try title to personal property when the amount involved is not more than fifteen thousand dollars (\$15,000).

(2) In all cases when equity is pleaded as a defensive matter in any case otherwise properly pending in a municipal or justice court.

(3) To vacate a judgment or order of such municipal or justice court obtained through extrinsic fraud, mistake,

inadvertence, or excusable neglect.

(c) In any action that is otherwise within its jurisdiction, the court may impose liability whether the theory upon which liability is sought to be imposed involves legal or equitable principles.

(d) Changes in the jurisdictional ceilings made by amendments to this section at the 1977-78 Regular Session of the Legislature shall not constitute a basis for the transfer to another court of any case pending at the time such changes become operative.

Comment. Subdivision (a)(6) of Section 86 is amended to make clear that the municipal and justice courts have jurisdiction over actions to enforce and foreclose condominium assessment liens to the same extent as actions to enforce and foreclose mechanics' and laborers' liens.