

Memorandum 88-84

Subject: Study D-1000 - Creditors' Remedies Recommendation (Comments of State Bar Committee on Administration of Justice)

At the October meeting, the Commission approved the *Recommendation Relating to Creditors' Remedies* for printing and introduction as a bill. We have just received a letter from the State Bar Committee on Administration of Justice suggesting a change in the recommended legislation. (See Exhibit 1.)

The recommended legislation would shorten the six-month period after a sale of property to the judgment creditor during which the judgment debtor may seek to overturn the sale on account of irregularities. The California Association of Collectors had suggested shortening this period to 21 days. The Commission decided on 60 days. CAJ suggests 90 days. The difference between 60 and 90 days is largely a question of taste and how one weighs the various factors. The advantage of accepting CAJ's proposal is that they can be listed in support of the bill.

If the revision is made, Section 701.680 and its comment would read as follows:

SEC. 3. Section 701.680 of the Code of Civil Procedure is amended to read:

701.680. (a) Except as provided in paragraph (1) of subdivision (c), a sale of property pursuant to this article is absolute and may not be set aside for any reason.

(b) If the judgment is reversed, vacated, or otherwise set aside, the judgment debtor may recover from the judgment creditor the proceeds of a sale pursuant to the judgment with interest at the rate on money judgments to the extent the proceeds were applied to the satisfaction of the judgment.

(c) If the sale was improper because of irregularities in the proceedings, because the property sold was not subject to execution, or for any other reason:

(1) The judgment debtor, or the judgment debtor's successor in interest, may commence an action within ~~six months~~ 90 days after the date of sale to set aside the sale if the purchaser at the sale is the judgment creditor. Subject to paragraph (2), if the sale is set aside, the

judgment of the judgment creditor is revived to reflect the amount that was satisfied from the proceeds of the sale and the judgment creditor is entitled to interest on the amount of the judgment as so revived as if the sale had not been made. Any liens extinguished by the sale of the property are revived and reattach to the property with the same priority and effect as if the sale had not been made.

(2) The judgment debtor, or the judgment debtor's successor in interest, may recover damages caused by the impropriety. If damages are recovered against the judgment creditor, they shall be offset against the judgment to the extent the judgment is not satisfied. If damages are recovered against the levying officer, they shall be applied to the judgment to the extent the judgment is not satisfied.

(d) For the purposes of subdivision (c), the purchaser of the property at the sale is not a successor in interest.

Comment. Subdivision (c)(1) of Section 701.680 is revised to provide for the reattachment of liens on property sold at an execution sale that is later held to be improper. In this case, the liens that were extinguished by operation of Section 701.630, including the lien of the judgment creditor sought to be satisfied by the sale, are revived and reattach to the property as if the execution sale had not taken place. Other things being equal, revived liens attach in the amounts and with the priority that they would have had if not extinguished by the sale under the superior lien of the judgment creditor.

Subdivision (c)(1) is also amended to shorten the time for bringing an action to set aside the sale from six months to 90 days.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel



THE COMMITTEE ON ADMINISTRATION OF JUSTICE
THE STATE BAR OF CALIFORNIA

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November 16, 1988

Mr. Stan Ulrich
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Re: Tentative Recommendation Relating to Creditor's Remedies

Dear Stan:

Please refer to our recent telephone discussions on this subject. You asked me to give a more complete explanation of the reasons the Committee on Administration of Justice recommends that Code of Civil Procedure section 701.680 (c)(1) be amended to shorten the time for bringing an action from six months to ninety days instead of the sixty days proposed in your Tentative Recommendations.

It is felt that sixty days is such a short period of time that judges would be overly lenient in allowing a judgment debtor relief from losing his or her rights. However, a ninety day period would probably tend to make judges less lenient with the judgment debtor.

Sincerely,

A handwritten signature in cursive script, appearing to read "Monroe Baer".

Monroe Baer
Staff Attorney

MB/sv

cc: Judianne Jaffe, Esq.
Sidney Kanazawa, Esq.
Peter Shack, Esq.