

First Supplement to Memorandum 80-16

Study D-300 - Enforcement of Judgments (Property Subject to Enforcement--Equitable and Contingent Interests)

Although the general rule is that all "property" of the judgment debtor is subject to enforcement of a money judgment, questions have arisen whether equitable, contingent, and leasehold interests are "property" subject to enforcement, and whether property held under a guardianship or conservatorship is subject to enforcement. This memorandum explores these matters and offers statutory language. The staff has not attempted to specify any precise organization for the statutory provisions. At this point, we are primarily concerned with the policies of applying such property to the judgment.

Equitable Interests

Significant equitable interests of a judgment debtor that have been sought by judgment creditors are the interest of the judgment debtor as a beneficiary of a trust and the interest of the judgment debtor as a purchaser under an executory contract of sale.

Beneficial interest in trust. A judgment lien does not attach to the judgment debtor's equitable interest in real property held by a trustee in trust. See, e.g., *Poindexter v. Los Angeles Stone Co.*, 60 Cal. App. 686, 214 P. 241 (1923) (record title in trustee under unrecorded trust instrument). Nonetheless, the judgment creditor may execute on and sell the judgment debtor's equitable interest in the trust without actually reaching the corpus of the trust. See, e.g., *Houghton v. Pacific Southwest T. & S. Bank*, 111 Cal. App. 509, 513, 295 P. 1079 (1931) (interest of beneficiary of trust in land).

The rationale of these cases is that the judgment debtor has no interest in particular property in the trust corpus; therefore, the judgment lien reaches no particular property in the trust corpus. But see *Lynch v. Cunningham*, 131 Cal. App. 164, 21 P.2d 154 (1933) (interest of judgment debtor in real property trust where property is to be distributed to beneficiaries should be levied on as real property). The judgment debtor's beneficial interest, however, is a property right that has value, and the beneficial interest may, therefore, be levied upon and sold.

This scheme creates a number of practical problems. If the trust provides for the education of the beneficiary, are trust payments to be made to the purchaser of the beneficiary's interest? If so, are they measured by the educational needs of the beneficiary or of the purchaser? If measured by the needs of the beneficiary, suppose the beneficiary chooses not to go to school? Or suppose the beneficiary selects the most expensive school available? If the trust provides the sole support of the beneficiary, should it be subject to enforcement of a judgment at all, or should it be exempt? The cases do not address these points.

The staff believes a more satisfactory solution is to permit the court to control the extent to which a judgment creditor may reach a judgment debtor's beneficial interest in a trust. The staff would add a provision along the following lines:

§ 695.050. Trusts

695.050. (a) The judgment debtor's interest in a trust is not subject to execution but is subject to enforcement of a money judgment upon petition by the judgment creditor to the court and pursuant to the procedure prescribed in Chapter 19 (commencing with Section 1120) of Division 3 of the Probate Code (administration of trusts). Application of the judgment debtor's interest in the trust to the satisfaction of the judgment shall be by such means as the court, in its discretion, determines are proper, including but not limited to imposition of a lien on or sale of the judgment debtor's interest, collection of trust income, and liquidation and transfer of trust assets by the trustee.

(b) The judgment debtor's interest in a trust is exempt to the extent the interest is necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.

(c) As used in this section, "trust" has the meaning provided in Section 1138 of the Probate Code.

Comment. Subdivision (a) of Section 695.050 reverses the case law rule that the judgment debtor's beneficial interest in a trust is subject to execution. See, e.g., *Houghton v. Pacific Southwest T. & S. Bank*, 111 Cal. App. 509, 295 P. 1079 (1931). Enforcement processes may not reach specific trust assets or the judgment debtor's interest in the trust (see, e.g., *Poindexter v. Los Angeles Stone Co.*, 60 Cal. App. 686, 214 P. 241 (1923) (judgment lien)) except pursuant to court order applying the interest or assets to satisfaction of the judgment. It should be noted that a spendthrift trust is subject to enforcement only to the extent permitted by the law governing spendthrift trusts. See Section 695.030 and Comment thereto.

Subdivision (b) creates an exemption for an interest in a trust necessary for support, analogous to a spendthrift provision in a trust instrument.

Subdivision (c) incorporates provisions that make clear that this section applies only to written, voluntary, express trusts (testamentary or inter vivos) and not to such trusts as Totten trusts, investment trusts, and deeds of trust.

The staff believes that bank account trusts, such as Totten trusts, require separate study, and plans to deal with them separately.

Interests under executory contract of sale. What are the rights of creditors to reach property under an executory contract of sale? Under the doctrine of equitable conversion, the seller has bare title and the buyer is the equitable owner of the land. The cases have held that the equitable interest of the buyer is subject to execution as well as any legal interest retained by the seller. See, e.g., Hansen v. d'Artenay, 13 Cal. App.2d 293, 297, 57 P.2d 202 (1936) (buyer of real property). However, a judgment lien does not attach to the equitable interest of the buyer but does attach to the legal interest of the seller. See, e.g., Belieu v. Power, 54 Cal. App. 244, 201 P. 620 (1921).

The cases holding that a judgment lien does not attach to the equitable interest of the buyer are based upon a construction of statutory language and not upon logic. Any interest the buyer has in the property should be subject to the lien. The staff recommends that language be added to the judgment lien statute to make clear that the judgment lien attaches to any interest, whether legal or equitable, of the debtor in real property, "including but not limited to the interest of a vendor or a vendee under an executory contract for sale of the property." The Comment would point out that this reverses existing case law.

Contingent Interests

A future interest that is contingent is not subject to enforcement in California. See, e.g., Anglo California Nat'l Bank v. Kidd, 58 Cal. App.2d 651, 655, 137 P.2d 460 (1943):

A contingent interest, depending as it does upon a dubious or uncertain event, is not subject to execution until reduced to possession. [Citations.] The rule is sound, based upon the well-known fact that ordinarily on a forced sale of such an interest a nominal price only is obtained, to the injury of the judgment debtor.

This rule is criticized in Halbach, Creditors' Rights in Future Interests, 43 Minn. L. Rev. 217 (1958), who suggests that there are appropriate means of applying contingent interests to the satisfaction

of a judgment. In Massachusetts, for example, both legal and equitable reversions and remainders may be reached to satisfy a judgment, except that supplementary procedures may not be utilized against an interest which is so speculative that its value cannot be fairly ascertained by any means. In Wisconsin, the court may grant the creditor a lien on a contingent interest and postpone sale until the interest is vested. Halbach states, "Where such interests are available to creditors only through courts of equity, the court could postpone sale or otherwise exercise its broad powers to fashion appropriate remedies which protect the interests of the debtor, the creditors, and the purchaser. Wherever statutes provide for court supervision of execution sales, this power should be used as a means of assuring a fair price." 43 Minn. L. Rev. at 236 (footnote omitted).

The staff agrees with this analysis and would add to the enforcement of judgments statute the substance of the following provision:

§ 695.060. Contingent interests

695.060. A contingent remainder, executory interest, or other interest of the judgment debtor in property that is not vested in the judgment debtor is not subject to execution but is subject to enforcement of a money judgment upon application by the judgment creditor to the court pursuant to Chapter 6 (commencing with Section 708.010). Application of the interest of the judgment debtor to the satisfaction of the judgment shall be by such means as the court, in its discretion, determines are proper to protect the interests of both the judgment debtor and judgment creditor, including but not limited to imposition of a lien on or sale of the judgment debtor's interest.

Comment. Section 695.060 reverses the rule of such cases as *Anglo California Nat'l Bank v. Kidd*, 58 Cal. App.2d 651, 137 P.2d 460 (1943), which held that contingent interests are not subject to enforcement, by execution or otherwise. Section 695.060 is intended to permit the court in an examination or creditors' suit to fashion a suitable remedy through its equitable powers in order to prevent a sacrifice sale of the judgment debtor's interest while preserving the rights of the judgment creditor.

The staff would also add to the judgment lien provisions language making clear that a judgment lien attaches to a contingent interest in real property but the judgment creditor cannot apply the interest to the judgment except pursuant to Section 695.060.

Leaseholds

The interest of a lessee under a leasehold is characterized as personal property. Such a property interest is subject to execution, but a judgment lien will not attach to it since judgment liens attach

only to real property. See, e.g., *Summerville v. Stockton Milling Co.*, 142 Cal. 529, 76 P. 243 (1904). The staff believes this interpretation of the law is too technical and narrow. The Commission's draft treats a leasehold interest in property as real property for all purposes including levy and sale, and it should treat a leasehold interest as real property for purposes of the judgment lien. The staff would make this clear by defining real property to include "all rights and interests in real property, including but not limited to leasehold interests" and by noting in the Comment to the judgment lien section that the judgment lien attaches to real property, including leasehold interests.

Property in Guardianship or Conservatorship Estate

Property in the estate of a ward or conservatee may or may not be held in the name of the guardian or conservator. Regardless how the title is taken, such property is not subject to execution or other enforcement processes, but may be applied to the satisfaction of a judgment only by order of the probate court having jurisdiction of the estate. See *McCracken v. Lott*, 3 Cal.2d 164, 44 P.2d 355 (1935). The staff believes this treatment is appropriate and suggests that it be codified in the enforcement of judgments statute:

§ 695.070. Guardianship or conservatorship estates

695.070. Property in a guardianship or conservatorship estate is not subject to enforcement of a money judgment pursuant to this title but the judgment creditor may apply to the court in which the guardianship or conservatorship proceeding is pending under Division 4 (commencing with Section 1400) of the Probate Code for an order requiring payment of the judgment.

Comment. Section 695.070 codifies the rule of *McCracken v. Lott*, 3 Cal.2d 164, 44 P.2d 355 (1935). If the guardian or conservator fails, neglects, or refuses to pay the judgment, the judgment creditor may apply to the court having jurisdiction of the guardianship or conservatorship proceeding pursuant to Probate Code Section 2404.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary