

Memorandum 80-67

Subject: Study D-300 - Enforcement of Judgments (Liens on Pending Actions; Assignment Orders)

This memorandum considers comments we received concerning the provisions in the Tentative Recommendation Relating to Enforcement of Judgments relating to liens on pending actions and to assignment orders. (TR §§ 706.510-706.630.) The comments referred to were sent to you previously as exhibits to Memorandum 79-29 and the Second Supplement thereto. A revised staff draft of these provisions is attached.

Article 5. Lien on Pending Action or Proceeding

§ 708.410. Lien on pending action or proceeding (TR § 705.510)

The staff has revised this procedure to make clear that the lien reaches the property that is the subject of the pending action, whether it is tangible or intangible. Thus no distinction is to be made between a debt and a cause of action. (A similar change was made in Section 700.180 in Memorandum 80-61.)

Professor Lloyd Tevis suggests that the procedure requiring application to the court on noticed motion for a lien on a pending cause of action and nonfinal judgment be replaced by a simple levy procedure. (Exhibit 17.) The Tentative Recommendation continued the aspect of existing law that gives the court discretion to grant the lien. In *Atiya v. DiBartolo*, 63 Cal. App.3d 121, 133 Cal. Rptr. 611 (1976), the court held that it was an abuse of discretion to deny the lien on the ground that the imposition of a lien would impede settlement negotiations and in dictum stated that a substantial showing that other assets were available might justify the denial of a lien. Professor Tevis states that, in view of the flexible approach of the Tentative Recommendation which eliminates various prerequisites to resort to a particular remedy, even the availability of other property should not prevent creation of a lien on a pending cause of action. The staff agrees with Professor Tevis's analysis and his suggestion that the lien be granted as a matter of right. We have revised Section 708.410 to provide that a lien is created when a notice of lien and an abstract of the money judgment is filed in the action. This is as simple as a levy, but avoids using a levying officer.

§ 708.420. Endorsement of lien on judgment and abstract (TR § 705.520)

Mr. Frederick Holden suggests that this section be revised to require endorsement of the date of creation of the lien on the judgment and any abstract thereof. (Exhibit 13, p. 21.) The staff has revised this section accordingly.

§ 708.440. Compromise, settlement, satisfaction

Subdivision (a) has been added to make clear that the judgment debtor may not obtain a writ to enforce the judgment unless the lien is first satisfied or released.

§ 708.450. Enforcement of lien

Mr. Frederick Holden suggests that the manner of enforcing the lien on the cause of action and judgment be prescribed in the statute. (Exhibit 13, p. 20.) We have added Section 708.450 to provide for enforcement of the lien. Note that the intent of this article is to establish a priority and is not to permit the judgment creditor to appropriate the judgment debtor's judgment and treat it as if it were his or her own. In other words, without levy on or assignment of the property under the judgment, the appointment of a receiver, or resort to some other remedy, the judgment creditor may not levy on property of his or her judgment debtor's judgment debtor, any more than a judgment creditor may levy on property of a garnishee who owes a debt to the judgment debtor in the absence of a judgment in a creditor's suit.

§ 708.460. Applicable exemption procedure

The staff has added this provision to make clear that exemptions are to be claimed when the lien is enforced and not when it is filed. The Tentative Recommendation did not provide for exemption claims.

708.470. Intervention

Since a court hearing would not be required to obtain a lien under this article as revised by the staff, a separate section has been included to make clear that the judgment creditor may intervene in the action. This matter appeared in Section 705.510(b) of the Tentative Recommendation.

Article 6. Assignment Order

§ 708.510. Order to assign right to payments (TR § 705.610)

The staff has made some technical and editorial changes in this provision. Although he approves of this procedure, Mr. Frederick Holden (Exhibit 13, p. 21) writes that there is a danger in permitting the assignment of a right to rent because the debtor-landlord may be tempted to increase the rent to the detriment of tenants. The staff thinks that a debtor-landlord will usually be tempted to raise rents no matter what enforcement procedures are being used.

§ 708.520. Restraining assignment or other disposition

The staff proposes the addition of this restraining order provision to provide some protection in the interim between the application for an assignment order and the time it is effective.

§ 708.530. Effect and priority of assignment

Draft Section 780.530 gives the assignment ordered by the court the same effect and priority as a voluntary assignment by incorporating Section 955.1 of the Civil Code. The staff proposes this provision as a replacement for the assignment order lien that appeared in the Tentative Recommendation. (TR § 705.620.) It makes more sense to apply the normal rules to ordered assignments than to try to create a lien by service of an order of assignment on the judgment debtor.

§ 708.540. Rights of person obligated

The staff proposes the addition of this provision protecting obligors who do not have notice of the assignment. The State Bar Committee on Administration of Justice suggested that the obligor be given notice of the hearing as well (Exhibit 22, p 2), but the staff thinks there is no need to involve obligors until the assignment is made.

§ 708.550. Exemption procedure (TR § 705.610(c))

The procedure for claiming exemptions in assignment order proceedings has been clarified.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

Liens on Pending Actions or Proceedings

Existing law precludes levy upon or sale of a cause of action or judgment "as such."¹ The judgment creditor may, however, seek to establish a priority over other creditors in the eventual recovery by the judgment debtor in the action against a third person by applying on noticed motion for an order granting a lien on the cause of action and judgment.² The general rule is that the priority of the lien is determined as of the time the lien is granted³ but the equitable rule granting priority to the one who first applies for the lien has also been invoked.⁴

The proposed law provides that a lien is created on the property that is the subject of the action when the judgment creditor files in the action a notice of lien and an abstract of judgment--no court hearing is necessary.⁵ A lien may not be created on the pending action or judgment as distinct from the underlying property, whether tangible or intangible, that is sued upon. Notice of the lien is given to the parties to the action. The rights of a party are not affected until notice is received.⁶ Hence, if a party pays the judgment debtor without

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1. Section 688(f).
 2. Section 688.1(a). The court may also permit the judgment creditor to intervene in the action.
 3. See *Takehara v. H.C. Muddox Co.*, 8 Cal.3d 168, 170, 501 P.2d 913, 104 Cal. Rptr. 345 (1972); Civil Code § 2897 (priority based on time of creation of lien, other things being equal).
 4. See *Del Conte Masonry Co. v. Lewis*, 16 Cal. App.3d 678, 681, 94 Cal. Rptr. 439 (1971).
 5. Existing law provides no standard for denial of the application for a lien. In *Atiya v. DiBartolo*, 63 Cal. App. 3d 121, 133 Cal. Rptr. 611 (1976), the court held that it was an abuse of discretion to deny the lien on the ground that the lien would impede settlement negotiations but in dictum stated that a substantial showing that other assets were available might justify denial of a lien. Under the proposed law, the choice of which assets to pursue in satisfaction of the judgment is left to the judgment creditor. If the judgment debtor wants to avoid a lien, he or she may voluntarily apply other assets to the satisfaction of the judgment.
 6. This principle of protecting obligors without notice is derived from comparable general provisions. See Civil Code § 955.1; Com. Code § 9318.

knowledge of the lien, the obligation that is the subject of the action may be satisfied despite the judgment creditor's lien.

Existing law does not specify the type of cause of action or judgment upon which a lien may be granted. The proposed law permits creation of a lien on any type of property, whether tangible or intangible, that is subject to enforcement of a money judgment; the fact that the property is the subject of a pending action or a judgment does not affect its availability to satisfy the judgment creditor's judgment. Hence, if the judgment debtor has commenced an action for specific recovery of personal property, the judgment creditor may obtain a lien on that property by filing in the action. If the judgment debtor prevails, the judgment creditor would be able to enforce the lien by levying on the property under a writ of execution in the manner provided generally for levying on the judgment debtor's property in the possession of a third person. The judgment creditor would not, of course, be entitled to take possession of the property, but only to sell it at an execution sale.

Existing law is silent concerning the manner of enforcing the lien. It has been suggested that the judgment creditor would have to bring an action to foreclose the lien in order to reach an amount represented by a judgment.⁷ Such a remedy is needlessly formal and restrictive. There is no reason why a debt of a third person represented by a judgment cannot be applied to the satisfaction of the judgment against the judgment debtor in the same manner as other debts are applied.⁸ Enforcement against a debt that has been reduced to judgment requires fewer safeguards because the existence of the debt and the amount due are certain so that enforcement is less likely to result in a windfall to the judgment creditor or to a purchaser at a sale should the judgment be sold. Under the proposed law, the judgment creditor may select the most effective means to apply the property under the judgment to satisfaction of the judgment creditor's money judgment, such as levy under a writ of execution followed by sale or collection, appointment of a receiver to

7. See Roseburg Loggers, Inc. v. Plywood-Champion Papers, Inc., 14 Cal.3d 742, 748, 537 P.2d 399, 122 Cal. Rptr. 567 (1975) (dictum); Work of the 1941 California Legislature, 15 So. Cal. L. Rev. 1, 18 (1941).

8. See the discussion under "Methods of Levy" supra.

collect the judgment, application for an assignment order, or collection from a public entity owing money to the judgment debtor. If the property in the action is exempt from enforcement of a money judgment, the judgment debtor may assert an exemption claim in the exemption proceedings applicable to the particular procedure selected by the judgment creditor for enforcing the lien.

Existing law provides that no compromise, settlement, or satisfaction of the claim or judgment may be entered into on behalf of the judgment debtor without the consent of the judgment creditor.⁹ This prohibition should be modified to permit compromise, settlement, or satisfaction with the approval of the court where the action is pending or judgment was entered so that the judgment creditor may not prevent a reasonable settlement. The judgment debtor is also encouraged to make a settlement with the judgment creditor, since the lien prevents enforcement of the judgment debtor's right under the judgment unless the lien is first satisfied or released.

Existing law provides that an assignee by operation of law of a party to a personal injury action may not acquire a lien on money recovered for general damages.¹⁰ This provision should not be continued because it has been held to be in conflict with the Bankruptcy Act.¹¹

Orders to Assign Right to Payment

The proposed law permits the judgment creditor to apply to the court on noticed motion for an order requiring the judgment debtor to assign to the judgment creditor or a receiver all or part of a right to payment.¹² Under this procedure, the terms of the assignment are subject to the court's discretion, but the judgment creditor may not receive amounts in excess of that needed to satisfy the money judgment. The terms of the order are subject to later modification to take account of

9. Section 688.1(a).

10. Section 688.1(b).

11. See In re Kanter, 505 F.2d 228, (9th Cir. 1974), aff'g 345 F. Supp. 1151 (C.D. Cal. 1972).

12. This procedure is derived from cases involving examination proceedings or creditors' suits where property was ordered to be assigned or

changed circumstances. The judgment creditor may obtain an ex parte order restraining assignment pending the hearing on the motion for an assignment order. If an assignment is ordered, its effect is the same as a voluntary assignment.¹³ It is good against third persons generally, and if written notice of the assignment is given to the obligor, the judgment creditor's assignment has priority over any other assignment notice of which is given later. The rights of the person obligated to make payments are not affected until the obligor is served with an effective assignment.

The assignment order remedy is designed to be used to reach forms of property that cannot be reached by levy under a writ of execution,¹⁴ such as rights to payment dependent on future developments,¹⁵ rent,¹⁶

delivered to a receiver. See *Habenicht v. Lissak*, 78 Cal. 351, 20 P. 874, 877 (1889); *Pacific Bank v. Robinson*, 57 Cal. 520 (1881); *Hathaway v. Brady*, 26 Cal. 581 (1864); *Tucker v. Fontes*, 70 Cal. App.2d 768, 161 P.2d 697, 701 (1945). See also N.Y. Civ. Prac. Law & R. § 5226 (*McKinney*) (order requiring judgment debtor to make specified installment payments where shown that debtor will be receiving money).

13. See Civil Code § 955.1; see also Com. Code §§ 9318.

14. The law is not especially clear in delineating the conditions making a debt subject to garnishment. Compare *Philbrook v. Mercantile Trust Co.*, 84 Cal. App. 187, 195-96, 257 P. 882 (1927) (existing debt fixed in amount but payable in the future subject to garnishment), *Brainard v. Rogers*, 74 Cal. App. 247, 248-50, 239 P. 1095 (1925) (fire insurance policy after fire but before adjustment subject to garnishment), *Meacham v. Meacham*, 262 Cal. App.2d 248, 252, 68 Cal. Rptr. 746 (1968) (contract for royalties from marketing invention subject to garnishment), and Section 682.3 (continuing levy on future earnings) with *Early v. Redwood City*, 57 Cal. 193, 195 (1881) (garnishment did not reach money due only after completion of work under contract), *Hustead v. Superior Court*, 2 Cal. App.3d 780, 785-88, 83 Cal. Rptr. 26 (1969) (future rent not subject to garnishment), and *Dawson v. Bank of America*, 100 Cal. App.2d 305, 309-10, 223 P.2d 280 (1950) (escrow not subject to garnishment where amount not certain and conditions necessary to establish proper claimant not fulfilled).

15. See *Dawson v. Bank of America*, 100 Cal. App.2d 305, 309-10, 223 P.2d 280 (1950).

16. See *Hustead v. Superior Court*, 2 Cal. App.3d 780, 785-88, 83 Cal. Rptr. 26 (1969).

surplus amounts from a spendthrift trust,¹⁷ and wages due from the federal government.¹⁸ This remedy is also available to reach and apply royalties and commissions, and payments falling due on accounts receivable, general intangibles, and judgments--forms of property that are subject to levy and either sale or collection.¹⁹ By restricting the assignment of payments to the amount necessary to satisfy the judgment, the assignment order procedure, in conjunction with the proposed restrictions on the sale of certain obligations, is designed to avoid cases where valuable or potentially valuable obligations are purchased by the judgment creditor or a third person on a speculative basis, perhaps resulting in a large windfall to the purchaser.²⁰

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17. Under existing law surplus income from a spendthrift trust may be reached by a creditor's suit or an order in examination proceedings where it is shown that there is no valid direction in the trust instrument for the accumulation of surplus income and that the income is not all necessary for the beneficiary's education and support. See Civil Code § 859; *Canfield v. Security First Nat'l Bank*, 13 Cal.2d 1, 34, 87 P.2d 830 (1939); *Estate of Lawrence*, 267 Cal. App.2d 77, 82-83, 72 Cal. Rptr. 851 (1968). Under the proposed law, such property could still be reached in this manner, but would also be reachable by way of an assignment order.
 18. As a function of the principle of sovereign immunity, wages in the hands of the federal government are not subject to garnishment without the consent of the government. However, wages may be reached by an order obtained in examination proceedings directed to the judgment debtor to endorse and deliver paychecks to a receiver. See *Sheridan v. Sheridan*, 33 Cal. App.3d 917, 920-22, 109 Cal. Rptr. 466 (1972). Pursuant to 42 U.S.C. § 659 (1976), the wages of federal employees may be garnished for the enforcement of child support and alimony payments as if the United States were a private person. See also *Standard Oil Div., American Oil Co. v. Starks*, 528 F.2d 201, 203-04 (7th Cir. 1975) (employees of U.S. Postal Service not immune from garnishment).
 19. See the discussion under "Sale and Collection" supra.
 20. See, e.g., *Meacham v. Meacham*, 262 Cal. App.2d 248, 253 n.2, 68 Cal. Rptr. 746, ___ n.2 (1968), where it was asserted that a \$13,000 windfall would result from the sale of a right to royalties from the marketing of an invention in satisfaction of judgment for plaintiff's attorney's fees.

Article 5. Lien on Pending Action or Proceeding§ 708.410. Lien on pending action or proceeding

708.410. (a) The judgment creditor of a party to a pending action or special proceeding may obtain a lien on personal property, whether tangible or intangible, that is the subject of the action or proceeding and upon the judgment debtor's right to the property under any judgment subsequently procured by filing a notice of lien and an abstract of the judgment creditor's money judgment with the court in which the action or special proceeding is pending.

(b) The notice of lien shall contain the following information:

- (1) The date the notice of lien is filed.
- (2) The amount due on the date the notice of lien is filed.
- (3) A statement that the judgment debtor's right to personal property under a judgment in the action or proceeding is subject to a lien.

(4) The date the judgment creditor's money judgment was entered.

Comment. Section 708.410 supersedes a portion of former Section 688.1(a). A lien under this article reaches the judgment debtor's right to money under the judgment as permitted by former law. See *Abatti v. Eldridge*, 103 Cal. App.3d 484, ____ Cal. Rptr. ____ (1980). This lien also reaches other types of property involved in the action. The lien obtained by filing pursuant to this section is subject to any prior liens of the same type or another type, such as an attorney's charging lien. See *Roseburg Loggers, Inc. v. U.S. Plywood-Champion Papers, Inc.*, 14 Cal.3d 742, 748-51, 537 P.2d 399, 403-05, 122 Cal. Rptr. 567, 571-73 (1975); cf. *Haupt v. Charlie's Kosher Mkt.*, 17 Cal.2d 843, 846, 121 P.2d 627 (1941) (attorney's lien prevails over subsequent attachment lien under former statute). The lien is ineffective after the time for enforcement of the judgment creditor's money judgment has expired. See Section 683.020. The duration of the lien may be extended as provided in Section 683.190.

The purpose of this lien is to establish and preserve the judgment creditor's priority until the judgment is final and nonappealable. At that time, the judgment creditor may seek to reach the judgment subject to the lien by some other enforcement procedure if no settlement is agreed upon. See Section 708.450.

CROSS-REFERENCES

Abstract of judgment § 674

Defined terms

Judgment creditor 680.____

Judgment debtor 680.____

Liens generally § 679.010 et seq.

§ 708.420. Endorsement of lien on judgment and abstract

708.420. (a) If a lien is created pursuant to this article, the court clerk shall endorse upon the judgment recovered in the action or special proceeding a statement of the existence of the lien and the date the notice of lien was filed.

(b) In addition to the matters set forth in Section 674, any abstract issued upon the judgment shall contain a statement of the judgment creditor's lien and the date the lien was created.

Comment. Section 708.420 supersedes the third sentence of former Section 688.1.

29635

§ 708.430. Notice of filing

708.430. (a) The judgment creditor shall serve a copy of the notice of lien on all parties to the action or proceeding. Service shall be made personally or by mail.

(b) Failure to serve all the parties does not affect the lien created by filing the notice of lien, but the rights of a party are not affected until the copy of the notice of lien is actually received.

Comment. Subdivision (a) of Section 708.430 supersedes a portion of former Section 688.1(a) which required notice to all parties of the motion for a lien. Subdivision (b) makes clear, however, that failure to give notice does not affect the validity of the lien. The lien is created pursuant to Section 708.410 when the notice of lien is filed with the court. Under subdivision (b) a party who does not have notice of the lien may, for example, pay the amount sought in the action notwithstanding Section 708.440.

CROSS-REFERENCES

Defined terms

Judgment creditor § 680.____.

Manner of service §§ 684.010-684.080

29630

§ 708.440. Compromise, settlement, satisfaction

708.440. Except as provided in subdivision (b) of Section 708.430, unless the lien is first satisfied or otherwise released:

(a) No writ may be issued in favor of the judgment debtor to enforce the judgment recovered in the action or special proceeding.

(b) No compromise, settlement, or satisfaction of the pending action or proceeding or the judgment may be entered into by or on behalf of the judgment debtor without one of the following:

(1) The consent of the judgment creditor.

(2) The approval of the court in which the action or special proceeding is pending or the judgment is entered, in the discretion of the court, obtained at a hearing on noticed motion with notice to the judgment creditor.

Comment. Section 708.440 supersedes a portion of the second sentence of former Section 688.1. The provision permitting compromise, settlement, or satisfaction pursuant to court order despite the opposition of the judgment creditor has been added to prevent the judgment creditor from forcing the judgment debtor to proceed with the action despite the judgment debtor's conviction that it is advisable to settle. The introductory clause recognizes that a party who settles without notice is unaffected by the lien and also by the prohibition of this section.

CROSS-REFERENCES

Defined terms

Judgment creditor § 680.____

Judgment debtor § 680.____

Manner of service §§ 684.010-684.080

Satisfaction and discharge §§ 724.010-724.____

29628

§ 708.450. Enforcement of lien

708.450. After the judgment subject to a lien created pursuant to Section 708.410 is entered as a final judgment and the time for appeal from the judgment has expired or, if an appeal is filed, after the appeal is finally determined, the lien may be enforced by any applicable procedure.

Comment. Section 708.450 makes available a variety of remedies for the enforcement of a lien created under this article, such as levy under a writ of execution and sale or collection (see Sections 700.180, 701.510), appointment of a receiver to collect the judgment (see Section 708.620), application for an assignment order (see Section 708.510), and collection from a public entity owing money to the judgment debtor (see Sections 708.710-708.795). The judgment creditor is not required to bring an equitable action to foreclose the lien. Under former law, it appeared that where the judgment debtor of the judgment debtor did not voluntarily pay the judgment creditor to discharge the lien and the

judgment debtor took no steps to enforce the judgment, the judgment creditor had to bring an action to foreclose the lien in order to reach the amount represented by the judgment. See *Roseburg Loggers, Inc. v. Plywood-Champion Papers, Inc.*, 14 Cal.3d 742, 748, 537 P.2d 399, 409, 122 Cal. Rptr. 561, 571 (1975) (dictum).

18533

§ 708.460. Applicable exemption procedure

708.460. If the judgment debtor desires to claim that the right that is the subject of the action or special proceeding is exempt from enforcement of a money judgment, the claim shall be made pursuant to the procedure for claiming exemptions that is applicable to the procedure used by the judgment creditor to enforce the lien created pursuant to this article.

Comment. Section 708.460 makes clear that exemptions are not to be claimed under this article. There is no need to determine whether the judgment debtor's right to money in the action is exempt until the judgment is final and the judgment creditor seeks to enforce the lien. The procedure for claiming an exemption then depends upon the manner in which the lien is sought to be enforced. See, e.g., Sections 703.510 (procedure after levy), 708.260 (creditor's suit), 708.550 (assignment order), 708.770 (collection from public entity owing money to judgment debtor).

CROSS-REFERENCES

Defined terms

Judgment creditor § 680.____

Judgment debtor § 680.____

Exempt property § 704.010 et seq.

31451

§ 708.470. Intervention

708.470. As an alternative or in addition to obtaining a lien under this article, the judgment creditor may make an application to intervene in the action or proceeding pursuant to Section 387.

Comment. Section 708.470 continues the substance of a portion of the first sentence of former Section 688.1(a).

Article 6. Assignment Order

§ 708.510. Order to assign right to payment

708.510. (a) Except as otherwise provided by law, upon application of the judgment creditor on noticed motion, the court may order the judgment debtor to assign to the judgment creditor or to a receiver appointed pursuant to Article 7 (commencing with Section 708.510) all or part of a right to payment due or to become due, whether or not the right is conditioned on future developments, including but not limited to the following types of payments:

(1) Wages due from the federal government that are not subject to levy.

(2) Rents.

(3) Commissions.

(4) Royalties.

(5) Surplus amounts from a spendthrift trust liable pursuant to Civil Code Section 859.

(b) Notice of the motion shall be served on the judgment debtor. Service shall be made personally or by mail.

(c) In determining whether to order an assignment or the amount of an assignment pursuant to subdivision (a), the court may take the following factors into consideration:

(1) The reasonable requirements of a judgment debtor who is a natural person and of persons supported in whole or in part by the judgment debtor.

(2) Payments the judgment debtor is required to make or that are deducted from the money the judgment debtor would otherwise receive in satisfaction of other judgments and wage assignments.

(3) The amount remaining due on the money judgment.

(4) The amount being or to be received in satisfaction of the right to payment.

(d) A right to payment may be assigned pursuant to this article only to the extent necessary to satisfy the money judgment.

Comment. Section 708.510 provides a new procedure for reaching certain forms of property that cannot be reached by levy under a writ of

execution. It also provides an optional procedure for reaching assignable forms of property that are subject to levy, such as accounts receivable, general intangibles, judgments, and instruments. This section does not make any property assignable that is not already assignable. This remedy may be used alone or in conjunction with other remedies provided in this title for reaching rights to payment, such as execution, orders in examination proceedings, creditors' suits, and receivership. The use of this remedy is subject to limitations on the time for enforcement of judgments. See Sections 683.010-683.220.

The introductory clause of subdivision (a) recognizes that certain rights to future payments, such as pension benefits, are protected by law from assignment. See, *e.g.*, 5 U.S.C. § 8346 (1976) (federal government employees' retirement benefits); 45 U.S.C. § 231m (Supp. V 1975) (railroad employees' annuities).

Paragraph (1) of subdivision (a) provides a new means to reach federal employees' wages. Such wages generally may not be garnished but may be reached in examination proceedings by an order to the judgment debtor to endorse and deliver paychecks to a receiver. See *Sheridan v. Sheridan*, 33 Cal. App.3d 917, 920-22, 109 Cal. Rptr. 466 (1972). However, pursuant to 42 U.S.C. § 659 (1976), the wages of federal employees may be garnished for the enforcement of child support and alimony payments "as if the United States were a private person."

Paragraph (2) permits issuance of an order for the assignment of the right to payment of rent. Under former law, it was held that future rental installments could not be reached by garnishment. See *Hustead v. Superior Court*, 2 Cal. App.2d 780, 786-87, 83 Cal. Rptr. 26 (1969).

The assignment of a right to commissions or royalties pursuant to paragraphs (3) and (4) is a more appropriate manner for reaching such uncertain amounts than through levy and sale as permitted in *Meacham v. Meacham*, 262 Cal. App.2d 248, 252, 68 Cal. Rptr. 746 (1968).

Surplus income from a spendthrift trust may still be reached, as under former law, by a creditor's suit (or by an order in examination proceedings) where it is shown that there is no valid direction in the trust instrument for accumulation of surplus income and that the income is not all necessary for the beneficiary's education and support. See Civil Code § 859; *Canfield v. Security First Nat'l Bank*, 13 Cal.2d 1, 34, 87 P.2d 830 (1939; *Estate of Lawrence*, 267 Cal. App.2d 77, 82-83, 72 Cal. Rptr. 851 (1968).

Subdivision (c) is based on the standard for fixing the amount of payments under the New York installment payment order procedure. See N.Y. Civ. Prac. Law & R. § 5226 (McKinney 1978).

Subdivision (d) recognizes that the amount collected by the judgment creditor pursuant to this article may not exceed the amount necessary to satisfy the judgment. See Sections 685.020 (accrual of interest), 685.030 (cessation of interest), 685.040 (right to costs).

CROSS-REFERENCES

Defined terms

Court § 680.____
 Judgment Creditor § 680.____
 Judgment Debtor § 680.____
 Money judgment § 680.____

Manner of service §§ 684.010-684.080

Property subject to enforcement of money judgment § 685.010-685.040

§ 708.520. Restraining assignment or other disposition

708.520. (a) When an application is made pursuant to Section 708.510 or thereafter, the judgment creditor may apply to the court ex parte, or on noticed motion if the court so directs or a court rule so provides, for an order restraining the assignment or other disposition of the right to payment that is sought to be assigned.

(b) The court may issue an order pursuant to this section upon a showing of need for the order and may require an undertaking in its discretion.

(c) The court may modify or vacate the order at any time with or without a hearing on such terms as are just.

(d) The order shall be personally served upon the judgment debtor and shall contain a notice to the judgment debtor that failure to comply with the order may subject the judgment debtor to being held in contempt of court.

Comment. Section 708.520 affords injunctive relief in an appropriate case, pending determination of the judgment creditor's application for an assignment order.

CROSS-REFERENCES

Defined terms

Court § 680. ____

Judgment creditor § 680. ____

Judgment debtor § 680. ____

Manner of service §§ 684.010-684.080

§ 708.530. Effect and priority of assignment

708.530. The effect and priority of an assignment ordered pursuant to this article is governed by Section 955.1 of the Civil Code. For purpose of priority, an assignee of a right to payment pursuant to this article shall be deemed to be a bona fide assignee for value.

Comment. Section 708.530 incorporates the rule generally applicable assignments of general intangibles and other rights to payment. Under Civil Code Section 955.1 and this section, the judgment creditor who has obtained an assignment under this article will have priority over another assignee of the same right for value and without notice only if the judgment creditor first gives notice to the obligor. See Section 708.540.

§ 708.540. Rights of person obligated

708.540. The rights of an obligor are not affected by an order assigning the right to payment until notice of the order is received by the obligor. Notice of the order may be served personally or by mail on the obligor. For the purpose of this section, "obligor" means the person who is obligated to make payments to the judgment debtor or who may become obligated to make payments to the judgment debtor depending upon future developments.

Comment. Section 708.540 makes clear that the person obligated to make payments to the judgment debtor or who will become obligated is not affected by the assignment order until notice of the order is received. This section is analogous to provisions governing the effect of an execution levy. See, e.g., Sections 700.____ (rights of account debtor), 700.____ (rights of judgment debtor's judgment debtor). See also Civil Code § 955.1 (rights of certain obligors upon assignment); Com. Code § 9318 (rights of account debtor).

31514

§ 708.550. Exemption procedure

708.550. (a) The judgment debtor may claim that all or a portion of the right to payment is exempt from enforcement of a money judgment by application to the court on noticed motion filed not later than three days before the date set for the hearing on the judgment creditor's application for an assignment order. The judgment debtor shall execute an affidavit in support of the application that includes all of the matters set forth in subdivision (b) of Section 703.520.

(b) Notice of the motion shall be personally served on the judgment creditor not later than three days before the date set for the hearing.

(c) The court shall determine any claim of exemption made pursuant to this section at the hearing on issuance of the assignment order.

Comment. Section 708.550 provides a motion procedure for claiming exemptions under this article. Exemptions not claimed as provided in this section are waived. See Section 703.030.

CROSS-REFERENCES

Application of exemptions § 703.____

Defined terms

Court § 680.____

Judgment Creditor § 680.____

Judgment debtor § 680.____

Exempt property §§ 704.010-704.880
Manner of service §§ 684.010-684.080

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§ 708.560. Modification or setting aside assignment order

708.560. (a) Either the judgment creditor or the judgment debtor may apply by noticed motion for an order to modify or set aside the assignment order. Notice of motion shall be served on the other party. Service shall be made personally or by mail.

(b) The court shall make an order modifying or setting aside the assignment order upon a showing that there has been a material change in circumstances since the time of the previous hearing on the assignment order. The court may order a reassignment of the right to payments as necessary. The order shall state whether and to what extent it applies to payments already made.

Comment. Section 708.560 gives the court broad descretion to modify or set aside an assignment order depending upon the circumstances of a case.

CROSS-REFERENCES

Defined terms

Judgment creditor § 680.____
Judgment debtor § 680.____
Manner of Service §§ 684.010-684.080