

Memorandum 80-68

Subject: Study D-300 - Enforcement of Judgments (Collection Where
Judgment Debtor is Creditor of Public Entity)

This memorandum considers comments we received concerning the provisions in the Tentative Recommendation Relating to Enforcement of Judgments that govern collection of a money judgment where the judgment debtor is owed money by a public entity. (TR §§ 705.710-705.795.) (The comments referred to were sent to you previously as exhibits to Memorandum 79-29.) A revised staff draft of these provisions is attached hereto.

§ 708.740. Collection where judgment debtor is creditor of state
(TR § 705.740)

Mr. Frederick Holden states that it is unnecessarily harsh to require a judgment creditor whose debtor is owed money by the state to file with the particular department before the department presents the claim to the controller as required by Section 708.740(a) and existing Section 710(a). (Exhibit 13, p. 21.) He suggests that, if the claim has already been forwarded to the controller, the creditor should be able to file with the controller. The staff is sympathetic with this suggestion, but we recommend no change since it is impractical to attempt to catch the claim once it has gone to the controller.

§ 708.760. Collection of judgment where judgment debtor is contractor on public work (TR § 705.760)

Mr. Frederick Holden suggests that the judgment creditor should be paid before disputes concerning materialmen's liens and the like are determined so long as a sufficient amount is retained for the settlement of such claims. (Exhibit 13, p. 22.) The staff agrees with this suggestion and has revised Section 708.760 accordingly.

Respectfully submitted,

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Collection Where Judgment Debtor Is Creditor of Public Entity

Existing law provides an exclusive procedure for reaching money, other than wages, owed to the judgment debtor by a public entity.¹ Under this procedure, the judgment creditor files with the state agency or local public entity an abstract or transcript of the judgment and an affidavit stating the amount owing on the judgment. Filing in this manner is the equivalent of levy under a writ of execution and the priorities between creditors is determined as of the time of filing with the public entity.² The public entity is required to pay the money into court and the court then pays the nonexempt portion of the money to the judgment creditor.

This scheme is generally continued in the proposed law;³ however, several revisions are needed. Under existing law, the relation between the procedure for obtaining a lien on a pending cause of action and any eventual judgment⁴ and the procedure for reaching money owed the judgment debtor by a public entity is unclear. The proposed law provides that the special procedure for obtaining a lien on a cause of action must be followed when the obligation is the subject of a pending cause of action. Under existing law, the general procedure for determining exemptions from execution by Section 690.50 is incorporated with the provision that the court is to be considered the levying officer.⁵ This exemption procedure is inadequate. The judgment debtor is not required to be given notice of the filing, the payment into court, or the payment to the judgment creditor, although the statute assumes that exemptions will

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1. See Sections 710, 710a. As provided in Section 710(h), earnings are withheld pursuant to Section 682.3.
 2. See Department of Water & Power v. Inyo Chem. Co., 16 Cal.2d 744, 751-53, 108 P.2d 410 (1940); Ott Hardware Co. v. Davis, 165 Cal. 795, 800, 134 P.2d 973 (1913). This principle is codified in the proposed law.
 3. Several minor and technical changes are recommended. For example, the provision for setting off amounts owed by, or advanced to, the judgment debtor applies only to the state under Section 710(a), para. 2; this provision should also apply to local public entities.
 4. See discussion under "Lien on Pending Action or Proceeding" supra.
 5. Section 710(c).

be claimed and determined despite the judgment debtor's lack of notice.⁶ The judgment creditor should give notice of the filing to the judgment debtor, just as a judgment debtor is given notice of levy under a writ of execution. The court clerk should give the judgment debtor notice when the court receives the payment from the public entity, and the judgment debtor should then be afforded 10 days from service of the notice of payment within which to make a claim of exemption on noticed motion before the court pays over to the judgment creditor.

Existing law provides a special procedure that applies where the money owed to the judgment debtor by a public entity is an award in a condemnation proceeding brought by the public entity. It is provided that the money may be paid into the court in which the condemnation proceeding was tried and that the clerk then sends notice to "all parties interested in said award" of the hearing to determine conflicting claims to the award.⁷ The court is directed to determine the conflicting claims and order the distribution of the money accordingly. This special procedure is unnecessary;⁸ the general procedures under the proposed law for reaching money owed to the judgment debtor by a public entity afford adequate remedies. Before final judgment in the condemnation proceeding, the judgment creditor would be able to obtain a lien on

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6. The purpose of this special procedure is "to shift to the court the burden of adjudicating any claims of exemption which may arise and to insulate the governmental units from liability for wrongful payments to garnishing creditors." *McDaniel v. City & County of San Francisco*, 259 Cal. App.2d 356, 363, 66 Cal. Rptr. 384 (1968).
 7. Section 710(d). It is not clear under this provision whether the judgment creditor is to receive notice.
 8. The existing procedure is also inadequate in several respects and is not consistent with the relevant provisions of the Eminent Domain Law. For example, the reference to the hearing where conflicting claims to the award are to be determined is ambiguous, and the provision that the court order the distribution of the money deposited conflicts with the Eminent Domain Law. The value of divided interests in property acquired by eminent domain are determined in the condemnation proceeding itself pursuant to Section 1260.220. If an amount of probable compensation is deposited, it may be withdrawn on application pursuant to Section 1255.210. If the amount of compensation has been determined, the defendant may apply for withdrawal of the deposit pursuant to Section 1268.140. There is no reason for the judgment creditor to be involved in the

any amounts eventually awarded.⁹ If the judgment is final and the public entity has not paid the award or previously deposited the award with the court,¹⁰ the judgment creditor may follow the general procedure for reaching money owed to the judgment debtor by a public entity. If the public entity has deposited the amount of the award with the court where the condemnation proceeding is held and the creditor has not obtained a lien before final judgment, the creditor could use some other appropriate procedure, such as garnishment or motion.¹¹

condemnation proceeding at the time the interests of the condemnation defendants are determined; the creditor should be involved only when payment is to be made to the judgment debtor, at which time the issue is whether the award is exempt, such as where it represents the homestead exemption or is composed of relocation benefits.

9. See the discussion under "Lien on Pending Action or Proceeding" supra.
10. See Sections 1255.010 (deposit of probable compensation), 1268.010 (payment directly to defendant), 1268.110 (deposit of full amount of award).
11. See, e.g., Kimball v. Richardson-Kimball Co., 111 Cal. 386, 394, 43 P. 1111 (1896) (levy of attachment); Phoenix v. Kovacevich, 246 Cal. App.2d 774, 778-79, 55 Cal. Rptr. 135 (1966) (permission to levy by court order); Credit Bureau of San Diego v. Getty, 61 Cal. App.2d Supp. 823, 826-29, 142 P.2d 105 (1943) (affidavit procedure for former Section 710 not effective where court deposited money with county); Colver v. W.B. Scarborough, 73 Cal. App. 455, 457-59, 238 P. 1110 (1925) (levy of execution).

Article 8. Collection of Judgment Where Judgment
Debtor Is Creditor of Public Entity

§ 708.710. Definitions

708.710. As used in this article:

(a) "Local public entity" means any public entity other than the state.

(b) "Public entity" means the state, a county, city, district, public authority, public agency, and any other political subdivision in the state.

(c) "State" means the State of California.

Comment. Section 708.710 defines several terms used in this article but makes no substantive change in former law. See former Section 710.

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§ 708.720. Exclusive procedures

708.720. If a public entity owes money to the judgment debtor, the obligation of the public entity may be applied to the satisfaction of the money judgment against the judgment debtor only in the manner provided by the following:

(a) This article.

(b) Chapter 5 (commencing with Section 706.010).

(c) Article 5 (commencing with Section 708.410).

Comment. Section 708.720 makes clear what was implicit under former law. See former Section 710(h).

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§ 708.730. Filing and notice generally

708.730. (a) Except as otherwise provided in Chapter 5 (commencing with Section 706.010) and in Article 5 (commencing with Section 708.410), if money is owing and unpaid to the judgment debtor by a public entity, the judgment creditor may file, in the manner provided in this article, an abstract of the money judgment or a certified copy of the money judgment, together with an affidavit which states that the judgment

creditor desires the relief provided by this article and states the exact amount then necessary to satisfy the judgment. The judgment creditor may state in the affidavit any fact tending to establish the identity of the judgment debtor.

(b) Promptly after filing the abstract or certified copy of the judgment and the affidavit with the public entity, the judgment creditor shall serve notice of the filing personally or by mail on the judgment debtor.

Comment. Subdivision (a) of Section 708.730 continues the substance of the introductory paragraph of subdivision (a) and the first sentence of subdivision (e) of former Section 710, but makes clear that if the liability is the subject of a pending action the procedure for obtaining a lien on a pending action or proceeding must be followed. See Sections 708.410-708.____. The introductory clause of subdivision (a) also recognizes that earnings of public officers and employees may be withheld only pursuant to Chapter 5 (commencing with Section 706.010).

Money is "owing and unpaid" under these provisions when there is an existing and unsatisfied legal liability on the part of the public entity. *McDaniel v. City & County of San Francisco*, 259 Cal. App.2d 356, 361, 66 Cal. Rptr. 384, 387 (1968); *Department of Water & Power v. Inyo Chem. Co.*, 16 Cal.2d 744, 751-53, 108 P.2d 410 (1940).

Subdivision (b) is new. Former Section 710 did not provide for a notice of filing. See *McDaniel v. City & County of San Francisco*, 259 Cal. App.2d 356, 363, 66 Cal. Rptr. 384 (1968). This notice is analogous to notice of levy under a writ of execution. See Section 699.530.

The procedure provided by this article also applies in cases where money is owed to the judgment debtor by reason of an award in a condemnation proceeding. Former Section 710(d) provided a distinct but similar procedure for reaching such awards. Under this title, the judgment creditor may seek to apply such property toward the satisfaction of a money judgment through the procedures normally applicable, depending upon the status of the money at the time when it is sought to be reached. Hence, if a condemnation proceeding has been commenced, the judgment creditor may obtain a lien on the cause of action and judgment pursuant to Article 5 (commencing with Section 708.410). If the judgment is final and the public entity has not paid the award to the judgment debtor, the judgment creditor may file an abstract or certified copy of the judgment and an affidavit with the public entity pursuant to this article. If the public entity has deposited the amount of the award with the court where the condemnation proceeding was held and the judgment creditor has not obtained a lien under Article 5, the judgment creditor may use some other appropriate procedure, such as garnishment or motion. See, e.g., *Kimball v. Richardson-Kimball Co.*, 111 Cal. 396, 394, 43 P. 1111 (1896) (levy of attachment); *Phoenix v. Kovacevich*, 246 Cal. App.2d 774, 778-79, 55 Cal. Rptr. 135 (1966) (permission to levy by court order); *Credit Bureau of San Diego v. Getty*, 61 Cal. App.2d Supp.

823, 826-29, 142 P.2d 105 (1943) (affidavit procedure of former Section 710 not effective where court deposited money with county); Colver v. W.B. Scarborough Co., 73 Cal. App. 455, 457-59, 238 P. 1110 (1925) (levy of execution).

CROSS-REFERENCES

Defined terms

Judgment creditor § 680.____

Judgment debtor § 680.____

Money judgment § 680.____

Public entity § 708.710(b)

Manner of service §§ 684.010-684.080

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§ 708.740. Collection where judgment debtor is creditor of state

708.740. (a) If money is owing and unpaid to the judgment debtor by the state, the judgment creditor shall file the abstract or certified copy of the judgment and the affidavit with the state department, board, office, or commission owing the money to the judgment debtor prior to the time the department, board, office, or commission presents the claim of the judgment debtor to the State Controller.

(b) When presenting the claim of the judgment debtor to the State Controller, the department, board, office, or commission shall note the fact of the filing of the abstract or certified copy of the judgment and the affidavit, state the amount necessary to satisfy the judgment as shown by the affidavit, and state any amounts advanced to the judgment debtor by the state, or owed by the judgment debtor to the state, for expenses or for any other purpose.

(c) To discharge the claim of the judgment debtor, the State Controller shall deposit with the court, by a warrant or check payable to the court, the amount due the judgment debtor (after deducting an amount sufficient to reimburse the department, board, office, or commission for any amounts advanced to the judgment debtor or owed by the judgment debtor to the state) necessary to satisfy the money judgment in full or to the greatest extent and pay the balance thereof, if any, to the judgment debtor.

§ 708.750

Comment. Section 708.740 continues the substance of paragraph 1 of subdivision (a) of former Section 710.

CROSS-REFERENCES

Defined terms

Court § 680.____
Judgment creditor § 680.____
Judgment debtor § 680.____
Money judgment § 680.____
State § 708.710(c)

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§ 708.750. Collection where judgment debtor is creditor of local public entity

708.750. (a) If money is owing and unpaid to the judgment debtor by a local public entity, the judgment creditor shall file the abstract or certified copy of the judgment and the affidavit with the auditor of the local public entity or, if there is no auditor, with the official whose duty corresponds to that of auditor.

(b) To discharge the claim of the judgment debtor, the auditor or other official shall deposit with the court by a warrant or check payable to the court, the amount due the judgment debtor (after deducting an amount sufficient to reimburse the local public entity for any amounts advanced to the judgment debtor or owed by the judgment debtor to the public entity) necessary to satisfy the money judgment in full or to the greatest extent and pay the balance thereof, if any, to the judgment debtor.

Comment. Section 708.750 continues the substance of paragraph 2 of subdivision (a) of former Section 710. The reference in subdivision (b) to deductions for advances to, or amounts owed by, the judgment debtor did not appear in the former law applicable to local public entities, but has been included in subdivision (b) to make it parallel to Section 708.740(c), applicable to the state.

CROSS-REFERENCES

Defined terms

Court § 680.____
Judgment creditor § 680.____
Judgment debtor § 680.____
Local public entity § 708.710(a)
Money judgment § 680.____

§ 708.760. Collection where judgment debtor is contractor on public work; subordination to claims of laborers

708.760. (a) If the judgment debtor named in the abstract or certified copy of the judgment filed pursuant to this article is a contractor upon a public work, the cost of which is to be paid out of public moneys voted, appropriated, or otherwise set apart for such purpose, only so much of the contract price shall be deemed owing and unpaid within the meaning of Section 708.740 or 708.750 as may remain payable under the terms of the contractor's contract, upon the completion thereof, after deducting sums due and to become due to persons described in Section 3181 of the Civil Code. In ascertaining the sums due or to become due to such persons, only claims which are filed against the moneys due or to become due to the judgment debtor in accordance with the provisions of Chapter 4 (commencing with Section 3179) of Title 15 of Part 4 of Division 3 of the Civil Code shall be considered.

(b) The controller, auditor, or other public disbursing officer whose duty it is to make payments under the provisions of the contract may not deposit an amount with the court pursuant to this article until the contract is completed, but may deposit an amount with the court to satisfy the claim of the judgment debtor before the payments specified in subdivision (a) are made so long as a sufficient amount is retained for the satisfaction of the claims of persons described in Civil Code Section 3181.

Comment. Subdivision (a) of Section 708.760 continues the substance of the first and second sentences of former Section 710a. Subdivision (b) supersedes the last sentence of former Section 710a. Subdivision (b) is intended to permit payment to the judgment creditor without the necessity of awaiting the resolution of disputes concerning payment to other contractors.

CROSS-REFERENCES

Defined terms

Court § 680.____

Judgment debtor § 680.____

§ 708.770. Notice of deposit with court; exemption claim

708.770. (a) Promptly after deposit with the court by the public entity, the court clerk shall serve personally or by mail a notice of deposit on the judgment debtor.

(b) An exemption may be claimed by noticed motion made within 10 days after service of the notice of deposit pursuant to subdivision (a). Notice of motion shall be given the judgment creditor.

Comment. Subdivision (a) of Section 708.770 requires the court clerk to mail notice of deposit pursuant to Section 708.740 or 708.750 to the judgment debtor. This notice enables the judgment debtor to make a claim of exemption before the money is paid over to the judgment creditor.

The limitation on the time for claiming an exemption provided by subdivision (b) is the same as the period applicable to exemption claims under a writ of execution. See Section 703.520.

CROSS-REFERENCES

Defined terms

Court § 680.____
 Judgment creditor § 680.____
 Judgment debtor § 680.____
 Public entity § 708.710(b)
 Exemptions § 703.010 et seq.
 Manner of service §§ 684.010-684.080

§ 708.775. Distribution of money

708.775. After the expiration of 10 days from the date notice of deposit with the court was served on the judgment debtor, the court shall pay the nonexempt portion of the money deposited to the judgment creditor and the balance thereof, if any, to the judgment debtor, unless some other disposition is required by law.

Comment. Subdivision (a) of Section 708.775 supersedes former Section 710(c). This section recognizes that the judgment debtor may not be entitled to the excess, such as, for example, where a second judgment creditor has a lien subordinate to that of the first judgment creditor. See Section 701.810 (distribution of proceeds).

CROSS-REFERENCES

Defined terms

Court § 680.____
 Judgment creditor § 680.____
 Judgment debtor § 680.____

§ 708.780. Lien

708.780. Filing of the abstract or certified copy of the judgment and the affidavit pursuant to this article creates a lien on the money owing and unpaid to the judgment debtor by the public entity, in an amount equal to that which may properly be applied toward the satisfaction of the money judgment.

Comment. Section 708.780 provides for the creation of a lien as of the filing with the public entity by the judgment creditor under Sections 708.740 and 708.750. This principle is consistent with decisions under former law which equated filing with levy and determined priority as of the time of filing. See *Department of Water & Power v. Inyo Chem. Co.*, 16 Cal.2d 744, 751-53, 108 P.2d 410 (1940); *Ott Hardware Co. v. Davis*, 165 Cal. 795, 800, 134 P. 973 (1913).

CROSS-REFERENCES

Defined terms

Judgment debtor § 680. ____
 Money judgment § 680. ____
 Public entity § 708.710(b)
 Liens generally § 697.010 et seq.

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§ 708.785. Filing fee; deposit of fees collected by state

708.785. (a) The judgment creditor upon filing the abstract or certified copy of the judgment and the affidavit shall pay a fee of six dollars (\$6) to the public entity with which it is filed.

(b) Fees received by a state agency under this article shall be deposited to the credit of the fund from which payments were, or would be, made on account of collection under this article.

Comment. Subdivision (a) of Section 708.785 continues the substance of subdivision (b) of former Section 710. Subdivision (b) continues the substance of subdivision (g) of former Section 710.

CROSS-REFERENCES

Defined terms

Judgment creditor § 680. ____
 Public entity § 708.710(b)

§ 708.790. Liability of public officer

708.790. No public officer or employee is liable for failure to perform a duty imposed by this article unless sufficient information is furnished by the abstract or certified copy of the judgment together with the affidavit to enable the officer or employee in the exercise of reasonable diligence to ascertain the identity of the judgment debtor therefrom and from the papers and records on file in the office in which the officer or employee works. The word "office" as used in this section does not include any branch or subordinate office located in a different city.

Comment. Section 708.790 continues the substance of the last two sentences of subdivision (e) of former Section 710. See Section 708.730(a) (judgment creditor may state additional information in affidavit to establish identity of judgment debtor).

§ 708.795. Limitations on procedure of this article

708.795. Nothing in this article authorizes the filing against an overpayment of tax, penalty, or interest, or interest allowable with respect to an overpayment, under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code.

Comment. Section 708.795 continues the substance of subdivision (f) of former Section 710.