

## First Supplement to Memorandum 83-23

Subject: Study D-301 - Creditors' Remedies (Assembly Bill 99)

We recently received the attached letter from Rick Schwartz urging an amendment of the provision governing levies on deposit accounts. The objection is that Code of Civil Procedure Section 700.140, when read with Section 701.010(b)(2)(B), picks up amounts in a deposit account at the time of levy and all amounts coming into the account until the lien ceases when the financial institution pays funds to the levying officer. The staff recommends that we accept Mr. Schwartz's suggestion to return to the practice under former law of regarding the levy as reaching only amounts in the account (including amounts being collected) when the levy takes place. This will avoid practical problems anticipated by the banks and provide greater clarity. A similar amendment should be made in Section 488.455 governing attachment of deposit accounts.

The staff's recommendation would be accomplished by the following amendments to AB 99 (see copy attached to Memorandum 83-23):

Amendment [1]

On page 11, line 32, after the period, insert:  
The attachment lien reaches only amounts in the deposit account at the time of service on the financial institution, including items in the deposit account that are in the process of being collected.

Amendment [2]

On page 19, line 12, after the period, insert:  
The execution lien reaches only amounts in the deposit account at the time of service on the financial institution, including items in the deposit account that are in the process of being collected.

Respectfully submitted,

Stan G. Ulrich  
Staff Counsel



SOUTHERN CALIFORNIA HEADQUARTERS

March 8, 1983

RICK SCHWARTZ  
Senior Counsel

(213) 228-2522

California Law Revision Commission  
4000 Littlefield Road, Room B-2  
Palo Alto, California 94306

RE: Enforcement of Judgment Law - Continuing  
Levy on Deposit Accounts

Gentlemen:

In a recent letter and communications with John H. DeMouilly and Stan G. Ulrich it was pointed out to me that the Commission apparently changed current practice when it provided for what amounts to essentially a continuing levy on deposit accounts.

The position of the Commission and staff is that Section 701.010(b)(2)(B) requires the garnishee to pay amounts that become due and payable to the judgment debtor on the obligation levied upon during the period of the execution lien and that reading this provision with Section 700.140, the execution lien attaches to the deposit account when the copy of the writ and the notice of levy are served and ceases, under Section 700.410(e) when the amount levied upon is paid to the levying officer.

This is contrary to current practice where only the funds on deposit at the specific time of the levy including funds in the process of collection are reached by the levy and this change will create accounting and practical problems.

First, if the levy covers subsequent deposits, it will probably be impossible for the financial institution to pay over all funds within the ten days because the financial institution will not know whether the subsequent deposit or deposits represented good (collected) funds. Because these subsequent deposits will not be immediately paid over, the lien will continue in any further subsequent deposits. This creates confusion and uncertainty and is burdensome to the financial institution and may require multiple Garnishee's Memorandums. It also creates practical problems if the debtor wishes to have certain outstanding checks such as wages to employees or tax payments paid from subsequent deposits.

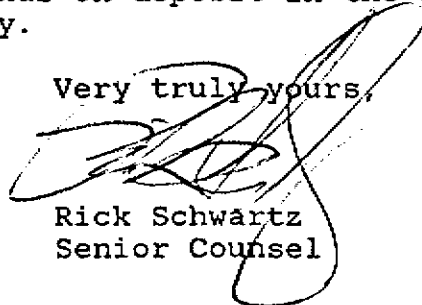
In a typical problem loan situation, a debtor whose bank account is levied upon, will not wish to have important checks drawn on the account for wages, taxes and certain other priority expenses returned, unpaid, by the financial institution. The debtor usually will make arrangements to pay critical checks such as wages and taxes as they are received by making contemporaneous deposits.

If it is the Commission's position that these subsequent contemporaneous deposits specifically intended to cover priority checks are picked up by the execution lien, then current practices could not be used and all troubled debtors would tend to file bankruptcy proceedings or would be required to open new accounts at another institution, reissue checks and explain their problems to employees, creditors and any person whose check is returned unpaid. This would have a detrimental effect.

Furthermore, the change is so subtle that I doubt many financial institutions will be aware of the change and substantial garnishee liability could accrue as a result of the change.

I urge the Commission to make changes in AB99 to preserve existing law so that a levy on a deposit account picks up only those funds on deposit in the account at the actual time of the levy.

Very truly yours,



Rick Schwartz  
Senior Counsel

RS:vm

cc: John H. DeMouilly  
Executive Secretary

Stan G. Ulrich  
Staff Counsel

Lane P. Brennan w/enc.  
Vice President & Senior Counsel  
Legal Department  
Wells Fargo Bank  
475 Samsone Street  
San Francisco, California 94103

California Law Revision Commission  
March 8, 1983  
Page 3

John Hancock           w/enc.  
#3017

Tom Montgomery       w/enc.  
#3017

R. Blair Reynolds   w/enc.  
Senior Legislative Counsel  
California Bankers Association  
1127 11th Street  
Suite 706  
Sacramento, California 95814

Alan Ahart, Esq.   w/enc.