

First Supplement to Memorandum 89-35

Subject: Study L-1026 - Enforcement of Judgment Lien in Probate

A recent case, *Coronado Bank v. Prata*, 206 Cal. App. 3d 1035 (Nov. 1988), erroneously permitted creation of a judgment lien by recording an abstract of judgment after the debtor's death. A copy of the opinion is attached as Exhibit 1.

In this case, decedent died in Texas in 1982. Plaintiff bank obtained judgment in the Texas probate proceeding against the administratrix of decedent's estate. Decedent owned real property in California. In 1983, the bank filed a notice of entry of sister state judgment in Los Angeles and recorded an abstract of the resulting California judgment.

In 1984, the Texas administratrix petitioned for ancillary administration in California. In 1986, she petitioned for final distribution of decedent's real property to her, and gave notice of hearing to the bank. The bank failed to file a timely creditors' claim in the California proceeding, but filed an independent civil action to foreclose the judgment lien on the real property. The administratrix demurred to the complaint on the ground that the banks' claim was a "claim for money" under Probate Code Section 730(a) (to become Section 9300 on July 1), and that under the section the bank's exclusive remedy was to file a creditors' claim in the estate proceeding. The probate court agreed with this contention, and entered a judgment of dismissal of the bank's complaint.

The appellate court reversed, relying on Section 716 (to become Section 9391 on July 1). Section 716 authorizes an independent action by the holder of a "lien" against estate property if recourse against other estate property is waived. The court said that, although Section 730 requires a money judgment to be enforced only in the estate proceeding unless property of the decedent is levied on under a writ of execution before the decedent dies, Section 716 provides an independent and alternative remedy.

The court noted that Section 730 provides that, after death of the decedent, money judgments "are not enforceable under the Code of Civil Procedure against the estate of the decedent but are payable in the due course of administration." The court did not mention Section 686.020 of the Code of Civil Procedure which is similar: "After the death of the judgment debtor, enforcement of a judgment against the judgment debtor is governed by the Probate Code."

The court also noted that the Law Revision Commission comment to Section 730 (added in 1980) "supports the view that a money judgment obtained against the administrator of the estate of a decedent can only be enforced in probate proceedings." Nonetheless, the court held that Section 730 did not bar the use of Section 716 to enforce an abstract of judgment filed after decedent's death.

The effect of Probate Code Section 730 and Code of Civil Procedure Section 686.020 is that, after the judgment debtor's death, a judgment creditor can no longer create a lien against estate property by recording an abstract of judgment. This is because the creation and effect of a judgment lien on real property is governed by the Code of Civil Procedure (Sections 697.310 to 697.410). Nothing in the Probate Code provides for creation of a judgment lien against estate property. So the *Coronado Bank* case was incorrectly decided.

Section 686.020 is already being amended by the Commission's creditors' remedies bill (AB 157). The staff recommends further amending the section as set out in Exhibit 2 to rectify the *Coronado Bank* case.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

CORONADO BANK v. PRATA**1035**

206 Cal.App.3d 1035; — Cal.Rptr. — [Nov. 1988]

[No. B032437. Second Dist., Div. One. Nov. 30, 1988.]

**CORONADO BANK, Plaintiff and Appellant, v.
SYLVIA PRATA, Defendant and Respondent.****SUMMARY**

The trial court sustained without leave to amend an estate administrator's demurrer to a bank's complaint, seeking to foreclose on a judgment lien against real property in the decedent's estate after final distribution, on the grounds that the action was barred by Prob. Code, § 730 (money judgment against estate enforceable only in due course of administration), and by the doctrine of res judicata. The trial court also awarded sanctions against plaintiff and its counsel. The bank's judgment lien was predicated on a sister state judgment obtained against the estate's administrator after the death of the debtor, duly entered and recorded in California. The bank did not file a claim against the estate during administration, but unsuccessfully sought a continuance in the underlying probate proceedings to submit written opposition to or intervene in the petition for final distribution. (Superior Court of Los Angeles County, No. C658492, Kurt J. Lewin, Judge.)

The Court of Appeal reversed. It held that the action was not barred under Prob. Code, § 730, since Prob. Code, § 716 (exceptions to claim requirement), expressly provides an equitable alternative remedy for the enforcement of a judgment lien against an estate. Neither was the action barred by the doctrine of res judicata, it held, since the underlying probate proceedings did not result in a determination of the merits of the bank's foreclosure claim. It also held that the imposition of further sanctions was unwarranted, since the bank and its counsel did not engage in misconduct by pursuing inconsistent positions or arguing a position that later turned out to be wrong. (Opinion by Hanson (Thaxton), J., with Spencer, P. J., and Devich, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports, 3d Series

- (1) **Pleading § 21—Demurrer to Complaint—Standard of Review.**—
When appeal is taken from a judgment after a demurrer is sustained

without leave to amend, plaintiff's claim of error must be regarded in the most favorable light possible. For the purpose of appellate review, a general demurrer admits the truth of all material factual allegations in the complaint. Issues of statutory interpretation which may be raised are questions of law subject to the appellate court's independent review.

- (2a-2c) Decedents' Estates § 119—Actions Against Estate—Foreclosure of Judgment Lien Obtained After Decedent's Death.**—In an action by a bank to foreclose on a judgment lien against real property in a debtor's estate after its final distribution, predicated on a sister state judgment obtained against the estate's administrator after the death of the debtor and duly entered and recorded in California, the trial court erred in sustaining without leave to amend the administrator's demurrer to the complaint on the asserted ground that the action was barred by Prob. Code, § 730 (money judgment against estate enforceable only in due course of administration). Although the bank did not file a claim against the estate during administration, Prob. Code, § 716 (exceptions to claim requirement), expressly provides an equitable alternative remedy for the enforcement of a judgment lien against an estate, and is not dependent on participation in the probate proceedings.

[See Cal.Jur.3d, Decedents' Estates, § 1191 et seq.; Am.Jur.2d, Executors and Administrators, § 285.]

- (3a-3d) Judgments § 73—Res Judicata—Judgment on Merits in Probate Proceedings—Effect on Subsequent Action to Foreclose Judgment Lien Against Administrator of Estate.**—In an action by a bank to foreclose on a judgment lien against real property in a debtor's estate after its final distribution, predicated on a sister state judgment obtained against the estate's administrator after the death of the debtor and duly entered and recorded in California, the trial court erred in sustaining without leave to amend the administrator's demurrer to the complaint on the asserted ground that the action was barred by the doctrine of res judicata, based on the bank's unsuccessful appellate efforts to obtain a continuance to submit written opposition to or to intervene in the petition for final distribution. The underlying probate proceedings and appellate review thereof did not result in a determination of the merits of the bank's foreclosure claim.

- (4a-4c) Costs § 11—Sanctions—Maintenance of Frivolous Appeal—Arguing Inconsistent Positions.**—A bank that brought an action against the administrator of an estate to foreclose on a judgment lien against real property in the estate, after unsuccessfully pursuing an alternative

and inconsistent legal argument in the underlying probate proceedings, was not subject to sanctions for allegedly maintaining a frivolous appeal. To pursue one line of argument in particular proceedings and then pursue another inconsistent position at a later time, or to argue a position that later turns out to be wrong, does not in itself subject parties and attorneys to sanctions or professional admonishment. The issues involved in the actions involved reconciliation of two apparently inconsistent Probate Code provisions, and the bank did not act with any motive other than an understandable desire to collect monies due.

- (5) **Judgments § 70—Res Judicata—Judgment as Merger or Bar.**—The doctrine of res judicata gives certain conclusive effect to a former judgment in subsequent litigation involving the same controversy. It seeks to curtail multiple litigation causing vexation and expense to the parties and wasted effort and expense in judicial administration. However, a final judgment is res judicata only if it was rendered on the merits.

COUNSEL

Frاندzel & Share, Stephen H. Marcus and Mitchell F. Singer for Plaintiff and Appellant.

Polston, Schwartz, Hamilton & Fenster and Barry R. Schlom for Defendant and Respondent.

OPINION

HANSON (Thaxton), J.—Plaintiff Coronado Bank, a Texas corporation, filed a complaint to enforce and foreclose on a judgment lien. Named as defendants were Sylvia Prata, an individual, Bancamerica Commercial Corporation, a California corporation, and Does. Defendant Sylvia Prata demurred to the complaint, asserting that it was barred by Probate Code section 730 and by the doctrine of res judicata. Accompanying the demurrer was a motion to expunge a lis pendens on certain real property which was the subject of the complaint, and a motion for sanctions against plaintiff and plaintiff's then counsel.

The trial court sustained the demurrer without leave to amend, "on the grounds set forth in the moving papers." granted the motion to expunge the

lis pendens, and awarded sanctions to defendant Prata's counsel, payable by plaintiff and its then counsel, in the sum of \$3,000. A judgment of dismissal of the complaint was duly entered, and plaintiff Coronado Bank has filed a timely notice of appeal from the judgment of dismissal. As we shall explain, we reverse the judgment of dismissal, and remand to the trial court with directions.

FACTUAL AND PROCEDURAL HISTORY

Concepcion M. Steinberg died in El Paso, Texas on February 18, 1982. On September 21, 1983, plaintiff Coronado Bank secured a judgment in the probate court in Texas for \$325,904.34 against certain named individuals, including defendant Sylvia Prata (the decedent's daughter), as the administrators of the estates of Ruben Steinberg and Concepcion Steinberg, and against a Texas corporation, House of Foam and Fabrics.

On November 8, 1983, plaintiff Coronado Bank filed a notice of entry of a sister state judgment in Los Angeles, rendering the Texas judgment a California judgment for the purpose of enforcement. On December 30, 1983, plaintiff Coronado Bank recorded an abstract of judgment in the official records of the recorder's office, in Los Angeles.

At the time the Texas judgment was entered and recorded in this state, decedent Concepcion Steinberg was the record owner of California real property located at 2905 Markridge Road, La Crescenta, California. On November 8, 1984, Sylvia Prata petitioned the Los Angeles County Probate Court for letters of administration; Prata was appointed administrator of the estate of Concepcion Steinberg; the La Crescenta property was the only asset involved in this ancillary probate proceeding, then valued at \$125,000.

On January 8, 1986, Prata filed the report of the administrator, a waiver of accounting, petition for approval of assignment, petition for allowance of statutory attorney fees and petition for final distribution of the La Crescenta property to her. The hearing on the petition for final distribution was set for February 7, 1986. Notice of hearing was sent to Coronado Bank through Texas counsel on January 13, 1986.

Coronado Bank had never filed any written documents in the probate proceedings notifying the probate court of its California judgment and claim against the California property in the estate. It had filed no written opposition to the petition for final distribution to Prata, but did appear at the hearing on the petition for final distribution through California counsel.

The probate court denied as untimely the bank's request for a continuance to submit appropriate written papers, to intervene or interpose objections to the petition for final distribution, expressing the view that the

recorded abstract of judgment would protect the bank's claim of prior right to the property, despite its distribution to Prata. The trial court had discussed this situation on the record with the estate's attorney, who expressed his view that the property subject to distribution would be distributed to Prata subject to the bank's lien.

Coronado Bank appealed the trial court's refusal to allow the bank a continuance to prepare written opposition to this court. One of the arguments made on behalf of the bank in this court was that the probate court's refusal to allow the bank to participate in the probate proceedings and oppose distribution to Prata was highly prejudicial to the bank because, pursuant to Probate Code section 730, such participation was the *only* method the bank had for enforcing its judgment and collecting the money due. On April 30, 1987, this court dismissed the appeal without reaching the merits on the ground that the bank had never become a party of record in the probate proceedings and thus had no standing to prosecute an appeal from orders made in those proceedings. The bank sought reconsideration by this court, but reconsideration was denied. The bank then filed a petition for review with the California Supreme Court, but review was denied on May 29, 1987. On both of these latter occasions, the bank continued to argue that participation in the probate proceedings was its only remedy.

Meanwhile, Prata was attempting to refinance the property and the bank's California counsel was advised, after the California Supreme Court had denied hearing, that these efforts were being hampered by the cloud on title created by the abstract of judgment and a *lis pendens* the bank had filed against the California property. After the remittitur issued from this court, the bank responded by filing the complaint to enforce the lien which is before us at present. After the sanction order was made below (and satisfied), plaintiff bank acquired new California counsel who now represent the bank on this appeal. The notice of appeal specifies that appeal is taken from the judgment of dismissal, not from those orders made expunging the *lis pendens* and awarding the sanctions. Consequently, the only issue before us concerns the legal sufficiency of the complaint itself.

STANDARD OF REVIEW

(1) The standard of review applicable when appeal is taken from a judgment after a demurrer sustained without leave to amend is well established. Since plaintiff has been precluded before trial from proceeding against the dismissed defendant, plaintiff's claim of error must be regarded in the most favorable light possible. For the purpose of review in this court, a general demurrer admits the truth of all material factual allegations in the complaint. (*Hoyem v. Manhattan Beach Sch. Dist.* (1978) 22 Cal.3d 508, 517 [150 Cal.Rptr. 1, 585 P.2d 851].) In this matter, there is no dispute

between the parties as to the facts, but issues of statutory interpretation are raised, which are questions of law subject to our independent review.

DISCUSSION

I.

(2a) Plaintiff's present complaint sought enforcement of a lien against the La Crescenta property pursuant to Probate Code section 716, a statute which has existed in this state under one designation or another, for over 100 years. As enacted by Statutes 1931, chapter 281, section 716, page 632, it provided as follows:

"No holder of a claim against an estate shall maintain an action thereon, unless the claim is first filed with the clerk or presented to the executor or administrator, *except in the following case*: An action may be brought by the holder of a mortgage or lien to enforce the same against the property of the estate subject thereto, where all recourse against any other property of the estate is expressly waived in the complaint; but no counsel fees shall be recovered in such action unless the claim was filed or presented as aforesaid." (Italics added.)

In 1937, the California Supreme Court issued its opinion in *Corporation of America v. Marks* (1937) 10 Cal.2d 218 [73 P.2d 1215, 114 A.L.R. 1162], where a judgment creditor had filed abstracts of judgment in a county in which the debtor owned real property, thereby creating judgment liens; the debtor then died. The creditor did not file a claim in the debtor's estate because the creditor had no knowledge of the debtor's death; after the estate's assets had been distributed and the estate was closed, the creditor brought an action pursuant to Probate Code section 716, to foreclose its judgment liens within five years of their entry. The defendants were devisees of the decedent debtor's real property. The court held that the plaintiff creditor had the right as provided by section 716 to pursue this alternative remedy to obtain payment, even though it had not filed its claim during the administration of the decedent debtor's estate. The court held also that the language of section 716, a remedial statute, was to be liberally interpreted, and that the word "lien" in the statute was subject to broad definition. The *Marks* decision has never been overruled, although infrequently cited. It is noted, in 7 Witkin, Summary of California Law (8th ed. 1973) Wills and Probate, section 418, pages 5869-5870, that in bringing the action to foreclose, the lien holder must expressly waive recourse against other property of the estate, i.e., "he cannot get judgment for deficiency, costs or counsel fees. [Citations.]"

As amended by Statutes 1980, chapter 124, section 6, page 294, section 716 was substantially unchanged except that it further provided that "The

action may be brought whether or not the claim was filed or presented . . . [in the estate of the decedent debtor]." The statute also now included the provision that "As used in this section, 'lien' includes, but is not limited to, a judgment that is a lien"—which appears to reflect legislative recognition of *Marks*' holding that "lien" should be broadly interpreted. This section was repealed in 1988, but the parties to this appeal concede that the 1980 version was applicable during the period in which the events occurred giving rise to this litigation.

Effective July 1, 1988, the new section 716 contains substantially the same language as the 1980 version: subdivision (a) was deleted, and subdivisions (b) and (c) were retained and relettered.

II.

Defendant Prata argues that the bank's action pursuant to section 716 is barred by another Probate Code section, section 730, also applicable during the appropriate time period and which provided, in pertinent part, that "(a) Except as provided in subdivision (c), *after the death of the decedent*, the following judgments are not enforceable under the Code of Civil Procedure against the estate of any decedent but are payable in the due course of administration. . . . (3) A judgment rendered against the executor or administrator upon a claim for money against the estate of the decedent. . . ."

Subdivisions (c) and (d) provide as follows: "(c) If any property of the decedent is levied upon under a writ of execution before the decedent dies, the property levied upon may be sold or collected to satisfy the judgment. The officer making the sale or collection shall account to the executor or administrator for any surplus. If the judgment is not so satisfied, the balance of the judgment remaining unsatisfied is payable in the due course of administration.

"(d) *Notwithstanding the death of the decedent*, a judgment for the possession of property or a judgment that requires a sale of property may be enforced under the Code of Civil Procedure. Nothing in this subdivision authorizes enforcement under the Code of Civil Procedure against any property of the estate of the decedent other than the property described in the judgment for possession or sale. After the death of the decedent, any demand for money against the estate that is not satisfied from the property described in the judgment for possession or sale shall be filed and presented in the same manner as other claims and is payable in the due course of administration." (Italics added.)

This statute was added by Statutes 1980, chapter 124, section 8; it too was repealed, operative July 1, 1988 by Statutes 1987, chapter 923, section

37. However, pursuant to Probate Code section 9004, it has application to proceedings commenced before that date. And provisions for enforcement of judgment and/or attachment liens against the assets of an estate are now contained in Probate Code section 9300 et seq.; Probate Code section 9302 now has adopted the language of section 730, subdivision (d) by providing, in pertinent part, that "(a) Notwithstanding the death of the decedent, a judgment for possession of property or a judgment for sale of property may be enforced under the Enforcement of Judgments Law. Nothing in this subdivision authorizes enforcement under the Enforcement of Judgments Law against any property in the estate of the decedent other than the property described in the judgment for possession or sale." The statute also provides for satisfaction of a deficiency from the other assets of the estate—during administration.

Defendant Prata quotes extensively from the arguments made by plaintiff bank in seeking reconsideration by the Court of Appeal and review by the California Supreme Court that since the judgment upon which the abstract of judgment was based was entered on September 21, 1983, *after the death of the decedent*, it was not, pursuant to Probate Code section 730, enforceable except through the probate proceedings. There is language in *Estate of Davis* (1985) 171 Cal.App.3d 854, 857 [217 Cal.Rptr. 734], which supports this interpretation; there it was explained that "Probate Code section 730 provides that a money judgment rendered against the estate of the intestate is a claim to be paid in the due course of administration; it does not create any lien on real property, cannot be enforced by execution and does not give the judgment creditor any priority of payment. A judgment against an estate is *only* payable in the due course of administration *out of the assets of the estate*." (Citations omitted; italics in original.) The Law Revision Commission's chapter concerning the 1980 revision of Probate Code section 730 supports the view that a money judgment obtained against the administrator of the estate of a decedent can only be enforced in probate proceedings, and defendant Prata so argues here, contending that the proceedings by which the superior court made the Texas judgment a California judgment and the subsequent recordation of that judgment were "nullities."

(3a) Defendant Prata contends that since the probate proceedings are final, the doctrine of res judicata prevented plaintiff bank from proceeding on the new complaint.

Defendant Prata asserts that even if plaintiff bank could file a complaint pursuant to section 716, the complaint itself was deficient because it did not expressly waive entitlement to payment from other assets of the estate.

(4a) Contending that plaintiff bank should not be allowed to pursue one line of legal reasoning (i.e., that Prob. Code, § 730 barred it from pursuing

any alternative remedy outside the probate proceeding) and then contend, as it does on this appeal, that section 716 does indeed provide it with an alternative remedy, defendant Prata asks this court to impose sanctions in addition to what was imposed below on plaintiff bank and its counsel for bringing a "frivolous appeal."

III.

(2b) Plaintiff bank relies here on the full discussion in the *Marks* case, which rejected an argument based on the predecessor statute to Probate Code section 730 that the alternative remedy was barred; the *Marks* court declared that Probate Code section 716 provided such a remedy. Plaintiff points out that Probate Code section 716 has co-existed with Probate Code section 730 since *Marks*, and when major revision of the Probate Code was undertaken and effective in 1988, Probate Code section 716 was retained by the Legislature.

In *Marks, supra*, of course, the judgment creditor had obtained judgment and recorded *before* the death of the debtor; however, plaintiff argues that there is no language in section 716 which bars section 716 proceedings because the death of the debtor occurred *before* the judgments were obtained and recorded, and there is no case authority to that effect either.

In addition, plaintiff bank emphasizes that the Steinberg estate was administered primarily in Texas, and that the judgment of the Texas court became a California judgment and was recorded in this state *before* defendant Prata even commenced ancillary probate proceedings here. It is contended that the California courts should give "full faith and credit" to judgments of sister states, pursuant to the United States Constitution, article IV, section 1.

(3b) Plaintiff bank contends that the doctrine of res judicata is manifestly inapplicable to bar its complaint where the "prior proceeding" did not address the merits of the case before it but dismissed the appeal.

(4b) Finally, plaintiff bank denies that this appeal is a "frivolous" appeal by any standard, and suggests that sanctions are inappropriate where previous counsel advanced a line of legal reasoning which merely proved to be wrong rather than indicative of bad faith or malice on the part of plaintiff bank. It is contended that plaintiff bank has merely attempted to collect money due.

IV.

(2c) We have concluded that Probate Code section 716 does provide an equitable alternative remedy to a mortgage or lien holder in this state, one

not dependent on participation in probate proceedings. As we have indicated, *Marks* has not been overruled, and the Legislature has seen fit to retain the statute as of 1988. The proceeding contemplated in section 716 is based upon equity, and seems to us to encompass the right of a foreign judgment creditor who perfected a lien in this state prior to the ancillary probate proceeding to proceed against the property of the estate located in California. The relief afforded by the statute is not dependent upon the time of death of the debtor.

We hold that plaintiff bank's complaint was not barred by Probate Code section 730, but was simply based on another statute which provided an alternative remedy. We note that section 730, subdivision (d) states that an exception to the section 730 provision concerning the exclusivity of the probate proceedings for enforcement of money judgments lies where the judgment creditor obtains "a judgment that requires the sale of the property." This would seem to us to include a proceeding to foreclose pursuant to section 716, which permits a cause of action which results in just such a judgment. Viewed in this way, there is nothing inconsistent about the two statutes. The trial court, therefore, incorrectly sustained the demurrer without leave to amend. Upon remand, plaintiff bank should be allowed to amend its complaint to expressly waive recourse to other assets of the estate, if any remain.

(3c) The trial court was also incorrect in sustaining the demurrer on the grounds that the complaint was barred by the doctrine of *res judicata*. (5) In 7 Witkin, California Procedure (3d ed. 1985) Judgment, section 188, page 621, it is explained that "The doctrine of *res judicata* gives certain *conclusive effect* to a *former judgment* in subsequent litigation involving the same controversy. It seeks to curtail multiple litigation causing vexation and expense to the *parties* and wasted effort and expense in *judicial administration*." (Italics in original.) "A final judgment is *res judicata only if it was rendered on the merits*. This requirement is derived from the fundamental policy of the doctrine, which gives stability to judgments after the parties have had a fair opportunity to litigate their claims and defenses." (7 Witkin, Cal. Procedure, *supra*, Judgment, § 217, p. 654; italics added.) (3d) Since the probate proceedings, and the appellate review sought thereafter by plaintiff bank, did not result in a determination on the merits of plaintiff bank's claim, the subsequent complaint to foreclose was not barred by the doctrine of *res judicata*.

(4c) We are asked to impose *additional* sanctions on plaintiff bank and its counsel for bringing a "frivolous" appeal. As our discussion indicates, the appeal is far from "frivolous," and thus we do not seriously consider that request.

We are aware that the action of the trial court in imposing sanctions on plaintiff bank and its former counsel is not before this court, but appellate counsel for defendant Prata continues to insist in very vehement terms that plaintiff bank has engaged in some sort of wrongdoing during this litigation, and that it is dishonest and professionally reprehensible for parties, through their lawyers, to pursue one line of argument in particular proceedings and then pursue another inconsistent position at a later time.

To argue a position that turns out to be wrong is in itself neither a crime nor should it subject parties and lawyers to sanctions or to professional admonishment. Obviously, if the element of factual misrepresentation is present, a different situation is involved. Here, however, no one lied to the probate judge or to the trial court; the arguments made to the Court of Appeal and to the Supreme Court simply turned out, upon scrutiny, to be incorrect. Legitimate striving to protect oneself from a charge of malpractice does not necessarily suggest bad faith either.

The issues presented by the circumstances of this case involved reconciling two provisions of the Probate Code that appeared to be inconsistent with each other. Law is not a precise science; circumstances sometimes produce complexity and confusion. We are not persuaded that plaintiff bank has acted in this litigation with any motive other than an understandable desire to collect monies due.

DISPOSITION

The judgment of dismissal is reversed. The matter is remanded to the trial court, where plaintiff bank, if it elects to proceed, is to be permitted to amend its complaint. Plaintiff bank is to recover its costs in this court.

Spencer, P. J., and Devich, J., concurred.

Exhibit 2

Code of Civil Procedure § 686.020 (amended). Enforcement of judgment after death of judgment debtor

SECTION 1. Section 686.020 of the Code of Civil Procedure is amended to read:

686.020. After the death of the judgment debtor, enforcement of a judgment against property in the judgment debtor's estate is governed by the Probate Code , and not by this title.

Comment. Section 686.020 is amended for conformity with the scope of the Probate Code provisions relating to enforcement of judgments. See Prob. Code §§ 9300-9304, 9391. As a consequence, property transferred subject to an enforcement lien before the death of the judgment debtor may be applied to the satisfaction of a money judgment as if the judgment debtor had not died. See Section 695.070 (enforcement of lien after transfer).

Under Section 686.020 and Probate Code Section 9300, after death of a judgment debtor, enforcement of judgment is under the Probate Code, not under the Code of Civil Procedure. Therefore, the filing of an abstract of judgment after death of the judgment debtor does not create a lien on estate property. The language "and not by this title" is added to make this clear. *Coronado Bank v. Prata*, 206 Cal. App. 3d 1035 (Nov. 1988), was incorrectly decided, and is overruled by this amendment.