

## Memorandum 2001-40

**SB 562 (Morrow): Civil Procedure Technical Corrections**

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Senate Bill 562 (Morrow) would implement the Commission's recommendations on *Civil Procedure: Technical Corrections and Authority to Appoint Receivers*. The bill was passed by the Senate on the consent calendar and is pending in the Assembly Judiciary Committee. A few points warrant discussion.

## STAY OF MECHANIC'S LIEN ENFORCEMENT PENDING ARBITRATION

As introduced, SB 562 included the Commission's recommendation on *Stay of Mechanic's Lien Enforcement Pending Arbitration*, as well as the other two proposals. On the suggestion of the Chief Counsel to the Senate Judiciary Committee, the bill was amended to delete the proposal on *Stay of Mechanic's Lien Enforcement Pending Arbitration* before the bill was heard in the Senate Judiciary Committee. The Chief Counsel regards this proposal as more substantive than the other two proposals. He urged the staff to reintroduce it next year as part of a substantive bill, such as a Commission proposal on mechanic's liens. He also raised questions regarding the impact of an appellate decision that was issued after the Commission finalized its recommendation. We plan to analyze this matter for the Commission before the proposal is reintroduced.

## COMMENT TO CODE OF CIVIL PROCEDURE SECTION 86

The recommendation on *Civil Procedure: Technical Revisions* proposes to amend Code of Civil Procedure Section 86(a)(6) to reflect elimination of the municipal courts and clarify the jurisdictional classification of a petition to release a mechanic's lien. The recommendation on *Authority to Appoint Receivers* proposes to amend subdivision (a)(8) of the same provision to delete the language on circumstances for appointment of a receiver and insert a cross-reference. These proposals have been combined into a single amendment in SB 562:

SECTION 1. Section 86 of the Code of Civil Procedure is amended to read:

86. (a) The following civil cases and proceedings are limited civil cases:

(1) Cases at law in which the demand, exclusive of interest, or the value of the property in controversy amounts to twenty-five thousand dollars (\$25,000) or less. This paragraph does not apply to cases that involve the legality of any tax, impost, assessment, toll, or municipal fine, except actions to enforce payment of delinquent unsecured personal property taxes if the legality of the tax is not contested by the defendant.

(2) Actions for dissolution of partnership where the total assets of the partnership do not exceed twenty-five thousand dollars (\$25,000); actions of interpleader where the amount of money or the value of the property involved does not exceed twenty-five thousand dollars (\$25,000).

(3) Actions to cancel or rescind a contract when the relief is sought in connection with an action to recover money not exceeding twenty-five thousand dollars (\$25,000) or property of a value not exceeding twenty-five thousand dollars (\$25,000), paid or delivered under, or in consideration of, the contract; actions to revise a contract where the relief is sought in an action upon the contract if the action otherwise is a limited civil case.

(4) Proceedings in forcible entry or forcible or unlawful detainer where the whole amount of damages claimed is twenty-five thousand dollars (\$25,000) or less.

(5) Actions to enforce and foreclose liens on personal property where the amount of the liens is twenty-five thousand dollars (\$25,000) or less.

(6) Actions to enforce and foreclose, or petitions to release, liens of mechanics, materialmen, artisans, laborers, and of all other persons to whom liens are given under the provisions of Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3 of the Civil Code, or to enforce and foreclose an assessment lien on a common interest development as defined in Section 1351 of the Civil Code, where the amount of the liens is twenty-five thousand dollars (\$25,000) or less. However, where an action to enforce the lien affects property that is also affected by a similar pending action that is not a limited civil case, or where the total amount of the liens sought to be foreclosed against the same property aggregates an amount in excess of twenty-five thousand dollars (\$25,000), the action is not a limited civil case, and if the action is pending in a municipal court, upon motion of any interested party, the municipal court shall order the action or actions pending therein transferred to the proper superior court. Upon making the order,

~~the same proceedings shall be taken as are provided by Section 399 with respect to the change of place of trial.~~

(7) Actions for declaratory relief when brought pursuant to either of the following:

(A) By way of cross-complaint as to a right of indemnity with respect to the relief demanded in the complaint or a cross-complaint in an action or proceeding that is otherwise a limited civil case.

(B) To conduct a trial after a nonbinding fee arbitration between an attorney and client, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code, where the amount in controversy is twenty-five thousand dollars (\$25,000) or less.

(8) ~~Actions to issue temporary restraining orders and preliminary injunctions, and to take accounts, and to appoint receivers where necessary to preserve the property or rights of any party to a limited civil case; to appoint a receiver and to make any order or perform any act, pursuant to Title 9 (commencing with Section 680.010) of Part 2 (enforcement of judgments) in a limited civil case; to appoint a receiver pursuant to Section 564 in a limited civil case; to determine title to personal property seized in a limited civil case.~~

(9) Actions under Article 3 (commencing with Section 708.210) of Chapter 6 of Division 2 of Title 9 of Part 2 for the recovery of an interest in personal property or to enforce the liability of the debtor of a judgment debtor where the interest claimed adversely is of a value not exceeding twenty-five thousand dollars (\$25,000) or the debt denied does not exceed twenty-five thousand dollars (\$25,000).

(10) Arbitration-related petitions filed pursuant to either of the following:

(A) Article 2 (commencing with Section 1292) of Chapter 5 of Title 9 of Part 3, except for uninsured motorist arbitration proceedings in accordance with Section 11580.2 of the Insurance Code, if the petition is filed before the arbitration award becomes final and the matter to be resolved by arbitration is a limited civil case under paragraphs (1) to (9), inclusive, of subdivision (a) or if the petition is filed after the arbitration award becomes final and the amount of the award and all other rulings, pronouncements, and decisions made in the award are within paragraphs (1) to (9), inclusive, of subdivision (a).

(B) To confirm, correct, or vacate a fee arbitration award between an attorney and client that is binding or has become binding, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code, where the arbitration award is twenty-five thousand dollars (\$25,000) or less.

- (b) The following cases in equity are limited civil cases:
- (1) Cases to try title to personal property when the amount involved is not more than twenty-five thousand dollars (\$25,000).
  - (2) Cases when equity is pleaded as a defensive matter in any case that is otherwise a limited civil case.
  - (3) Cases to vacate a judgment or order of the court obtained in a limited civil case through extrinsic fraud, mistake, inadvertence, or excusable neglect.

**The staff suggests the following Comment for the Commission's approval, which simply combines the Comments from the two different proposals:**

**Comment.** Subdivision (a)(6) of Section 86 is amended to clarify the jurisdictional classification of a petition to release a mechanic's lien. This is declaratory of existing law. See Code Civ. Proc. § 85 (limited civil cases) & Comment. See also Code Civ. Proc. § 88 (unlimited civil case).

Subdivision (a)(6) is also amended to reflect elimination of the municipal courts as a result of unification with the superior courts pursuant to Article VI, Section 5(e), of the California Constitution. For reclassification of an action in a unified superior court, see Sections 403.010-403.090.

Subdivision (a)(8) is amended to delete the language on circumstances for appointment of a receiver in a limited civil case, and insert a cross-reference to Section 564, which now governs appointment of receivers in both limited and unlimited civil cases. The language deleted from the first clause of subdivision (a)(8) is continued in Section 564(b)(8), but broadened to apply to all cases. This is not a significant change. See Section 564 Comment. The language deleted from the second clause of subdivision (a)(8) is not continued, because it is redundant with Section 564(b)(3) and (b)(4).

Respectfully submitted,

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