

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

Enforcement of Sister State
Money Judgments

November 1973

CALIFORNIA LAW REVISION COMMISSION

School of Law
Stanford University
Stanford, California 94305

THE CALIFORNIA LAW REVISION COMMISSION

COMMISSION MEMBERS

JOHN D. MILLER
Chairman

MARC SANDSTROM
Vice Chairman

ROBERT S. STEVENS
Member of the Senate

ALISTER McALISTER
Member of the Assembly

JOHN J. BALLUFF
Member

NOBLE K. GREGORY
Member

JOHN N. McLAURIN
Member

THOMAS E. STANTON, JR.
Member

HOWARD R. WILLIAMS
Member

GEORGE H. MURPHY
Ex Officio

COMMISSION STAFF

Legal

JOHN H. DEMOULLY
Executive Secretary

JACK I. HORTON
Assistant Executive Secretary

NATHANIEL STERLING
Staff Counsel

STAN G. ULRICH
Legal Counsel

Administrative-Secretarial

ANNE JOHNSTON
Administrative Assistant

VIOLET S. HAJU
Secretary

KRISTINE A. POWERS
Secretary

NOTE

This pamphlet begins on page 451. The Commission's annual reports and its recommendations and studies are published in separate pamphlets which are later bound in permanent volumes. The page numbers in each pamphlet are the same as in the volume in which the pamphlet is bound. The purpose of this numbering system is to facilitate consecutive pagination of the bound volumes. This pamphlet will appear in Volume 11 of the Commission's *Reports, Recommendations, and Studies*.

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

Enforcement of Sister State
Money Judgments

November 1973

CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford University
Stanford, California 94305

CALIFORNIA LAW REVISION COMMISSION

SCHOOL OF LAW—STANFORD UNIVERSITY
STANFORD, CALIFORNIA 94305
(415) 321-2300, EXT. 2479

JOHN D. MILLER
Chairman

MARC SANDSTROM
Vice Chairman

SENATOR ROBERT S. STEVENS
ASSEMBLYMAN ALISTER McALISTER

JOHN J. BALLUFF

NOBLE K. GREGORY

JOHN N. McLAURIN

THOMAS E. STANTON, JR.

HOWARD R. WILLIAMS

GEORGE H. MURPHY
Ex Officio

November 1, 1973

To: THE HONORABLE RONALD REAGAN
Governor of California and
THE LEGISLATURE OF CALIFORNIA

The California Law Revision Commission was directed by Resolution Chapter 27 of the Statutes of 1972 to study the law relating to attachment, garnishment, execution, repossession of property, civil arrest, confession of judgment procedures, default judgment procedures, and related matters.

The Commission herewith submits its recommendation relating to one aspect of the 1972 resolution—enforcement of sister state money judgments.

Respectfully submitted,
JOHN D. MILLER
Chairman

CONTENTS

	<i>Page</i>
Background	457
Recommendations	458
Proposed Legislation	459
Code of Civil Procedure	
§ 674 (conforming amendment)	459
Technical amendment (heading for Title 11)	461
Chapter 1. Sister State Money Judgments	461
§ 1710.10. Definitions	461
§ 1710.15. Application for entry of judgment	462
§ 1710.20. Venue	464
§ 1710.25. Entry of judgment	464
§ 1710.30. Notice of entry of judgment	465
§ 1710.35. Effect of judgment; enforcement	465
§ 1710.40. Vacation of judgment	466
§ 1710.45. Issuance of writ of execution	467
§ 1710.50. Stay of enforcement	468
§ 1710.55. Limitations on entry of judgment	470
§ 1710.60. Optional procedure	470
§ 1710.65. Actions based on part of judgment of sister state not requiring payment of money	471
§ 1713.1 (technical amendment)	471
§ 1713.3 (technical amendment)	472
§ 1915 (repealed)	472

BACKGROUND

The exclusive way to enforce a sister state money judgment in California is to bring an action on the judgment; when a California judgment is obtained, then execution may issue.¹ This traditional manner of enforcing judgments of sister states requires all the normal trappings of an original action. The judgment creditor must file a complaint. There must be personal or quasi in rem jurisdiction. The creditor may obtain a writ of attachment, if available, to preserve assets until such time as a writ of execution may be issued. A trial (however summary) must be held, at which time the judgment debtor may raise any defenses to the validity of the sister state judgment.² Only after the entry of the California judgment may the judgment creditor seek execution on the debtor's assets in this state.

The formal, traditional process for enforcing sister state judgments has been criticized as time consuming and inefficient.³ A simpler and more efficient procedure is offered by a registration procedure. For example, under the revised Uniform Enforcement of Foreign Judgments Act of 1964,⁴ a sister state judgment may be filed with the court in the state where enforcement is sought and is then treated as a judgment of that court. The Uniform Act procedure is used in the major commercial states of New York and Pennsylvania and also in Arizona, Colorado, Kansas, North Dakota, Oklahoma,

¹ See 5 B. WITKIN, *CALIFORNIA PROCEDURE Enforcement of Judgment* § 193 at 3548 (2d ed. 1971); *RESTATEMENT (SECOND) OF CONFLICT OF LAWS* § 99, Comment b; § 100, Comment b (1971); *cf.* *CODE CIV. PROC.* § 1913.

² Defenses to enforcement include the following: the judgment is not final and unconditional; the judgment was obtained by extrinsic fraud; the judgment was rendered in excess of jurisdiction; the judgment is not enforceable in the state of rendition; the plaintiff is guilty of misconduct; the judgment has already been paid; suit on the judgment is barred by the statute of limitations in the state where enforcement is sought. See 5 B. WITKIN, *CALIFORNIA PROCEDURE Enforcement of Judgment* §§ 194-195 at 3549-3550 (2d ed. 1971); *RESTATEMENT (SECOND) OF CONFLICT OF LAWS* §§ 103-121 (1971).

³ See, e.g., Kulzer, *The Uniform Enforcement of Foreign Judgments Act and The Uniform Enforcement of Foreign Judgments Act (Revised 1964 Act)*, STATE OF NEW YORK JUDICIAL CONFERENCE, 13TH ANNUAL REPORT 248 (1968); *Report of the Standing Committee on Jurisprudence and Law Reform*, 52 A.B.A. REPORTS 292 (1927); Jackson, *Full Faith and Credit—The Lawyer's Clause of the Constitution*, 45 COLUM. L. REV. 1 (1945); Paulsen, *Enforcing the Money Judgment of a Sister State*, 42 IOWA L. REV. 202 (1957).

⁴ 9A UNIFORM LAWS ANN. 488 (1965). A similar registration procedure is provided by Sections 35-40 of the Revised Uniform Reciprocal Enforcement of Support Act of 1968. See NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, *HANDBOOK* 235-237 (1968).

Wisconsin, and Wyoming.⁵ A similar procedure is provided in legislation enacted by Congress in 1948 for the enforcement of the judgment of one federal district court in another district.⁶

RECOMMENDATIONS

The Law Revision Commission recommends that California provide an optional procedure for the enforcement of sister state money judgments⁷ similar to that provided by the Uniform Act. The following are the significant features of the legislation recommended by the Commission:

(1) The judgment creditor files an application in a California superior court⁸ for the entry of a California judgment based on the sister state judgment. The application is accompanied by an authenticated copy of the sister state judgment. The clerk enters a judgment in the amount shown in the application to be remaining unpaid on the sister state judgment.

(2) The judgment creditor is required to promptly serve on the judgment debtor a notice of entry of the judgment in the manner provided for service of summons. The judgment debtor, upon noticed motion made not later than 30 days after service by the creditor of the notice of entry of the judgment, may have the judgment vacated on any ground that would be a defense to an action in California to enforce the sister state judgment.

(3) As a general rule, the judgment creditor may not obtain

⁵ In addition, an earlier act—the Uniform Enforcement of Foreign Judgments Act of 1948—which provides a summary judgment procedure, has been adopted in Arkansas, Illinois, Missouri, Nebraska, Oregon, and Washington. 9A UNIFORM LAWS ANN. 475 (1965); NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, HANDBOOK 309 (1970).

⁶ 28 U.S.C. § 1963 (1970). Registration systems have long been used successfully in other countries with federated states, e.g., Australia. See Yntema, *The Enforcement of Foreign Judgments in Anglo-American Law*, 33 MICH. L. REV. 1129 (1935); Leflar, *The New Uniform Foreign Judgments Act*, 24 N.Y.U. L.Q. REV. 336, 343-345 (1949); Morison, *Extra-Territorial Enforcement of Judgments Within the Commonwealth of Australia*, 21 AUST. L.J. 298 (1947).

⁷ Support orders of sister state courts would not be enforceable by the proposed procedure since a separate enforcement procedure for such orders is provided by the Revised Uniform Reciprocal Enforcement of Support Act, Title 10a (commencing with Section 1650) of Part 3 of the Code of Civil Procedure.

⁸ Although generally claims of not more than \$1,000 are heard in justice court (CODE CIV. PROC. § 112) and claims of not more than \$5,000 are heard in municipal court (CODE CIV. PROC. § 89), all proceedings under the recommended procedure would take place in superior court regardless of amount. The consolidation of all such proceedings in the superior court should promote efficient and uniform operation and use of the procedure should not be so frequent as to be burdensome on the court.

a writ of execution until 30 days after he serves the judgment debtor with notice of entry of judgment. However, the judgment creditor may obtain a writ of execution and have it levied prior to notice of entry of judgment where "great or irreparable injury" would otherwise result or where the judgment debtor is a nonresident,⁹ but in such cases, assets levied upon may not be sold (except where the property is perishable) or distributed to the creditor until at least 30 days after the creditor serves notice of entry of the judgment on the judgment debtor.

The recommended procedure constitutes a complete and orderly scheme for the enforcement of sister state money judgments. It offers savings in time and money to both courts and creditors. At the same time, the procedure is fair to the judgment debtor because (1) it does not make enforceable any sister state judgment that is not now enforceable in California by an action on the judgment and (2) it permits the judgment debtor to assert any defense that he could now assert if an action were brought on the judgment in California.

PROPOSED LEGISLATION

The Commission's recommendation would be effectuated by the enactment of the following measure:

An act to amend Sections 674, 1713.1, and 1713.3 of, to amend the heading of Title 11 (commencing with Section 1710.10) of Part 3 of, to add Chapter 1 (commencing with Section 1710.10) to Title 11 of Part 3 of, and to repeal Section 1915 of, the Code of Civil Procedure, relating to enforcement of judgments.

The people of the State of California do enact as follows:

CODE OF CIVIL PROCEDURE

§ 674 (conforming amendment)

SECTION 1. Section 674 of the Code of Civil Procedure is amended to read:

674. (a) An abstract of the judgment or decree of any court of this state, including a *judgment entered pursuant*

⁹ For the purposes of this exception, a nonresident is a nonresident individual, a foreign corporation which has not qualified to do business in California, or a foreign partnership which has not designated an agent for service of process in California.

to Chapter 1 (commencing with Section 1710.10) of Title 11 of Part 3, or a judgment of any court sitting as a small claims court, or any court of record of the United States, the enforcement of which has not been stayed on appeal or pursuant to Section 1710.50, certified by the clerk, judge or justice of the court where such judgment or decree was rendered, may be recorded with the recorder of any county and from such recording the judgment or decree becomes a lien upon all the real property of the judgment debtor, not exempt from execution, in such county, owned by him at the time, or which he may afterward and before the lien expires, acquire. Such lien continues for 10 years from the date of the entry of the judgment or decree unless the enforcement of the judgment or decree is stayed on appeal or pursuant to Section 1710.50 by the execution of a sufficient undertaking or the deposit in court of the requisite amount of money as provided in this code, or by the statutes of the United States, in which case the lien of the judgment or decree, and any lien or liability now existing or hereafter created by virtue of an attachment that has been issued and levied in the action, unless otherwise by statutes of the United States provided, ceases, or upon an undertaking on release of attachment, or unless the judgment or decree is previously satisfied, or the lien otherwise discharged. The abstract above mentioned shall contain the following: title of the court and cause and number of the action; date of entry of the judgment or decree; names of the judgment debtor and of the judgment creditor; amount of the judgment or decree, and where entered in judgment book, minutes or docket in the justice court.

(b) An order made pursuant to subdivision (b) of Section 908 of the Welfare and Institutions Code shall be considered a judgment for the purposes of subdivision (a) of this section.

Comment. Section 674 is amended to make clear that the section applies to judgments entered pursuant to Title 11 (commencing with Section 1710.10) of Part 3 of this code.

Technical amendment (heading for Title 11)

SEC. 2. The heading of Title 11 (commencing with Section 1710.10) of Part 3 of the Code of Civil Procedure is amended to read:

TITLE 11. ~~OF PROCEEDINGS IN PROBATE COURTS~~ *SISTER STATE AND FOREIGN MONEY JUDGMENTS*

Chapter 1. Sister State Money Judgments

SEC. 3. Chapter 1 (commencing with Section 1710.10) is added to Title 11 of Part 3 of the Code of Civil Procedure, to read:

CHAPTER 1. SISTER STATE MONEY JUDGMENTS

§ 1710.10. Definitions

1710.10. As used in this chapter:

(a) "Judgment creditor" means the person or persons who can bring an action to enforce a sister state judgment.

(b) "Judgment debtor" means the person or persons against whom an action to enforce a sister state judgment can be brought.

(c) "Sister state judgment" means that part of any judgment, decree, or order of a court of a state of the United States, other than California, which requires the payment of money but does not include a support order as defined in subdivision (k) of Section 1653.

Comment. Subdivisions (a) and (b) of Section 1710.10 incorporate the general law determining the persons who may enforce a judgment and against whom a judgment may be enforced. See, *e.g.*, Title 3 (commencing with Section 367) of Part 2 and Sections 578 and 579 of this code.

Subdivision (c) is based on Section 1 of the revised Uniform Enforcement of Foreign Judgments Act of 1964. 9A UNIFORM LAWS ANN. 488 (1965). However, unlike the Uniform Act which applies to all state and federal judgments entitled to full faith and credit, Section 1710.10(c) applies only to judgments of sister state courts which require the payment of money. Moreover, support orders as defined in Section 1653(k) are excluded from the coverage of this chapter since they are enforceable under

the Revised Uniform Reciprocal Enforcement of Support Act of 1968, Title 10a (commencing with Section 1650). It should be noted that “sister state judgment” is defined as that *part* of a judgment requiring the payment of money. Hence, for example, if a judgment of a sister state court requires both the payment of money and the performance of some other act, such as the conveyance of land, only the part requiring the payment of money is considered a “sister state judgment” enforceable under this chapter. The part requiring the performance of some other act may be enforced, if at all, only by a separate action. See Section 1710.65.

§ 1710.15. Application for entry of judgment

1710.15. (a) A judgment creditor may apply for the entry of a judgment based on a sister state judgment by filing an application with the superior court for the county designated by Section 1710.20.

(b) The application shall be executed under oath and shall include all of the following:

(1) A statement that an action in this state on the sister state judgment is not barred by the applicable statute of limitations.

(2) A statement, based on the applicant’s information and belief, that no stay of enforcement of the sister state judgment is currently in effect in the sister state.

(3) A statement of the amount remaining unpaid under the sister state judgment.

(4) A statement that no action based on the sister state judgment is currently pending in any court in this state and that no judgment based on the sister state judgment has previously been entered in any proceeding in this state.

(5) Where the judgment debtor is an individual, a statement setting forth the name and last known residence address of the judgment debtor. Where the judgment debtor is a corporation, a statement of the corporation’s name, place of incorporation, and whether the corporation, if foreign, has qualified to do business in this state under the provisions of Chapter 3 (commencing with Section 6403) of Part 11 of Division 1 of Title 1 of the Corporations Code. Where the judgment debtor is a partnership, a statement of the name of the partnership,

whether it is a foreign partnership, and, if it is a foreign partnership, whether it has filed a statement pursuant to Section 15700 of the Corporations Code designating an agent for service of process. Except for facts which are matters of public record in this state, the statements required by this paragraph may be made on the basis of the judgment creditor's information and belief.

(6) A statement setting forth the name and address of the judgment creditor.

(c) A properly authenticated copy of the sister state judgment shall be attached to the application.

Comment. Section 1710.15 states the requirements for the application for entry of judgment and requires that the application be filed with a superior court regardless of the amount of the judgment. See also Section 1710.20 (venue).

Paragraph (1) of subdivision (b) adopts the statute of limitations applicable to bringing an action in this state on the sister state judgment. The limitations period is determined by Title 2 (commencing with Section 312) of Part 2 of this code. Subdivision 3 of Section 337.5 prescribes a basic 10-year period for commencement of an action upon a sister state judgment. However, the 10-year period is tolled while the judgment debtor is absent from the state. See CODE CIV. PROC. § 351; *Cvecich v. Giardino*, 37 Cal. App.2d 394, 99 P.2d 573 (1940). On the other hand, a lesser period as provided by the law of the sister state may be applicable under the borrowing provision of Section 361. *E.g.*, *Biewind v. Biewind*, 17 Cal.2d 108, 109 P.2d 701 (1941); *Parhm v. Parhm*, 2 Cal. App.3d 311, 82 Cal. Rptr. 570 (1969). *But cf.* *Mark v. Safren*, 227 Cal. App.2d 151, 38 Cal. Rptr. 500 (1964). For a good discussion of the problems of applying a borrowing statute like Section 361, see *Juneau Spruce Corp. v. International Longshoremen's & Warehousemen's Union*, 128 F. Supp. 697 (D. Hawaii 1955). If the judgment is made payable in installments, the statute of limitations for each installment runs from the time each payment falls due. *Biewind v. Biewind*, *supra*; *DeUprey v. DeUprey*, 23 Cal. 352 (1863); *Mark v. Safren*, *supra*. It should be noted that the bar of the statute of limitations is also a ground for vacating a judgment entered pursuant to this chapter. See Section 1710.40 and Comment.

Paragraph (2) of subdivision (b) reflects the substantive requirement of subdivision (a) of Section 1710.55. See also Section 1710.50(a)(2). Paragraph (3) is designed to prevent double recovery. Where the sister state judgment is payable in

installments, the “amount remaining unpaid” will be the total amount of the judgment less amounts which have been paid. Of course, only the installments which have fallen due and remain unpaid may be enforced by execution. Paragraph (4) reflects the substantive requirement of subdivisions (b) and (c) of Section 1710.55. The statement required by paragraph (5) of subdivision (b) will provide information necessary to determine whether a writ of execution may issue before notice of entry is given the judgment debtor. See Section 1710.45(b) and Comment.

Subdivision (c) requires that a properly authenticated copy of the sister state judgment be attached to the application. Section 1738 of Title 28 of the United States Code requires that full faith and credit be given to judgments authenticated in the manner there set forth and thereby provides certain maximum restrictions. For California provisions relating to authentication of judgments, see, *e.g.*, EVID. CODE §§ 1452, 1453, 1530(a).

§ 1710.20. Venue

1710.20. (a) The application shall be filed in the office of the clerk of the superior court for:

(1) The county in which any judgment debtor resides; or

(2) If no judgment debtor is a resident, any county in this state.

(b) The court may transfer proceedings under this chapter pursuant to Title 4 (commencing with Section 392) of Part 2.

Comment. Section 1710.20 states the venue requirements for proceedings under this chapter. Where a judgment creditor errs in his application, the judgment debtor may request a transfer of the proceedings under the general provisions relating to transfer of venue. A transfer will not, however, affect the validity of actions already taken.

§ 1710.25. Entry of judgment

1710.25. Upon the filing of the application, the clerk shall enter a judgment based upon the application for the amount shown therein to be remaining unpaid under the sister state judgment. Entry shall be made in the same manner as entry of a judgment of the superior court.

Comment. Section 1710.25 is similar to Section 2 of the revised Uniform Enforcement of Foreign Judgments Act of 1964 which requires the clerk to file a sister state judgment and treat it in the same manner as a judgment of his state. 9A UNIFORM LAWS ANN. 488 (1965). Section 1710.25 accomplishes the same end by requiring entry of a judgment on the basis of the judgment creditor's application. See Section 1710.15. An authenticated copy of the sister state judgment is attached to the application. Where the sister state judgment is payable in installments, the clerk enters judgment in installment form for the amount remaining unpaid. Execution may issue only as to unpaid installments which have accrued.

§ 1710.30. Notice of entry of judgment

1710.30. Notice of entry of judgment shall be served promptly by the judgment creditor upon the judgment debtor in the manner provided for service of summons by Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2. Notice shall be in a form prescribed by the Judicial Council and shall inform the judgment debtor that he has 30 days within which to make a motion to vacate the judgment.

Comment. Section 1710.30 requires the judgment creditor to serve notice of entry of judgment promptly. In proceedings under this chapter, the court clerk does not send notice of entry of judgment as provided in Section 664.5.

Ordinarily, service of notice of entry of judgment must be made at least 30 days before a writ of execution may issue. See Section 1710.45(a) and Comment. However, in certain circumstances, the judgment debtor may be served with a writ of execution before he is served with notice of entry of judgment. See Section 1710.45(b), (c), and Comment. See also CODE CIV. PROC. § 682.1 (service of writ on judgment debtor).

§ 1710.35. Effect of judgment; enforcement

1710.35. Except as otherwise provided in this chapter, a judgment entered pursuant to this chapter shall have the same effect as a money judgment of a superior court of this state and may be enforced or satisfied in like manner.

Comment. Section 1710.35 provides that a judgment entered pursuant to this chapter is to be treated as a judgment of the superior court for purposes of enforcement. Hence, for example, the provisions of this code regarding judgment liens (Section 674), execution (Sections 681–713½), and supplemental proceedings (Sections 714–723) apply to the judgment. However, some variations exist between the enforcement procedures of this chapter and those generally applicable. See, e.g., Section 1710.45. A judgment entered pursuant to this chapter may be enforced after 10 years as provided by Section 685. Likewise, an action may be brought upon a judgment entered pursuant to this chapter. *Cf. Thomas v. Thomas*, 14 Cal.2d 355, 94 P.2d 810 (1939); *Atkinson v. Adkins*, 92 Cal. App. 424, 268 P. 461 (1928). However, the same sister state judgment may not serve as the basis for entry of more than one California judgment. See Sections 1710.55(b), (c), 1710.60, and the Comments thereto.

§ 1710.40. Vacation of judgment

1710.40. (a) A judgment entered pursuant to this chapter may be vacated on any ground which would be a defense to an action in this state on the sister state judgment.

(b) Not later than 30 days after service of notice of entry of judgment pursuant to Section 1710.30, proof of which has been made in the manner provided by Article 5 (commencing with Section 417.10) of Chapter 4 of Title 5 of Part 2, the judgment debtor, on written notice to the judgment creditor, may make a motion to vacate the judgment under this section.

Comment. Section 1710.40 allows the judgment debtor to make a noticed motion to vacate the entry of judgment on any ground which would be a defense to an action in this state on the sister state judgment. Common defenses to enforcement of a sister state judgment include the following: the judgment is not final and unconditional (where finality means that no further action by the court rendering the judgment is necessary to resolve the matter litigated); the judgment was obtained by extrinsic fraud; the judgment was rendered in excess of jurisdiction; the judgment is not enforceable in the state of rendition; the plaintiff is guilty of misconduct; the judgment has already been paid; suit on the judgment is barred by the statute of limitations in the state where enforcement is sought. See 5 B.

WITKIN, CALIFORNIA PROCEDURE *Enforcement of Judgment* §§ 194–195 at 3549–3550 (2d ed. 1971); RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 103–121 (1971).

Where it appears that a writ of execution may be issued or levied before the 10-day notice of motion period specified in Section 1005 has run, the court may either shorten the time of notice under Section 1005 or grant a stay of enforcement under Section 1710.50 in order to prevent execution before the judgment debtor's motion can be heard. Equitable relief from the judgment may be available in certain circumstances after the time for making a motion to vacate has expired. See 5 B. WITKIN, CALIFORNIA PROCEDURE *Attack on Judgment in Trial Court* § 175 at 3744–3745 (2d ed. 1971); RESTATEMENT OF JUDGMENTS §§ 112–130 (1942).

§ 1710.45. Issuance of writ of execution

1710.45. (a) Except as otherwise provided in this section, a writ of execution on a judgment entered pursuant to this chapter shall not issue until at least 30 days after the judgment creditor serves notice of entry of the judgment upon the judgment debtor, proof of which has been made in the manner provided by Article 5 (commencing with Section 417.10) of Chapter 4 of Title 5 of Part 2.

(b) A writ of execution may be issued before service of the notice of entry of judgment if the judgment debtor is any of the following:

(1) An individual who does not reside in this state.

(2) A foreign corporation not qualified to do business in this state under the provisions of Chapter 3 (commencing with Section 6403) of Part 11 of Division 1 of Title 1 of the Corporations Code.

(3) A foreign partnership which has not filed a statement pursuant to Section 15700 of the Corporations Code designating an agent for service of process.

(c) The court may order that a writ of execution be issued before service of the notice of entry of judgment if the court finds upon an *ex parte* showing that great or irreparable injury would result to the judgment creditor if issuance of the writ were delayed as provided in subdivision (a).

(d) Property levied upon pursuant to a writ issued under subdivision (b) or (c) shall not be sold or distributed before 30 days after the judgment creditor serves notice of entry of the judgment upon the judgment debtor, proof of which has been made in the manner provided by Article 5 (commencing with Section 417.10) of Chapter 4 of Title 5 of Part 2. However, if property levied upon is perishable, it may be sold in order to prevent its destruction or loss of value, but the proceeds of the sale shall not be distributed to the judgment creditor before the date sale of nonperishable property is permissible.

Comment. Subdivision (a) of Section 1710.45 states the general rule which requires service of the notice of entry of judgment at least 30 days before a writ of execution may be issued. A writ of execution may not be issued under subdivision (a) unless proof of service has been filed which shows that the 30-day requirement has been satisfied. Exceptions to subdivision (a) are stated in subdivisions (b) and (c).

Subdivision (b) permits the issuance and levy of a writ of execution before notice against the assets of three types of nonresident debtors. Subdivision (c) permits issuance of a writ upon an ex parte showing that great or irreparable injury would result if the judgment creditor were required to give notice before obtaining a writ of execution. Although the clerk may issue writs of execution against the debtors described in subdivision (b), the creditor must obtain a court order before a writ of execution may issue under subdivision (c). The clerk may rely on the information in the creditor's application in deciding whether a writ of execution may be issued under subdivision (b). See Section 1710.15(b)(5).

Subdivision (d) provides a special 30-day delay period which gives the judgment debtor an opportunity to make a motion to vacate the judgment before his property is sold or distributed. See Section 1710.40. Section 1710.45 does not otherwise affect the general execution procedures.

§ 1710.50. Stay of enforcement

1710.50. (a) The court shall grant a stay of enforcement where:

(1) An appeal from the sister state judgment is pending or may be taken in the state which originally rendered the judgment. Under this paragraph, enforcement shall be

stayed until the proceedings on appeal have been concluded or the time for appeal has expired.

(2) A stay of enforcement of the sister state judgment has been granted in the sister state. Under this paragraph, enforcement shall be stayed until the sister state stay of enforcement expires or is vacated.

(3) The judgment debtor has made a motion to vacate pursuant to Section 1710.40. Under this paragraph, enforcement shall be stayed until the judgment debtor's motion to vacate is determined.

(4) Any other circumstance exists where the interests of justice require a stay of enforcement.

(b) The court may grant a stay of enforcement under this section on its own motion, on ex parte motion, or on noticed motion.

(c) The court shall grant a stay of enforcement under this section on such terms and conditions as are just including but not limited to the following:

(1) The court may require an undertaking in an amount it determines to be just, but the amount of the undertaking shall not exceed double the amount of the judgment creditor's claim.

(2) If a writ of execution has been issued, the court may order that it remain in effect.

(3) If property of the judgment debtor has been levied upon under a writ of execution, the court may order the levying officer to retain possession of the property capable of physical possession and to maintain the levy on other property.

Comment. Section 1710.50 gives broad discretion to the court to grant a stay of enforcement in the interests of justice. Where the court has adequate information, it may grant the stay on its own motion. Otherwise, the burden is on the judgment debtor to show a need for the stay on ex parte or noticed motion. Subdivision (c) gives the court broad discretion in fashioning the terms of the stay in order to adequately protect the interests of both the judgment creditor and the judgment debtor. Whether an undertaking is to be required, and the amount of the undertaking if one is required, is left to the discretion of the court which may consider factors such as whether (1) a successful defense is probable, (2) it is likely that the debtor will conceal or transfer his assets, (3) the debtor has already given

a bond on appeal in the sister state, and (4) the debtor prefers having his property held subject to levy rather than giving an undertaking.

§ 1710.55. Limitations on entry of judgment

1710.55. No judgment based on a sister state judgment may be entered pursuant to this chapter in any of the following cases:

(a) A stay of enforcement of the sister state judgment is currently in effect in the sister state.

(b) An action based on the sister state judgment is currently pending in any court in this state.

(c) A judgment based on the sister state judgment has previously been entered in any proceeding in this state.

Comment. Subdivision (a) of Section 1710.55 prevents the judgment creditor from using the procedures of this chapter to obtain the entry of a judgment based on a sister state judgment where enforcement has been stayed in the sister state. If entry of judgment is obtained in this state before the stay of enforcement of the sister state judgment is granted in the sister state, the judgment debtor may seek to stay enforcement of the California judgment under Section 1710.50(a)(2).

Subdivisions (b) and (c) of Section 1710.55, together with subdivision (b) of Section 1710.60, preclude a judgment creditor from using his sister state judgment as defined in Section 1710.10(c) as the basis for more than one California judgment.

§ 1710.60. Optional procedure

1710.60. (a) Except as provided in subdivision (b), nothing in this chapter affects any right a judgment creditor may have to bring an action to enforce a sister state judgment.

(b) No action to enforce a sister state judgment may be brought where a judgment based on such sister state judgment has previously been entered pursuant to this chapter.

Comment. Subdivision (a) of Section 1710.60 is similar to Section 6 of the revised Uniform Enforcement of Foreign Judgments Act of 1964. 9A UNIFORM LAWS ANN. 489 (1965). The enactment of this chapter is not intended to restrict the traditional method of enforcing a sister state money judgment which requires the judgment creditor to bring an independent

action in this state. See 5 B. WITKIN, CALIFORNIA PROCEDURE *Enforcement of Judgment* § 193 at 3548–3549 (2d ed. 1970); RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 99, 100, Comment b (1971); RESTATEMENT OF JUDGMENTS § 47, Comment e (1942). However, subdivision (b) makes clear that the judgment creditor must choose between the methods of enforcement offered. He may not obtain two money judgments in this state based on one sister state judgment as defined in Section 1710.10(c) by using the two different procedures. See also Section 1710.55(b).

§ 1710.65. Actions based on part of judgment of sister state not requiring payment of money

1710.65. The entry of a judgment based on a sister state judgment pursuant to this chapter does not limit the right of the judgment creditor to bring an action based on the part of a judgment of a sister state which does not require the payment of money, nor does the bringing of such an action limit the right of the judgment creditor to obtain entry of judgment based on the sister state judgment pursuant to this chapter.

Comment. Section 1710.65 makes it clear that the enforcement of the part of a judgment of a sister state ordering the payment of money pursuant to this chapter is independent of any action on the part of such judgment awarding some other relief and that use of the two separate procedures is not to be regarded as splitting a single cause of action.

§ 1713.1 (technical amendment)

SEC. 4. Section 1713.1 of the Code of Civil Procedure is amended to read:

1713.1. As used in this chapter:

(1) “Foreign state” means any governmental unit other than the United States, or any state, district, commonwealth, territory, insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands; ~~or the Ryukyu Islands;~~

(2) “Foreign judgment” means any judgment of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine or other penalty, or a judgment for support in matrimonial or family matters.

Comment. Section 1713.1(1) is amended to reflect the return to Japan of administrative rights over the Ryukyu Islands effective May 15, 1972. See Agreement With Japan Concerning the Ryukyu Islands and the Daito Islands, June 17, 1971, art. I, para. 1 & art. V, paras. 1 & 2, T.I.A.S. No. 7314 (effective May 15, 1972).

§ 1713.3 (technical amendment)

SEC. 5. Section 1713.3 of the Code of Civil Procedure is amended to read:

1713.3. Except as provided in Section 1713.4, a foreign judgment meeting the requirements of Section 1713.2 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. The foreign judgment is enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit *except that it may not be enforced pursuant to the provisions of Chapter 1 (commencing with Section 1710.10)*.

Comment. The amendment of Section 1713.3 makes clear that the procedure provided by Chapter 1 (commencing with Section 1710.10) for entering a California judgment based on a sister state judgment is not available for the enforcement of foreign nation money judgments. See Section 1710.10 and Comment. Foreign nation money judgments are enforced by bringing an action in California to obtain a domestic judgment. See *164 East 72nd Street Corp. v. Ismay*, 65 Cal. App.2d 574, 151 P.2d 29 (1944).

§ 1915 (repealed)

SEC. 6. Section 1915 of the Code of Civil Procedure is repealed.

~~1915. Except as provided in Chapter 2 (commencing with Section 1713) of Title 11 of Part 3 of this code, a final judgment of any other tribunal of a foreign country having jurisdiction, according to the laws of such country, to pronounce the judgment, shall have the same effect as in the country where rendered, and also the same effect as final judgments rendered in this state.~~

Comment. Section 1915 is repealed because it has been largely ignored by the courts and has served no useful purpose. See A. EHRENZWEIG, CONFLICT OF LAWS § 45 at 163 n.25 (1962) (“Being much too sweeping in its language . . . this provision has remained ineffective.”). See also *Ryder v. Ryder*, 2 Cal. App.2d 426, 37 P.2d 1069 (1934); *DeYoung v. DeYoung*, 27 Cal.2d 521, 165 P.2d 457 (1946); *Sohnlein v. Winchell*, 230 Cal. App.2d 508, 41 Cal. Rptr. 145 (1964).

Section 1915 was enacted in nearly its present form in 1907 apparently with an eye to the doctrine of reciprocity in order to assure the foreign execution of judgments entered in California against insurance companies in foreign nations, primarily Germany, involving claims arising out of the 1906 earthquake and fire. However, the section failed to achieve its basic historical purpose when in 1909 the imperial court of Germany refused to permit the execution of California judgments rendered by default against German insurance companies. See Lorenzen, *The Enforcement of American Judgments Abroad*, 29 YALE L.J. 188, 202–205 (1919). Since that time, the meaning and effect of Section 1915 have been a source of confusion. See, e.g., *Scott v. Scott*, 51 Cal.2d 249, 254, 331 P.2d 641, 644 (1958) (Traynor, J., concurring); *Ryder v. Ryder*, *supra*; Comment, *Recognition of Foreign Country Divorces: Is Domicile Really Necessary?*, 40 CAL. L. REV. 93 (1952). The effect of Section 1915 was even further diminished upon the enactment of the Uniform Foreign Money-Judgments Recognition Act (Sections 1713–1713.8) in 1967, which removed foreign nation money judgments entitled to recognition under that act from the effect of Section 1915. With the repeal of Section 1915, the enforcement of foreign nation judgments is determined by other statutory provisions and the decisions of the courts under principles of the common law and private international law. See Sections 1713–1713.8; *Scott v. Scott*, *supra* (Traynor, J., concurring); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 98, Comment b (1971); Smit, *International Res Judicata and Collateral Estoppel in the United States*, 9 U.C.L.A. L. REV. 44 (1962).

(474–500 blank)