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Reply to Southern California

## **COLLECTING ON JUDGMENTS**

### **By: Barry Ferns, Esq.**

#### **1. Judgments in General**

- a. In the following discussion, unless otherwise stated, only California law applies.
- b. Interest rate on a judgment is 10.0% per annum (California Constitution, Article 15 and C.C.P. §685.010) . Also, if a Contract that you are suing on does not contain an interest rate, you may ask for 10.0% per annum. (C.C. §3289).
- c. A judgment, in California, is good for ten (10) years from the date of entry (C.C.P. §683.020) or, if the judgment is payable in installments, ten (10) years from the date of each unpaid installment (C.C.P. §683.030) . So, be careful not to attempt to collect on an "unenforceable" judgment as it may result in a lawsuit wherein the Judgment Debtor may request not only actual damages but punitive damages.
- d. A judgment, in California, may be renewed in an additional ten (10) years increments (C.C.P. §683.110, et seq.) and the ten year time limit may be extended (like when the Debtor files a bankruptcy petition which is then denied or he or she leaves the state). Failure to timely renew a judgment means that you loose the opportunity to have another ten (10) years to collect. Moreover, if the full amount of the judgment remains unpaid at the initial ten (10) year mark, then the judgment will have doubled because it is accruing 10% interest.
- e. A judgment may be for money, possession of personal property, or any number of

“orders”.

- f. You have an absolute right to your costs of enforcing a judgment. This includes adding in your post judgment attorneys fees (C.C.P. §685.040). This has to be done by means of filing and serving a post judgment cost bill no later than two (2) years from the date that the costs were incurred or fully satisfied. The Judgment Debtor may object to these costs, but he or she may only do so by filing a motion to Tax Costs within ten (10) days from the date of filing of the cost bill.

## **2. Enforcing a Judgment by means of a Writ of Execution**

- a. A Writ of Execution has to be issued by the court (C.C.P. §699.010).
- b. A Writ is an Order of a court to a Marshal, Constable or Sheriff (hereinafter “Sheriff”) to do a thing. In the case of a judgment, it is the “vehicle” by which the Sheriff enforces the judgment by court order.
- c. A Writ of Execution can only be directed to one County (Sheriff) at a time as the Sheriff only has authority to act in his or her county. However, you can obtain multiple Writs that are directed to more than one county (Sheriff). Costs a little more.
- d. You can add interest and some post judgment costs onto the Writ of Execution at the time that it is issued.
- e. Cost to issue: \$25.00.

## **3. Levy creates a Lien (C.C.P. §§ 481.010, et seq. and 697.010, et seq.)**

- a. Levying on personal or real property creates a "lien" against that property. This may give you priority against any subsequent lien placed on the property.
- b. If you have a lien on certain property because of a levy, it may be foreclosed upon or even be superior to lien given to a trustee in a bankruptcy proceeding.

## **4. Post Judgment Cost Bill (C.C.P. §685.040)**

- a. You have a right to recoup your post judgment costs by simply filing a post judgment cost bill. Post judgment costs may include the cost of issuance of a Writ of Execution, Abstract of Judgment, etc..
- b. If your judgment included an award of attorneys fees, you may add to your judgment your post judgment attorneys fees by means of filing a post judgment cost bill and declaration supporting those attorneys fees.
- c. Post judgment attorneys fees may also be obtained through a “motion” procedure. If by motion or post judgment cost bill, the Judgment Debtor may object to costs by either making a motion to tax (cost bill) or filing an opposition to motion.
- d. Post judgment costs and attorneys fees must be requested within two (2) years of being incurred or they are waived.

**5. Levy against an Instrument (C.C.P. §687.020)**

- a. An instrument is a "Check, draft, money order or other order for the withdrawal of money from a financial institution.
- b. Can be used to levy on a check drawn on a bank and made payable to the Judgment Debtor.
- c. Levy must be made by Sheriff, who takes physical possession of it and has the authority to endorse it.

**6. Property subject to Enforcement (C.C.P. §695.010)**

- a. All property of a judgment debtor is subject to enforcement of a money judgment..
- b. This included property of a judgment debtor which is the possession of a third party.

**7. Levy on Community Property (C.C.P. §695.020)**

- a. Community property may levied upon.
- b. A simple declaration is all you need re identifying that bank account as "community property" in order to have it levied upon. The third party (spouse)

can object saying that the property is not "community" but absent that, the property is easily levied upon (C.C.P. §700.160)

- c. The third party spouse may file a claim of exemption just as the other spouse had a right to do (C.C.P. §703.020).

**8. Lien on Real Property: Abstracts (C.C.P. §697.310, et seq.)**

- a. To create a lien on a Judgment Debtors real property, you must have an Abstract issued AND recorded in the county where you want to have the lien. CAUTION: You only have a lien on real property in any given county when and if you record your abstract. Recordation in one county is not a lien against real property owned in any other county.
- b. Lien is created, upon recordation, on any real property which the Judgment Debtor has an interest in or obtains an interest in during the duration of the judgment lien (ie: 10 years unless renewed for another 10 years).
- c. In Southern California, you could record Abstract in Los Angeles, Orange, Riverside and San Bernardino Counties and feel very secure that you have covered most of the probable counties were the Judgment Debtor might own, or obtain, real property. Different story in Northern California where you have a lot of smaller "gold rush" counties.
- d. It costs \$25.00 to issue an Abstract although the original can be recorded in any county in California.
- e. Abstract may be invalid unless fill out correctly, such as placing the Judgment Debtors Social Security and Drivers license numbers, if know. Since your Judgment Debtors all had to apply for credit, you must have their Social Security numbers. Moreover, if this is a Conditional Sales Contract obligation through a car dealer, you should also have the Drivers license numbers. (C.C.P. §§ 674 and 697.310, et seq.)
- f. Requirement of Social Security number is at odds with federal protection of privacy. They finally changed the Abstract form and applicable code sections to require just the last 4 digits of the Social Security number (and Drivers License number).
- g. Demand in escrows are routinely sent to judgment creditors to "release" the Abstract. So, a loan or sale could be held up pending receipt of your demand. As

a lien holder, you are required to respond to such a demand. Make sure that your demand covers every nickel owed to you or will be owed to you for removing satisfying the judgment and removing the lien.

- h. After judgment satisfied, Abstract must be removed. Again, remember to add those fees and costs to any payoff request.

**9. Lien on Personal Property (C.C.P. § 697.510, et seq.)**

- a. To create a lien on a Judgment Debtors personal property, you need to file a lien with the Secretary of State. It is a simple form to file.
- b. This lien is most often picked up when the Judgment Debtor is applying for a loan and his or her lender runs a UCC search. The lender will want to pay off this lien so as not to be 2<sup>nd</sup> to your lien.

**10. Execution Lien (C.C.P. § 697.710, et seq.)**

- a. A levy against the property of the Judgment Debtor creates a “lien” on that property.
- b. By creating a lien, you become a secured creditor.

**11. Receiver (C.C.P. §699.070)**

- a. The court can appoint a receiver to take possession of property and preserve it for levy.
- b. You see this used where the Judgment Debtor owns a piece of real property which is being rented out. Rents are collected by the receiver so that the Judgment Debtor does not have access to it. However, the mortgage, taxes, etc. would still have to be paid.
- c. This is more expensive but costs are recoverable.

**12. Levy on Real Property (C.C.P. §700.010, et seq.)**

- a. You can levy on the real property owned by a Judgment Debtor by obtaining a Writ of Execution (for money).
- b. If the Judgment Debtor is an individual, you have to make sure that there is equity in the property over and above the liens and the exemptions. A motion has to be made.
- c. It is easier to just record an abstract, thereby creating a lien on that property and just wait for it to be sold or for the Debtor to apply for a Real Estate Loan (which should result in the potential lien holder to asking to pay you off).
- d. Levy is conducted by the Sheriff and you may "credit bid" and actually purchase the property. However, the Judgment Debtor has one year to "redeem" the property by paying off the judgment. This will have a negative impact on any sales price since the purchaser may lose the property if it gets redeemed.

### **13. Levy on Vehicle or Vessel (C.C.P. §700.090)**

- a. Sheriff can levy the Writ against the Vehicle or Vessel and take possession and sell it. This costs a lot of money (Sheriff's deposit).
- b. The Judgment Debtor may file a claim of exemption which is effective in most cases since vehicles and vessels often times depreciate in value.
- c. In a federal case, the Federal Rules of Civil Procedure 64 allows you to use several means to obtain possession of the Vessel, such as Replevin (Claim and Delivery) and "Arrest" (which is a lawsuit against the Vessel itself).
- d. There are special problems involving a Vessel since a Sheriff may not sell the Vessel "free and clear of liens" (only a Federal Marshal can do that after the Vessel is "arrested").
- e. If you are trying to obtain possession of your "mortgaged" vessel, a federal lawsuit under 46 U.S.C. 31325 may already have been filed and an application for an "Arrest" of the vessel requested.

### **14. Safe Deposit (C.C.P. §700.140)**

- a. When levying on any bank account, ask the Sheriff to levy on any Safe Deposit box that may also be there.
- b. The Sheriff will seize any property in the Safe Deposit Box and sell it. I obtained coins, cash, bonds and jewelry.
- c. The contents of a Safe Deposit Box may mean more to Judgment Debtor than you and therefore result in a payoff.

**15. Bank Levy (C.C.P. §§ 700.140, 704.080)**

- a. You need to know the name and address of the financial institution. This information is provided to the Sheriff by means of a set of “instructions”.
- b. In Northern California, most all counties levy on Banks using a two prong system. You need to instruct the Sheriff on your Bank Levy but it will be handled by a private process server who will first go to the Sheriff and open a file and then carry out the actual physical portion of the levy.
- c. In Southern California, most all counties levy on Banks using a two prong system. You need to instruct the Sheriff on your Bank Levy but it will be handled by a private process server who will first go to the Sheriff and open a file and then carry out the actual physical portion of the levy.
- d. Don’t forget to include a request to levy on all Safety Deposit accounts.
- e. If you, as a financial institution, fail to properly reply, then you may be liable for the money. Failure to send the Sheriff a proper "Return of Garnishment" may result in a lawsuit being brought to compel. Also, you may be liable for attorneys fees and costs if a suit is brought. (C.C.P. §701.030)

**16. Duties of Third Parties (C.C.P. §701.010, et seq.)**

- a. A person (which includes a business, corporation, etc.) has a duty to respond to a levy. A Garnishee’s Memorandum must be filed within 10 days of levy.
- b. Failure to file a Garnishee’s Memorandum may result in that person being liable to you for any monies not paid over as a result of the levy. Moreover, attorneys fees and costs are recoverable against that third party if you have to file suit.

- c. Make sure that the levy instructions and the Writ adequately describe your Judgment Debtor. I had one where the name was “William Wurschmidt” but his bank account said “Bill Wurschmidt”. I had correct address of bank and the Judgment Debtor. The bank responded “can not locate” and the Judgment Debtor withdrew \$10,000.00 after the levy. The bank became liable for the \$10,000.00, interest and our legal fees and costs and paid up!

**17. Exemptions (C.C.P. §704.010)**

- a. The Judgment Debtor has various exemptions available under California law. These may be vastly different in other states. For example, Texas exempts one full acre of land with in city limits and 40 acres of land outside of city.
- b. Vehicle: \$2,300.00 (C.C.P. §704.010)
- c. Health Aids: All (C.C.P. §704.050). In old days, you could repossess dentures paid on the installment plan. Interesting concept but can not do it anymore.
- d. Earnings: 25% of net pay (follows federal guidelines). (C.C.P. §704.070)
- e. Deposit Accounts: \$1,225.00 if single depositor and \$2,425.00 if more than one (C.C.P. §704.080)
- f. Public and Private Retirement: All (C.C.P. §§ 704.1110 and 704.115)
- g. Personal Property used in trade, business or profession (no vehicle) \$6,075.00 (\$12,150 if joint with spouse) (C.C.P. §704.060)
- h. Dwelling: \$75,00.00 (Single), \$100,000.00 (married), \$175,00.00 (if 65+ years, disabled and 55+ with income not exceeding \$15,000 per year). (C.C.P. §704.730) Needs to reside on property.
- i. Other exemptions are listed.

**18. Wage Levy (C.C.P. §706.020, et seq.)**

- a. Levy of Writ of Execution and Earnings Withholding Order on Employer.
- b. Some counties require that you go through a process server, who opens a file with the local Sheriff and then does the levy. Adds to costs but makes it quicker.



- c. Be sure that your instructions are accurate. Just naming, for example, “Costco” may not be sufficient if the Judgment Debtor works for “Costco Warehouse, Inc.”. Try and speak to someone in payroll to verify.
- d. Employer must respond within 10 days of levy. If not, they are liable for any monies that you could have obtained from levy. We have successfully sued employers over this.
- e. There may be prior levies so first come, first served. Also, support orders may go on for a very long time. Try and work out payment schedule if this occurs.
- f. You can get 25% of net wages.
- g. Be aware of who you are levying against. If, for example, the Judgment Debtor is a real estate salesman, be sure to add “commissions” to your levy instructions. Also consider doing a motion to assign those commissions.

**19. Judgment Debtor Exams (C.C.P. §708.110, et seq.)**

- a. This procedure requires the court to sign an Order requiring the Judgment Debtor to appear to answer questions about his or her assets. It must be personally served. Failure to appear will result in a bench warrant being issued.
- b. Can only be done periodically, that is after 120 days (four months) from the last examination.
- c. For a real impact, we have used court reporters at examinations to (1) intimidate, (2) make a written record of property which can be used later on if the Judgment Debtor denies that he or she owned certain property and (3) create “perjury” trap if the Judgment Debtor feels the need to lie.
- d. Creates a lien on all of the Judgment Debtors personal property for a period of one year after service. This has been used in bankruptcy proceedings to make you a secured creditor.
- e. Cost to have issued: \$40.00

**20. Creditors Suit (C.C.P. §708.210, et seq.)**

- a. If a third person is in possession or control of property of the Judgment Debtor, you may bring a law suit to retrieve it.
- b. This is a separate lawsuit which you can bring under your own name. A restraining order can also be obtained.
- c. No jury trial allowed.

**21. Assignment Order (C.C.P. §708.510, et seq.)**

- a. By means of a motion, you can have various types of property assigned over to you, such as: Wages due from Federal government, Rents, commissions, Royalties, Payments due from patent or copyright or insurance policy.
- b. Order is enforceable as against the Judgment Debtor and any Third Party. Failure to comply may mean "contempt" (ie: money damages or even jail).
- c. Combine it with a Debtor Exam to obtain more information.
- d. I am using it now to get a shareholder of corporation to assign over his stock. The other stock holder should be calling me any day to resolve account as I will pursue corporation next.

**22. Use your imagination**

- a. If the Judgment Debtor has an asset, you can probably go after it.
- b. Remember, Big Spin and other winnings are attachable!
- c. Once, we negotiated a reduced payment out of the escrow where Debtor insisted on keeping \$10,000.00 for his next home (or else he would let house go by foreclosure) so we gave escrow instructions for the reduced payment and had private process server open file with Sheriff and levy at 10:15 a.m. (just after escrow closed) and got the balance out of the \$10,000.00 which was still being held in the escrow account.
- d. Also, asset may be more valuable to the Judgment Debtor than it is actually worth so you may get paid off before the sale of that asset simply because the Judgment Debtor wants it.