

RESOLUTION 03-24-08

DIGEST

Enforcement of Judgments: Liability of Third Persons

Adds Code of Civil Procedure section 684.115 to provide the manner of service of an order requiring a third person to deliver property or money and amends Code of Civil Procedure section 701.020 to provide for liability of third persons for noncompliance with levy.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution adds Code of Civil Procedure section 684.115 to provide the manner of service of an order requiring a third person to deliver property or money and amends Code of Civil Procedure section 701.020 to provide for liability of third persons for noncompliance with levy. This resolution should be disapproved because proposed Code of Civil Procedure section 684.115 permits service by mail on third persons, while personal service on third persons is required by other statutes in the statutory scheme. (See, e.g., Code Civ. Proc., §§ 700.060 (bailed goods not covered by negotiable document), 700.100 (chattel paper in possession of third person), 700.110 (instrument in possession of third person), 700.120 (negotiable document in possession of third person), 700.140 (financial institution deposit account), 700.150 (financial institution safe deposit box).)

The amendment of section 701.020, standing alone, bolsters the rights of the judgment creditor to collect from a third party, who, without good cause, acts to defeat the judgment creditor's rights against the judgment debtor's property. However, when combined with the proposed new section 684.115, permitting service by mail, it could expose third party entities to liability for the amount required to satisfy the judgment, together with attorneys' fees and costs incurred by the creditor, without actual notice to the third party.

This resolution creates more problems than it resolves, as it leaves the existing statutory scheme internally inconsistent and lacking adequate notice to unsophisticated third parties.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to add Code of Civil Procedure section 684.115 and amend Code of Civil Procedure section 701.020 to read as follows:

- 1 §684.115
- 2 Service of any order requiring a third person to deliver property or money shall be
- 3 by personal service, certified mail or other delivery service which requires a signature
- 4 showing delivery.

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6 §701.020

7 (a) If a third person is required by any provision of this article Title 9 of the Code
8 of Civil Procedure to deliver property to the levying officer, or to any other person or
9 entity pursuant to court order, or to make payments to the levying officer, or to any other
10 person or entity pursuant to court order, and the third person fails or refuses without good
11 cause to do so or defers or accelerates any payment to a judgment debtor with the intent to
12 defeat or diminish the judgment creditor's rights under the levy being made, the third
13 person is liable to the judgment creditor for whichever of the following is the lesser
14 amount:

15 (1) The value of the judgment debtor's interest in the property or the amount of the
16 payments required to be made.

17 (2) The amount required to satisfy the judgment pursuant to which the levy is
18 made.

19 (b) The third person's liability continues until the earliest of the following times:

20 (1) The time when the property levied upon is delivered to the levying officer or the
21 payments are made to the levying officer.

22 (2) The time when the property levied upon is released pursuant to Section
23 699.060.

24 (3) The time when the judgment is satisfied or discharged.

25 (c) The third person's liability may be established by noticed motion of the
26 judgment creditor, by a civil action against the third party or by any other applicable
27 method. If the third person's liability is established, the court that determines the liability
28 may, in its discretion, require the third person to pay the costs and reasonable attorney's
29 fees incurred by the judgment creditor in establishing the liability.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS:

Existing Law: Only explicitly provides for liability of third persons for failure to comply when served with a levy. Current law also provides for penalties against an employer for attempting to interfere with a levy under an earnings withholding order.

This Resolution: Makes it clear that there can be third party liability for failure to comply with any order properly directed to the third party. This amendment brings the sanctions provided for under the earning withholding order sections to a general garnishment.

The Problem: Current law does not make it clear that there can be third party liability for failure to comply with any order properly directed to that third party. Although an employer may be penalized for attempting to interfere with a levy under an earnings withholding order, there is no similar provision for a garnishee who interferes with a levy under a general garnishment.

IMPACT STATEMENT:

This proposed resolution does not affect any other law, statute or rule.

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