

Recent Developments in the Law of Attachment, Claim & Delivery, Injunctions and Receivers

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I. OVERVIEW OF THE LAW

A. WRITS OF ATTACHMENT

1. Statutory Authority.

Code of Civil Procedure sections 481.010 - 493.060.

2. Definition.

A writ of attachment is a prejudgment lien on real or personal property assets to secure payment of a judgment that may be obtained in a contract action.

3. Requirements.

To obtain a writ of attachment, the applicant must show that:

- a. Plaintiff's claim is for money;
- b. Plaintiff's claims total at least \$500, excluding costs, interest and attorneys' fees;
- c. Plaintiff's claim is based on an express or implied contract; and
- d. Plaintiff's claim is for a fixed or readily ascertainable amount. (Code Civ. Proc., § 483.010 (a).)

Plaintiff must also comply with the procedural requirements of the attachment statute. (Code Civ. Proc., § 483.010; Hobbs v. Weiss (1999) 73 Cal.App.4th 76.)

Note: This remedy is not available to secure a claim that is secured by real property, unless the value of the real property collateral has decreased through no fault of the plaintiff. (See Code Civ. Proc., § 483.010 (b).)

B. WRITS OF POSSESSION

1. Statutory Authority.

Code of Civil Procedure sections 511.010 - 516.050.

2. Definition.

A writ of possession is a prejudgment remedy allowing a plaintiff to obtain possession of specific personal property in which the plaintiff has an ownership or security interest.

3. Requirements.

To obtain a writ of possession, the applicant must bring an action for possession of personal property, must show entitlement to possession of the personal property and must meet the specific procedural requirements of the writ of possession statute. (Code Civ. Proc., § 512.010.)

C. INJUNCTIONS

1. Statutory Authority.

Code of Civil Procedure sections 525 - 534; FRCP 65; and numerous other statutes authorizing injunctive relief. (See Obtaining an Injunction (SEB Action Guide Fall 2000) Appendix A.)

2. Definition.

An injunction is a court order that compels a party to take certain actions, or prohibits a party from taking certain actions. (See Civ. Code, §§ 3367 and 3368.)

3. Requirements.

To obtain an injunction, the applicant must generally show that equity requires the court to issue injunctive relief. The specific showing depends on the statute authorizing the injunction.

D. RECEIVERS

1. Statutory Authority.

Code of Civil Procedure sections 564 - 570.

2. Definition.

A receiver is a court-appointed representative whose function is to manage, preserve, sell or dispose of real or personal property assets which are the subject of dispute.

3. Requirements.

To obtain the appointment of a receiver, the applicant must generally show that equity requires the appointment of a receiver and that there are no other less intrusive remedies to protect the interests of the applicant.

II. RECENT DEVELOPMENTS

A. WRITS OF ATTACHMENT

1. By obtaining a writ of attachment in an action alleging contract and tort claims, a plaintiff is not barred by the doctrine of election of remedies from pursuing the tort claims. (Wafer International Corp. v. Khorsandi (1999) 69 Cal.App.4th 1261.)
2. By taking legal action against a general partner/guarantor of a limited partnership obligation, a real estate-secured creditor takes an "action" under the One-Action Rule of Code of Civil Procedure section 726(a) and violates the One-Action Rule. (Prestige Limited Partnership-Concord v. East Bay Car Wash Partners (In re Prestige Limited Partnership-Concord) (Bankr. N.D.Cal. 1997) 205 B.R.427, aff'd (9th Cir. 1999) 164 F.3d 1214.) Specifically, a real estate-secured creditor's attachment and levy on a bank account of the general partner/guarantor constitutes an "action" for purposes of Section 726(a) which, in turn, results in a waiver of the real estate security. (Id., relying upon Shin v. Superior Court (1994)

26 Cal.App.4th 542.) In Prestige, the creditor had a security interest in a ground lease.

3. A real estate-secured lender does not violate the One-Action Rule solely by filing a lawsuit against the borrower. (Kirkpatrick v. Westamerica Bank (1998) 65 Cal. App. 4th 982.) Short of a judgment against the borrower, the secured creditor must have made an election of remedies which prejudiced or substantially injured the borrower for such pre-judgment steps to constitute an “action.”
4. A Court may not issue a right to attach order under the noticed hearing procedure without conducting a hearing. (Hobbs v. Weiss (1999) 73 Cal.App.4th 76.)
5. A beneficiary’s interest under a letter of credit is not property which can be made subject to a writ of attachment. (Studwell, Inc. v. Korean Exchange Bank (1997) 55 Cal.App.4th 1185.)

B. WRITS OF POSSESSION

1. If a secured creditor obtains collateral by a writ of possession, and thereafter wishes to sell the property seized and obtain a deficiency judgment against a guarantor of the personal property secured obligation, the creditor must comply with the notice requirements of Commercial Code section 9504 (3). (Cerritos Valley Bank v. Stirling (2000) 81 Cal.App.4th 1108.)
2. A writ of possession may be obtained in an employment dispute to regain possession of documents improperly taken from the employer. (See Pillsbury, Madison & Sutro v. Schectman (1997) 55 Cal.App.4th 1279.)

C. INJUNCTIONS

1. A U.S. district court lacks jurisdiction, in an action for money damages, to issue a preliminary injunction preventing the disposing of assets in which the plaintiff claims no lien or equitable interest. (Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc., 527 U.S. 308 (1999).) In Grupo Mexicano, decided under Rule 65 of the Federal Rules of Civil

Procedure, the Supreme Court noted that the authority of the federal courts to issue injunctive relief was not altered by Rule 65 and depended upon traditional principles of equity jurisdiction which required that a judgment establishing a debt was necessary before a court of equity could interfere with a debtor's use of its property.

2. An injunction governing the use of real property that is recorded does not run with the land and bind future property owners. (People ex rel Gwin v. Kothari (2000) 83 Cal.App.4th 759.) The Court noted that an injunction is an in personam, not an in rem, remedy, and thus can only bind the defendant.
3. An injunction may not interfere with a constitutionally protected right, such as the First Amendment right of free speech or assembly. (See Aguilar v. Avis Rent A Car System, Inc. (1999) 21 Cal.4th 121; City of San Jose v. Superior Court (1995) 32 Cal.App.4th 330.)

D. RECEIVERS

1. While the trial court has discretion to decide whether a receiver can be sued in the action in which the receiver is appointed or in a separate action, the trial court may not prevent a lawsuit against the receiver altogether. (Jun v. Myers (2001) 88 Cal.App.4th 117.)