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Enforcement of a Money Judgment in California

Introduction

The case essentially involves enforcement of a money judgment. Our client won a \$500,000 judgment against an architect. Nine days after the judgment, the architect took out a \$600,000 second mortgage on his \$800,000 property, probably a homestead. The bank was not informed of the existence of the judgment. Out of the mortgage money, the architect used \$432,032.08 to pay off old liens and mortgages on the property, and kept the remaining \$167,967.92. Days before the trial, the architect also transferred his share of a separate desert property to a woman with whom he had shared the property as a joint tenant for a consideration of \$1. Thereafter the architect married the woman.

Questions presented

1. If the client has a judgment lien, will it take priority over the mortgage lien acquired by the bank as an innocent third party?
2. If the client does not have a judgment lien, can he attack the second mortgage with the bank under the Uniform Fraudulent Transfer Act?
3. Can the creditor obtain an avoidance of the transfer of the desert property to the girlfriend under the Uniform Fraudulent Transfer Act?

4. Does the judgment creditor have any remedy to recover the amount owed to him by the judgment debtor?
5. If any of the properties transferred by the judgment debtor is his “homestead”, will it be exempted from the purview of the creditor’s judgment lien?

Short Answers

1. Yes, if the client has a judgment lien, it will take priority over the bank’s mortgage lien as per Cal Code Civ Proc § 697.390.
2. Possibly no, unless the client can show that the transfer was made without equivalent consideration and with intent to defraud him.
3. Yes, the transfer of the desert property to his girlfriend is a voidable transfer as per the Uniform Fraudulent Transfer Act.
4. Yes, the client has various remedies to enforce payment of the money judgment.
5. Possibly no. A judgment creditor can obtain a court-ordered sale of such dwellings to satisfy judgments

Discussion

Our client is the judgment creditor in a money judgment. The remedies available to a judgment creditor in order to recover from the debtor would vary depending on his holding a judgment lien and not holding. The ensuing discussion would show that if he holds a valid lien, then such lien would prevail over the bank’s mortgage lien. If he does not hold a valid judgment lien, then the provisions of Uniform Fraudulent Transfer Act would apply to make the debtor’s second mortgage with the bank a voidable one.

I. IF THE CLIENT HAS A JUDGMENT LIEN, SUCH LIEN WILL TAKE PRIORITY OVER THE BANK'S MORTGAGE LIEN

A judgment lien is designed to secure the priority of the judgment creditor over third persons who may acquire rights in the property between the creation of the judgment lien and the sale of the property upon execution in satisfaction of the judgment. *Corporation of America v. Marks*, 10 Cal. 2d 218,220 (Cal. 1937). Only two classes are subject to the lien of a judgment -- real property owned by the debtor at the time of docketing and real property that he may afterward acquire. *Id.* at 534. A judgment lien under section 671 (now 674) of the Code of Civil Procedure did not attach to an equitable interest in real property. It only applied to a legal interest therein. The lien created by a judgment is not a transfer or conveyance of the property. *Huff v. Sweetser*, 8 Cal. App. 689,695 (Cal. Ct. App. 1908). It is not a specific lien on the real estate of the judgment debtor, but is merely a general lien, and is subject to all prior liens, either legal or equitable. *Id.*

PRE-CONDITIONS FOR A JUDGMENT LIEN

As per Cal Code Civ Proc § 697.310 a judgment lien on real property is created under the section by **recording an abstract of a money judgment with the county recorder** and continues until 10 years from the date of entry of the judgment unless the judgment is satisfied or lien is released.

Cal Code Civ Proc § 674 (2006) *Cal. Civ. Proc. Code § 674* provides, in part, that when an abstract of judgment is recorded it 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. See *Kinney v. Vallentyne*, 15 Cal. 3d 475,477 (Cal. 1975). Under section 674, there is no lien unless and until the abstract of judgment is recorded.

Judgments do not become liens upon real estate until **properly indexed**, and that purchasers are not required to search for judgment liens further than to examine the proper index. *James Huff*, 8 Cal. App. 689, 695. It is only through the medium of a sufficient and legal docketing of the judgment that it can become a lien on the real estate of the judgment debtor; and it is the duty of the judgment creditor to see to it, if he would secure such lien, that his judgment is properly docketed, for, as against a *bona fide* purchaser for value, any material defect or omission in that respect is the fault of the judgment creditor, and the loss, if any, occasioned thereby, will be regarded as his own. In order to create a lien the judgment alone is insufficient; it must be properly docketed and the formalities of docketing, as required by the statute, must be substantially complied with. *Id.* at 696, 697. *Eby v. Foster*, 61 Cal. 282, 286 (Cal. 1882). No judgment lien is created upon real property belonging to a judgment debtor until the judgment be docketed. (§ 671, C. C. P.) Docketing a judgment consists of an entry in the docket in the Clerk's office of a brief abstract of the judgment. *Id.*

Therefore, the judgment creditor holds a judgment lien on the debtor's real property only if the abstract of the judgment has been properly recorded with the county recorder, and properly indexed/docketed.

PRIORITY OF JUDGMENT LIENS

Cal. Civ. Code § 2897 deals with priority of liens generally. Accordingly, other things being equal, generally different liens upon the same property have priority

according to the time of their creation. However, Cal Code Civ Proc § 697.390 deals specifically with the effect of transfer or encumbrance of interest subject to judgment lien:

Cal Code Civ Proc § 697.390

If an interest in real property that is subject to a judgment lien is transferred or encumbered without satisfying or extinguishing the judgment lien:

- (a) The **interest transferred or encumbered remains subject to a judgment lien** created pursuant to Section 697.310 in the same amount as if the interest had not been transferred or encumbered.
- (b) The interest transferred or encumbered remains subject to a judgment lien created pursuant to Section 697.320 in the amount of the lien at the time of transfer or encumbrance plus interest thereafter accruing on such amount.

In the case on hand, the judgment debtor has transferred his interest in a property that is subject to the creditor's judgment lien. It was so transferred without extinguishing the creditor's lien that already existed. Therefore, the interest in the property remains subject to the creditor's lien in the property in the same amount as if the interest had not been transferred.

The essence of the above discussion is that if our client has procured a valid judgment lien by recording the judgment abstract and properly docketing it, such lien has priority over the bank's mortgage lien secured through the second mortgage.

GENERAL REMEDIES AVAILABLE TO A JUDGMENT CREDITOR

A judgment creditor has various remedies for enforcement of the money judgment, whether or not he holds a judgment lien.

The creditor may file a writ of execution under Cal Code Civ Proc § 699.510 according to which "after entry of a money judgment, **a writ of execution shall be**

issued by the clerk of the court upon application of the judgment creditor and shall be directed to the levying officer in the county where the levy is to be made and to any registered process server.” A writ of execution may be used to request a sale of the property to enforce the judgment.

As per Cal Code Civ Proc § 708.020 (a), the judgment creditor may propound **written interrogatories** to the judgment debtor, in the manner provided in Chapter 13 (commencing with Section 2030.010) of Title 4 of Part 4, requesting “information to aid in enforcement of the money judgment” and to this the debtor should answer.

Further, as per Cal Code Civ Proc § 708.030 (a), the judgment creditor may, in order to aid in enforcement of the money judgment, **demand that any judgment debtor produce and permit to inspect and to copy a document** that is in the possession, custody, or control of the party on whom the demand is made in the manner provided in Chapter 14 (commencing with Section 2031.010) of Title 4 of Part 4.

As against the third party, which is the bank in our case, the creditor has a remedy. As per Cal Civ. Proc. Code § 708.210, if a third person has possession or control of property in which the judgment debtor has an interest or is indebted to the judgment debtor, the **judgment creditor may bring an action against the third person** to have the interest or debt applied to the satisfaction of the money judgment.

The judgment creditor can have the court appoint a receiver to enforce the judgment upon showing that “considering the interests of both the judgment creditor and the judgment debtor, the appointment of a receiver is a reasonable method to obtain the fair and orderly satisfaction of the judgment.” Cal Code Civ Proc § 708.620.

II. APPLICABILITY OF THE UNIFORM FRAUDULENT TRANSFER ACT TO THE TWO TRANSFERS EFFECTED BY THE CLIENT- SECOND MORTGAGE WITH THE BANK AND TRANSFER OF DESERT PROPERTY TO GIRLFRIEND

In the absence of a judgment lien, the client has an alternate remedy of attacking the second mortgage with the bank as a fraudulent one under the Uniform Fraudulent Transfer Act and pursuing the remedies available under the said Act. So far as an existing judgment creditor is concerned the title and ownership of property conveyed with intent to defraud creditors remains in the fraudulent grantor as completely as though the transfer had not been attempted. A conveyance made to defraud creditors, and to defeat a valid subsisting judgment, will be set aside in a proper proceeding. *Bird v. Murphy*, 72 Cal. App. 39,44 (Cal. Ct. App. 1925).

In *Liuzza v. Bell*, 40 Cal. App. 2d 417 (Cal. Ct. App. 1940), the judgment creditors obtained a money judgment against the decedent for injuries sustained in an accident. Prior to the trial, the decedent transferred real property to her daughter. The judgment creditors, in a second action obtained a judgment to set aside the conveyance as fraudulent and impose a lien on the property in favor of the judgment creditors. Prior to the trial of the second action, the decedent died. The judgment creditors, in a third action against the estate administrator, obtained a judgment ordering the estate administrator to sell the property to satisfy the judgment creditor's claim. The issue before the court was if the real property deed from the decedent to her daughter was null and void. The court held that a creditor may attack a transfer as fraudulent when he has reduced his claim to judgment, and has endeavored without avail to collect the same by execution. It is not

necessary that the creditor impress a lien upon the property prior to the institution of the fraudulent conveyance action. In fraudulent transactions, for the protection of creditors it has been held that ownership and title remain in the grantor. *Id.* at 429.

THE SECOND MORTGAGE WITH THE BANK IS NOT A FRAUDULENT
TRANSFER UNDER THE UNIFORM FRAUDULENT TRANSFER ACT

The Uniform Fraudulent Transfer Act is found in Cal Civ Code § 3439. As per Cal Civ Code § 3439.04, a debtor's transfer or obligation is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation **with actual intent to hinder, delay, or defraud any creditor** and **without receiving equivalent consideration**. Thus the twin requirements of the provision to render a transfer of property fraudulent are (i) intent to defraud the creditor; and (ii) receiving unequal consideration.

In the case at hand, soon after the court pronounced the judgment against the architect for over \$500,000.00, he took the bank loan on his largest property worth about \$800,000.00. The amount of the loan was for \$600,000.00 and he used all the equity to pay off other debts and pocketed the remaining amount about \$167,000.00 for himself. His intention can be deciphered in the way he dealt with the largest asset in the aftermath of an adverse verdict. The hurried mortgage of the property for such a huge amount smacks of a fraud to deprive the creditor, the fruits of the judgment. However, it appears that the property was mortgaged for equivalent consideration. Therefore one element of Cal Civ Code § 3439.04 is not satisfied, for which reason the transfer of property to the bank cannot be called a fraudulent transfer. Therefore, for the creditor to attack the

second mortgage with the bank under the Uniform Fraudulent Transfer Act he would have to also prove that the said transfer was effected without equivalent consideration.

Nevertheless, the general remedies available to a creditor can be exhausted by the client.

TRANSFER OF DESERT PROPERTY TO GIRLFRIEND FOR AN UNFAIR CONSIDERATION IS A FRAUDULENT TRANSFER

In the case of the transfer of the desert property, made with out adequate consideration, the question will be whether, such a transaction, was designed to defraud the judgment creditor. According to Cal Civ Code § 3439.04, a transfer is fraudulent if made with actual intent to hinder, delay, or defraud any creditor and without receiving equivalent consideration. The desert property was transferred apparently with intent to defraud the creditor and without equivalent consideration. A fraudulent conveyance is a transfer by the debtor of property to a third person undertaken with the intent to prevent a creditor from reaching that interest to satisfy its claim. *Yaesu Electronics Corp. v. Tamura*, 28 Cal. App. 4th 8, 13 (1994). Section § 3439.04(b)(8) essentially stipulates to cross check whether the value received by the debtor was reasonably equivalent to the value of the transferred asset to ascertain the actual intent to defraud. "Fair consideration' is defined by *section 3439.03 of the Civil Code* as the exchange of property or the satisfaction of an antecedent debt which is the 'fair equivalent' of the property conveyed. . . . 'What constitutes "a fair equivalent" or "a fair consideration" under the Fraudulent Conveyance Act must be determined from the standpoint of creditors. . . .' The test in determining the propriety of a creditor's challenge of a conveyance for lack of a 'fair consideration' within the meaning of the act depends on whether the debtor is

thereby rendered execution proof, and the existence of any intent of fraud on the part of either the grantor or the grantee is an immaterial factor." (*Hansen v. Cramer* (1952) 39 Cal.2d 321, 324-325 [245 P.2d 1059, 30 A.L.R.2d 1204].) It is quite difficult to obtain direct proof of fraud. As people do not in such cases proclaim their intent, it can only be inferred from all the attending facts, circumstances, and conditions and by ascribing to the conduct of people those motives which would ordinarily be the motives of others doing like things under like circumstances. *S. E. Slade Lumber Co.*, 31 Cal. App. 155 (Cal. Ct. App. 1916. In *Lyons v. Security Pacific Nat. Bank*, 40 Cal. App. 4th 1001 (Cal. Ct. App. 1995), the court characterized the transaction with out a reasonable value in exchange as a constructive fraud. The court held:

Civil Code section 3439.04 describes actual fraud in subdivision (a) which provides a fraudulent transfer is one which is made "With actual intent to hinder, delay, or defraud any creditor of the debtor." Subdivision (b), which describes constructive fraud, provides a fraudulent transfer is one which, under certain circumstances, is made "Without receiving a reasonably equivalent value in exchange" therefore. (*Reddy v. Gonzalez* (1992) 8 Cal. App. 4th 118, 122 [10 Cal. Rptr. 2d 55].) Subdivision (a) is independent of section (b) and does not require proof of anything more than actual intent to defraud. (8 Cal. App. 4th at p. 123.)

Just as \$ 10 is not a valuable consideration for the transfer of property worth several thousand dollars, *Betty v. Knapp*, 5 Cal. App. 2d 512 (Cal. Ct. App. 1935), one dollar is a paltry sum to qualify for a valid consideration.

The desert property was transferred to the debtor's girlfriend with an intent to defraud the creditor and without fair consideration; this makes the transaction a fraudulent transfer.

Under Section 697.390 of the California Civil Code, if the transfer is in fraud of the creditor, the creditor may follow the property into the hands of the transferee even if the transfer took place before the judgment lien attached. Section 697.390 (a) holds that the interest transferred or encumbered remains subject to a judgment lien created pursuant to Section 697.310 in the same amount as if the interest had not been transferred or encumbered. The section deals only with the situation where the transfer or encumbrance is made after the judgment lien is created. However, if the transfer is in fraud of the creditor, the creditor may follow the property into the hands of the transferee even if the transfer took place before the judgment lien attached. See, *e.g.*, *McGee v. Allen*, 7 Cal.2d 468, 473(Cal. 1936); *Liuzza*, 40 Cal. App.2d 417, 429, 104 P.2d 1095 (1940).

In *McGee*, 7 Cal. 2d 468 (Cal. 1936), a son held his share of his deceased father's estate in trust for an attorney by executed a deed conveying to Allen his interest in the ranch property which is the subject of this action. The court below found that said instruments and deed were executed with intent to hinder, delay and defraud creditors of T. Dean Webster, and adjudged them void. Affirming the decision, the court agreed that the evidence strongly supported the conclusion that the transfers to the attorney were colorable. *Id.* at 473.

In *Judson v. Lyford*, 84 Cal. 505 (Cal. 1890), the debtor set up a trust in order to distribute his wife's estate to his children and himself. At the time the debtor executed the deed to the trustee he was heavily indebted to the creditor and had no other real property to convey. The court held that the deed was absolutely void as against the creditor as the debtor's actions indicated his intent to hinder and delay the creditor in

recovering his money. The court held that the intent of the grantor is the material element and it is immaterial how innocent the grantee was. (*Lee v. Figg*, 37 Cal. 336; 99 Am. Dec. 271; *Peek v. Peek*, 77 Cal. 111; *Swartz v. Hazlett*, 8 Cal. 128.) Nor is it necessary that the grantor should have had any malice against the creditor, or any evil intent to injure him, or any actual intent to do a wrong. It is immaterial whether, as a matter of fact, he supposed that he had a perfect right to conceal his property from his creditor. Concealment of property from one's creditor is what the law forbids, and the intent so to conceal it is considered fraud; and it is sufficient so to plead it. *Id.* at 508. A grantor, who sets up a voluntary conveyance, knowing that he has pre-existing creditors, is required to prove that he had the means to satisfy the creditors at the time of the transfer, over and above the value of the transferred property. *Schwartz v. Brandon*, 97 Cal. App. 30 (Cal. Ct. App. 1929)

Moreover, under Section 697.390 of the California Civil Code, if the transfer is in fraud of the creditor, the creditor may follow the property into the hands of the transferee even if the transfer took place before the judgment lien attached. Section 697.390 (a) holds that the interest transferred or encumbered remains subject to a judgment lien created pursuant to Section 697.310 in the same amount as if the interest had not been transferred or encumbered. The section deals only with the situation where the transfer or encumbrance is made after the judgment lien is created. However, if the transfer is in fraud of the creditor, the creditor may follow the property into the hands of the transferee even if the transfer took place before the judgment lien attached. See, e.g., *McGee v. Allen*, 7 Cal.2d 468, 473(Cal. 1936); *Liuzza v. Bell*, 40 Cal. App.2d 417, 429, 104 P.2d 1095 (1940).

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Therefore, the girl friend is not an innocent purchaser for value because the property was transferred to her name for a token consideration of \$1 before the trial, which is neither fair nor valid according to the statute and precedents.

REMEDIES AVAILABLE UNDER THE UNIFORM FRAUDULENT TRANSFER ACT

As per *Cal Civ Code § 3439.07*, the creditor can **obtain avoidance of the transfer** or obligation to the extent necessary to satisfy the creditor's claim, subject to the limitations in Section 3439.08. Section 3439.08 makes a transfer not voidable against a person "who took in good faith and for a reasonably equivalent value or against any subsequent transferee." See *Filip v. Bucurenciu*, 129 Cal. App. 4th 825,830 (Cal. Ct. App. 2005). Thus, except in cases where the transferee receives the property in good faith, *Civil Code section 3439 et seq.*, provides that a creditor may bring an action to set aside a fraudulent transfer to the extent necessary to satisfy the creditor's claim (Civ. Code, § 3439.07, subd. (a)(1)) and permits **provisional remedies such as attachments, injunctions, and appointment of receivers** (Civ. Code, § 3439.07, subd. (a)(2), (a) (3) (A), (a)(3)(B)). Although it does not provide for notices of lis pendens, it does not

exclude them either. *Hunting World v. Superior Court*, 22 Cal. App. 4th 67, 70 (Cal. Ct. App. 1994). The remedies of injunction and receivership fall under equitable remedies. *Filip*, 129 Cal. App. 4th 825,830 (Cal. Ct. App. 2005). Ordinarily a judgment creditor must exhaust his remedies at law, before he can proceed in equity to satisfy a judgment, but when it appears that the issuing of an execution would be fruitless, the issuing and return of the execution is not a necessary prerequisite to the maintenance of a suit in equity. *Bird v. Murphy*, 72 Cal. App. 39, 44 (Cal. Ct. App. 1925).

California Civil Code § 3439.07 (b) says that if a creditor has obtained a judgment on a claim against the debtor, the creditor may **levy execution on the asset transferred** or its proceeds. A **constructive trust** plainly is a proper remedy under CC § 3439.07(a)(3). *Monastra v. Konica Business Machines, U.S.A., Inc.*, 43 Cal. App. 4th 1628 (Cal. Ct. App. 1996).

Cal. Civ. Code § 3441 provides that a **creditor can avoid the act or obligation of his debtor for fraud** only where the fraud obstructs the enforcement, by legal process, of his right to take the property affected by the transfer or obligation. Consequently, it is universally held that a creditor is not in a position to attack a transfer for fraud unless he has a specific lien upon the property transferred or has reduced his claim against the debtor to judgment. *Sewell v. Price*, 164 Cal. 265,270 (Cal. 1912).

A creditor has generally an election of one of three remedies by which he may reach property fraudulently transferred: (1) a creditor having obtained a judgment may cause the property to be levied on and sold, and if he is the purchaser, bring an action to quiet title; (2) he may bring an action to set aside the conveyance and subject the property to his judgment lien; or (3) he may bring an action in the nature of a creditor's bill for the

purpose of subjecting to the payment of his judgment the money or property transferred or concealed in fraud of his rights. *Richardson v. Michel*, 45 Cal. App. 2d 188 (Cal. Ct. App. 1941). The Act expressly gives a creditor as to whom a conveyance is fraudulent the alternative right, either to: (1) have the conveyance set aside or obligation annulled to the extent necessary to satisfy a claim, or (2) disregard the conveyance and attach or levy execution on the property conveyed. *Brunvold v. Victor Johnson & Co.*, 59 Cal. App. 2d 75 (Cal. Ct. App. 1943). A creditor may have a fraudulent conveyance set aside to the extent necessary to satisfy his claim without first reducing the claim to judgment. However, where a judgment creditor, in disregard of the debtor's fraudulent conveyance of all her property after entry of the judgment, causes execution to be issued under the judgment and a sale had thereon, he may not thereafter in equity seek to set aside the fraudulent transfer for the purpose of subjecting the properties to execution a second time in satisfaction of the unpaid balance of the judgment. *Michal v. Adair*, 66 Cal. App. 2d 382 (Cal. Ct. App. 1944)

III. JUDGMENT CREDITORS CAN OBTAIN COURT-ORDERED SALE OF HOMESTEADS TO SATISFY JUDGMENTS

As per Cal Code Civ Proc § 704.740, the interest of a natural person in a dwelling may not be sold to enforce a money judgment except pursuant to a court order for sale. In *Reddy v. Gonzalez*, 8 Cal. App. 4th 118 (Cal. Ct. App. 1992) the husband conveyed his interest in the residence to his wife. He did this specifically to protect the property from third parties. The plaintiff, an unsuccessful buyer, sued the husband for losses incurred in the failed transaction. The trial court found in favor of plaintiff and set aside the conveyance to defendant. Affirming the trial court's decision, the appellate court held:

[A] **judgment lien can attach to real property used as a dwelling**, even though the property may later be found to be subject to a homestead exemption (Code Civ. Proc., § 667.340; legis. committee com. to *Code Civ. Proc.*, § 697.340, West's Ann. Codes, p. 160.) In addition, a dwelling subject to a homestead exemption can be sold to satisfy a money judgment so long as prescribed statutory procedures are followed. (*Code Civ. Proc.*, § 704.740.) Because, under the current statutory scheme, judgment liens do attach to dwellings potentially subject to a homestead exemption and **judgment creditors can obtain court-ordered sale of such dwellings to satisfy judgments**, such property is not outside the reach of creditors. Consequently, a conveyance by a debtor of an interest in such property with the intent to defraud creditors is a fraudulent conveyance under *Civil Code section 3439.04*

.Id. at 121, 122 (emphasis added)

Presuming that the properties transferred by the judgment debtor in either of the transactions, i.e. the transfer through second mortgage, or that to the girlfriend, is of a homestead, a judgment lien can attach to those properties and it can be sold to satisfy a money judgment because the transfers were fraudulent conveyances effected with the intent to shield it from creditors. *Id.*

Conclusion

The re-financed property: If the client holds a judgment lien, the general remedies available to judgment creditors listed under the California Code of Civil Procedure are available in order to enforce the money judgment.

The desert property: The provisions of the Uniform Transfer Act can be utilized to declare the transfer fraudulent, and therefore voidable. Remedies listed under the Act can be utilized to attack the transfer of the desert property to the girl friend.

Homestead: Even if either of the properties is a homestead, the judgment creditor can obtain a court ordered sale to enforce the judgment.

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