Third Party Claims against Judgment Creditors: Burden of Proof

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Recommended Citation
Available at: https://repository.uchastings.edu/hastings_law_journal/vol14/iss1/10
cases that a homestead owner can make an inter vivos gift of the property, free
from his general creditors’ claims, even when the donees of the homestead would
not have taken by descent upon the death of the donor. Why then should he
not be permitted to make such a gift by testamentary devise of the property?

In the Fath decision the court emphasized that the exemption in favor of
devises is no wrong to the general creditors since they are presumed to have
permitted the homestead owner to incur debts with them knowing that these
obligations could not be satisfied by levy and execution upon the devised prop-
erty. Is there any reason why this rationale would be less applicable in a
case where strangers have taken by devise than in a case where the devisees
are the heirs of the homestead owner?

Whatever valid reasons might exist for excluding “strangers” from the pro-
tection conferred upon devisees by section 1265, seemingly no court in Cali-
ifornia has undertaken the task of making such a judicial exclusion; and unless
the court’s statement in McIntyre is construed as an indication of a judicial
willingness to step in that direction, no present distinction exists in California
law between the respective rights of heirs and strangers to avail themselves of
the protection offered by the statute.

In the last analysis the court’s statement could be dismissed as dicta since
a narrow interpretation of section 1265 will support the holding in the case
without consideration of the respective rights of heirs and strangers to the
estate of the deceased. The question is: Will the courts so regard it in future
cases in which strangers to the estate attempt to claim the protection of the
homestead exemption of section 1265?

David W. McMurtry*

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132 Cal. at 613, 64 Pac. at 997.
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THIRD PARTY CLAIMS AGAINST JUDGMENT CREDITORS:
BURDEN OF PROOF

In California when a creditor attaches, garnishes or executes upon personal
property in the possession of another, a third party may deliver to the levying
officer a written claim of right to possession of or title to that property and
the issue will be judicially determined with the burden of proof resting on the
third party claimant.1

In a recent California case, Beverly Hills Thrift and Loan v. Western Dredg-
ing and Construction Co.,2 a corporate third party filed such a claim in order
to determine title to a dredge which at the time of levy was in the possession
of the judgment debtor. The claimant had never expressly surrendered title to
the dredge but had, several years prior to the bringing of this present suit,

1 CAL. CODE CIV. PROC. § 689.
transferred possession of the dredge to its president and chief stockholder, Smith. It was Smith who turned the dredge over to the judgment debtor. The California District Court of Appeal, in affirming the judgment of the trial court denying the claim, held that the corporation had sacrificed any rights it might have had to the dredge because: first, the claimant by his conduct placed Smith in a position where he could and did act as general manager, and as such was vested with ostensible authority to act in the manner he did; second, that the claimant by placing Smith in full and sole possession of the dredge for so long a period of time became estopped by such conduct to deny Smith's ownership and the acts done pursuant to such ownership; and third, that the claimant did not sustain his burden of proving ownership where his only evidence as to ownership was the hazy testimony of one of his officers.

This case raises interesting questions as to the scope of the third party claimant's burden of proof under Code of Civil Procedure section 689. While it is true that an attachment or execution creditor acquires only the actual interest of his debtor, the court presumes an execution to be regular until proof has been adduced to the contrary; and a third party claimant, if he is to succeed, must prove by a preponderance of the evidence that the property involved belongs to him and not the debtor. When, for example, the property is shown to have been in the possession of the debtor at the time he executed a mortgage the claimant must disprove the presumptive ownership of the debtor because it is in itself sufficient evidence to support a finding in the creditor's favor. In the strong words of Justice Sloss: "[A] presumption . . . although disputable, is itself evidence, and . . . it is for the trial court to say whether the evidence offered to overthrow the presumption has sufficient weight to effect that purpose."

It has become clear in this state that mere oral evidence may not be of sufficient weight. In fact, the third party claimant takes a poor gambler's choice where the only basis for his title is in mere oral testimony, especially if that testimony can come only from an interested party. A leading case demonstrating this point of view is that of Watwood v. Steur. This was a proceeding by third party claimants under Code of Civil Procedure section 689 to determine ownership of personal property contained in a safe deposit box and levied on in execution against Steur, the holder of the box. The court found that the claimants did not sustain their burden of proving ownership by their own testimony and that of the judgment debtors that the property belonged to them. In affirming the decision of the trial court Justice Peters remarked: "The fundamental error in the position of the appellants is that they argue, in effect, that, because the Steurs and the third party claimants testified that the prop-

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6 Pabst v. Shearer, 172 Cal. 239, 156 Pac. 466 (1916).
7 Id. at 242, 156 Pac. at 467.
9 Id. at 623-24, 201 P.2d at 462.
erties belong to appellants, the trial court was bound by their testimony. This is not the law... Provided he does not act arbitrarily, the trial judge may reject in toto the testimony of a witness even though the witness is uncontradicted.

The Beverly Hills Thrift case, while ratifying the favorable attitude of the California courts toward the judgment creditor, has further defined the burden of proof required of the third party claimant. As well as upon the oral testimony of one of its officers, the claimant relied on its corporate existence to sustain its claim to the dredge, and maintained that it was the burden of the judgment creditor to establish any estoppel or agency situation which may arise and deprive the corporation of its property. The court, however, rejected this viewpoint. Although its holding seems inconsistent with prior holdings because, generally, the burden of proving estoppel or agency is with the party who relies on it, nevertheless it seems sound under the circumstances presented in cases arising under Code of Civil Procedure section 689. The corporation is not only in a better position to know whether any authority has been expressly given, but it also stands on equal ground with the judgment creditor on the issue of implied authority. While it may at first seem dangerous in its consequences to infer the authority of a corporate officer to deal with property of the corporation, nevertheless the opportunity is left open to the corporation to show facts and circumstances to overthrow any such inference. The doctrine of presumptive authority of a corporate officer to act within the scope of corporate business has been widely accepted in some jurisdictions, but the California courts have been reluctant to go so far. Perhaps this case may serve as a pivot point on which to develop such a doctrine.

The burden of proof under Code of Civil Procedure section 689, then, is wholly on the third party claimant. The California court, recognizing the reasonable demands of the dealing public, has so broadened the burden of proof required of the third party claimant as to give the California creditor a great advantage in his dealings. The third party claimant must not only convincingly rebut the statutory presumptions which arise in the creditor’s favor, but he must also take the affirmative and convince the trier of fact of the absence of any inference of ostensible authority or estoppel.

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10 Black v. Harrison Home Co., 155 Cal. 121, 99 Pac. 494 (1909); Alta Silver Mining Co. v. Alta Placer Mining Co., 78 Cal. 629, 21 Pac. 377 (1889); CAL. CORP. CODE § 3900.

* Member, Second Year class.