

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 3283 (Committee on Judiciary)

Version: February 29, 2024

Hearing Date: June 11, 2024

Fiscal: No

Urgency: No

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SUBJECT

Enforcement of judgments: claims of exemption

DIGEST

This bill makes clear that a claim of exemption and a notice of opposition to that claim do not constitute an appearance and limits the power of the court over such a claimant to only determining the claim of exemption.

EXECUTIVE SUMMARY

Debtors who have had money judgments issued against them are able to seek claims of exemption to protect certain property or monies from being targeted by judgment creditors.

One particular issue that has arisen is when a debtor is faced with a default judgment for a debt and seeks a claim of exemption, the appearance establishes jurisdiction over the debtor, jeopardizing their ability to make a special appearance to set aside the original default.

This bill directly addresses this issue by stating that a claim of exemption and a notice of opposition to that claim do not constitute an appearance. The bill further curbs the power of the court over such a claimant by limiting it to only determining the claim of exemption.

This Committee on Judiciary bill is supported by various legal services groups, including the East Bay Community Law Center. No timely opposition was received by the Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that the claim of exemption and notice of opposition to the claim of exemption constitute the pleadings. (Code Civ. Proc. § 703.580(a).)¹
- 2) Establishes that at the conclusion of a claim of exemption hearing, the court is required to determine whether or not the property is exempt in whole or in part. (§ 703.580(d).)
- 3) Establishes that failure of the judgment debtor to make a timely claim of exemption constitutes a waiver of the exemption. (§ 703.030.)
- 4) Establishes a defendant's appearance in a civil action when they, among other things, answer, demur, file a notice of a motion to strike, or file a motion to transfer. (§ 1014.)
- 5) Permits a defendant to file a motion to set aside a default judgment. (§ 473.5.)
- 6) Provides that a general appearance by a party is equivalent to personal service of summons on such party. (§ 410.50(a).)
- 7) Establishes that an appearance at a hearing at which ex parte relief is sought, or an appearance at a hearing for which an ex parte application for a provisional remedy is made, is not a general appearance and does not constitute a waiver of the right to make a motion, as provided. (§ 418.11.)

This bill:

- 1) Provides that a claim of exemption and notice of opposition to that claim do not constitute an appearance.
- 2) Limits the power of the court over such a claimant to determining the claim of exemption.

COMMENTS

1. Restoring the rights of claimants

When someone fails to make payments on a debt, the person or company to whom the money is owed, the creditor, may seek a judgment from the courts for the amount of

¹ All further statutory references are to the Code of Civil Procedure, unless otherwise indicated.

unpaid plus fees and interest. This judgment, by itself, is just a piece of paper. With a judgment in hand, however, the creditor can proceed with a number of different tools for collecting the money owed: placing a lien on real property, seizing personal property for sale, garnishing wages, or placing a levy on a debtor's bank account.

Existing law provides judgment debtors a tool to shield themselves from onerous debt collection activity, claims of exemption. Pursuant to a prescribed process, the debtor can claim some portion of their property exempt from collection, thereby protecting it from, for example, levy or garnishment.

The concern motivating this bill is when the underlying debt judgment is the result of a default judgment. Under existing law, defendants who defaulted through no fault of their own can make a special appearance to set aside the default under Code of Civil Procedure Section 473.5, but that motion does not stop the execution of judgment from occurring while they pursue the set-aside motion. If they appear at a claim of exemption hearing, then jurisdiction is established for both the claim of exemption hearing and the underlying case. Once general jurisdiction is established, they can no longer make a special appearance to set aside the default in the underlying case on the basis of jurisdiction. This presents a dire choice for debtors and undercuts the benefits of claims for exemption.

Writing in support, a coalition of legal services entities, including the East Bay Community Law Center, explains the dilemma:

A claim of exemption is a necessary hearing for people who need a reduction in the amount of money being levied or garnished as a result of a money judgement. In the event of a levy or garnishment, the person affected has a very short window of time to stop the withdrawal, the process by which is a claim of exemption. In some of the cases, people who are not the actual debtor, either through mistake or identity theft, are stuck in a position of giving up their due process right to jurisdiction or stopping the wrongful withdrawals.

Additionally, in a nationwide examination of debt collection cases over the last decade, data shows that a whopping 70% of cases resulted in default judgement.² California's Office of Court Research reported in 2012 that, of cases filed in small claims courts in three counties (San Francisco, Alameda, and Sacramento), debt collection cases represent 27% of all cases filed against Spanish speakers. By contrast, only 16% of cases filed against English speakers were debt collection cases. Spanish language speakers

² *How Debt Collectors Are Transforming the Business of State Courts* (May 6, 2020) The Pew Charitable Trusts, <https://www.pewtrusts.org/-/media/assets/2020/06/debt-collectors-to-consumers.pdf> [as of May 30, 2024].

face substantially greater challenges in bringing their cases to court even apart from the language barrier.

This bill solves the problem by expressly stating that the claim of exemption and opposition do not constitute an appearance. The bill further limits the jurisdictional effect of filing for a claim of exemption by limiting the power of the court over the exemption claimant to determining the claim of exemption.

2. Stakeholder positions

According to the author:

A claim of exemption is a necessary hearing for people who need a reduction in the amount of money being levied or garnished as a result of a money judgement. Under existing law, appearance at a claim of exemption hearing constitutes a general appearance and thereby deprives the debtor of the opportunity to challenge jurisdiction—on the basis of improper service or mistaken identity—in the underlying debt collection case.

AB 3283 restores the rights of claimants in debt collection cases who were never properly served. This bill is a common-sense measure that provides claimants with the ability to halt the execution of judgment while they challenge their underlying debt collection case. In many cases, individuals may not even be aware that there is a debt collection proceeding against them, resulting in unjust judgments being issued in their absence. They only become aware of the judgment in the event of levy or garnishment, and then only have a very short period of time to stop the collection, through a claim of exemption. By restoring the ability for claimants to challenge judgments and halt execution while they challenge jurisdiction in the underlying case, this bill promotes fairness, accountability, and access to justice for all.

The coalition of legal services groups, including Public Counsel, write:

This bill is narrowly tailored to restore the rights of only claimants who were never properly served. This allows the claimant to stop the execution of judgement through proper channels while they challenge the underlying case. It will not remove any claimant from properly established jurisdiction in the underlying case. Without this measure, impact claimants forfeit their right to proper service, or they must bear the burden of the execution of judgement while pursuing a costly and time [consuming] motion to set aside.

SUPPORT

California Low-Income Consumer Coalition
East Bay Community Law Center
Public Counsel
Senior Advocacy Network
Western Center on Law & Poverty

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: AB 2837 (Bauer-Kahan, 2024) places certain safeguards and timelines on bank levies, wage garnishment, and claims of exemption. Specifically, it requires a judgment creditor to take additional steps to verify a judgment debtor's address and provide notice of enforcement to a judgment debtor, by requiring a court to order the return of exempt property that has been levied upon, and limiting the time period during which an earnings withholding order may be enforced and the frequency with which such an order may be sought. It requires a financial institution to protect from levy cumulatively exempt funds belonging to the debtor and held in multiple accounts. AB 2837 is currently in this Committee.

Prior Legislation:

SB 1477 (Wieckowski, Ch. 849, Stats. 2022) modified the formula for determining what portion of a judgment debtor's wages can be garnished in order to satisfy a judgment for persons, so that the lesser of twenty percent of the person's disposable earnings, or 40 percent by which the person's weekly disposable earnings exceed 48 times the prevailing minimum hourly wage.

SB 616 (Wieckowski, Ch. 552, Stats. 2019) extended and clarified a deposit account holder's timeline for filing a claim of exemption when a judgment creditor seeks to extract money from the account through a levy. It also establishes an automatic exemption from bank account levies, with specified exceptions, of no more than the minimum basic standard of adequate care for a family of four, as defined and annually adjusted.

SB 501 (Wieckowski, Ch. 800, Stats. 2015) reduced the maximum amount of a judgment debtor's weekly disposable earnings subject to levy under an earnings withholding order to the lesser of twenty-five percent of the individual's weekly disposable earnings or fifty percent of the amount by which the individual's disposable earnings for the

week exceed 40 times the state minimum hourly wage, or applicable local minimum hourly wage, if higher.

AB 1775 (Wieckowski, Ch. 474, Stats. 2012) codified in California law the definition under the federal Consumer Credit Protection Act for “disposable earnings” and the maximum amount of weekly wage garnishment of 25 percent of the individual’s disposable earnings. AB 1775 also capped the weekly wage garnishment amount at 40 times the state minimum hourly wage and provided certain multipliers to determine a maximum amount subject to levy for pay periods other than weekly.

PRIOR VOTES:

Assembly Floor (Ayes 59, Noes 14)

Assembly Judiciary Committee (Ayes 10, Noes 2)
