TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION	:	No. 81-510
of	:	AUGUST 20, 1981
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THE HONORABLE OMER L. RAINS, MEMBER OF THE SENATE, has requested an opinion on the following questions:

1.   Does a registered process server have the authority to serve a writ of execution on a judgment for recovery of money in a deposit account of a judgment debtor?

2.   Does a registered process server have the authority to serve writs of execution leaving the sale, delivery, or taking legal custody of the property to the sheriff, constable or marshal?

CONCLUSIONS

1.   A registered process server has the authority to serve a writ of execution on a judgment for recovery of money in a deposit account of a judgment debtor, so long as the levy of execution does not require the person serving the writ to sell, deliver, or take custody of the money in the account.

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2.	A registered process server has the authority to serve writs of execution authorizing the sale, delivery, or taking custody of the judgment debtor's property in the possession of another, leaving to the sheriff, constable, or marshal the duty to sell, deliver, or take custody of the property.

ANALYSIS

A writ of execution is an order for the enforcement of a judgment in a civil action. (Code of Civ. Proc., § 681;[1] see *Southern Cal. L. Co.* v. *Hotel Co.* (1892) 94 Cal. 217, 221.) Chapter 1 (commencing with § 681) of title 9 of part 2 of the Code of Civil Procedure sets forth the provisions for execution of judgments in California.

Prior to 1978, the only officers empowered to serve and execute the writ were the sheriff, constable, or marshal. (See former § 682 (enacted 1872; amended Stats. 1933, ch. 744, § 132; Stats. 1951, ch. 1737, § 104; Stats. 1955, ch. 793, § 1; Stats. 1971, ch. 1684, § 1; Stats. 1973, ch. 20, § 8) and § 687 (enacted 1872; amended Stats. 1907, ch. 360, § 2; Stats. 1933, ch. 744, § 134).) These same officers are still the only ones defined as "levying officers" with respect to a writ of attachment or writ of possession. (§§ 481,140, 511.060.) In 1978, sections 682 and 687, along with some related sections, were amended to authorize a registered process server[2] to serve a writ of execution.

Section 682 now reads in part:

"The writ of execution must be issued in the name of the people, sealed with the seal of the court, and subscribed by the clerk or judge, and be directed to the sheriff, constable, or marshal, *or registered process server*, and it must intelligibly refer to the judgment, stating the court, the county, and in municipal and justice courts, the judicial district, where the judgment is entered, and if it be for money, the amount thereof, and the amount actually due thereon. . . ." (Emphasis added; Stats. 1978, ch. 1419, § 1; amended Stats. 1979, ch. 66, § 1.)

And section 687 currently states:

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[1]All section references axe to the Code of Civil Procedure unless otherwise indicated.

[2]A registered process server is one who makes more than ten services of process within the state during a calendar year and is required to file a verified certificate of registration as a process server with the county clerk of the county in which he resides or has his principal place of business. (See Bus. & Prof. Code, § 22350 *et seq*.)

"(a) Where the execution is against the property of the judgment debtor, it may be issued to the sheriff, or any constable, or marshal of any county in the state. Where it requires the delivery of real or personal property, it must be issued to the sheriff, or a constable, or marshal of the county where the property, or some part thereof, is situated. If the judgment directs or authorizes the issuing of any process requiring the sale, or the delivery of possession of, or otherwise affecting specific real property, which is then, or subsequently becomes, a party of a county other than that in which such judgment was entered, such process may be issued to, and executed by, the sheriff, or any constable, or marshal of such other county, as to the property situate therein. Executions may be issued to different counties.

"(b) *A writ of execution may be served by any registered process server* registered pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code, *where execution is sought against property of a judgment debtor in the possession of another and the levy of execution does not require the person serving the writ to sell, deliver, or take custody of such property*.

"(c) When a writ of execution is served by a registered process server pursuant to subdivision (b), the sheriff, constable, or marshal shall perform all other duties as required by the provisions of this chapter, *except for the actual service of the writ*, as if the sheriff, constable, or marshal had served the writ himself, and shall in addition process the return of the writ by the registered process server upon receipt of the fee specified in Section 26725 of the Government Code." (Emphases added; Stats. 1978, ch. 1419, § 4.)

It appears from section 682 and the form set out in section 682.1 that the writ of execution may be directed to a registered process server as well as to the sheriff, constable, or marshal. Section 687 limits the acts which a registered process server may perform in carrying out the directions of the writ. We are asked whether a registered process server has the authority to serve and execute a writ of execution on a judgment for recovery of money in a deposit account of a judgment debtor. We assume that the question refers to a deposit account which is solely in the name of the judgment debtor. (*Cf.* § 682a.)

There is no specific provision for levying a writ of execution on a deposit account standing solely in the name of the judgment debtor but "[a]ll property subject to execution may be levied upon or released from levy in like manner as like property may be levied upon or released from attachment . . . ." (§ 688(b).)

Section 487.010 of chapter 7 of title 6.5 of part 2 ("Attachment") sets forth the property which is subject to attachment, including a deposit account.

Section 488.390 sets forth the procedure to attach a deposit account. It states in part:

"(a) Except where the account is represented by a negotiable instrument, to attach a deposit account, the levying officer shall serve the financial institution holding such account with a copy of the writ and the notice of attachment.

"(b) Promptly after the attachment of the deposit account and in no event more than 45 days after the deposit account is attached, the levying officer shall serve the defendant, and any other person in whose name the account is held, with a copy of the writ and the notice of attachment. A failure to serve the defendant or other persons pursuant to this subdivision shall not affect the lien created pursuant to subdivision (a). . . ."

In interpreting statutory language we look to the legislative purpose and intent behind the statute (*Great Lake Properties, Inc.* v. *City of El Segundo* (1977) 19 Cal. 3d 152, 153), and accord to the words used their usual, ordinary, and common sense meaning. (*In re Rojas* (1979) 23 Cal. 3d 152, 155.)

The language of section 687(b) clearly authorizes a registered process server to serve a writ of execution against the property of a judgment debtor in the possession of another if the levy of execution[3] does not require the process server to sell, deliver, of take custody of such property.

Money placed in a deposit account is subject to levy of execution. (§§ 487.010(c)(7), 688(b).) Upon its deposit, it becomes the possession of the bank, savings and loan association, or credit union wherein the account is established. (*Newmark Grain Co.* v. *Merchants Nat. Bank* (1913) 166 Cal. 203, 208.) Therefore, the money of a judgment debtor which has been placed in a deposit account is "in the possession of another" within the meaning of section 687(b). Section 688(b) provides in part that "[a]ll property subject

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[3]"A levy under a writ of execution to enforce a judgment is an act of dominion over specific property by an authorized officer of the court that, but for the writ under which he proceeds, would be a trespass, conversion, or other unlawful invasion of a property right. Such levy results in the creation of a legal right to subject the judgment debtor's interest in the property to the satisfaction of the debt of the judgment creditor, to the exclusion of others whose rights are inferior" (Fns. omitted; 30 Cal. Jur. 3d, Enforcement of Judgments, § 73, p 118.)

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to execution may be levied upon or released from levy in like manner as like property may be levied upon or released from attachment. . . ." section 488.380(a) provides that "to attach a deposit account, the levying officer shall serve the financial institution holding such account with a copy of the writ and the notice of attachment." Reading sections 688(b) and 488.390(a) together we conclude that a writ of execution is levied upon a deposit account by serving a copy of the writ and a notice of execution on the financial institution. The foregoing construction is supported by the fact that had a method of levy of attachment not been provided, the levying officer would serve "(1) a copy of the writ of execution and (2) a notice that such property or debt is levied upon in pursuance of such writ." (§ 688(b).) It follows that a registered process server is authorized to levy on such deposit account by serving the financial institution holding the account with a copy of the writ and notice of execution.[4] (§ 488.390(a).)

We conclude that a registered process server has the authority to serve a writ of execution on a judgment for recovery of money in a deposit account of a judgment debtor so long as the levy of execution does not require the person serving the writ "to sell, deliver, or take custody" of the money in the account.

As to the question of whether a registered process server has the authority to serve writs of execution, leaving the sale, delivery, or taking legal custody of the property to the sheriff, constable, or marshal, we assume that the reference is to writs of execution which *authorize* the sale, delivery, or taking custody of the judgment debtor's property in the possession of another, but which do not require the person serving the writ to sell, deliver, or take custody of such property. A registered process server cannot serve a writ of execution which requires the person serving the writ to sell, deliver, or take custody of such property. (§ 687(b).)

Subdivision (c) of section 687 states:

"*When a writ of execution is served by a registered process server pursuant to subdivision (b), the sheriff constable, or marshal shall perform all other duties* as required by the provisions of this chapter, except for the actual service of the writ, as if the sheriff, constable, or marshal had served the writ himself, and shall in addition process the return of the writ by the registered process server upon receipt of the fee specified in Section 26725 of the Government Code." (Emphasis added.)

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[4]The lien on property levied upon pursuant to section 488.390 becomes effective on the date of service on the person in possession of the property (§ 488.500.)

Reading subdivisions (b) and (c) together it is clear that a registered process server has the authority *to serve* a writ of execution which authorizes the sale, delivery, or taking custody of property of the judgment debtor which is in the possession of another. (See § 687(a), (b).) Subsequent to the service of the writ, "the sheriff, constable, or marshal shall perform all other duties" authorized by the writ. (§ 687(c); see 10 Pacific L.J. (Jan. 1979), Review of Selected 1978 California Legislation, p. 353.)

We therefore conclude that a registered process server has the authority to serve a writ of execution authorizing the sale, delivery, or taking into custody property of the judgment debtor in the possession of another, leaving to the sheriff, constable, or marshal the duty to sell, deliver, or take custody of the property.

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