

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

GARY SALZMAN,

Plaintiff and Appellant,

v.

DAWN PHILLIPS,

Defendant and Respondent.

B276460

(Los Angeles County
Super. Ct. No. MC023536)

APPEAL from a judgment of the Superior Court of Los Angeles County, Brian C. Yep, Judge. Reversed and remanded.

Gary Salzman, in pro. per., for Plaintiff and Appellant.

No appearance for Defendant and Respondent.

Gary Salzman, in pro. per., appeals from an order of the trial court denying his motion for an order for the sale of real property belonging to Dawn Phillips, against whom Salzman previously had obtained a default money judgment. Salzman contends he complied with the statutory procedures for enforcing a money judgment and that the trial court erred in denying his motion. We agree and therefore reverse.

FACTUAL AND PROCEDURAL BACKGROUND

In June 2015, Salzman filed a first amended complaint against Phillips, her husband and several trusts (collectively defendants), alleging that defendants committed fraud against Salzman, a medically disabled person, by having Phillips pretend to be Salzman's girlfriend and then "bilk thousands of dollars" from him. The complaint alleged that defendants committed identity theft against Salzman, withdrew over \$50,000 from Salzman's credit union account, and used the money to obtain real estate.

In December 2015, the court entered a default judgment against Phillips in the amount of \$49,352.54, plus costs and interest for a total judgment of \$67,882.18. The court subsequently amended the judgment to include attorney fees, resulting in a total judgment of \$75,382.18. Salzman recorded an abstract of judgment on February 23, 2016. (See Code Civ. Proc., § 697.310, subd. (a) ["a judgment lien on real property is created under this section by recording an abstract of a money judgment with the county recorder"].)¹

¹ Unspecified statutory references are to the Code of Civil Procedure.

On January 5, 2016, Phillips was found guilty of one count of grand theft in violation of Penal Code section 487a and placed on probation. Salzman asked the court to take judicial notice of the conviction in order to support his claim for punitive damages. Phillips was ordered to appear at a judgment debtor exam in February 2016.

In April 2016, Salzman obtained a writ of execution from the superior court in the amount of \$75,407.18.² He filed a Real Estate Levy Instruction Form with the Los Angeles County Sheriff's Department, seeking to levy real property owned by Phillips. (See § 699.510, subd. (a) ["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."].) On June 3, 2016, the Sheriff's Department issued a Notice to Creditor of Levy on Dwelling, stating that a levy on the property had been made and instructing Salzman to apply to the court for an order to sell the property within 20 days, and then to file a copy of the application in the Sheriff's office, pursuant to section 704.750.

On June 20, 2016, Salzman filed a motion and application for an order for the sale of Phillips' real property in the superior court. In his declaration in support of his application to sell Phillips' property, Salzman explained the steps he had taken thus far. He further stated that Phillips had not filed a homestead declaration regarding the

² An additional fee of \$25 for the issuance of the writ was included.

property, the property was not encumbered by any bank or lender, and the property was worth over \$143,000. Salzman also stated that he believed the property was not a homestead and that, according to the Los Angeles County Recorder's office, Phillips had not filed a homestead declaration. (See §§ 704.740, 704.910.) The court held a hearing and denied the motion. Salzman timely appealed.

DISCUSSION

Salzman contends the trial court erred in denying his motion and application for an order for the sale of Phillips' property in order to enforce the money judgment. The minute order indicates that both parties argued at the hearing and the court denied the motion, but there is no indication of the court's reason for the denial. There is no transcript in the record of the hearing at which the court denied the motion,³ but according to Salzman, the reason given by the trial court for denying his motion was, "We don't sell houses here." Phillips' defense at the hearing purportedly was "I didn't do it." Salzman states that the court advised him to "Keep working with the Sheriff." Salzman argues on appeal that "There is nothing left to 'work with' other than providing the Sheriff[] an Order For Sale." After examining the statutory procedures for enforcing a money judgment, we conclude that Salzman correctly followed the requisite procedures. The order denying

³ Salzman informs us that there was no court reporter at the hearing on the motion.

Salzman’s application therefore is reversed and the matter remanded for further proceedings.

“Detailed statutory provisions govern the manner and extent to which civil judgments are enforceable. In 1982, following the recommendations of the California Law Revision Commission, the Enforcement of Judgments Law (EJL) was enacted. The EJL appears in sections 680.101 through 724.260 and is a comprehensive scheme governing the enforcement of all civil judgments in California.’ [Citation.]” (*Gonzalez v. Toews* (2003) 111 Cal.App.4th 977, 980; see Moore et al., *California Civil Practice Procedure* (2017), § 30:1 [“The Code of Civil Procedure prescribes detailed procedures for enforcing judgments against various types of judgment debtors and assets. (§§ 680.010 to 724.260).”].)

“Except as otherwise provided by law, all property of the judgment debtor is subject to enforcement of a money judgment.” (§ 695.010, subd. (a).) “In general, any property of the judgment debtor that is subject to enforcement of a money judgment is subject to levy under a writ of execution under section 699.710.” (*FirstMerit Bank, N.A. v. Reese* (2015) 242 Cal.App.4th 408, 412.)

“A judgment lien on real property is created by recording an abstract of a money judgment with the county recorder. (§ 697.310, subd. (a).) Generally, a judgment lien for the amount required to satisfy the money judgment attaches to all interests in real property which are subject to the enforcement of money judgments located in the county where the lien is created. (§§ 697.340, subd. (a), 697.350, subd. (a).)

That rule does not apply, however, when a declaration of homestead has been recorded on the property in question before the abstract of judgment is recorded. (See §§ 697.340, 704.950.) In such a case, the judgment lien generally attaches to the declared homestead only ‘in the amount of any surplus over the total of the following: [¶] (1) All liens and encumbrances on the declared homestead at the time the abstract of judgment or certified copy of the judgment is recorded to create the judgment lien. [¶] (2) The homestead exemption set forth in Section 704.730.’ (§ 704.950, subd. (c); [citation].) (*Smith v. James A. Merrill, Inc.* (1998) 64 Cal.App.4th 94, 99, fn. omitted.)

“The first step for execution on a dwelling house is for the judgment creditor to have the superior court issue a writ of execution. (§§ 699.510, 699.520.) The judgment creditor then delivers the writ to the levying officer with instructions for service. (§ 699.530.) Next, the officer levies on the real property. After the levy, the officer is required to promptly serve notice on the judgment creditor that the levy has been made. (§ 704.750, subd. (a).) Within 20 days after the notice is served, the judgment creditor must apply for an order of sale or the property will be released. [Citation.]” (*Kahn v. Berman* (1988) 198 Cal.App.3d 1499, 1508.)

“A judgment creditor must obtain a *court order* of sale after a noticed hearing before a judgment debtor’s real property dwelling may be sold at an execution sale. The main purpose of the hearing procedure is to determine whether the dwelling is subject to the *homestead exemption*, and to ensure that the debtor is paid the amount

of the exemption if the property is sold.” (Ahart et al., Cal. Practice Guide: Enforcing Judgments and Debts (The Rutter Group 2016), ¶ 6:756.)

The homestead statute provides that the “interest of a natural person in a dwelling may not be sold under this division to enforce a money judgment except pursuant to a court order for sale obtained under this article and the dwelling exemption shall be determined under this article.” (§ 704.740, subd. (a).) “Homestead laws are designed to protect the sanctity of the family home against a loss caused by a forced sale by creditors. . . . The homestead exemption ensures that insolvent debtors and their families are not rendered homeless by virtue of an involuntary sale of the residential property they occupy. . . . [¶] A homestead exemption does not preclude sale of the home but entitles the homesteader to receive the value of the exemption if the property is sold to satisfy a judgment lien. ‘When there is sufficient equity in the property, it may be sold and the exemption applies to the sales proceeds that are exempt from the claims of certain creditors and can be used by the debtor to acquire another residence.’ (5 Miller & Starr, Cal. Real Estate (3d ed. 2000) Homesteads, § 13:43, p. 87.)”⁴

⁴ “In California, a homestead exemption may be asserted two ways. First, a declaration of homestead may be recorded. (¶§ 704.920.)” (*Amin v. Khazindar* (2003) 112 Cal.App.4th 582, 588.) Second, there is an “automatic” homestead exemption, which “is available when a party has continuously resided in a dwelling from the time that a creditors’ lien attaches until a court’s determination in the forced sale process that the exemption does not apply.” (*Ibid.*)

(Wells Fargo Financial Leasing, Inc. v. D & M Cabinets (2009) 177 Cal.App.4th 59, 67-68.)

The judgment creditor must file an application for an order for sale pursuant to sections 704.740, 704.750 and 704.760. “The application must state: (1) whether the county tax assessor’s records show that there is a current homeowner’s or disabled veteran’s exemption; (2) whether the dwelling is a homestead, whether there is a recorded homestead declaration, and the amount of any exemption; and (3) the names and addresses of any lienors, and the amounts of their liens on the property.” (Miller & Starr, Cal. Real Estate (4th ed. Dec. 2016) § 42:75, Conditions to conducting the execution sale of a dwelling, fns. omitted; see §§ 704.760, 704.770.)

After the application is filed, the trial court sets a hearing and orders the judgment debtor to show cause why an order for sale should not be made in accordance with the application. (§ 704.770.) At the hearing, the trial court must determine whether the property is subject to a homestead exemption and, if so, the amount of the exemption, the fair market value of the property, and the amount of any liens or encumbrances on the property. (§ 704.780, subd. (b).) “[T]he burden of proof that the dwelling is a homestead is on the person who claims that the dwelling is a homestead,” unless “the records of the county tax assessor indicate that there is a current homeowner’s exemption or disabled veteran’s exemption for the dwelling,” in which case “the judgment creditor has the burden of proof that the dwelling is not a homestead.” (§ 704.780, subd. (a)(1).) “The court shall make an order

for sale of the dwelling subject to the homestead exemption, unless the court determines that the sale of the dwelling would not be likely to produce a bid sufficient to satisfy any part of the amount due on the judgment.” (*Id.*, subd. (b).) “The court is not required to determine fair market value and the amount of liens to be satisfied where the dwelling is not an exempt homestead.” (Levin, 37 Cal.Jur.3d Homesteads (Feb. 2017), § 96.)

Salzman complied with the procedures set forth in the Enforcement of Judgments Law. He recorded an abstract of judgment (§ 697.310), obtained a writ of execution and delivered it to the levying officer, and timely applied for an order of sale. (§§ 699.510, 699.520, 699.530, 704.750.) He complied with the requirements for an application for an order of sale by including “[a] statement whether or not the records of the county tax assessor indicate that there is a current homeowner’s exemption,” “[a] statement, which may be based on information and belief, whether the dwelling is a homestead . . . , and a statement whether or not the records of the county recorder indicate that a homestead declaration . . . that describes the dwelling has been recorded by the judgment debtor,” and a statement that the property was not encumbered by any lien. (§ 704.760, subds. (a), (b) & (c).)

At the hearing on Salzman’s motion, the trial court was required to determine whether or not the property was subject to a homestead

exemption and, if not, to order a sale of the property.⁵ (§ 704.780, subd. (b) [“If the court determines that the dwelling is not exempt, the court shall make an order for sale of the property in the manner provided in Article 6 (commencing with Section 701.510) of Chapter 3.”].) Even if the property was determined to be exempt, the court was required to “make an order for sale of the dwelling subject to the homestead exemption, unless the court determines that the sale of the dwelling would not be likely to produce a bid sufficient to satisfy any part of the amount due on the judgment pursuant to Section 704.800.” (*Ibid.*; see *Abbett Electric Corp. v. Storek* (1994) 22 Cal.App.4th 1460, 1470 [examining § 704.780 and finding “a legislative intent to impose a mandatory duty on the trial court to issue an order for sale upon determining that the dwelling is exempt”].) The court thus erred in denying Salzman’s application for an order of sale.

“A hearing must be held to confirm whether the dwelling is an exempt homestead and to determine the amount of the exemption and the fair market value of the property.” (Cal. Judges Benchbook: Civil Proceedings After Trial (CJER 2014) Enforcement of Judgment, § 6.67, p. 408.) In his declaration, Salzman states that he believed that the property was not a homestead and that the Los Angeles County Recorder indicated there was no homestead declaration on file. However, the record is devoid of any findings by the trial court as to

⁵ “The sale of a non-exempt dwelling is governed by the general procedures applicable to other types of property.” (§ 704.780, Legislative Committee Comments – Assembly (1984 Amendment); 37 Cal.Jur.3d Homesteads, § 96.)

whether the property was exempt. We therefore reverse and remand for the court to hold another hearing, determine whether the property is a homestead, and grant the order for sale as appropriate under section 704.780.

DISPOSITION

The order denying Salzman's application for an order of sale is reversed and the matter remanded for the court to make the findings and orders required under section 704.780. Salzman is entitled to recover costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, Acting P. J.

We concur:

MANELLA, J.

COLLINS, J.