

## MEMORANDUM

TO: [REDACTED]  
[REDACTED]

FROM: [REDACTED]  
Attorney at Law

RE: *Virgin Islands Enforcement of Judgment Question*

DATE: [REDACTED], 2006

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This Memorandum addresses the question our client has proposed regarding the collection of a Virgin Islands judgment against a judgment debtor who is also a plaintiff in a personal injury action pending in that same jurisdiction.

Just as a preview and possibly to save you some time, all of ¶3 below just recites, for comparison purposes, California's statutory scheme that covers the question at issue. If you want to skip that and start at ¶4, there is where you will find the meat of the research and conclusions regarding how the problem should be analyzed under applicable Virgin Islands' law.

### **1. Facts.**

As I understand the facts presented, our client ("Client") obtained a monetary judgment in a Virgin Islands court ("Action No. 1") against a defendant ("Defendant"). No portion of that judgment has been satisfied or, if it has, there is still a remaining outstanding balance that has not yet been satisfied. Defendant, at some point either during or after the pendency of Action No. 1, was involved in an automobile action, and is suing the other driver for damages ("Action No. 2"). Action No. 2 is also pending before a Virgin Islands court. The Plaintiff in Action No. 2 is, in other words, our judgment debtor who was the defendant in Action No. 1.

### **2. Question Presented.**

The question presented is: How can Client perfect and eventually execute upon the lien represented by his favorable judgment in Action No. 1 in a manner such that any proceeds paid to the Defendant either by way of settlement or judgment in Action No. 2 will go directly to Client in partial or whole satisfaction of the judgment in Action No. 1, rather than into the pockets of the Defendant?

### **3. Typical Law Found in Most U.S. Jurisdictions.**

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Most U.S. jurisdictions have statutory provisions governing the process of how a judgment is perfected and enforced against a “chose in action” owned by the judgment debtor. For example, California has adopted a very precise statutory scheme found at *Code of Civil Procedure* §§ 708.410 through 708.480. Those sections -- to give an example of the statutory framework that has been established in most other U.S. jurisdictions -- provide as follows:

“708.410. (a) A judgment creditor who has a money judgment against a judgment debtor who is a party to a pending action or special proceeding may obtain a lien under this article, to the extent required to satisfy the judgment creditor's money judgment, on both of the following:

(1) Any cause of action of such judgment debtor for money or property that is the subject of the action or proceeding.

(2) The rights of such judgment debtor to money or property under any judgment subsequently procured in the action or proceeding.

(b) To obtain a lien under this article, the judgment creditor shall file a notice of lien and an abstract or certified copy of the judgment creditor's money judgment in the pending action or special proceeding.

(c) At the time of the filing under subdivision (b) or promptly thereafter, the judgment creditor shall serve on all parties who, prior thereto, have made an appearance in the action or special proceeding a copy of the notice of lien and a statement of the date when the notice of lien was filed in the action or special proceeding. Service shall be made personally or by mail. Failure to serve all parties as required by this subdivision does not affect the lien created by the filing under subdivision (b), but the rights of a party are not affected by the lien until the party has notice of the lien.

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(d) For the purpose of this article, an action or special proceeding is pending until the time for appeal from the judgment has expired or, if an appeal is filed, until the appeal has been finally determined.

708.420. The notice of lien under Section 708.410 shall contain all of the following:

(a) A statement that a lien has been created under this article and the title of the court and the cause and number of the pending action or proceeding in which the notice of lien is filed.

(b) The name and last known address of the judgment debtor.

(c) The name and address of the judgment creditor.

(d) The title of the court where the judgment creditor's money judgment is entered and the cause and number of the action, the date of entry of the judgment, and the date of any subsequent renewals, and where entered in the records of the court.

(e) The amount required to satisfy the judgment creditor's money judgment at the time the notice of lien is filed in the action or proceeding.

(f) A statement that the lien attaches to any cause of action of the judgment debtor that is the subject of the action or proceeding and to the judgment debtor's rights to money or property under any judgment subsequently procured in the action or proceeding.

(g) A statement that no compromise, dismissal, settlement, or satisfaction of the pending action or proceeding or any of the judgment debtor's rights to money or property under any judgment procured therein may be entered into by or on behalf of the judgment debtor, and that the judgment debtor may not enforce the

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judgment debtor's rights to money or property under any judgment procured in the action or proceeding by a writ or otherwise, unless one of the following requirements is satisfied:

(1) The prior approval by order of the court in which the action or proceeding is pending has been obtained.

(2) The written consent of the judgment creditor has been obtained or the judgment creditor has released the lien.

(3) The money judgment of the judgment creditor has been satisfied.

(h) A statement that the judgment debtor may claim an exemption for all or any portion of the money or property within 30 days after the judgment debtor has notice of the creation of the lien and a statement that, if the exemption is not claimed within the time allowed, the exemption is waived.

708.430. (a) The court in which the action or special proceeding is pending may permit a judgment creditor who has obtained a lien under this article to intervene in the action or proceeding pursuant to Section 387.

(b) For the purposes of Sections 708.450 and 708.470, a judgment creditor shall be deemed to be a party to the action or special proceeding even though the judgment creditor has not become a party to the action or proceeding under subdivision (a).

708.440. (a) Except as provided in subdivision (c) of Section 708.410, unless the judgment creditor's money judgment is first satisfied or the lien is released, the judgment recovered in the action or special proceeding in favor of the judgment debtor may not be enforced by a writ or otherwise, and no compromise, dismissal, settlement, or satisfaction of the pending action or

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special proceeding or the judgment procured therein may be entered into by or on behalf of the judgment debtor, without the written consent of the judgment creditor or authorization by order of the court obtained under subdivision (b).

(b) Upon application by the judgment debtor, the court in which the action or special proceeding is pending or the judgment procured therein is entered may, in its discretion, after a hearing, make an order described in subdivision (a) that may include such terms and conditions as the court deems necessary. The application for an order under this subdivision shall be made on noticed motion. The notice of motion shall be served on the judgment creditor. Service shall be made personally or by mail.

708.450. (a) If a lien is created under this article, the judgment debtor may claim that all or any portion of the money or property that the judgment debtor may recover in the action or special proceeding is exempt from enforcement of a money judgment. The claim shall be made by application on noticed motion to the court in which the action or special proceeding is pending, filed and served on the judgment creditor not later than 30 days after the judgment debtor has notice of the creation of the lien. Service shall be made personally or by mail. The judgment debtor shall execute an affidavit in support of the application that includes all the matters set forth in subdivision (b) of Section 703.520. No notice of opposition to the claim of exemption is required. The failure of the judgment debtor to make a claim of exemption under this section constitutes a waiver of the exemption.

(b) The court may determine the exemption claim at any time prior to the entry of judgment in the action or special proceeding or may consolidate the exemption hearing with the hearing on a motion pursuant to Section 708.470.

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(c) If the judgment debtor establishes to the satisfaction of the court that the right of the judgment debtor to money or property under the judgment in the action or special proceeding is all or partially exempt from enforcement of a money judgment, the court shall order the termination of the lien created under this article on the exempt portion of the money or property.

708.460. (a) If a lien is created pursuant to this article, the court clerk shall endorse upon the judgment recovered in the action or special proceeding a statement of the existence of the lien and the time it was created.

(b) Any abstract issued upon the judgment shall include a statement of the lien in favor of the judgment creditor.

708.470. (a) If the judgment debtor is entitled to money or property under the judgment in the action or special proceeding and a lien created under this article exists, upon application of any party to the action or special proceeding, the court may order that the judgment debtor's rights to money or property under the judgment be applied to the satisfaction of the lien created under this article as ordered by the court. Application for an order under this section shall be on noticed motion. The notice of motion shall be served on all other parties. Service shall be made personally or by mail.

(b) If the judgment determines that the judgment debtor has an interest in property, the court may order the party having custody or control of the property not to transfer the property until it can be levied upon or otherwise applied to the satisfaction of the lien created under this article.

(c) If the court determines that a party (other than the judgment debtor) having notice of the lien created under this article has transferred property that was subject to the lien or has paid an

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amount to the judgment debtor that was subject to the lien, the court shall render judgment against the party in an amount equal to the lesser of the following:

- (1) The value of the judgment debtor's interest in the property or the amount paid the judgment debtor.
- (2) The amount of the judgment creditor's lien created under this article.

708.480. A lien created under this article may be enforced by any applicable procedure:

- (a) After the judgment subject to the lien is entered and the time for appeal from the judgment has expired.
- (b) If an appeal is filed from the judgment subject to the lien, after the appeal is finally determined.”

As you can see, California, at least, has given our fact situation a great deal of thought and has enacted a specific legislative framework to deal with the issue. This is not, unfortunately, the case in the Virgin Islands.

#### **4. The Law of the Virgin Islands.**

##### **A. Explanation of Research Methodology.**

The body of statutory law which governs the Virgin Islands is called the *Virgin Islands Code*. It has various subchapters that cover areas that are governed by other Codes when, for instance, California law is being applied, such as the *Penal Code*. It also has an entire subsection that is somewhat akin to California's *Code of Civil Procedure*.

In carrying out my research on the question presented, I first read through all of the pertinent portions of the *Virgin Islands Code*. I found nothing nearly as detailed or akin to California's *Code of Civil Procedure* §§ 708.410 through 708.480 as quoted in ¶3 above. So I

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next telephoned the young lady who serves as the Law Clerk for the Honorable Curtis V. Gomez of the District Court of the Virgin Islands, St. Thomas/St. John Division, and described the situation to her in detail. She indicated that to the best of her knowledge, the Virgin Islands had nothing similar to the California scheme, and that it was a question that, again to her knowledge, had ever come up. So I next telephoned and spoke with Bennett Chan, Esq., one of the senior partners in the Virgin Islands' 11-attorney firm of Dudley, Clark & Chan, L.L.P., and described our fact situation to him. He indicated that the Virgin Islands simply does not have anything in its governing Code that would specifically cover our situation, and remarked that compared with a jurisdiction like California, the Virgin Islands' laws are rather "primitive." Finally, I telephoned the senior partner in the Virgin Islands' law firm of Hodge & Francois, and once again went through our entire fact situation with her. Ms. Hodge confirmed almost word for word what Mr. Chan had previously told me, namely, that nothing in the *Virgin Islands Code* directly covers our situation, and wished me good luck.

**B. Back to the *Virgin Islands Code*.**

In my opinion, there is a way to achieve the goal our client seeks; the method is just not all collected in the same place within the *Virgin Islands Code*, so the answer does not immediately jump out to the researcher like the California answer does.

I believe that there are two primary sub-sections of the *Virgin Islands Code* that apply to our fact situation. These are:

- Title 5, "Judicial Procedure," Subchapter 1, "Civil Procedure," Part IV, "Judgment," and Chapter 25, "Attachment"; and
- Title 5, "Judicial Procedure," Subchapter 1, "Civil Procedure," Part IV, "Judgment," and Chapter 43, "Enforcement of Judgments."

A portion of the first citation listed above is Section 256, entitled "Execution of Writ," and which provides as follows:

"The marshal to whom the writ is delivered shall execute the same without delay, as follows:

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- (1) Real property shall be attached by leaving with the occupant thereof, or if there be no occupant, in a conspicuous place therein, a copy of the writ certified by the marshal.
- (2) Personal property capable of manual delivery to the marshal, and not in the possession of a third person, shall be attached by taking it into his custody.
- (3) Other personal property shall be attached by leaving a certified copy of the writ, and a notice specifying the property attached, with the person having possession of the same, *or if it be a debt, then with the debtor*, or if it be rights or shares in the stock of an association or corporation or interest or profits thereof, then with such person or officer of such association or corporation as Rule 4 of the Federal Rules of Civil Procedure authorizes a summons to be served upon.” [Emphasis added]

Section 256, *supra*, relates only to pre-judgment provisional remedies and not to post-judgment remedies. But its significance lies in the fact that it is referenced in a portion of the second of the two citations listed above, which relates specifically to “Enforcement of Judgments.” Section 480 of that Chapter, entitled “Levy on Property,” provides as follows:

“When a writ of execution is against the property of the judgment debtor, it shall be executed by the marshal as follows:

- (1) If property has been attached, he shall indorse on the execution, and pay to the clerk forthwith the amount, if any, of the proceeds of sales of perishable property, or debts due the defendant received by him, sufficient to satisfy the judgment.
- (2) If the judgment is not then satisfied and property has been attached and remains in his custody he shall sell the same or sufficient thereof to satisfy the judgment.

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(3) If then any portion of the judgment remains unsatisfied, or if no property has been attached, or the same has been discharged, he shall levy on the property of the judgment debtor sufficient to satisfy the judgment.

(4) *Property shall be levied on in like manner and with like effect as similar property is attached, as provided in sections 256, 257, and 265 of this title, omitting the filing of the certificate provided for in section 258 of this title.*

(5) Until a levy, property shall not be affected by the execution. When property has been sold or payments received by the marshal on execution, he shall pay the proceeds thereof, or sufficient to satisfy the judgment, to the clerk by the day on which the writ is returnable.

(6) When property has been attached, and it is probable that such property will not be sufficient to satisfy the judgment, the execution may be levied on other property of the judgment debtor without delay. If after satisfying the judgment any property or the proceeds remain in the custody of the marshal he shall deliver the same to the judgment debtor.” [Emphasis added]

Thus, the post-judgment procedure for property like that described in Section 256, *supra* -- which specifically refers to debts owed by other parties to the debtor -- is the same as the pre-judgment procedure prescribed for provisional remedies such as attachments. Section 256’s only requirement is that the marshal leave “...a certified copy of the writ, and a notice specifying the property attached, with the person having possession of the same, *or if it be a debt, then with the debtor...*” That is the procedure for pre-judgment provisional remedies. Section 480(4) provides that the same procedure also applies to post-judgment enforcement by way of a writ of execution.

## 5. Conclusions.

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Even though it would appear that service of the writ of execution by the marshal on the defendant in Action No. 2 would suffice under the *Virgin Islands Code*, I believe that in an abundance of caution, we should recommend to our client that he do the following:

- Serve the defendant in Action No. 2 with the Writ of Execution either personally or by certified mail, return receipt requested;
- Serve the defendant's counsel in Action No. 2 with the Writ of Execution, either personally or by certified mail, return receipt requested;
- Serve the Defendant (i.e., the plaintiff in Action No. 2) with the Writ of Execution either personally or by certified mail, return receipt requested;
- Serve the Defendant's (i.e., the plaintiff in Action No. 2) counsel in Action No. 2 with the Writ of Execution either personally or by certified mail, return receipt requested; and
- If there are any other parties to Action No. 2, such as co-plaintiffs, co-defendants, intervenors, or the like, I think that they, too, as well as their respective counsel, should be served with the Writ of Execution either personally or by certified mail, return receipt requested.

This is the "abundance of caution" approach, because my reading of the statute would appear to indicate that only notice to the judgment debtor is required. But within the context of a lawsuit where there are other parties as well as counsel involved, merely serving the judgment debtor might well result in he or she being the only party aware of the existence of the writ of execution, leaving payment of any settlement or judgment behind our client's back much easier to accomplish.

In addition, there is one other provision with which our client should be advised to comply if he or she has not already done so, namely, Section 425, entitled "Judgment Lien," which provides as follows:

“(a) At any time after the entry of judgment, while an execution may issue upon such judgment, and the same remains unsatisfied

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in whole or in part, the judgment creditor, or his representative in case of his death, may file a certified transcript of the judgment in the office of the recorder of deeds in either or both of the judicial divisions of the Virgin Islands.

(b) Upon the filing of such transcript, the recorder shall docket the same in the judgment docket of his office and note the same in the property register against such property or properties of the judgment debtor situate in the judicial division as may be requested by the judgment creditor in writing, which shall be filed with the transcript of the judgment. Such judgment may be noted against all after acquired property of the judgment debtor with like effect, upon the request of the judgment creditor.

(c) From the date of docketing the transcript of a judgment, such judgment shall be a lien against the judgment debtor's real property against which it is noted as provided in this section. A conveyance of real property or any portion thereof or interest therein shall be subject to the lien of a judgment unless such conveyance has been recorded at the time of docketing the transcript of such judgment.

(d) Whenever a period of ten years elapses after the entry of judgment without an execution being issued on such judgment, the lien thereof shall expire.

(e) The term "judgment" as used in the section shall include any determination by a court or the hearing officer (as defined in Title 16, section 341 of this Code) that a person's child support obligation is overdue. Notwithstanding the provision of subsection (d) of this section, a judgment for overdue child support shall not expire."

Please let me know if you have any questions, comments, or suggestions regarding the above analysis.

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Best regards as always,

A handwritten signature in black ink, enclosed within a red rectangular border. The signature is stylized and appears to be 'H. [unclear]'. Below the signature is a thick black horizontal bar.

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