

149 Cal.App.3d Supp. 29, 197 Cal.Rptr. 531  
(Cite as: 149 Cal.App.3d Supp. 29, 197 Cal.Rptr. 531)

Appellate Department, Superior Court,  
Sonoma County, California.  
**SURETY COMPANY OF THE PACIFIC,**  
Cross-complainant and Defendant,  
v.  
Louis M. PIVER et al., Cross-defendants and  
Respondents;  
Shamrock Materials, Inc., Cross-defendant and  
appellant.  
**Civ. A. No. 156-A.**

Aug. 25, 1983.

After materials company had obtained judgment against defendant and surety in different county, based on statutory contractor's license bond, action was brought by second claimant, also based upon bond, and surety filed cross complaint in interpleader. The Municipal Court, Sonoma County, Gayle C. Guynup, J., granted surety's motion for order restraining all parties to action, including materials company, from instituting or further prosecuting any other proceedings which affected rights and obligations of parties to interpleader, and materials company appealed. The Superior Court, Appellate Department, Sonoma County,

Boone, J., held that: (1) trial court's restraining order was appealable, and (2) trial court had jurisdiction to issue such restraining order, including jurisdiction to restrain collection of prior judgment obtained by materials company.

Affirmed.

West Headnotes

[1] Appeal and Error 30 ↪ 100(1)

30 Appeal and Error  
30III Decisions Reviewable  
30III(E) Nature, Scope, and Effect of  
Decision  
30k96 Relating to Provisional  
Remedies  
30k100 Injunction  
30k100(1) k. In General. Most  
Cited Cases  
Order restraining all parties to action based on statutory contractor's license bond from instituting or further prosecuting any other proceedings which affected rights and obligations of parties to surety's interpleader

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action was appealable. West's Ann.Cal.Bus. & Prof.Code § 7071.5 et seq.; West's Ann.Cal.C.C.P. §§ 386, 386(f), 904.2(g).

**[2] Courts 106 ↪ 480(1)**

106 Courts  
    106VII Concurrent and Conflicting  
Jurisdiction  
    106VII(A) Courts of Same State  
    106VII(A)1 In General  
    106k480 Injunction or Prohibition  
Against Proceedings  
    106k480(1) k. In General. Most  
Cited Cases

**Courts 106 ↪ 480(2)**

106 Courts  
    106VII Concurrent and Conflicting  
Jurisdiction  
    106VII(A) Courts of Same State  
    106VII(A)1 In General  
    106k480 Injunction or Prohibition  
Against Proceedings  
    106k480(2) k. Enjoining  
Enforcement of Judgment. Most Cited Cases  
Trial court, in action based on statutory

contractor's license bond, had jurisdiction to issue order restraining all parties to action from instituting or further prosecuting any other proceeding which affected rights and obligations of parties to surety's interpleader action, notwithstanding that party's claim had been reduced to judgment in different county; jurisdiction to restrain "further prosecuting" another action included jurisdiction to restrain collection of judgment. West's Ann.Cal.Bus. & Prof.Code § 7071.5 et seq.; West's Ann.Cal.C.C.P. §§ 386, 386(f), 904.2(g).

**\*\*531 Daniel A. Gamer, San Rafael, for cross-defendant and appellant.**

**\*\*532 Geoffrey R. Hudson, Palo Alto, for cross-complainant and defendant.**

Eric M. Safire, San Francisco, for cross-defendants and respondents.

**\*30 BOONE, Judge.**

Cross-defendant Shamrock Materials, Inc. (Shamrock) appeals from orders restraining it from further prosecuting Marin County Municipal Court Action No. 68140 against defendant and cross-complainant **Surety**

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**Company of the Pacific (Surety).**

\*31 In the Marin County action Shamrock obtained a summary judgment in the sum of \$1,224.24 plus interest and costs based on a statutory contractor's license bond (Bus. & Prof. Code, § 7071.5 et seq.) issued by Surety on behalf of defendant Louis M. Piver. The present action against Surety, brought by a second claimant, is also based on the bond. Shamrock was notified of this second claim together with a further claim of the Carpenters Trust Fund prior to the time Shamrock moved for summary judgment.

In this action Surety filed a cross-complaint in interpleader (Code Civ.Proc., § 386) and moved for an order restraining all parties to the action from instituting or further prosecuting any other proceeding which affects the rights and obligations of the parties to the interpleader (Code Civ.Proc. 386(f)). Pursuant to that motion, Shamrock was and is, restrained from further prosecuting the Marin County action.

[1] The restraining orders (injunctions?) are appealable. (Code Civ.Proc., § 904.2, subd. (g); 6 Witkin, Cal.Procedure (2d ed.1971), appeal; § 77, p. 4088)

[2] On the merits, the trial court clearly had jurisdiction to make the orders. (Code Civ. Proc., § 386, subd. (f); *Department of Education v. Superior Court* (1979) 97 Cal.App.3d 977, 979, 159 Cal.Rptr. 265). The circumstance that Shamrock's claim has been reduced to judgment does not preclude such restraint. Section 386, subd. (f) is not limited by its terms to unliquidated or unadjudicated claims. The statute authorizes an order restraining either "instituting" or "further prosecuting" any other proceeding.

Nor should such a statutory limitation be implied. A restraint against enforcing a judgment, as here, may be essential to the protection of interpleader jurisdiction. (*Treinius Sunshine Mining Co. v. Sunshine Min. Co.* (1939) 308 U.S. 66, 74, 60 S.Ct. 44, 48, 84 L.Ed. 85, 91, interpleader action based on inconsistent judgments in two States; see *Big Lake State Bank v. Morris' Estate* (1961 N.D.Tex.) 202 F.Supp. 115, 118.)

Indeed, there may be situations in which the various claimants to particular property or a fund should be permitted to proceed to judgment in a proper forum of their choice, being restrained in

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the interpleader action only as to the enforcement of any judgment so obtained. That is the established practice under rule 22, Federal Rules of Civil Procedure. (*State Farm Fire & Cas. Co. v. Tashire* (1967) 386 U.S. 523, 535, 87 S.Ct. 1199, 1206, 18 L.Ed.2d 270, 278; *Empire Fire & Marine Ins. Co. v. Crisler* (1976 S.D.Miss.) 405 F.Supp. 990, 993; *Maryland Cas. Co. v. \*32 Sauter* (1973 N.D.Miss.) 58 F.R.D. 466, 468.) As revised in 1975, the California statute is in conformity with rule 22. (3 Witkin, Cal.Procedure (2d ed. 1983 Supp.), Pleading § 217A, p. 122.) Hence, section 386 should receive the same construction. Jurisdiction to restrain "further prosecuting" another action includes jurisdiction to restrain collection of the judgment.

The question is not one of competing courts of concurrent jurisdiction. The restraint is directed only at Shamrock, not to the Marin court. Moreover, the jurisdiction involved is that of maintaining the interpleader cross-action, which is solely vested in the trial court herein.

Neither is there a collateral attack on the Marin judgment. The validity of Shamrock's claim is not in question. The interpleader cross-action seeks only to apportion the amount of the bond among the claimants.

**\*\*533** Finally, no facts are presented establishing laches or any other equitable defense to the restraining orders.

The orders are therefore affirmed.

SATER, P.J., and GALLAGHER, J., concur.  
Cal.Super.,1983.

Surety Co. of the Pacific v. Piver  
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