

Ask the Receiver: Can the receivership court stay lawsuits?

Q: I was appointed as a state court receiver over a corporation. There are a number of pending lawsuits against the corporation. Currently there are few liquid assets and I would rather not use them to defend the lawsuits. Can the receivership court stay the lawsuits and require the claims be dealt with in a claims procedure in the receivership case?

A: It depends. The pivotal issue is whether the case you were appointed in is an action (Code Civ. Proc. § 22) or a special proceeding (Code Civ. Proc. § 23). The distinction is important because Code of Civil Procedure section 526(b)(1) prohibits an injunction: “to stay a judicial proceeding pending at the commencement of the action in which the injunction is demanded, unless the restraint is necessary to prevent a multiplicity of proceeding.” [Emphasis added]. Because the section only refers to action, the prohibition does not apply to special proceedings. See generally, *Veyna v. Orange County Nursery, Inc.*, 170 Cal. App.4th 146, 154 (2009).

So, what is the difference between an action and a special proceeding? An action is defined as: “...an ordinary proceeding in a court of justice by which one party prosecutes another for the declaration, enforcement, or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense.” Code Civ. Proc. § 22. A special proceeding is everything else. “Every other remedy is a special proceeding.” Code Civ. Proc. § 23. As the cases acknowledge, the definition is not too helpful. “The term... is not generally defined by statute ... the term does not have a well-established meaning...special proceedings being of statutory origins do not proceed according to the course of the common law but give new rights and afford new remedies.” *Boggs v. North American Bond & Mortg. Co.*, 20 Cal. App. 2d 316, 319 (1937). The California Supreme Court has explained: “As a general rule, a special proceeding is confined to the type of case which was not, under the common law or equity practice, either an action at law or a suit in equity.” *Tidewater Associated Oil Co. v. Superior Court*, 43 Cal. 815,822 (1955). The following types of cases, for example, have been held to be special proceedings and hence Code of Civil Procedure section 526(b)(1) would not apply. An action for the dissolution of a corporation. *Esparza v. Kadam, Inc.*, 182 Cal. App. 2d 802,807 (1960); for the same reasons, actions for the involuntary dissolution of a limited partnership or limited liability company (see Corp. Code §15908.02 et. seq. and §17707.03 et. seq.); probate proceedings, *Estate of Quinn*, 43 Cal 2d 785,787 (1955); insurance company liquidations, *Carpenter v. Pacific Mut. Life Ins. Co.*, 10 Cal. 2d 307,327 (1937). The Code of Civil Procedure itself lists a number of cases that are defined as special proceedings. Part 3. Of Special Proceedings of a Civil Nature, starting at Code of Civil Procedure section 1063.

Even if you cannot stay the pending actions, a judgment obtained is only a claim in the receivership and its payment is subject to the receivership court. *Credit Managers Ass’n v. Kennesan Life & Accident Inc. Co.*, 25 F.3d 743,751 (1994) (A judgment “operates only as an

established claim against the assets... It is not enforceable by execution. The manner of paying it is under the exclusive control of the court in which the receivership proceeding is pending...”). The situation would be entirely different if your case was filed in federal court because Code of Civil Procedure section 526(b)(1) would not apply. Federal courts have repeatedly upheld stays enjoining the commencement or prosecution of actions against entities or assets in receivership. SEC v. Wencke, 622 F.2d 1363 (9th Cir. 1980) (issuing a stay is an inherent power of a court of equity and protects the res in the court’s possession).