

Compensatory and Collection Remedies

CHAPTER 570

ATTACHMENT

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570.01 ALLOWANCE OF WRIT. In an action for the recovery of money, other than for libel, slander, seduction, breach of promise of marriage, false imprisonment, malicious prosecution, or assault and battery, the plaintiff, at the time of issuing the summons or at any time thereafter, may have the property of the defendant attached in the manner hereinafter prescribed, as security for the satisfaction of such judgment as he may recover. A writ of attachment shall be allowed by a judge of the court in which the action is brought, or a court commissioner of the county. The action must be begun as provided in section 541.12 not later than 60 days after issuance of the writ.

[R. L. s. 4215] (9342)

570.013 PUBLIC EMPLOYEES; ATTACHMENT OF WAGES. The salary or wages of an officer or employee of a county, city, town, village, or school district, or of any department of any such subdivision, is liable to attachment. Where the person is an officer, the writ shall be served upon the auditor, treasurer or clerk of the subdivision or department of which he is an officer. Where the person is an employee other than an officer, the writ shall be served upon the person in charge of the office or department in which the employee works.

When payment has been made pursuant to levy, a copy of the attachment with certificate of satisfaction shall be delivered to the treasurer as his voucher for such payment.

[1953 c 110 s 1]

570.02 CONTENTS OF AFFIDAVIT. To obtain such writ, the plaintiff, his agent or attorney, shall make affidavit that a cause of action exists against the defendant, specifying the amount of the claim and the ground thereof, and alleging:

- (1) That the debt was fraudulently contracted; or
- (2) That defendant is a foreign corporation, or not a resident of this state; or
- (3) That he has departed from the state, as affiant verily believes, with intent to defraud or delay his creditors, or to avoid the service of a summons, or keeps himself concealed therein with like intent; or
- (4) That he has assigned, secreted, or disposed of his property, or is about to do so, with intent to delay or defraud his creditors.

[R. L. s. 4216] (9343)

570.03 CONDITIONS OF BOND. Before allowing the writ, the court shall require of the plaintiff a bond, in the penal sum of at least \$250, conditioned that if judgment be given for the defendant, or if the writ be vacated, the plaintiff will pay all costs that may be awarded against him, and all damages caused by the attachment, not exceeding the penalty of the bond.

[R. L. s. 4217] (9344)

570.04 ISSUANCE, CONTENTS, AND SCOPE OF WRIT. Upon filing the affidavit and bond, with the order allowing such writ, the clerk shall issue the same, stating therein the amount of the plaintiff's demand. Several writs may issue at the same time, directed to the sheriffs of different counties. Each shall require the sheriff to attach and safely keep the unexempt property of defendant found in his county, or so much thereof as shall suffice to satisfy the amount

claimed, with expenses and costs. All property not exempt from execution under the judgment demanded in the action shall be subject to attachment therein.

[R. L. s. 4218] (9345)

570.05 EXECUTION OF WRIT. The sheriff, on receiving the writ, shall execute the same without delay. Real estate shall be attached by his filing a certified copy of the writ, and of his return of such attachment thereon, containing a description of such real estate, with the register of deeds of the county in which the same is situated, and serving a copy of such writ and return upon the defendant, if he can be found in his county, without any other act or ceremony. Such attachment shall be a lien on the interest of the defendant in such real estate from the time of filing the same. Personal property shall be attached in the manner provided by law for the levy of an execution thereon and, so far as practicable, the provisions respecting such levy shall govern the execution of the writ of attachment.

[R. L. s. 4219] (9346)

570.06 INVENTORY, SERVICE, AND RETURN. When an attachment of personal property has been made, the sheriff shall forthwith annex to the writ an inventory of the property attached and, if the defendant be a resident of his county, shall serve such writ and inventory upon him in the manner prescribed for the service of a summons. When any writ of attachment is fully executed or discharged, he shall return the same, with his doings thereon, to the court.

[R. L. s. 4220] (9347)

570.07 PERISHABLE PROPERTY TO BE SOLD; CREDITS COLLECTED. If any of the property attached be perishable, the sheriff shall sell the same in the manner provided for the sale of personal property on execution. He may also take such legal proceedings, either in his own name or in that of the defendant, as may be necessary for the recovery of the credits and effects attached, and may discontinue the same as the court may direct.

[R. L. s. 4221] (9348)

570.08 JUDGMENT FOR PLAINTIFF, HOW SATISFIED. If judgment be recovered by the plaintiff, the sheriff shall satisfy the same out of the property attached, if sufficient, first paying to plaintiff the proceeds of sales of perishable property and of all credits collected by him, or so much thereof as may be required. If a balance remain due and an execution on the judgment be to him issued, he shall sell thereunder so much of the attached property as may be necessary to satisfy such balance.

[R. L. s. 4222] (9349)

570.09 MOTION TO VACATE. The defendant, within the time allowed to answer, or, if he has answered, at any time before the trial, may apply to the court, on notice, to vacate the writ of attachment. If the motion be made upon affidavits on the defendant's part, but not otherwise, the plaintiff may oppose the same by affidavits in addition to those upon which the writ was allowed.

[R. L. s. 4223] (9350)

570.093 BOND OF DEFENDANT FOR RELEASE OF PROPERTY. Where his property has been attached a defendant may secure the release of the property from the attachment by giving a bond, if he acts before judgment is entered. The bond must be approved by a judge or justice of the court in which the action was brought, but where the action was brought in the district court, the court commissioner may approve the bond. The bond shall be executed in a penal sum at least double the amount claimed in the writ of attachment or, where the value of the property attached is less than the amount claimed, twice such value. The bond shall be conditioned to pay any judgment rendered against the defendant in the action, or as much as equals the value of the property attached. If he approves the bond, the judge, justice, or court commissioner shall issue an order discharging the attachment and releasing the property. When the defendant has filed the order with the bond and served a copy of the order upon the plaintiff or his attorney, the order becomes effective.

[1953 c 110 s 3]

570.10 ATTACHED PROPERTY RETAKEN, WHEN; DAMAGES. Should any of the attached property belonging to the defendant pass out of the sheriff's hands without being converted by him into money, he may retake the same, and for that

purpose shall have all the powers originally conferred by the writ; and any person who shall conceal or wilfully withhold such property from the sheriff shall be liable for double damages, at the suit of the party injured.

[R. L. s. 4224] (9351)

570.11 SATISFACTION, DISCHARGE; REAL ESTATE. An attachment of real estate may be released by filing for record with the register of deeds:

(1) A certified copy of an order of the court vacating the attachment, or of a final judgment in defendant's favor, or a satisfaction of judgment in plaintiff's favor, rendered in such action;

(2) A certificate of satisfaction or discharge of the attachment, executed and acknowledged by the plaintiff or his attorney, as required for the satisfaction of a mortgage;

(3) A deed of release of the attached premises, or of any part or interest therein, in which case the parts or interests not described in the deed shall remain subject to the attachment lien.

Such attachment may also be released by an entry in the margin of the record, signed by the plaintiff or his attorney, acknowledging such release.

[R. L. s. 4225] (9352)

570.12 SATISFACTION AND DISCHARGE; PERSONAL PROPERTY. When an attachment of personal property has been made by filing a copy of the writ with any public official, its discharge shall be effected by filing in the same office any instrument of release mentioned in section 570.11.

[R. L. s. 4226] (9353)

570.13 ABANDONMENT OF ACTION. If no judgment be entered within three years after the attachment, any party interested in the attached property, whether a party to the action or not, may move the court therein for its release. If it be made to appear that no proceeding has been taken in the action within the preceding three years, or from other evidence that the action has been abandoned, such motion shall be granted. The attachment shall be void and of no effect without any further action at the end of ten years from such attachment if, within such time, no judgment in the proceeding has been entered.

[R. L. s. 4227; 1945 c. 272 s. 1] (9354)

570.14 ATTACHMENTS AND RELEASES; RECORD AND INDEX. All copies of writs of attachment filed for record with the register of deeds, and all satisfactions or releases of attachments of real estate thereunder, shall be recorded in the books provided for the record of mortgages, and shall be indexed as if the defendant in the attachment were a mortgagor and the plaintiff a mortgagee.

[R. L. s. 4228] (9355)