

1977 Senate Bill 563

Date published: May 12, 1978

CHAPTER 308, Laws of 1977

AN ACT to repeal 810.04; to amend 809.10, 810.01, 810.02 (4) and (5), 810.03, 810.06, 810.07, 810.09, 810.11 and 810.12; to repeal and recreate 810.02 (intro.) and 810.05; and to create 810.02 (6) of the statutes, relating to changing procedure in nonconsumer replevin actions.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 809.10 of the statutes is amended to read:

809.10 Bail, how given. The defendant may give a bail bond executed by ~~two~~ 2 or more sufficient sureties, stating their places of residence and occupations, to the effect that the defendant shall, at all times, ~~render himself~~ be amenable to the process of the court during the pendency of the action and to such as may be issued to enforce the

judgment therein, or if ~~he be the defendant~~ is arrested for the cause mentioned in s. 809.02 (1) (c), a bond executed by sufficient sureties, to the ~~same effect as that required by s. 810.06~~ they are bound in a sum double the value of the property.

SECTION 2. 810.01 of the statutes is amended to read:

810.01 Replevin, plaintiff may claim delivery. The plaintiff in a replevin action may, ~~at any time before answer,~~ claim the ~~immediate~~ delivery of the property as prior to final judgment in the manner provided in this chapter.

SECTION 3. 810.02 (intro.) of the statutes is repealed and recreated to read:

810.02 (title) Order directing return of property. (intro.) An order directing the return of property to the plaintiff at any time before final judgment in a replevin action shall be issued only by a judge or other judicial officer on the affidavit of the plaintiff made after summons is issued. The affidavit or verified complaint shall set forth specific factual allegations to show the following:

SECTION 4. 810.02 (4) and (5) of the statutes are amended to read:

810.02 (4) That the ~~same property~~ has not been taken for a tax, assessment or fine or seized under ~~an any~~ execution or attachment against the property of the plaintiff, or ~~that~~ if so seized that it is exempt from ~~such the~~ seizure; ~~and,~~

(5) The value of the property; ~~and~~

SECTION 5. 810.02 (6) of the statutes is created to read:

810.02 (6) The location of the property claimed by the plaintiff with sufficient specific factual allegations for the judge or judicial officer to determine that there is reason to believe that the property is in the location described or in the possession of the defendant or any person acting on behalf of, subject to or in concert with the defendant.

SECTION 6. 810.03 of the statutes is amended to read:

810.03 Requisition to sheriff. ~~The plaintiff may, by an indorsement upon the complaint or the affidavit, require the sheriff of the county where the property claimed may be to~~ Upon the issuance of an order making a factual determination set forth in s. 810.02 and upon the execution of a bond in an amount approved by the judge or judicial officer and with sufficient sureties approved by the judge or judicial officer, to secure the value of the property, the prosecution of the action, the return of the property to the defendant, if the return thereof be adjudged, and payment to the defendant of such sum as may be recovered against the plaintiff, the sheriff shall then take the same property from the defendant or such persons as are acting on behalf of, in concert with or under control of the defendant, and deliver ~~it~~ possession of the property to the plaintiff.

SECTION 7. 810.04 of the statutes is repealed.

SECTION 8. 810.05 of the statutes is repealed and recreated to read:

810.05 Motion to vacate or modify. The defendant may at any time upon notice to the plaintiff move the court or the presiding judge thereof to vacate or modify the order directing delivery of the property for any sufficient cause. A motion to vacate or modify the order directing delivery of the property may be combined with a motion to increase the plaintiff's security or excepting to the sureties on the plaintiff's bond.

SECTION 9. 810.06 of the statutes is amended to read:

810.06 Return of property to defendant. At any time before ~~the delivery of the property to the plaintiff,~~ final judgment the defendant may, ~~if he do not except to the sureties of the plaintiff,~~ require the return thereof ~~upon of the property by executing and~~ delivering to the sheriff a bond, executed by sufficient sureties, ~~to the effect that they are bound in a sum double the value of the property (as stated in the complaint or affidavit of the plaintiff), for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him to the effect that the defendant shall be bound to the sum of the bond for the delivery of the property thereof to the plaintiff, if the delivery be adjudged, and for the payment to the plaintiff of such sum as may be~~

recovered against the defendant. ~~If a return of the property be not so required within 3 days after the taking and the service on the defendant it shall be delivered to the plaintiff, except as provided in s. 810.11. The sheriff shall promptly notify the plaintiff that the defendant has demanded a return of the property.~~

SECTION 10. 810.07 of the statutes is amended to read:

810.07 Justification of sureties. ~~The plaintiff may within 3 days after he is notified notification by the sheriff that the defendant demands a return of the property notify the sheriff that he excepts except to the defendant's sureties, otherwise he waives his right to except. If he excepts, the defendant's sureties shall justify as provided in s. 810.08. Upon such justification the sheriff shall deliver the property to the defendant. The sheriff shall be responsible for the defendant's sureties until they justify or until justification is waived, and may retain the property until that time; but if they or others in their place fail to justify at the time and place appointed he shall deliver the property to the plaintiff by motion to the judge or judicial officer under s. 810.08 (2), and the judge or judicial officer shall determine the sufficiency of the sureties provided for the bond.~~

SECTION 11. 810.09 of the statutes is amended to read:

810.09 Property in building, how taken. ~~If the property or any part thereof be is in a building or inclosure enclosure the sheriff shall publicly may demand its delivery; if it be not delivered he shall enter and take the property. If the property is not delivered the sheriff shall advise the plaintiff of the refusal of the delivery. The plaintiff may then apply to the court for a warrant upon a sufficient showing of probable cause that the property is contained in the building or enclosure and upon delivery of the warrant of the judicial officer to the sheriff the sheriff may then enter and take the property.~~

SECTION 12. 810.11 and 810.12 of the statutes are amended to read:

810.11 Claims of third parties; indemnity to officer. ~~If the property taken be is claimed by a third 3rd person and such claimant shall make affidavit of his title and right to the possession, stating the facts as to such right and title, and serve the same upon the sheriff he shall not be bound to keep the property or deliver it to the plaintiff unless he shall indemnify the sheriff against such claim by a bond in double the value of the property as stated by the plaintiff executed by two sureties and no such claim to such property shall be valid against the sheriff unless made as aforesaid; and he may retain the property a reasonable time to demand such indemnity, the 3rd person may make application to the judge or judicial officer under ss. 810.02 and 810.03 for an order directing that the 3rd person be given delivery of the property so claimed. Any person having possession of the property may move the court to vacate or modify the order directing delivery to the 3rd party claimant, or post bond in the same manner provided for the defendant.~~

810.12 Papers filed. ~~The sheriff shall file the replevin a return or any other papers with proof of service and his doings therein with the clerk of the court in which the action is pending, within 20 days after taking the property mentioned therein relating to any actions by the sheriff made under this chapter within a reasonable time after service.~~