

CHAPTER 816

REMEDIES SUPPLEMENTARY TO EXECUTION

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816.03 Debtor may be compelled to answer as to property. (1) (a) When an execution against property has, within 5 years, been returned unsatisfied in whole or in part or the officer holding the execution certifies that he is unable to levy upon property sufficient to satisfy the judgment or the judgment creditor by affidavit satisfies the court or judge that the judgment debtor, whether an individual, firm, corporation or other association, has property which he unlawfully refuses to apply towards the satisfaction of the judgment, the court or a judge of the county to which the execution was issued shall, upon motion of the judgment creditor, order such judgment debtor, whether an individual, firm, corporation or other association, to appear before him and answer concerning his property at a time and place specified in the order, within said county.

(b) A court commissioner upon application of a judgment creditor shall order any judgment debtor to appear before him and answer concerning his property at a time and place specified in the order, within said county, in lieu of the procedure set forth in par. (a).

(2) The fact that garnishee proceedings have been commenced in aid of or that property has been levied on under a second execution shall not bar proceedings under this section; but if it appears to the satisfaction of the court or judge before whom such proceedings are pending that the property levied on or garnished will be sufficient to satisfy such judgment with costs, then the proceedings herein provided for may be dismissed or adjourned to a time after the sale under such execution or the termination of such garnishee proceedings.

History: 1971 c. 123; Sup. Ct. Order, 67 W (2d) 761; Stats. 1975 s. 816.03.

816.035 Commissioners' orders; service and return; filing; fees. (1) An order under s. 816.03 (1) issued by a court commissioner must be served by the sheriff or constable; the return thereon must be made to the commissioner who issued the order; and the commissioner must file the order and such return with the clerk of the court in which the judgment involved is entered.

(2) Upon issuance of the order, the court commissioner shall collect the fee prescribed in s. 814.68 (2) for attendance upon the examination.

History: Sup. Ct. Order, 67 W (2d) 761, 781; Stats. 1975 s. 816.035; 1981 c. 317.

816.04 Appointment of receiver. A receiver may be appointed but before appointing a receiver the court or judge shall ascertain, if practicable, whether any other supplementary proceedings are pending against the judgment debtor, and if there be any, the plaintiff therein shall have notice to appear and shall have notice of all subsequent proceedings in relation to such receivership. There shall be but one receivership at any time.

History: Sup. Ct. Order, 67 W (2d) 761; Stats. 1975 s. 816.04.

Violation of "one receivership" rule does not create statutory right of action in judgment debtor. *Candee v. Egan*, 84 W (2d) 348, 267 NW (2d) 890 (1978).

816.05 Warrant against debtor. Upon satisfactory proof by affidavit that there is danger of the judgment debtor's leaving the state or concealing himself and that there is reason to believe that he has property which he unjustly refuses to apply to such judgment, the court or judge may issue a warrant requiring the sheriff to arrest him and bring him before such court or judge to answer concerning his property.

History: Sup. Ct. Order, 67 W (2d) 761; Stats. 1975 s. 816.05.

Cross Reference: See 425.113 which prohibits warrants against the person of a customer with respect to a claim arising from a consumer credit transaction.

425.113 does not exempt a person from being required to appear and make a disclosure under oath in a supplementary proceeding held under ch. 816. Lawful and reasonable court orders may be entered to compel such attendance. Disobedience of such orders are subject to contempt of court. *Smith v. Burns*, 65 W (2d) 638, 223 NW (2d) 562.

816.06 Examination of debtor and witnesses. At the hearing upon such order or warrant such judgment debtor may be examined on oath and testimony on the part of either party may be offered.

History: Sup. Ct. Order, 67 W (2d) 761; Stats. 1975 s. 816.06.

816.07 Bond; commitment. If it shall appear upon or pending any such examination that there is danger of the debtor leaving the state and that he has property which he has unjustly refused to apply to such judgment he may be ordered to give a bond with one or more sureties, that he will from time to time attend before the court or judge, as he shall direct, and that he will not, during the pendency of the proceedings, dispose of any property not exempt from execution. In default of such bond he may be committed to prison as for a contempt.

History: Sup. Ct. Order, 67 W (2d) 761; Stats. 1975 s. 816.07.

816.08 Property to be applied to judgment. The court or judge may order any property of the judgment debtor or due to the judgment debtor, not exempt from execution, to be applied toward the satisfaction of the judgment; but if it appear that any person alleged to have property of the judgment debtor or to be indebted to him claims an adverse interest in the property or denies the debt, such interest or debt shall be recoverable only in an action against such person by the receiver; and a transfer or other disposition of such property or interest may be restrained till a sufficient opportunity be given to the receiver to commence the action and prosecute the same to judgment and execution or until security therefor shall be given as ordered.

History: Sup. Ct. Order, 67 W (2d) 761; Stats. 1975 s. 816.08.

In supplementary proceeding, no issue can be tried between receiver (or judgment creditor) and third person as to rights in property. *Dept. of Revenue v. Milwaukee Mack Sales*, 91 W (2d) 1, 280 NW (2d) 274 (1979).

816.11 Costs, fees. The court or judge may allow to the judgment creditor or to any party so examined, whether a party to the action or not, witness' fees and disbursements and a fixed sum, in addition, not exceeding \$25, as costs, and require their payment by order.

History: Sup. Ct. Order, 67 W (2d) 761; Stats. 1975 s. 816.11.