CHAPTER 811

ATTACHMENT

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811.001 Definitions. In this chapter:

(1) "Defendant" includes the spouse or former spouse of the defendant if the action against the defendant is in connection with an obligation described under s. 766.55 (2).

(2) "Property of his or her debtor" and "property of the defendant" include the marital property interest of the spouse or former spouse of the debtor or defendant if the action against the debtor or defendant is in connection with an obligation described under s. 766.55 (2).

History: 1985 a. 37; 1993 a. 486.

811.01 Attachment; municipal corporation. Any creditor may attach the property of his or her debtor, in the cases, upon the conditions, and in the manner prescribed in this chapter. No writ of attachment shall be issued against a municipal corporation, as defined in s. 67.01 or to recover the price or value of intoxicating liquors sold at retail.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 811.01; 1993 a. 486.

The doctrine of marshaling assets is discussed. Moser Paper Co. v. North Shore Pub. Co. 83 Wis. 2d 852, 266 N.W.2d 411 (1978).

811.02 Writ; form and contents. The writ of attachment shall be issued by a judge or other judicial officer on the request of the plaintiff at any time before final judgment and after a summons and a complaint are filed. It shall be directed to the sheriff of some county in which the property of the defendant is supposed to be, and shall require the sheriff to attach all the property of the defendant within the county or so much thereof as may be sufficient to satisfy the plaintiff's demand, together with costs and expenses. It shall be in the name of the court and be sealed with its seal. If the amount of money sought was excluded from the demand for judgment, as required under s. 802.02 (1m), the court shall require the plaintiff to specify the amount of money claimed and provide that information to the court and to the other parties prior to the court issuing the writ.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 811.02; 1977 c. 412; 1987 a. 256.

Judicial Council Committee Note, 1974: The amendment precludes attachment prior to commencement of action by filing of the summons and complaint. [Re Order effective Jan. 1, 1976]

811.03 Basis for attachment. (1) ON CONTRACT OR JUDGMENT. Before any writ of attachment shall be executed the plaintiff or someone in the plaintiff's behalf shall make and annex thereto an affidavit setting forth specific factual allegations to show that the defendant is indebted, or that property of the defendant is available, to the plaintiff in a sum exceeding $50 specifying the amount above all setoffs, and that the same is due upon contract or upon a judgment and that the affiant knows or has good reason to believe either:

(a) That the defendant is absent from this state, or is concealed therein so that summons cannot be served on the defendant; or

(b) That the defendant has disposed of or concealed or is about to dispose of or conceal the defendant's property or some part thereof with intent to defraud the defendant's creditors; or

(c) That the defendant has removed or is about to remove property out of this state with intent to defraud the defendant's creditors; or

(d) That the defendant fraudulently incurred the obligation respecting which the action is brought; or

(e) That the defendant is not a resident of this state; or

(f) That the defendant is a foreign corporation; or if domestic that no officer or agent thereof on whom to serve the summons exists or resides in this state or can be found; or

(g) That the action is against a defendant as principal on an official bond to recover money due the state or to some county or other municipality therein, or that the action is against the defendant as principal upon a bond or other instrument given as evidence of debt for or to secure the payment of money embezzled or misappropriated by such defendant as an officer of the state or of a county or municipality therein.

(2) TORT ACTION. Except as provided in ss. 806.30 to 806.44, in tort actions the affidavit shall state that a cause of action in tort exists in favor of the plaintiff and against the defendant, that the damages sustained exceed $50, specifying the amount claimed and either:

(a) That the defendant is not a resident of this state; or that the defendant's residence is unknown and cannot with due diligence be ascertained; or

(b) That the defendant is a foreign corporation.

(3) ON DEMANDS NOT YET DUE. An action may be maintained and a writ of attachment issued on a demand not yet due in any case mentioned in this section, except the cases mentioned in sub. (1) (e), (f) and (g) and the same proceedings in the action shall be had and the same affidavit shall be required as in actions upon matured demands except that the affidavit shall state that the debt is to become due; but the bond specified in s. 811.06 shall be conditioned in 3 times the amount claimed in the affidavit. In case an attachment is issued before the maturity of the debt and a traverse to such attachment is sustained the court shall render a judgment for damages and costs against the plaintiff.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758, 778 (1975); Stats. 1975 s. 811.03; 1977 c. 412; 1985 a. 37; 1987 a. 256; 1991 a. 236; 1993 a. 486.

A second writ can be issued before the first is dissolved if based on a different ground. The validity of the basis for the writ must be determined as of the date it is issued. Plan Credit Corp. v. Swinging Singles, Inc. 54 Wis. 2d 146, 194 N.W.2d 822 (1972).

811.04 Amendment to affidavit. The affidavit required by s. 811.03 may be amended at any time before the trial by the substitution of a new affidavit containing allegations of facts existing at the time of making the former affidavit.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758, 778 (1975); Stats. 1975 s. 811.04.

811.06 Bond; justification. Before the writ of attachment is executed, a bond on the part of the plaintiff in a sum set by the judge or the judicial officer issuing the writ of attachment in an amount sufficient to provide adequate security to the defendant for any damages the defendant may sustain by reason of the attachment, shall be filed with the court to the effect that if the defendant recovers judgment the plaintiff shall pay all damages which the defendant may sustain by reason of the attachment. The affidavit of the surety annexed to the bond shall state that the surety is a resident and householder or freeholder within the state and worth double the sum specified in the bond in property therein above his or her debts and exclusive of property exempt from execution. No bond is necessary when this state or any county, town or municipality therein is plaintiff.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 811.06; 1977 c. 412.

The bond may be executed by the plaintiff's attorney on the plaintiff's behalf. Plan Credit Corp. v. Swinging Singles, Inc. 54 Wis. 2d 146, 194 N.W.2d 822 (1972).

811.07 Additional security. In case the defendant is not satisfied with the amount specified in the bond or with the surety, the defendant may, upon 5 days' notice to the plaintiff, apply to a judge for additional security and the judge may require the plaintiff to give and file another bond, to be approved by the judge, in such sum as the judge shall consider proper, not exceeding the appraised value of the property attached. The surety shall justify as provided in s. 811.06; but if there be more than one surety, the sureties may be accepted if they are jointly responsible for the required sum.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758, 778 (1975); Stats. 1975 s. 811.07; 1993 a. 486.

811.08 Officer's return. The officer executing the writ shall return thereon all of the officer's proceedings and within 10 days from receipt of the bond shall file the writ, affidavit and bond with the clerk of the court.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 811.08; 1993 a. 486.

Judicial Council Committee Note, 1974: The amendment precludes attachment prior to commencement of action by filing of the summons and complaint. [Re Order effective Jan. 1, 1976]

811.09 Alias writs. Alias writs of attachment may be issued to the sheriffs of different counties at any time before judgment. In such case a copy of the affidavit and bond annexed to the original writ shall be annexed to such alias writ. Such alias writs shall be executed and returned in the same manner as the original.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 811.09.

811.10 Directions to sheriff; several writs. (1) The sheriff shall without delay seize so much of the property of the defendant, in the sheriff's county, as will satisfy the demand of the plaintiff, with costs and expenses, and make an inventory thereof; the sheriff shall cause all personal property attached by the sheriff to be appraised by 2 disinterested residents of the county, who shall be first sworn by the sheriff to make a true appraisement thereof, which appraisement shall be signed by them, and the appraisement and inventory shall be returned with the writ; the sheriff shall serve copies of the writ, affidavit and bond, and inventory, upon the defendant in the same manner as a summons. In case of a nonresident or a foreign corporation the sheriff shall serve the copies of the writ, affidavit and bond, and inventory, on any agent of such defendant in the county, if any be known to the sheriff.

(2) If 2 or more writs against the same defendant shall be executed on the same property an inventory and appraisement shall be made in but one of the actions, and the sheriff shall endorse on the copy served upon the defendant in the other action a notice that the property seized is the property seized in the action in which the inventory and appraisement are made, giving the title of the action; and the officer shall state in his or her return the fact of such endorsement.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 811.10; 1993 a. 486.

A writ may be served on a nonresident's attorney. Plan Credit Corp. v. Swinging Singles, Inc. 54 Wis. 2d 146, 194 N.W.2d 822 (1972).

811.11 Attachment of real estate. To attach real estate the sheriff shall record in the office of the register of deeds the writ with his or her certificate that by virtue of that writ he or she has attached all the interest of the named defendant in such real estate, describing the same.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 811.11; 1993 a. 301.

811.12 What may be attached; how attached. All the property of the defendant, not exempt from execution, may be attached. Personal property shall be attached as upon an execution and the provisions respecting the levy of an execution thereon shall be applicable to an attachment.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 811.12.

811.13 Indemnity to sheriff. If there is reasonable doubt as to the ownership of the property or as to its liability to be attached the sheriff may require sufficient security to indemnify the sheriff for attaching such property.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 811.13; 1993 a. 486.

811.14 Sale of perishable property attached or garnisheed. When any property taken on a writ of attachment or received by the officer from any garnishee including actions appealed to the court, shall be likely to depreciate in value before the end of the action or the keeping thereof shall be attended with much loss or expense the court or a judge may order it sold in such manner as the best interests of the parties demand, and the money realized shall be held by the officer in lieu of the property sold.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 811.14; 1993 a. 213.

811.15 Care of property; collection of debts. The officer shall keep the property seized by the officer and the proceeds of such property as shall have been sold to answer any judgment which may be recovered in such action; and shall, subject to the direction of the court or judge, collect and receive into the officer's possession all the debts, credits and effects of the defendant. The officer may also take such legal proceedings, either in the officer's own name or in the name of such defendant, as may be necessary for that purpose and discontinue the same at such times and on such terms as the court or judge may direct.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 811.15; 1993 a. 486.

811.16 Bond for release of property; estoppel. The defendant may, at any time before judgment, deliver to the officer who attached the defendant's property a bond executed by 2 sureties, to the effect that they will, on demand, pay to the plaintiff the amount of the judgment, with all costs, that may be recovered against the defendant in the action, not exceeding the sum specified in the bond with interest. The bond shall be at least the amount claimed in the plaintiff's affidavit or, at the defendant's option, the value of the property attached, according to the appraisement; or, if real estate, in a sum fixed by the court or a judge, on notice. The sureties shall justify as provided in s. 811.06, and may be accepted if they are jointly responsible for the required sum.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975), 778; Stats. 1975 s. 811.16; 1977 c. 412; 1987 a. 256.

811.17 Exception to defendant's sureties; release of property; costs. The officer shall give to the plaintiff a copy of the bond with notice of the time when the bond was delivered to him or her; and the plaintiff shall, within 3 days thereafter, give notice to the officer that he or she excepts to the sureties or waives all objections to them. When plaintiff excepts, the sureties shall justify as provided in s. 810.08. The officer shall be responsible for the sufficiency of such sureties and may retain possession of the attached property until they shall so justify or objection be so waived. Thereafter the officer shall deliver the property attached to such defendant; if real estate is attached, the sheriff shall record

a certificate of the discharge thereof in the office of the register of deeds. If the plaintiff recover, all his or her costs and disbursements on the attachment shall be included in his or her judgment.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758, 778 (1975); Stats. 1975 s. 811.17; 1993 a. 301.

811.18 Vacation or modification of writ. The court or the presiding judge thereof may, at any time vacate or modify the writ of attachment upon motion of the defendant for any sufficient cause. A motion to vacate or modify may be combined with a motion to increase the plaintiff's security under s. 811.07.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975), 778; Stats. 1975 s. 811.18; 1977 c. 412.

811.19 Hearing on motion to vacate or modify. A motion to vacate or modify shall be heard forthwith by the court. On the motion, the burden of proof shall be upon the plaintiff. If the defendant has made an assignment for the benefit of creditors, the assignees of the defendant may move to vacate or modify the writ of attachment in the same manner as is provided for the defendant.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 811.19; 1977 c. 412.

811.21 Damages, defendant when to recover. If the defendant prevails in the action or if the action be discontinued the damages sustained by the defendant by reason of the taking and detention or sale of any property attached by reason of any injury thereto shall be assessed and the defendant shall have judgment therefor.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 811.21; 1993 a. 486.

811.22 Return of property; damages on dismissal; entry in register's office. When the defendant recovers judgment all the money or property held by any writ of attachment shall be delivered to him or her, subject to the plaintiff's rights on appeal, and he or she may maintain an action on the plaintiff's bond for the assessed damages sustained by reason of the writ of attachment. Upon the entry of final judgment in favor of the defendant or on satisfaction of a plaintiff's judgment, the clerk of court shall, if real estate was attached, certify the fact of the judgment or satisfaction, and on recording the certificate with the register of deeds in any county in which attached lands are situated the register shall enter the certificate upon the records of his or her office in discharge of the attachments.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); 1993 a. 301.

811.23 Judgment for plaintiff, how satisfied. When the plaintiff shall have recovered judgment in the action the sheriff or officer shall satisfy the same out of the property attached or received from any garnishee or otherwise, if sufficient therefor:

(1) By paying over to such plaintiff all money attached or received upon sales of property, or from any garnishee, or upon any debts or credits, or so much thereof as shall be necessary.

(2) By selling, under such execution as may be issued on such judgment, so much of the attached property, real or personal, as shall be necessary to satisfy the balance unpaid, according to the provisions regulating sales upon execution; except as provided in sub. (4).

(3) If any of the attached property belonging to the defendant shall have passed out of the hands of the sheriff without having been sold or converted into money, the sheriff shall repossess the attached property, and for that purpose shall have all the authority which the sheriff had to seize the property under the writ of attachment; and any person who shall willfully conceal or withhold the attached property from the sheriff shall be liable to double damages at the suit of the party injured.

(4) Until the judgment against the defendant shall be paid the sheriff may proceed to collect the evidences of debt that may have been seized or attached by virtue of the writ of attachment or that may have been delivered up by any person summoned as garnishee, and to prosecute any bond the sheriff may have taken in the course of the proceedings, and apply the proceeds thereof to the payment of the judgment and costs. When the judgment and all costs of the proceedings shall have been paid, the sheriff, upon reasonable demand, shall deliver over to the defendant the residue of the property attached or that may have been received from any garnishee, or the proceeds thereof.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 811.23; 1993 a. 486.

811.24 Action by sheriff, who to prosecute. The actions herein authorized to be brought by the sheriff or officer may be prosecuted by the plaintiff or under the plaintiff's direction, upon the delivery by the plaintiff to the sheriff or officer of an undertaking, with 2 sufficient sureties, to the effect that the plaintiff will indemnify the sheriff or officer for all damages, costs and expenses thereon not exceeding $250 in any one action; such sureties shall, when required by the sheriff or officer, justify by making an affidavit that each is a householder and worth double the amount of the penalty named in the undertaking over and above all debts and exemptions.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 811.24; 1993 a. 486.

811.25 Execution after defendant's death. If any defendant whose property is attached shall die and the judgment is in favor of the plaintiff, the property attached shall be applied to the payment of the judgment and execution may be issued on such judgment and satisfied out of the property so attached in the same manner as if such defendant were living.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 811.25.

811.26 Stranger may intervene. Any person not a party to the action, whose property is attached, may, at any time, either before or after judgment, be made a party upon the person's application for the purpose of removing or discharging the attachment. The court may grant such summary relief as shall be just, and may in proper cases award an issue for trial by jury.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 811.26; 1993 a. 486.