

1987 Senate Bill 550

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1987 Wisconsin Act 256

AN ACT to renumber and amend 802.05; to amend 226.13, 802.05 (title), 802.06 (3), 802.07 (1) and (3), 802.08 (2), 806.01 (1) (c), 806.02 (2), 811.02, 811.03 (3) and 811.16; to repeal and recreate 802.02 (1); and to create 802.02 (1m), 802.05 (1) (b), 802.05 (2) and 814.025 (4) of the statutes, relating to pleadings in civil actions and frivolous claims.

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

SECTION 1. 226.13 of the statutes is amended to read:

226.13 Plaintiff's lien. The plaintiff ~~in such action~~ shall, to the extent of the final judgment ~~therein~~, have a lien upon all ~~such the~~ property and interests ~~aforsaid~~ of the foreign corporation from the time of the filing of the complaint in ~~such the~~ action, unless ~~such the~~ foreign corporation shall file files with the clerk an undertaking, in double the amount claimed to be due to the plaintiff, executed by ~~two~~ 2 or more sureties in ~~its~~ the corporation's behalf, resident freeholders of this state, to the effect that the corporation will satisfy the final judgment that may be recovered in favor of

~~such the~~ plaintiff in ~~such the~~ action within ~~sixty~~ 60 days from the ~~rendition thereof~~. ~~Such date the judgment is rendered.~~ The undertaking ~~shall be~~ is of no effect unless accompanied by the affidavit of the sureties as ~~provided in~~ under s. 808.07, and ~~such sureties, upon being excepted to, must justify in like manner as there directed.~~ If the foreign corporation notifies the court and plaintiff of an intent to file an undertaking, and the amount of money sought by the plaintiff 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.~~

SECTION 2. 802.02 (1) of the statutes is repealed and recreated to read:

802.02 (1) CONTENTS OF PLEADINGS. A pleading or supplemental pleading that sets forth a claim for relief, whether an original or amended claim, counterclaim, cross claim or 3rd-party claim, shall contain all of the following:

(a) A short and plain statement of the claim, identifying the transaction or occurrence or series of transactions or occurrences out of which the claim arises and showing that the pleader is entitled to relief.

(b) A demand for judgment for the relief the pleader seeks.

SECTION 3. 802.02 (1m) of the statutes is created to read:

802.02 (1m) RELIEF DEMANDED. (a) Relief in the alternative or of several different types may be demanded. With respect to a tort claim seeking the recovery of money, the demand for judgment may not specify the amount of money the pleader seeks.

(b) This subsection does not affect any right of a party to specify to the jury or the court the amount of money the party seeks.

SECTION 4. 802.05 (title) of the statutes is amended to read:

802.05 (title) Signing of pleadings, motions and other papers; sanctions.

SECTION 5. 802.05 of the statutes is renumbered 802.05 (1) (a) and amended to read:

802.05 (1) (a) Every pleading, motion or other paper of a party represented by an attorney shall contain the name and address of the attorney and the name of the attorney's law firm, if any, and shall be subscribed with the handwritten signature of at least one attorney of record in the individual's name. A party who is not represented by an attorney shall subscribe the pleading, motion or other paper with the party's handwritten signature and state his or her address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certificate that the attorney or party has read the pleading, motion or other paper; that to the best of the attorney's or party's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay, formed after reasonable inquiry, the pleading, motion or other paper is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and that the pleading, motion or other paper is not used for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion or other paper is not signed ~~or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the action may proceed as though the pleading had not been served.~~ For a wilful violation of this section an attorney may be subjected to appropriate discipli-

~~nary action. Similar action may be taken if scandalous or indecent matter is inserted, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If the court determines that an attorney or party failed to read or make the determinations required under this subsection before signing any petition, motion or other paper, the court may, upon motion or upon its own initiative, impose an appropriate sanction on the person who signed the pleading, motion or other paper, or on a represented party, or on both. The sanction may include an order to pay to the other party the amount of reasonable expenses incurred by that party because of the filing of the pleading, motion or other paper, including reasonable attorney fees.~~

SECTION 6. 802.05 (1) (b) of the statutes is created to read:

802.05 (1) (b) If the attorney who signed a pleading, motion or other paper without reading the paper or making the determinations required by this subsection is representing a party under a contract made between a 3rd person and the party that requires that representation, and the 3rd person has actual knowledge that the pleading, motion or other paper is not well-grounded in fact or warranted by existing law or a good faith argument for the extension, modification or reversal of existing law or is used to harass, delay or increase the cost of litigation, the court may impose a similar appropriate sanction on the 3rd person.

SECTION 7. 802.05 (2) of the statutes is created to read:

802.05 (2) It is not a violation of sub. (1) if a pleading includes as a party a person who is later dismissed from that action, and the party responsible for including that person acted reasonably in doing so and moves for or agrees to a dismissal of that person within a reasonable time after the party knew or should have known that the person was not a proper party to the action.

SECTION 8. 802.06 (3) of the statutes is amended to read:

802.06 (3) JUDGMENT ON THE PLEADINGS. After issue is joined between all parties but within ~~such~~ time so as not to delay the trial, any party may move for judgment on the pleadings. Prior to a hearing on the motion, any party who was prohibited under s. 802.02 (1m) from specifying the amount of money sought in the demand for judgment shall specify that amount to the court and to the other parties. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in s. 802.08, and all parties shall be given reasonable opportunity to present all material made pertinent to ~~such~~ the motion by s. 802.08.

SECTION 9. 802.07 (1) and (3) of the statutes are amended to read:

802.07 (1) COUNTERCLAIM. A defendant may counterclaim any claim which the defendant has against a plaintiff, upon which a judgment may be had in the action. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. ~~It~~ Except as prohibited by s. 802.02 (1m), the counterclaim may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(3) (title) CROSS CLAIM. A pleading may state as a ~~cross claim~~ cross claim any claim by one party against a ~~co-party~~ coparty if the ~~cross claim~~ cross claim is based on the same transaction, occurrence, or series of transactions or occurrences as is the claim in the original action or as is a counterclaim therein, or if the ~~cross claim~~ cross claim relates to any property that is involved in the original action. ~~Such cross claim~~ Except as prohibited by s. 802.02 (1m), the cross claim may include a claim that the party against whom it is asserted is or may be liable to the cross claimant cross claimant for all or part of a claim asserted in the action against the cross claimant cross claimant.

SECTION 10. 802.08 (2) of the statutes is amended to read:

802.08 (2) MOTION. The motion shall be served at least 20 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. Prior to a hearing on the motion, any party who was prohibited under s. 802.02 (1m) from specifying the amount of money sought in the demand for judgment shall specify that amount to the court and to the other parties. The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

SECTION 11. 806.01 (1) (c) of the statutes is amended to read:

806.01 (1) (c) Every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded ~~such~~ the relief in the pleadings. If there be no answer the relief granted to the plaintiff shall not exceed that demanded in the complaint. 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 rendering judgment.

SECTION 12. 806.02 (2) of the statutes is amended to read:

806.02 (2) After filing the complaint and proof of service of the summons on one or more of the defen-

dants and an affidavit that the defendant is in default for failure to join issue, the plaintiff may move for judgment according to the demand of the complaint. 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 rendering judgment. If proof of any fact is necessary for the court to give judgment, the court shall receive the proof.

SECTION 13. 811.02 of the statutes is amended to read:

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.

SECTION 14. 811.03 (3) of the statutes is amended to read:

811.03 (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 ~~demanded~~ 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.

SECTION 15. 811.16 of the statutes is amended to read:

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 ~~alleged by~~ claimed in the plaintiff to be due plaintiff's affidavit or, at the defendant's option, the value of the property attached,

according to the appraisal; 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.

SECTION 16. 814.025 (4) of the statutes is created to read:

814.025 (4) To the extent s. 802.05 is applicable and differs from this section, s. 802.05 applies.

SECTION 17. **Initial applicability.** This act applies to all actions commenced on or after the effective date of this SECTION.
