

CHAPTER 267.

GARNISHMENT.

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267.01 Garnishment, definitions, conditions, exceptions. (1) Any creditor may proceed against any person (except a municipal corporation) who shall be indebted to or have any property in his possession or under his control belonging to such creditor's debtor, in the cases, upon the conditions and in the manner prescribed in this chapter. The term plaintiff is used in this chapter to embrace a judgment creditor, and the term defendant a judgment debtor.

(2) Except as otherwise provided in this chapter, the procedure in garnishee actions shall be the same as in ordinary civil actions.

(3) At any time after the summons is issued in an action for damages, founded upon contract, or an action mentioned in section 266.03 or an action upon a judgment, or when an execution against property has issued or is issuable, the plaintiff may commence a garnishee action.

(5) No garnishee action shall be brought to recover the price or value of spirituous, malt, ardent or intoxicating liquors sold at retail.

Cross Reference: See 331.36, providing that no person shall be liable as garnishee of a public corporation.

In garnishment, if the cause of action alleged in the complaint in the principal action is not one for damages founded on contract, the defendant in the garnishment action is entitled to dismissal of the garnishment proceedings on making a proper motion therefor. The merits of the principal action will not ordinarily be inquired into on an application to dismiss the garnishment action, further than to ascertain that there was a good-faith controversy involved; and if the complaint in the principal action purports to allege a cause of action for damages for breach of contract, a motion to quash or dismiss the garnishment action will not be granted on the ground that such complaint fails to state a cause of action, in the absence of any showing that a good-faith controversy does not exist. *Chernin v. International Oil Co.* 261 W 308, 52 NW (2d) 785.

Garnishment proceedings are special and in derogation of the common law, and the provisions of the statutes relating thereto must be strictly pursued in order to confer jurisdiction. *Mahrle v. Engle*, 261 W 485, 53 NW (2d) 176.

The filing of a judgment debtor's petition in bankruptcy and his adjudication as a bankrupt did not operate to divest the state circuit court of jurisdiction to proceed with the judgment creditor's garnishment action to the final step of ordering the creditor's judgment paid out of the money paid into court by the garnishees, the garnishment proceedings having been instituted more than 4 months prior to the bankruptcy proceedings. *Elliott v. Regan*, 274 W 298, 79 NW (2d) 657.

You are hereby summoned, as garnishee of the defendant, C. D., and required, within of a summons and verified complaint, which summons shall be substantially in the following form:

.... Court, County.

A. B., plaintiff, }
 v. }
 C. D., defendant, }
 E. F., garnishee. }

The State of Wisconsin, To said garnishee:

You are hereby summoned, as garnishee of the defendant, C. D., and required, within twenty days after the service of this summons and the annexed complaint upon you, exclusive of the day of service, to answer, whether you are indebted to or have in your possession or under your control any property belonging to such defendant, and to serve a copy of your answer on the undersigned at, in the county of; and in case of

your failure so to do judgment will be rendered against you for the amount of the plaintiff's judgment against said defendant, and costs. Of which the said defendant will also take notice.

If wages or salary are the subject matter of this garnishment action, you are required as provided in s. 272.18 (15) (e) to pay over to the principal defendant, on the date when the wages or salary subject to the garnishment action is normally payable, a subsistence allowance, out of the wages or salary then owing, in the sum of \$15 in the case of an individual without dependents or \$25 in the case of an individual with dependents, but in no event in excess of 50 per cent of the wages or salary owing.

.....
 Plaintiff's attorney (or plaintiff)
 P. O. address, , county, Wis.

History: 1955 c. 490.

267.025 Property in safe deposit box. Property in a safe deposit box in any bank or safe deposit company is not property in the possession or control of such bank or safe deposit company within the meaning of this chapter.

267.03 Complaint; several garnishees. (1) The garnishee complaint must allege the existence of one of the grounds for garnishment mentioned in section 267.01, the amount of the plaintiff's claim against the defendant, above all offsets, and that plaintiff believes that the named garnishee is indebted to or has property in his possession or under his control belonging to the defendant (naming him) and that such indebtedness or property is, to the best of plaintiff's knowledge and belief, not exempt from execution.

(2) Any number of garnishees may be embraced in the same garnishment; but if a joint liability be claimed it shall be so stated in the complaint, otherwise the several garnishees shall be deemed severally proceeded against. At any time before trial the complaint may be amended to include any facts existing at the time the garnishee action was commenced. When the complaint uses a partnership name the presumption shall be that the names of the partners are unknown.

267.04 Garnishee fees, costs. A garnishee shall be entitled to three dollars as garnishee fee, and shall not be required to answer unless such fee be first paid. When a corporation is garnished such fee shall be paid to the person upon whom the garnishee summons and complaint is served. Such fee shall be taxed as costs in the action the same as witness fees are taxed.

267.06 Service on garnishee and defendant. The garnishee summons and complaint shall be served on the garnishee in the manner provided in sections 262.07, 262.08 and 262.09 for service of a summons; and, except where service of the summons in the main action is made without the state or by publication, also on the defendant therein, in like manner, not later than ten days after service on a garnishee. When the defendant shall have appeared in the main action by an attorney service may be made upon such attorney or upon the defendant. Unless the garnishee summons and complaint be so served on the defendant or his attorney or the proof of service on the garnishee shows that, after due diligence, such service cannot be made within the state, the service on the garnishee shall become void.

Where the garnishee summons and complaint were served on the garnishee but not on the principal defendant or his attorney, the failure of the sheriff's return to state that such latter service could not be made within the state rendered the service on the garnishee void and resulted in a loss of whatever jurisdiction the court had already acquired, and such loss of jurisdiction could not be repaired by amending the return. When the service on the garnishee became void, and the jurisdiction first acquired by the court was lost, and the principal defendant had died, the subsequent appearance and participation in the proceedings by the garnishee and the executrix of the principal defendant did not restore or revive whatever jurisdiction may have been lost, since at the time when such participation was alleged to confer jurisdiction the property of the principal defendant, by reason of his death, had already come into custodia legis and was not subject to garnishment. *Mahrle v. Engle*, 261 W 485, 53 NW (2d) 176.

267.07 Subsequent garnishments. The plaintiff may, in like manner, subsequently proceed against other garnishees or against the same garnishees if he shall have reason to believe they have subsequently become liable; and he may summon garnishees resident in other counties than that in which the principal action is pending or in which judgment therein was entered.

267.08 Garnishee answer. (1) Within twenty days from service of the garnishee summons and complaint upon him the garnishee may, if the truth warrant, serve upon the plaintiff his answer in the following form, substantially:

the execution against the garnishee shall require the sheriff to pay the money collected into court to abide the event of the principal action. Moneys paid into court shall be paid to the plaintiff when final judgment shall be rendered in his favor, and to the extent of satisfying the same, upon order of the court, and any balance to the party entitled thereto.

(4) In case no such request is made and the garnishee does not elect to pay such sum to the clerk, the garnishee shall hold the same until the order of the court thereon.

(5) In case judgment shall be against the plaintiff such moneys shall be paid to the defendant. If the answer discloses other property in the possession or under the control of the garnishee the officer having a writ of attachment or an execution may levy upon the interest of the defendant in the same; otherwise the garnishee shall hold the same until the order of the court thereon.

History: 1951 c. 85.

267.12 Answer conclusive if not traversed. The answer of the garnishee shall be taken as true unless the plaintiff shall, within twenty days, serve upon the garnishee a reply.

267.14 Defendant or garnishee may defend both actions. (1) The defendant may, within twenty days from the service of the garnishee summons and complaint on him, answer the garnishee complaint and defend the garnishee action upon any ground upon which a garnishee might defend, and may participate in the trial of any issue between the plaintiff and garnishee. And the garnishee may, at his option, defend the principal action for the defendant, if the latter does not defend.

(2) When any garnishee shall defend the principal action, he shall thereby become a party defendant in said action and shall be so entered of record by the clerk, but shall be liable only for the costs in said action.

267.15 Principal action tried first; judgment. (1) No trial shall be had of the garnishee action until the plaintiff shall have judgment in the principal action and if the defendant have judgment the garnishee action shall be dismissed with costs.

(2) The court may adjudge the recovery of any debt, the conveyance, transfer or delivery to the sheriff or any officer appointed by the judgment of any real estate or personal property disclosed or found to be liable to be applied to the plaintiff's demand; or by the judgment pass the title thereto; and may therein or by its order direct the manner of making sale and of disposing of the proceeds thereof, or of any money or other thing paid or delivered to the clerk or officer. The judgment against a garnishee shall discharge him from all demands by the defendant for all property paid, delivered or accounted for by the garnishee, by force of such judgment.

Cross Reference: For sale of perishable property, see 266.14.

See note to 267.01, citing *Elliott v. Regan*, 274 W 298, 79 NW (2d) 657.

267.16 Interpleader. When the answer of the garnishee discloses that any third person claims the debt or property in his hands and the name and residence of such claimant the court may order that such claimant be interpleaded as a defendant in the garnishee action; and that notice thereof, setting forth the facts, with a copy of such order and answer be served upon him, and that after such service is made the garnishee may pay or deliver to the officer or the clerk such debt or property and have a receipt therefor, which shall be a complete discharge from all liability for the amount so paid or property so delivered. Such notice shall be served in the manner required for service of a summons. Upon such service being made such claimant shall be deemed a defendant in the garnishee action, and within twenty days shall answer setting forth his claim or any defense which the garnishee might have made.

267.17 Liability of garnishee. From the time of the service of the summons and complaint upon the garnishee he shall stand liable to the plaintiff for the property then in his possession or under his control belonging to the defendant or in which he is interested to the extent of his right or interest therein and for all his debts due or to become due to the defendant, except such as are exempt from execution, but not in excess of the amount of the plaintiff's claims as disclosed by his garnishee complaint.

See note to 267.09, citing *Mattek v. Hoffmann*, 272 W 503, 76 NW (2d) 300.

267.18 Nonliability as garnishee; judgment when rendered. No person shall be liable as garnishee:

(1) By reason of his having drawn, accepted, made, indorsed or guaranteed any negotiable instrument; or

(2) By reason of any thing received or collected by him by execution or other process; or

(3) By reason of any money in his hands as a public officer; or

(4) By reason of any thing owing by him upon a contingency.

(5) A debt owing by the owner of property subject to a mechanic's lien, pursuant to section 289.01, shall not be deemed absolutely due until the claims of subcontractors and

employees under section 289.02 shall have matured or expired. Except as above provided judgment may be given for any thing owing, although it has not become due in which case the garnishee shall not be required to pay or deliver it before the time appointed by the contract.

267.19 Action by defendant against garnishee stayed. Except upon the order of a judge no action shall be commenced by the defendant or his assignee against a garnishee upon any garnished claim or demand or to recover any property garnished, or execution be issued upon a judgment in favor of defendant against such garnishee, until the termination of the garnishee action; and if an action shall have been commenced or an execution issued it shall be stayed by the court or a judge thereof as to the garnishee upon his application.

267.20 Release of garnishment; bond. (1) The defendant may file with the clerk of the court a bond, executed by at least two sureties, resident freeholders of the state, to the effect that they will on demand pay to the plaintiff the amount of the judgment that may be recovered against such defendant not exceeding a sum specified, which shall be double the amount of the debt specified in the garnishee complaint or in such less sum as the court shall direct. If the plaintiff fails to take issue with the garnishee answer the bond shall be conditioned to pay to the plaintiff the amount of the debt admitted or of the value of the property held by the garnishee.

(2) The sureties shall justify their responsibility by affidavit annexed, stating a sum which each is worth in property within this state, above all his liabilities and exclusive of property exempt from execution, the aggregate of which sums shall be double the amount specified in the bond. The defendant shall serve on the plaintiff a copy of such bond with a notice of where the same was filed. Within three days after the receipt thereof the plaintiff may notify the defendant that he excepts to the sufficiency of the sureties, otherwise he waives all objections to them. When the plaintiff excepts, the sureties shall justify in like manner as bail on arrest, and the provisions of sections 264.17, 264.18 and 264.19 shall be applicable thereto. Thereafter the garnishee shall be discharged and the garnishment proceedings shall be deemed discontinued, and any money or property paid or delivered to any officer shall be surrendered to the person entitled thereto, and the costs shall be taxable as disbursements of the plaintiff in the action if he recovers.

267.21 Costs. In case of a trial of an issue between the plaintiff and any garnishee the plaintiff shall recover costs against the garnishee if the plaintiff recover more than the garnishee admitted by his answer; and if he do not, the garnishee shall recover costs. In all other cases the court may award costs in favor of or against any party. When there is no issue and liability on the part of the garnishee is disclosed the costs of the garnishment proceedings shall be taxed for the plaintiff, if he recovers, in the principal action.

Whether the garnishee defendant had such possession and control of mortgaged goods as to subject them to garnishment was a question of fact, so that, if the trial court's finding thereon in favor of the garnishee defendant was correct, the judgment properly awarded costs to the garnishee defendant, without the plaintiff having been served with a notice of taxation of costs. *Peterson Cutting Die Co. v. Bach Sales Co.* 269 W 113, 68 NW (2d) 804.

267.22 Garnishment of salaries and wages of public officers and employes. (1) (a) A judgment creditor (but no one else) may maintain a garnishment action against the state or any political subdivision thereof, except cities of the first class as defined in section 62.05, in the manner provided in this section to reach the unexempt wages or salary of the judgment debtor.

(b) This section does not apply or extend to money due to an officer or employe to reimburse him for expenditures made by him in the discharge of his duties.

(2) (a) The garnishee summons and complaint shall be served upon the garnishee by delivering a copy thereof to the director of budget and accounts (if the state is garnishee); otherwise to its secretary or clerk. Service on the judgment debtor shall be made in the manner and within the time provided by section 267.06 for service upon a defendant.

(b) Section 267.04 does not apply to proceedings under this section but otherwise the practice shall be that prescribed by this chapter.

(3) The complaint must contain an allegation that the plaintiff believes that the garnishee is indebted to the defendant for wages or salary and that such debt is not exempt under section 272.18.

(4) Within 20 days after such service upon him, the said director or the secretary or clerk of the garnishee shall answer the complaint by delivering or mailing to the court his certificate of the amount owed by the garnishee to the judgment debtor for wages and salary at the time of such service; and his answer as to the amount owing shall be conclusive in the garnishment action.

(5) (a) The regular checks or vouchers for the salary or wages of the judgment debtor shall issue and continue to issue in due course as though no garnishment action

were pending, but they shall be delivered to the court until the court notifies the said director or the secretary or clerk of the garnishee that the garnishment action has been dismissed or the judgment therein satisfied.

(b) The court may order such pay checks and vouchers cashed by its clerk and the proceeds held by him and disbursed as the court orders. The nonexempt portion of such proceeds shall be applied on the creditor's judgment.

(c) The court may in a summary manner, upon the application of the judgment debtor and with reasonable notice to the creditor, determine the exemptions to which the debtor is entitled and the amount thereof shall be paid to him and credited to the garnishee.

(d) Any proceeds of such checks and vouchers remaining in the custody of the court after the demands of such creditor as determined by the court are satisfied shall be ordered paid to the judgment debtor.

(e) Other judgment creditors of the judgment debtor may intervene in the garnishment action.

(6) A judgment under this section shall have precedence over an assignment by the debtor filed with the garnishee subsequent to the service of the garnishee summons.