

CHAPTER 811

ATTACHMENT

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811.01 Attachment; municipal corporation.

Any creditor may attach the property of his 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 W (2d) 758.

Doctrine of marshaling assets discussed. Moser Paper Co. v. North Shore Pub. Co. 83 W (2d) 852, 266 NW (2d) 411 (1978).

Ch. 266, 1973 stats [renumbered ch. 811 and amended by Sup. Ct. Order, 67 W (2d) 758, 778 and substantially amended by ch. 412, laws of 1977] declared unconstitutional. United States General, Inc. v. Arndt, 417 F. Supp. 1300.

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.

History: Sup Ct. Order, 67 W (2d) 758; 1977 c. 412.

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 some one in the plaintiff's behalf shall make and annex thereto an affidavit setting forth specific factual allegations to show that the defendant is indebted 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 him; or

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

(c) That the defendant has removed or is about to remove property out of this state with intent to defraud his 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. 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 fifty dollars specifying the amount claimed and either:

(a) That the defendant is not a resident of this state; or that his 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 demanded. 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 W (2d) 758, 778; 1977 c. 412.

A 2nd writ can be issued before the 1st 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 W (2d) 146, 194 NW (2d) 822.

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 W (2d) 758, 778.

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 W (2d) 758; 1977 c. 412.

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

811.07 Additional security. In case the defendant is not satisfied with the amount specified in the bond or with the surety he may, upon

5 days' notice to the plaintiff, apply to a judge for additional security and such judge may require the plaintiff to give and file another bond, to be approved by him, in such sum as he shall deem 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 they may be accepted if they are jointly responsible for the required sum.

History: Sup. Ct. Order, 67 W (2d) 758, 778.

811.08 Officer's return. The officer executing the writ shall return thereon all his 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 W (2d) 758

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 W (2d) 758.

811.10 Directions to sheriff; several writs. (1)

The sheriff shall without delay seize so much of the property of the defendant, in his county, as will satisfy the demand of the plaintiff, with costs and expenses, and make an inventory thereof; he shall cause all personal property attached by him to be appraised by two disinterested residents of the county, who shall be first sworn by him to make a true appraisal thereof, which appraisal shall be signed by them, and the appraisal and inventory shall be returned with the writ; he 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 such copies on any agent of such defendant in the county, if any be known to him.

(2) If two or more writs against the same defendant shall be executed on the same property an inventory and appraisal shall be made in but one of the actions, and the sheriff shall indorse 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 appraisal are made, giving the title of such action; and

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such officer shall state in his return the fact of such indorsement.

History: Sup. Ct. Order, 67 W (2d) 758.

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

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

History: Sup. Ct. Order, 67 W (2d) 758.

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 W (2d) 758.

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 him for attaching such property.

History: Sup. Ct. Order, 67 W (2d) 758.

811.14 Sale of perishable property attached or garnished.

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 W (2d) 758.

811.15 Care of property; collection of debts.

The officer shall keep the property seized by him and the proceeds of such 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 his possession all the debts, credits and effects of the defendant. The officer may also take such legal proceedings, either in his 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 W (2d) 758.

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 the plaintiff to be due 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.

History: Sup. Ct. Order, 67 W (2d) 758, 778; 1977 c. 412.

811.17 Exception to defendant's sureties; release of property; costs.

The officer shall forthwith give to the plaintiff a copy of such bond with notice of the time when the same was delivered to him; and the plaintiff shall, within 3 days thereafter, give notice to the officer that he excepts to the sureties or he 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 file a certificate of the discharge thereof in the office of the register of deeds. If the plaintiff recover, all his costs and disbursements on the attachment shall be included in his judgment.

History: Sup. Ct. Order, 67 W (2d) 758, 778.

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 W (2d) 758, 778; 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 W (2d) 758; 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 him by reason of the taking and detention or sale of any property attached by reason of any injury thereto shall be assessed and he shall have judgment therefor.

History: Sup Ct Order, 67 W (2d) 758.

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, subject to the plaintiff's rights on appeal, and he 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 such judgment or satisfaction, and on filing such certificate with the register of deeds in any county in which attached lands are situated such register shall enter such certificate upon the records of his office in discharge of such attachments.

History: Sup Ct Order, 67 W (2d) 758.

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 such sheriff shall repossess himself of the same, and for that purpose shall have all the authority which he had to seize the same under the writ of attachment; and any person who shall wilfully conceal or withhold such 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 he may have taken in the course of such 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 W (2d) 758.

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 his direction, upon the delivery by him to the sheriff or officer of an undertaking, with two sufficient sureties, to the effect that the plaintiff will indemnify him for all damages, costs and expenses thereon not exceeding two hundred and fifty dollars 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 W (2d) 758.

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 W (2d) 758.

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 his 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 W (2d) 758.