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 the officer 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 the judgment debtor 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 the court or judge and answer concerning the judgment debtor's property at a time and place specified in the order, within said county.

(b) A supplemental court commissioner upon application of a judgment creditor shall order any judgment debtor to appear before the supplemental court commissioner and answer concerning the judgment debtor's 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 garnisheed 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 Wis. 2d 585, 761 (1975); Stats. 1975 s. 816.03; 1993 a. 213, 486; 2001 a. 61.

A judgment creditor may examine the spouse of a judgment debtor in regard to the amount and location of marital property that might be available to satisfy a judgment. Courtyard Condominium Association, Inc. v. Draper, 2001 WI App 115, 244 Wis. 2d 153, 629 N.W.2d 38, 00−1817.

Supplemental proceedings under ch. 816 are a discovery tool in aid of judgment collection. Serving a debtor with an order to appear for supplemental proceedings does not give rise to a blanket lien on all of the debtor's personal property. A judgment creditor obtains an interest in a judgment debtor's identified, non−exempt personal property superior to other unsecured creditors when it dockets its money judgment, identifies specific personal property, and levies that property. Associated Bank N.A. v. Collier, 2014 WI 62, 345 Wis. 2d 397, 824 N.W.2d 928, 11−2597.

816.035 Commissioners' orders; service and return; filing; fees. (1) An order under s. 816.03 (1) issued by a supplemental court commissioner shall be served in the same manner as the service of a summons under s. 801.11. The return on the order shall be made to the supplemental commissioner who issued the order. The supplemental commissioner shall file the order and the return with the clerk of the court in which the judgment involved is entered.

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

History: Sup. Ct. Order, 67 Wis. 2d 585, 761, 781 (1975); Stats. 1975 s. 816.035; 1981 c. 317; 1993 a. 22; 2001 a. 61.

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 Wis. 2d 585, 761 (1975); Stats. 1975 s. 816.04.

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

A receiver's lien is governed by common law, as this section is silent on the subject. The lien is superior against other creditors claims on simple contracts from the time the creditor serves the debtor with notice to appear at supplementary proceedings under ch. 816. No additional steps to perfect the lien are required. Mann v. Bankruptcy Estate of Badger Lines, Inc. 224 Wis. 2d 646, 590 N.W.2d 270 (1999), 98−0888.

But see Associated Bank N.A. v. Collier, 2014 WI 62, 345 Wis. 2d 397, 824 N.W.2d 928, 11−2597.

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 or herself and that there is reason to believe that the judgment debtor has property which the judgment debtor unjustly refuses to apply to such judgment, the court or judge may issue a warrant requiring the sheriff to arrest and bring the judgment debtor before such court or judge to answer concerning the judgment debtor's property.

History: Sup. Ct. Order, 67 Wis. 2d 585, 761 (1975); Stats. 1975 s. 816.05; 1993 a. 486.

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

Section 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 compel attendance, disobedience of which is subject to contempt of court. Smith v. Burns, 65 Wis. 2d 638, 223 N.W.2d 562 (1974).

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 Wis. 2d 585, 761 (1975); Stats. 1975 s. 816.06.

A judgment creditor may examine the spouse of a judgment debtor in regard to the amount and location of marital property that might be available to satisfy a judgment. Courtyard Condominium Association, Inc. v. Draper, 2001 WI App 115, 244 Wis. 2d 153, 629 N.W.2d 38, 00−1817.

This section does not grant a judgment creditor the right to compel a non−judgment debtor third party to testify at supplemental proceedings. Crown Castle USA, Inc. v. Orion Logistics, LLC, 2012 WI 29, 339 Wis. 2d 252, 811 N.W.2d 332, 09−3029.

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 the debtor has property which the debtor has unjustly refused to apply to such judgment, the judgment debtor may be ordered to give a bond with one or more sureties, that the judgment debtor will from time to time attend before the court or judge, as the court or judge shall direct, and that the judgment debtor will not, during the pendency of the proceedings, dispose of any property not exempt from execution. In default of such bond the judgment debtor may be committed to prison as for a contempt.

History: Sup. Ct. Order, 67 Wis. 2d 585, 761 (1975); Stats. 1975 s. 816.07; 1993 a. 486.

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 the judgment debtor 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 Wis. 2d 585, 761 (1975); Stats. 1975 s. 816.08; 1993 a. 486.

In a supplementary proceeding, no issue can be tried between a receiver or judgment creditor and a 3rd−person as to rights in property. DOR v. Milwaukee Mack Sales, 91 Wis. 2d 1, 280 N.W.2d 274 (1979).

Supplemental proceedings under ch. 816 are a discovery tool in aid of judgment collection. Serving a debtor with an order to appear for supplemental proceedings does not give rise to a blanket lien on all of the debtor's personal property. A judgment creditor obtains an interest in a judgment debtor's identified, non−exempt personal property superior to other unsecured creditors when it dockets its money judgment, identifies specific personal property and levies that property. Associated Bank N.A. v. Collier, 2014 WI 62, 345 Wis. 2d 397, 824 N.W.2d 928, 11−2597.

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 Wis. 2d 585, 761 (1975); Stats. 1975 s. 816.11.