

CHAPTER 412, Laws of 1977

AN ACT to repeal 811.20; and to amend 811.02, 811.03 (1) (intro.), 811.06, 811.16, 811.18 and 811.19 of the statutes, relating to the procedure used by a creditor to attach property of his or her debtor.

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

SECTION 1. 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 ~~him~~ the sheriff to attach all the property of the defendant within ~~his~~ 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 ~~and signed by its clerk.~~

SECTION 2. 811.03 (1) (intro.) of the statutes is amended to read:

811.03 (1) ON CONTRACT OR JUDGMENT. (intro.) Before any writ of attachment shall be executed the plaintiff or some one in ~~his~~ the plaintiff's behalf shall make and annex thereto an affidavit ~~stating~~ setting forth specific factual allegations to show that the defendant is indebted to the plaintiff in a sum exceeding ~~fifty dollars~~ \$50 specifying the amount above all ~~set-offs~~ 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:

SECTION 4. 811.06 of the statutes is amended to read:

811.06 Bond; justification. Before the writ of attachment ~~shall be~~ is executed, a bond on the part of the plaintiff in ~~the~~ a sum of at least two hundred and fifty dollars ~~executed by sufficient surety, shall be delivered to the officer, 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 ~~recover~~ recovers judgment the plaintiff shall pay ~~all costs that may be awarded to the defendant and~~ all damages which ~~he~~ the defendant may sustain by reason of the attachment. The affidavit of the surety annexed to ~~such~~ the bond shall state that ~~he~~ 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.

SECTION 5. 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 ~~his~~ the defendant's property a bond executed by ~~two~~ 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 ~~such~~ the defendant in the action, not exceeding the sum specified in the bond with interest. ~~Such a~~ The bond shall be at least ~~double~~ the amount alleged by the plaintiff to be due or, at the defendant's option, ~~double~~ 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 6. 811.18 of the statutes is amended to read:

811.18 Vacation or modification of writ. The court or the presiding judge thereof may, at any time ~~before the trial of the action or a release of the property under s. 811.17,~~ vacate or modify the writ of attachment for irregularity or other upon motion of the defendant for any sufficient cause, upon 5 days' notice of motion; and the. ~~A motion therefor to vacate or modify~~ may be combined with a motion to increase the plaintiff's security under s. 811.07.

SECTION 7. 811.19 of the statutes is amended to read:

811.19 (title) Hearing on motion to vacate or modify. ~~Within 10 days after notice of the issuing of a writ of attachment against his property or within the time in which he may answer the complaint, the defendant may, by special answer, deny the existence, at the time of the making of the attachment affidavit of the material facts stated therein except the alleged liability and the amount thereof. The issue so raised shall be tried by the court, before the trial of the action and~~ A motion to vacate or modify shall be heard forthwith by the court. On the motion, the affirmative burden of proof shall be upon the plaintiff. And if ~~If the defendant has made an assignment for the benefit of his creditors his assignee may traverse and defend, 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.~~

SECTION 8. 811.20 of the statutes is repealed.
