

CHAPTER 76

ATTACHMENT

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- (1) Will fraudulently part with the property before judgment can be obtained against him or her.
- (2) Is actually removing the property out of the state.
- (3) Is about to remove the property out of the state.
- (4) Resides out of the state.
- (5) Is actually moving himself or herself out of the state.
- (6) Is about to move himself or herself out of the state.
- (7) Is absconding.
- (8) Is concealing himself or herself.
- (9) Is secreting the property.
- (10) Is fraudulently disposing of the property.
- (11) Is actually removing himself or herself beyond the limits of the judicial circuit in which he or she resides.
- (12) Is about to remove himself or herself out of the limits of such judicial circuit.
- History.**—s. 1, ch. 998, 1859; s. 2, ch. 1101, 1861; RS 1637; GS 2101; RGS 3402; CGL 5255; s. 26, ch. 67-254; s. 371, ch. 95-147.

76.01 Right to attachment.—Any creditor may have an attachment at law against the goods and chattels, lands and tenements of his or her debtor under the circumstances and in the manner hereinafter provided.

History.—RS 1635; GS 2099; RGS 3400; CGL 5253; s. 26, ch. 67-254; s. 370, ch. 95-147.

76.02 Attachment of corporate stock.—Shares of stock in any corporation incorporated by the laws of this state are subject to attachment under the circumstances hereinafter provided and in the manner prescribed for levy of execution thereon.

History.—s. 1, ch. 3917, 1889; RGS 2846; CGL 4533; s. 26, ch. 67-254.

76.03 Courts from which attachments shall issue. Attachments shall be issued by a judge of the court which has jurisdiction of the amount claimed by the creditor, but if the property to be attached is being actually removed from the state and the creditor is unable to obtain process from the proper court in time to prevent such removal, any judge may issue the writ, making it returnable to the proper court and immediately sending all papers in the action to the clerk of the court to which the writ is returnable.

History.—s. 2, Feb. 15, 1834; s. 1, ch. 250, 1849; RS 1636; GS 2100; RGS 3401; CGL 5254; s. 26, ch. 67-254; s. 15, ch. 73-334; s. 1, ch. 78-38.

76.04 Grounds when debt due.—The creditor may have an attachment on a debt actually due to the creditor by his or her debtor, when the debtor:

76.05 Grounds when debt not due.—Any creditor may have an attachment on a debt not due, when the debtor:

- (1) Is actually removing the property out of the state.
- (2) Is fraudulently disposing of the property to avoid the payment of his or her debts.
- (3) Is fraudulently secreting the property to avoid payment of his or her debts.

History.—s. 1, Feb. 14, 1835; RS 1638; s. 1, ch. 5257, 1903; GS 2102; RGS 3403; CGL 5256; s. 26, ch. 67-254; s. 372, ch. 95-147.

76.06 Effect of attachment upon unmatured debt. In attachments for debts not due, under s. 76.05, the existence of one or more of the special grounds assigned, and in case of attachment against executors or administrators for a debt not due, the existence of all the grounds assigned, shall cause the debt to become due, and plaintiff may proceed as on a debt falling due on a day before commencement of the action.

History.—RS 1647; GS 2111; RGS 3412; CGL 5265; s. 26, ch. 67-254.

76.07 Attachment in aid of foreclosure.—Any creditor who is commencing or has commenced an action to foreclose a mortgage on personal property may have an attachment against the property, when the creditor has reason to believe and does believe that:

- (1) The property or part of it will be concealed or disposed of so that it will not be forthcoming to answer a judgment on foreclosure.
- (2) The property or part of it will be removed beyond the jurisdiction of the court.
- (3) The property or part of it is of a perishable character and is being used and consumed by the mortgagor or other parties.
- (4) The property or part of it has been disposed of without the consent of the party holding the mortgage, and stating who has the property, if known and if not known, that he or she does not know who has it.

History.—s. 6, Dec. 11, 1824; RS 1640; GS 2104; RGS 3405; s. 1, ch. 8477, 1921; CGL 5258; s. 26, ch. 67-254; s. 373, ch. 95-147.

76.08 Procurement of attachment; generally.—Upon motion by plaintiff, a writ of attachment may issue

when the grounds relied on for the issuance of the writ clearly appear from specific facts shown by a verified complaint or a separate affidavit of the plaintiff, and all applicable requirements of s. 76.09, s. 76.10, or s. 76.11 are met.

History.—RS 1641; GS 2105; RGS 3406; CGL 5259; s. 26, ch. 67-254; s. 2, ch. 78-38.

76.09 Motion when debt due.—When the debt is actually due, the motion shall state the amount of the debt that is actually due, and that movant has reason to believe in the existence of one or more of the special grounds in s. 76.04, stating specifically the grounds.

History.—s. 1, ch. 998, 1859; RS 1642; GS 2106; RGS 3407; CGL 5260; s. 26, ch. 67-254.

76.10 Motion when debt not due.—When the debt is not actually due, the motion shall state the amount of the debt or demand; that it is actually an existing debt; and the existence of one or more of the special grounds in s. 76.05, stating specifically the grounds and plaintiff shall produce before the officer granting the attachment satisfactory proof, by affidavit (other than his or her own) or otherwise, of the existence of the special ground.

History.—s. 2, Feb. 14, 1835; RS 1643; GS 2107; RGS 3408; CGL 5261; s. 26, ch. 67-254; s. 374, ch. 95-147.

76.11 Motion for attachment in aid of foreclosure. In attachments in aid of foreclosure of mortgages on personal property the motion shall describe the property on which the mortgage exists, and state that a complaint has been filed to foreclose the mortgage, the amount of the debt secured by the mortgage, that it is actually due, and that movant has reason to believe in the existence of one or more of the special grounds enumerated in s. 76.07, stating specifically the grounds.

History.—s. 6, Dec. 11, 1824; RS 1645; GS 2109; RGS 3410; CGL 5263; s. 2, ch. 29737, 1955; s. 26, ch. 67-254.

76.12 Attachment bond.—No attachment shall issue until the person applying for it, the person's agent or attorney, makes a bond with surety to be approved by the clerk payable to defendant in at least double the debt demanded conditioned to pay all costs and damages which defendant sustains in consequence of plaintiff's improperly suing out the attachment. In foreclosure of a mortgage on personal property if the motion states that the property or part of it has been disposed of without the consent of the party holding the mortgage and that plaintiff does not know who has the property or part of it, the bond shall be made payable to the state for the use and benefit of all parties interested, conditioned to pay all costs and damages which are sustained in consequence of plaintiff's improperly suing out the attachment. Any party aggrieved may sue on the bond but the state is not liable for any costs, damages, or expenses that are incurred. Any bond in attachment is not void as against the obligors, nor are they discharged therefrom on account of any informality, although the attachment is dissolved because of the informality.

History.—s. 10, Feb. 15, 1834; RS 1646; GS 2110; RGS 3411; s. 2, ch. 8477, 1921; CGL 5264; s. 26, ch. 67-254; s. 375, ch. 95-147.

76.13 Writ; form.—

(1) **GENERALLY.**—The writ of attachment shall command the sheriff to attach and take into custody so

much of the lands, tenements, goods, and chattels of the party against whose property the writ is issued as is sufficient to satisfy the debt demanded with costs.

(2) **IN AID OF SUITS TO FORECLOSE.**—In actions to foreclose mortgages, the writ shall describe the property, and command the sheriff to take and hold such property or so much thereof as can be found sufficient to satisfy the debt to be foreclosed.

History.—s. 2, Feb. 15, 1834; RS 1648; GS 2112; RGS 3413; CGL 5266; s. 26, ch. 67-254; s. 3, ch. 83-255.

76.14 Writ; effect of levy.—The levy of a writ of attachment does not operate to dispossess the tenant of any lands or tenements, but a levy on real or personal property binds the property attached, except against preexisting liens. Levies on the same property under successive attachments have precedence as liens in the order in which they are made. A levy binds real estate as against subsequent creditors or purchasers only from the time of the record by the clerk of the circuit court of a notice of the levy and a description of the property levied on.

History.—s. 9, Feb. 17, 1833; RS 1651; GS 2115; RGS 3416; CGL 5269; s. 26, ch. 67-254.

76.151 Writ; execution on property changing possession.—If the property to be attached is in the possession of the defendant at the time of the issuance of the writ but passes into the possession of a third person before the execution of the writ, the sheriff holding the writ shall execute it on the property in the possession of the third person and shall serve the writ on the defendant and the third person. The action, with proper amendments, shall proceed against the third person.

History.—s. 4, ch. 83-255.

76.16 Writ; levy in other counties.—

(1) When plaintiff states in a motion for attachment that defendant has real or personal property in some county other than the one in which the action was instituted, a writ of attachment, original or ancillary, shall be issued and delivered to the sheriff of the county where the property is situate. The officer shall execute the writ and hold the property levied on subject to the order of the court from which the writ issued, which court has the power to order the delivery thereof to the sheriff of the county where the action was commenced or order the officer executing the writ to hold and dispose of it in his or her county.

(2) When any real property is levied on under this section, the officer levying the writ shall file a written notice of levy with the clerk of the circuit court for the county in which the property is located, which notice shall contain a description of the property levied on. The record shall be notice to all persons of the levy. If the attachment is dissolved or the action is dismissed, or for any reason the property ceases to be bound by the attachment, on due proof thereof the clerk shall note this on the record of the levy.

History.—s. 2, ch. 3721, 1887; RS 1650; GS 2114; RGS 3415; CGL 5268; s. 26, ch. 67-254; s. 376, ch. 95-147.

76.17 Writ; levy upon property removed from county pending levy.—When personal property of the defendant is located in any county at the time an action

is commenced in which an attachment issues but is removed from the county pending the action, the officer to whom the writ is delivered shall make return of the fact of the removal and plaintiff may file a motion stating to what county he or she believes the property has been removed, whereupon an alias writ shall issue and be delivered to the sheriff of each county to which the property or a part thereof has been removed. On receipt of the writ, the sheriff shall take possession of the property and deliver it to the proper officer of the court from which the writ was issued, and make return of the writ. All questions about the title of the property shall be adjudicated in the county in which the action was brought, unless the court changes the venue.

History.—ss. 1, 2, ch. 3245, 1881; RS 1650; GS 2114; RGS 3415; CGL 5268; s. 26, ch. 67-254; s. 377, ch. 95-147.

76.18 Return of property upon forthcoming bond.

At any time after execution of the writ, property attached may be restored to defendant or some other person for him or her on defendant or such other person giving bond with surety to the officer levying the attachment to be approved by the officer payable to plaintiff in an amount which shall exceed by one-fourth the value of the property, as determined by the court, or which shall exceed by one-fourth the amount of the claim, whichever is less, conditioned for the forthcoming of the property restored to abide the final order of the court.

History.—s. 13, Mar. 15, 1843; s. 1, ch. 6865, 1915; RS 1652; GS 2116; RGS 3417; CGL 5270; s. 26, ch. 67-254; s. 3, ch. 78-38; s. 378, ch. 95-147.

76.19 Return of property upon bond to pay debt.

Property attached may be restored to defendant (or in case of foreclosure of mortgage, to any person who makes affidavit that he or she is the owner of the equity of redemption), on his or her giving a bond with surety to be approved by the officer, conditioned for the payment to plaintiff of the debt and all costs of the action, when they are adjudicated to be payable to plaintiff.

History.—s. 4, Feb. 14, 1835; RS 1653; GS 2117; RGS 3418; CGL 5271; s. 26, ch. 67-254; s. 379, ch. 95-147.

76.20 Replevy of property taken by attachment.

If property taken under a writ of attachment is not subject to attachment, it may be replevied by defendant.

History.—s. 4, Feb. 14, 1835; RS 1654; GS 2118; RGS 3419; CGL 5272; s. 26, ch. 67-254.

76.21 Claims of third parties to attached property.

If any attachment is levied on property claimed by any person other than defendant, such person may replevy it or interpose a claim in the manner provided in case of execution.

History.—s. 8, Feb. 15, 1834; s. 1, Mar. 15, 1843; RS 1665; GS 2129; RGS 3430; CGL 5283; s. 26, ch. 67-254.

76.22 Custody of attached property; sale of perishables.

—All personal property levied on by attachment, shall remain in custody of the officer who attached it until disposed of according to law unless it is restored to defendant or some person for him or her, or is claimed by a third person. When the property attached is perishable or liable to great deterioration in value or the costs of keeping it are greatly disproportionate to its value, the court may order the sale of the property after such

notice as is expedient, and the proceeds of the sale shall be paid into court and abide the judgment.

History.—s. 12, Feb. 17, 1833; RS 1655; GS 2119; RGS 3420; CGL 5273; s. 26, ch. 67-254; s. 380, ch. 95-147.

76.24 Dissolution of attachment.

(1) The defendant by motion may obtain the dissolution of a writ of attachment unless the plaintiff proves the grounds upon which the writ was issued and a reasonable probability that the final judgment in the underlying action will be rendered in the plaintiff's favor. The court shall set down such motion for an immediate hearing. This motion shall be in lieu of the provisions of s. 76.18.

(2) On answer by defendant that any allegation in plaintiff's motion is untrue, this issue shall be tried. If the allegation in plaintiff's motion which is denied is not proved to be true, the attachment shall be dissolved.

(3) If the answer denies the debt demanded, the judge may require pleadings thereon on motion of either party to be filed in such time as he or she fixes.

(4) The issue, if any, raised by the pleadings shall be tried at the same time as the issue, if any, made by the answer on the special cause assigned in plaintiff's motion for the suit. On demand of either party a jury summoned from the body of the county shall be impaneled to try the issue.

History.—s. 5, Feb. 15, 1834; RS 1656; GS 2120; RGS 3421; CGL 5274; s. 15, ch. 29737, 1955; s. 26, ch. 67-254; s. 4, ch. 78-38; s. 381, ch. 95-147.

76.25 Effect of dissolution.

(1) ON THE ACTION.—When an attachment is dissolved, the attachment only shall be dissolved, and plaintiff may prosecute the action to final judgment.

(2) ON WRITS OF GARNISHMENT.—When an attachment is dissolved and a writ of garnishment has been issued the garnishment shall not be dissolved in consequence of dissolution of the attachment, but shall remain in full force and abide the termination of the action.

History.—s. 7, Feb. 15, 1834; s. 3, ch. 1100, 1861; RS 1657; GS 2121; RGS 3422; CGL 5275; s. 10, ch. 28301, 1953; s. 26, ch. 67-254.

76.251 When writ returnable.

—A writ of attachment is returnable when fully executed or when the officer is convinced that no property can be found. If property is seized under the writ, the writ shall be returned when the property seized finally passes from the lien of the writ and control of the officer levying it. At the time of each action taken under the writ, the officer shall endorse the action thereon.

History.—s. 26, ch. 67-254.

76.31 Judgments.

—If a default is entered for plaintiff and defendant has retaken the property on a forthcoming bond, final judgment shall be entered at the same time against defendant and the surety on the bond for the amount of the judgment against defendant if it is less than the value of the property as fixed by the officer, or for the value of the property so fixed if the value is less than the judgment against defendant. If defendant has retaken the property on a bond to pay the debt, the judgment shall also be entered against the surety for the amount of the judgment against defendant. When judgment is entered against defendant after trial, it shall be entered against the surety as above pro-

vided except that the value of the property retaken by defendant shall be found by the court or jury, as the case may be, and stated in the finding or verdict.

History.—RS 1664; GS 2128; RGS 3429; CGL 5282; s. 26, ch. 67-254.

76.32 Attachment of vessels.—

(1) **WHEN APPLICABLE.**—In all actions by any person, firm, corporation or association of persons, including the state and any governmental subdivision, agency or department of the state, against any person, firm, association of persons or corporation, whether resident or nonresident, to recover damages for injury to the person or property thereof, resulting from negligence in the navigation, direction or management of any ship or boat of any kind, whether domestic or foreign and however propelled, within the territorial jurisdiction of the state, plaintiff is entitled to an attachment at law against the vessel in the manner hereinafter provided.

(2) **VENUE.**—Venue shall be in the county where defendants or any of them reside or the county where the damage or injury was suffered or the county where the vessel charged with the responsibility for the damage or injury is found.

(3) **MOTION FOR.**—Before any writ of attachment issues, plaintiff shall file in the court from which the writ is desired, a motion, which shall not be verified or negative the attachment debtor's exemptions, and which shall set forth the filing of the action, the circumstances under which the injury or damage complained of was suffered giving rise to plaintiff's cause of action and the amount of plaintiff's demand made in good faith.

(4) **BOND.**—No attachment shall issue until the person applying for it, the person's agent or attorney, makes a bond with surety to be approved by the clerk of the court in which the action is commenced payable

to defendant in a sum at least double the amount of money in good faith demanded conditioned to pay all costs and damages which defendant may sustain in consequence of plaintiff's improperly suing out the attachment but no bond shall be required when the state, or any governmental subdivision, agency, or department is plaintiff.

(5) **FORTHCOMING BOND.**—Any vessel attached under this law may be restored at any time to defendant or to some other person for him or her, on defendant or the other person giving bond with surety to the officer levying the attachment to be approved by the officer payable to plaintiff in double the value of the vessel levied on, if the value does not exceed the amount of plaintiff's claim, or double the amount of plaintiff's claim, if the value exceeds the amount of plaintiff's claim, the value to be fixed by the officer, conditioned for the forthcoming of the property restored to abide the final judgment of the court but if the action is for unliquidated damages, defendant or the claimant of the offending vessel instead of furnishing a bond may apply to the court for a reduction in the amount of the bond, and the court may fix the amount and conditions of the bond at a sum sufficient to adequately secure payment of the amount of the injury or damage which may have been suffered by plaintiff with costs. The release bond shall be approved by the court. If plaintiff recovers a judgment, it shall be rendered against defendant, or the claimant of the vessel, and his or her surety on the release bond.

(6) **APPLICATION OF LAW.**—This law applies to those actions for injury, loss or damage which occur without the admiralty and maritime jurisdiction of the courts of the United States.

History.—ss. 1, 2, 3, 4, 5, 6, ch. 23137, 1945; s. 26, ch. 67-254; s. 382, ch. 95-147.
Note.—Former ss. 76.32-76.37.