

CHAPTER 77

GARNISHMENT

- 77.01 Right to garnishment.
- 77.02 Garnishment in tort actions.
- 77.03 Issuance of writ after judgment.
- 77.0305 Continuing writ of garnishment against salary or wages.
- 77.031 Issuance of writ before judgment.
- 77.04 Writ; form.
- 77.055 Notice to defendant and other interested persons.
- 77.06 Writ; effect.
- 77.061 Reply.
- 77.07 Dissolution of writ.
- 77.08 Writ; jury trials.
- 77.081 Default; judgment.
- 77.082 No reply filed.
- 77.083 Judgment.
- 77.13 Execution on garnishee's refusal to surrender property.
- 77.14 Disposition of property surrendered by garnishee.
- 77.15 Proceedings against third persons named in answer.
- 77.16 Claims by third persons to garnisheed property.
- 77.17 Compensation to garnishee.
- 77.19 Amount retained by garnishee.
- 77.22 Before judgment; effect of judgment for defendant.
- 77.24 Before judgment; discharge.
- 77.27 No appeal until fees are paid.
- 77.28 Garnishment; attorney's fees, costs, expenses; deposit required.

77.01 Right to garnishment.—Every person who has sued to recover a debt or has recovered judgment in any court against any person, natural or corporate, has a right to a writ of garnishment, in the manner hereinafter provided, to subject any debt due to defendant by a third person, and any tangible or intangible personal property of defendant in the possession or control of a third person. The officers, agents, and employees of any companies or corporations are third persons in regard to the companies or corporations, and as such are subject to garnishment after judgment against the companies or corporations.

History.—s. 1, ch. 43, 1845; s. 1, ch. 3738, 1887; RS 1666; s. 1, ch. 4136, 1893; GS 2130; s. 1, ch. 6910, 1915; RGS 3431; CGL 5284; s. 27, ch. 67-254.

77.02 Garnishment in tort actions.—Before judgment against a defendant no writ of garnishment shall issue in any action sounding in tort.

History.—s. 1, ch. 7352, 1917; RGS 3432; CGL 5285; s. 27, ch. 67-254.

77.03 Issuance of writ after judgment.—After judgment has been obtained against defendant but before the writ of garnishment is issued, the plaintiff, the plaintiff's agent or attorney, shall file a motion (which shall not be verified or negative defendant's exemptions) stating the amount of the judgment and that movant does not believe that defendant has in his or her possession visi-

ble property on which a levy can be made sufficient to satisfy the judgment. The motion may be filed and the writ issued either before or after the return of execution.

History.—s. 1, 14, ch. 43, 1845; RS 1667; s. 1, ch. 4393, 1895; GS 2131; RGS 3433; CGL 5286; s. 27, ch. 67-254; s. 383, ch. 95-147.

177.0305 Continuing writ of garnishment against salary or wages.—Notwithstanding any other provision of this chapter, if salary or wages are to be garnished to satisfy a judgment, the court shall issue a continuing writ of garnishment to the judgment debtor's employer which provides for the periodic payment of a portion of the salary or wages of the judgment debtor as the salary or wages become due until the judgment is satisfied or until otherwise provided by court order. A debtor's status as an employee of the state or its agencies or political subdivisions does not preclude a judgment creditor's right to garnish the debtor's wages. For the purposes of this section, the state includes the judicial branch and the legislative branch as defined in s. 216.011. The state, for itself and for its agencies and subdivisions, waives sovereign immunity for the express and limited purpose necessary to carry out this section. The court shall allow the judgment debtor's employer to collect up to \$5 against the salary or wages of the judgment debtor to reimburse the employer for administrative costs for the first deduction from the judgment debtor's salary or wages and up to \$2 for each deduction thereafter. The funds collected by the state under this section must be deposited in the Department of Banking and Finance Administrative Trust Fund for purposes of carrying out this section.

History.—s. 1, ch. 88-295; s. 2, ch. 93-69; s. 1, ch. 93-256.

Note.—Section 6, ch. 93-256, provides that "[t]his act applies only to an attachment, a garnishment, or other legal process that arises as a result of a contract, a loan, a transaction, a purchase, a sale, a transfer, or a conversion occurring on or after October 1, 1993."

77.031 Issuance of writ before judgment.—Before judgment has been obtained by the plaintiff against the defendant:

(1) A writ of garnishment shall be issued by the court or by the clerk on order of the court.

(2) To obtain issuance of the writ, the plaintiff, or the plaintiff's agent or attorney, shall file in the court where the action is pending a verified motion or affidavit alleging by specific facts the nature of the cause of action; the amount of the debt and that the debt for which the plaintiff sues is just, due, and unpaid; that the garnishment is not sued out to injure either the defendant or the garnishee; and that the plaintiff believes that the defendant will not have in his or her possession, after execution is issued, tangible or intangible property in this state and in the county in which the action is pending on which a levy can be made sufficient to satisfy the plaintiff's claim. The writ of garnishment shall set forth a notice to the defendant of the right to an immediate hearing for dissolution of such writ pursuant to s. 77.07. Upon issuance of the writ of garnishment, the clerk of the court shall provide by mail a copy of the writ to the defendant.

(3) Except when the plaintiff has had an attachment writ issued, no writ of garnishment before judgment shall issue until the plaintiff, or the plaintiff's agent or attorney, gives a bond with surety to be approved by the clerk payable to the defendant in at least double the amount of the debt demanded, conditioned to pay all costs, damages, and attorney's fees that the defendant sustains in consequence of the plaintiff's improperly suing out the writ of garnishment. A garnishment bond is not void or voidable because of an informality in it, nor shall the obligors be discharged because of the informality, even though the garnishment is dissolved because of the informality.

(4) The motion or pleading need not negative any exemptions of the defendant.

History.—s. 11, ch. 43, 1845; RS 1680; s. 1, ch. 4393, 1895; GS 2144; s. 2, ch. 6910, 1915; RGS 3446; CGL 5299; s. 2, ch. 29737, 1955; s. 27, ch. 67-254; s. 1, ch. 83-97; s. 8, ch. 85-80; s. 384, ch. 95-147.

Note.—Former s. 77.18.

77.04 Writ; form.—The writ shall require the garnishee to serve an answer to it on plaintiff within 20 days after service stating whether he or she is indebted to defendant at the time of the answer, or was indebted at the time of service of the writ, or at any time between such times; and in what sum and what tangible or intangible personal property of defendant the garnishee has in his or her possession or control at the time of his or her answer, or had at the time of the service of the writ, or at any time between such times; and whether the garnishee knows of any other person indebted to defendant, or who may have any of the property of defendant in his or her possession or control. The writ shall state the amount named in plaintiff's motion.

History.—s. 1, ch. 43, 1845; RS 1668; s. 1, ch. 4393, 1895; GS 2132; RGS 3434; CGL 5287; s. 11, ch. 28301, 1953; s. 27, ch. 67-254; s. 385, ch. 95-147.

77.055 Notice to defendant and other interested persons.—Within 5 days after service of the garnishee's answer on the plaintiff or after the time period for the garnishee's answer has expired, the plaintiff shall serve, by mail, the following documents: a copy of the writ, a copy of the answer, a notice, and a certificate of service. The notice shall advise the recipient that he or she must move to dissolve the writ within the time period set forth in s. 77.07(2) or be defaulted and that he or she may have exemptions from the garnishment which must be asserted as a defense. The plaintiff shall serve these documents on the defendant at the defendant's last known address and any other address disclosed by the garnishee's answer and on any other person disclosed in the garnishee's answer to have any ownership interest in the deposit, account, or property controlled by the garnishee. The plaintiff shall file in the proceeding a certificate of such service.

History.—s. 1, ch. 85-272; s. 2, ch. 88-295; s. 386, ch. 95-147.

77.06 Writ; effect.—

(1) Service of the writ shall make garnishee liable for all debts due by him or her to defendant and for any tangible or intangible personal property of defendant in the garnishee's possession or control at the time of the service of the writ or at any time between the service and the time of the garnishee's answer.

(2) The garnishee shall report in its answer and retain, subject to the provisions of s. 77.19 and subject to disposition as provided in this chapter, any deposit, account, or tangible or intangible personal property in the possession or control of such garnishee; and the answer shall state the name or names and addresses, if known to the garnishee, of the defendant and any other persons having or appearing to have an ownership interest in the involved property.

(3) In any case where a garnishee in good faith is in doubt as to whether any indebtedness or property is required by law to be included in the garnishee's answer or retained by it, the garnishee may include and retain the same, subject to the provisions of s. 77.19 and subject to disposition as provided in this chapter, and in such case the garnishee shall not be liable for so doing to the defendant or to any other person claiming the same or any interest therein or claiming to have sustained damage on account thereof.

(4) Service of a writ on a garnishee shall render him or her liable as provided in this chapter in any fiduciary or representative capacity held by him or her if the fiduciary or representative capacity is specified in the writ.

History.—s. 1, ch. 43, 1845; RS 1670; GS 2134; RGS 3436; CGL 5289; s. 27, ch. 67-254; s. 1, ch. 71-69; s. 1, ch. 74-98; s. 2, ch. 85-272; s. 387, ch. 95-147.

77.061 Reply.—When any garnishee answers and plaintiff is not satisfied with the answer, he or she shall serve a reply within 20 days thereafter denying the allegations of the answer as he or she desires. On failure of plaintiff to file a reply, the answer shall be taken as true and on proper disposition of the assets, if any are disclosed thereby, the garnishee is entitled to an order discharging him or her from further liability under the writ.

History.—s. 27, ch. 67-254; s. 388, ch. 95-147.

77.07 Dissolution of writ.—

(1) The defendant, by motion, may obtain the dissolution of a writ of garnishment, unless the petitioner proves the grounds upon which the writ was issued and unless, in the case of a prejudgment writ, there is a reasonable probability that the final judgment in the underlying action will be rendered in his or her favor. The court shall set down such motion for an immediate hearing. If the writ is dissolved, the action then shall proceed as if no writ had been issued.

(2) The defendant and any other person having an ownership interest in the property, as disclosed by the garnishee's answer, shall file and serve a motion to dissolve the garnishment within 20 days after the date indicated in the certificate of service on the defendant and such other person of the plaintiff's notice required by s. 77.055, stating that any allegation in plaintiff's motion for writ is untrue. On such motion this issue shall be tried, and if the allegation in plaintiff's motion which is denied is not proved to be true, the garnishment shall be dissolved. Failure of the defendant or other interested person to timely file and serve the motion to dissolve within such time limitation shall result in the striking of the motion as an unauthorized nullity by the court, and the proceedings shall be in a default posture as to the party involved.

(3) If the motion denies the debt demanded before judgment, the judge may require pleadings on motion of

either party on the debt demanded 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 defendant's motion to plaintiff's motion.

History.—s. 1, ch. 7353, 1917; RGS 3454; CGL 5307; s. 27, ch. 67-254; s. 2, ch. 83-97; s. 3, ch. 85-272; s. 389, ch. 95-147.

77.08 Writ; jury trials.—On demand of either party a jury summoned from the body of the county shall be impaneled to try the issues.

History.—s. 1, ch. 7353, 1917; RGS 3455; CGL 5308; s. 27, ch. 67-254.

77.081 Default; judgment.—

(1) If the garnishee fails to answer as required, a default shall be entered against him or her.

(2) On the entry of judgment for plaintiff, a final judgment shall be entered against the garnishee for the amount of plaintiff's claim with interest and costs. No final judgment against a garnishee shall be entered before the entry of, or in excess of, the final judgment against the original defendant with interest and costs. If the claim of the plaintiff is dismissed or judgment is entered against the plaintiff the default against garnishee shall be vacated and judgment for the garnishee's costs entered.

History.—s. 11, ch. 43, 1845; RS 1681, 1682; GS 2146, 2147; RGS 3448, 3449; CGL 5301, 5302; s. 27, ch. 67-254; s. 390, ch. 95-147.

Note.—Former ss. 77.20, 77.21.

77.082 No reply filed.—If no reply to garnishee's answer is served, garnishee may surrender any goods, chattels, or effects of defendant in garnishee's hands or possession to the sheriff and may pay any money or debt into registry of court. In such event or if garnishee prevails in the trial of any reply and after proper disposition of any property disclosed by garnishee's answer, the court shall discharge him or her from further liability under the writ.

History.—s. 27, ch. 67-254; s. 391, ch. 95-147.

77.083 Judgment.—Judgment against the garnishee on the garnishee's answer or after trial of a reply to the garnishee's answer shall be entered for the amount of his or her liability as disclosed by the answer or trial. Instead of scire facias, the court may subpoena the garnishee to inquire about his or her liability to or possession of property of the defendant. No judgment in excess of the amount remaining unpaid on the final judgment against the defendant or in excess of the amount of the liability of the garnishee to the defendant, whichever is less, shall be entered against the garnishee.

History.—s. 27, ch. 67-254; s. 3, ch. 83-97; s. 10, ch. 87-224; s. 392, ch. 95-147.

77.13 Execution on garnishee's refusal to surrender property.—If garnishee will not surrender the personal property belonging to defendant, provided he or she has the power to do so, and which garnishee has admitted is in his or her possession, the court may order execution issued against garnishee for the unpaid amount of plaintiff's judgment against defendant. The officer shall sell garnishee's property as under other executions. Garnishee may release his or her property from the levy and sale by surrendering the property of defendant to the officer levying the execution at the time

appointed for the sale of garnishee's property so levied on, or at any time before the day of the sale and by paying the costs of the proceedings to sell up to the time of the surrender.

History.—s. 5, ch. 43, 1845; RS 1675; GS 2139; RGS 3441; CGL 5294; s. 27, ch. 67-254; s. 393, ch. 95-147.

77.14 Disposition of property surrendered by garnishee.—When any garnishee has any of the personal property of defendant in his or her possession or control and surrenders it, the sheriff shall receive the property and sell it under the execution against defendant.

History.—s. 6, ch. 43, 1845; RS 1676; GS 2140; RGS 3442; CGL 5295; s. 27, ch. 67-254; s. 394, ch. 95-147.

77.15 Proceedings against third persons named in answer.—If the answer of garnishee shows that there is any of defendant's personal property in the possession or control of any person who has not been garnisheed, on motion of plaintiff a writ of garnishment shall issue against the person having personal property of the defendant and the person shall answer and be liable as other garnishees.

History.—s. 3, ch. 43, 1845; RS 1677; GS 2141; RGS 3443; CGL 5296; s. 2, ch. 29737, 1955; s. 27, ch. 67-254.

77.16 Claims by third persons to garnisheed property.—

(1) If any person other than defendant claims that the debt due by a garnishee is due to that person and not to defendant, or that the property in the hands or possession of any garnishee is that person's property and shall make an affidavit to the effect, the court shall impanel a jury to determine the right of property between the claimant and plaintiff unless a jury is waived.

(2) If the verdict is against the claimant, plaintiff shall recover costs. If the verdict is in favor of the claimant, the claimant shall recover costs against plaintiff.

(3) If the claim is interposed after a levy on property, the officer making the levy shall return the execution with the officer's levy thereon and the affidavit of the claimant to the court from which execution issued, and the proceedings shall be as in other cases of claims made to property taken on execution.

History.—s. 8, ch. 43, 1845; RS 1679; GS 2143; RGS 3445; CGL 5298; s. 27, ch. 67-254; s. 395, ch. 95-147.

77.17 Compensation to garnishee.—The garnishee shall be allowed the pay of a witness for the garnishee's attendance out of the debt owed to defendant or the property in the garnishee's possession. If there is no debt or property in the garnishee's possession, the allowance shall be against plaintiff.

History.—s. 7, ch. 43, 1845; RS 1678; GS 2142; RGS 3444; CGL 5297; s. 27, ch. 67-254; s. 396, ch. 95-147.

77.19 Amount retained by garnishee.—No garnishee who is indebted to or has in his or her possession the money of a person whose money or credits may be garnisheed shall retain out of the money more than double the amount which the writ of garnishment specifies as the amount plaintiff expects to recover or more than double the amount of the judgment plaintiff has recovered.

History.—s. 2, ch. 4393, 1895; GS 2145; RGS 3447; CGL 5300; s. 27, ch. 67-254; s. 397, ch. 95-147.

77.22 Before judgment; effect of judgment for defendant.—

(1) If the judgment is for defendant in the main action, plaintiff shall pay all costs which have accrued in consequence of suing out a writ of garnishment before judgment and the money or property brought into the registry of the court or custody of the officer thereby inures to the benefit of and shall be controlled by defendant as completely as though it had been rendered in defendant's favor.

(2) If plaintiff dismisses his or her action or has a judgment against him or her on the trial, the judgment against garnishee shall become a nullity and garnishee shall have execution for garnishee's costs against plaintiff.

History.—s. 11, ch. 43, 1845; s. 2, ch. 1100, 1861; RS 1683, 1684; GS 2148, 2149; RGS 3450, 3451; CGL 5303, 5304; s. 27, ch. 67-254; s. 398, ch. 95-147.

Note.—Former ss. 77.22, 77.23.

77.24 Before judgment; discharge.—At any time before the entry of judgment, a defendant whose property has been garnished may secure its release by giving a bond with surety to be approved by the clerk in at least double the amount claimed in the complaint with interest and costs, or if the value of the property garnished is less than this amount, then in double the value, conditioned to pay any judgment recovered against the defendant in the action with interest and costs, or so much thereof as shall equal the value. On the approval of the bond the court shall discharge the garnishment and release the property. The order shall become effective on its filing with the bond. If garnishee admits a debt to or possession of property of defendant in excess of a sum sufficient to satisfy plaintiff's claim, on motion of defendant and notice to plaintiff, the court shall release garnishee from responsibility to plaintiff for any debt to or property of defendant except in a sum deemed by the

court sufficient to satisfy plaintiff's claim with interest and costs.

History.—RS 1685; GS 2150; s. 1, ch. 5906, 1909; s. 2, ch. 6910, 1915; RGS 3452; CGL 5305; s. 27, ch. 67-254; s. 399, ch. 95-147.

77.27 No appeal until fees are paid.—If the writ is dismissed or plaintiff fails to sustain his or her claim, no appeal from the judgment shall be permitted until the attorney's fee provided in s. 77.28 has been paid into court.

History.—s. 2, ch. 4030, 1891; GS 1357; RGS 2553; CGL 4171; s. 27, ch. 67-254; s. 400, ch. 95-147.

77.28 Garnishment; attorney's fees, costs, expenses; deposit required.—Before issuance of any writ of garnishment, the party applying for it shall deposit \$100 in the registry of the court which shall be paid to the garnishee on the garnishee's demand at any time after the service of the writ for the payment or part payment of his or her attorney's fee which the garnishee expends or agrees to expend in obtaining representation in response to the writ. At the time of deposit, the clerk shall collect the statutory fee provided by s. 28.24(13) in addition to the \$100 deposited into the registry of the court. On rendering final judgment, the court shall determine the garnishee's costs and expenses, including a reasonable attorney's fee, and in the event of a judgment in favor of the plaintiff, the amount shall be subject to offset by the garnishee against the defendant whose property or debt owing is being garnished. In addition, the court shall tax the garnishee's costs and expenses as costs. Plaintiff may recover in this manner the sum advanced by plaintiff and paid into registry of court, and if the amount allowed by the court is greater than the amount of the deposit, together with any offset, judgment for the garnishee shall be entered against the party against whom the costs are taxed for the deficiency.

History.—s. 1, ch. 21772, 1943; s. 27, ch. 67-254; s. 2, ch. 81-301; s. 4, ch. 85-272; s. 1, ch. 88-234; s. 401, ch. 95-147.