CHAPTER 735

REPLEVIN

SUBCHAPTER 1

GOODS

§7301. Unlawful detention

When goods, unlawfully taken or detained from the owner or person entitled to the possession thereof, or attached on mesne process, or taken on execution, are claimed by any person other than the defendant in the action in which they are so attached or taken, such owner or person may cause them to be replevied.

§7302. Venue

Except as provided in section 509 and in Title 4, section 155, subsection 3-A, an action for replevin may be brought in either District Court or Superior Court in the county or division where a plaintiff or defendant resides or where any of the personal property sought to be replevied is located. [PL 2009, c. 245, §7 (RPR).]

SECTION HISTORY

PL 2009, c. 245, §7 (RPR).

§7303. Bond; additional security

Before serving the writ, the officer shall take from the plaintiff, or someone in his behalf, a bond to the defendant, with sufficient sureties or with a surety company authorized to do business in this State as surety, in double the value of the goods to be replevied, conditioned as in the prescribed form of the writ, to be returned with the writ to the court from which the writ issued, for the use of the defendant, and new sureties or surety company may be required thereon as provided in section 7403.

§7304. Writ of return where defendant prevails; judgment when property held as security

If it appears that the defendant is entitled to a return of the goods, he shall have judgment and a writ of return accordingly, with damages for the taking and costs. If the plaintiff claims the property replevied as security for a debt, his claim shall be discharged by payment or tender thereof, with interest and costs; and judgment shall be for a return without costs, unless his title has become absolute by a legal foreclosure.

§7305. Judgment for return of property attached or taken on execution; damages

If the goods, when replevied, had been taken in execution or were under attachment and judgment is afterwards rendered for the attaching creditor, and if, in either case, the service of the execution is delayed by the replevin, the damages on a judgment for a return shall not be less than at the rate of 12% a year on the value of the goods while the service of the execution is so delayed.

§7306. Disposal of money recovered for goods attached or taken on execution

All sums recovered by an officer in an action of replevin on account of goods attached or taken in execution by him or recovered in a civil action upon the replevin bond shall be applied:

1. Fees, charges, expenses. To pay the lawful fees and charges of the officer, and the reasonable expenses of the replevin action, and of the action on the bond, so far as they are not reimbursed by the costs recovered;

2. Payment to creditor. To pay the creditor, in whose action the goods were attached or taken on execution, the sum, if any, recovered by him in that action or what remains unpaid, with interest at the rate of 12% a year for the time that the money was withheld from the creditor or the service of his execution was delayed by reason of the replevin;

3. Application of balance or if creditor does not recover judgment. If the attaching creditor in such case does not recover judgment in his action, or if any balance remains of the money so recovered by the officer after paying the creditor his due, such balance or the whole amount, as the case may be, shall be applied as the surplus of the proceeds of sale should have been applied if such goods had been sold on execution.

§7307. Appropriation of money received by creditor

All sums received by such creditor from the sale of goods attached or taken in execution and afterwards returned, all sums received for the value of any of such goods as are not returned and all sums recovered from the officer for insufficiency of the bond shall be applied in discharge of the creditor's judgment, but all sums received as interest or damages for delay of his execution shall be retained to his own use and not go in discharge of the judgment.

§7308. Judgment if plaintiff recovers

If it appears that the goods were taken, attached or detained unlawfully, the plaintiff shall have judgment for his damages caused thereby and for his costs.

§7309. Continuance of attachment, if goods replevied

If the goods replevied had been attached, they shall, in case of judgment for a return, be held by the attachment until 60 days after judgment in the action in which they were attached has become final as provided in section 4601. If such final judgment is rendered before the return of the goods or if the goods when replevied had been seized on execution, they shall be held by the same attachment or seizure for 60 days after the return and may be taken and disposed of as if they had not been replevied.

§7310. Writ of reprisal

When the officer, in the service of the writ of return and restitution, is not able to find in his precinct the beast or other property directed to be returned in his precept, he shall certify that fact in his return. The court whence it issued, upon notice, may grant a writ of reprisal, in the form prescribed by law, against the plaintiff in replevin, to take his goods or beasts not exempt from attachment, of the full value, to be delivered to the defendant, to be held and disposed of by him according to law, until the plaintiff restores the beast or other property replevied by him.

§7311. Defendant's remedy on replevin bond

The foregoing provisions shall not preclude the defendant from resorting to his remedy on the replevin bond, or to his remedy against the officer for insufficiency of the bond, to recover the value of the goods together with the damage or loss occasioned by the replevin thereof, notwithstanding he has endeavored to recover the same by the writs of return and of reprisal.

§7312. Limitation of surety's liability on replevin bond

No action shall be maintained against any surety on a replevin bond unless it is commenced within one year after final judgment in replevin or, if the complaint in replevin is not filed with the court by the plaintiff within one year after the replevin of the goods.

SUBCHAPTER 2

PERSONS

§7351. Availability of writ; court of issue

If any person is imprisoned, restrained of his liberty or held in duress, unless by a lawful writ, warrant or other process, civil or criminal, he may have the writ for replevying the person, on complaint filed by himself or anyone in his behalf in the Superior Court, at the discretion of the court and not otherwise.

§7352. Issuance and service

The writ described in this chapter shall issue from and be returnable to the Superior Court in the county where the plaintiff is confined, and be directed to a proper officer and served as soon as may be, 14 days at least before the return day.

§7353. Form of writ

The form of the writ shall be as follows:

"STATE OF MAINE.

[L.S.]"...., ss. To the sheriff of our County of ...., or his deputy, Greeting.

"We command you, that without delay you cause to be replevied, C.D., who, as it is said, is taken and detained in a place called N., in our said County of ...., by the duress of G.H., that he may appear at our Superior Court, next to be held at ...., within and for the County of ...., on the .... day of .... next, then and there in our said court to demand right and justice against said G.H. for the duress and imprisonment aforesaid, and to prosecute his replevin, as the law directs; provided that the said C.D.," (the plaintiff,) "before his deliverance, gives bond to the defendant, in such sum as you judge reasonable, with two sufficient sureties, with condition to appear at said court to prosecute his replevin against the defendant, and to have his body there to be redelivered, if thereto ordered by the court, and to pay all such damages and costs as are awarded against him; and if the plaintiff is delivered by you at a day before the sitting of said court, you shall summon the defendant to appear at said court.

"Witness J.S., Esquire, our ...., at ...., the .... day of ...., in the year of our Lord nineteen hundred and ....

L.M., Clerk."

§7354. Bond before writ issues

No person shall be delivered by such writ described in this chapter until a bond is given by the plaintiff or person suing in his behalf, to be returned to the court with the writ, for the sufficiency of which the officer shall be answerable, as in case of bail in civil actions.

§7355. Judgment

If the plaintiff maintains his action, he shall be discharged and recover his costs; but if not, the defendant shall recover his costs and such damages as the jury assess; or if the defendant is defaulted or the parties consent, the court may assess the damages.

§7356. Defendant entitled to custody of plaintiff

If it appears that the defendant is bail for the plaintiff or that, as his child, ward, apprentice or otherwise, he is entitled to his custody, he shall have judgment for a redelivery of his body, to be held or disposed of according to law.

§7357. Plaintiff eloigned; defendant arrested; bail

If it appears that the defendant has eloigned the plaintiff's body so that the officer cannot deliver him, the court, on motion, shall issue a writ of reprisal to take the defendant's body and him safely keep

so that he may be at the next term of the court, to traverse the return of said writ for replevying the plaintiff. He may be discharged by giving bail for his appearance at court, with 2 sufficient sureties, in such sum as the officer requires.

§7358. Defendant imprisoned; writ of reprisal; suggestion of plaintiff's death

The defendant may traverse the return on the writ for replevying the plaintiff and if it appears that he is not guilty of eloigning the plaintiff, he shall be discharged and recover costs; but if he does not traverse it, or if on such traverse it appears that the defendant did eloign the plaintiff, an alias writ of reprisal shall issue, substantially in the form heretofore established and used in the State, on which he shall be committed to jail to remain irrepleviable until he produces the body of the plaintiff or proves his death. He may suggest the plaintiff's death and the court shall impanel a jury to try the fact at the defendant's expense; and if the death is proved, he shall be discharged.

§7359. Production of plaintiff; release of defendant

If the defendant, after the return of eloignment, produces the body of the plaintiff in court, the court shall deliver him from imprisonment, upon his giving the defendant such bond as hereinbefore in this chapter directed to be taken by the officer when the plaintiff is delivered by him; and for want thereof, he shall be committed to abide the judgment on the writ for replevying the plaintiff; and, in either case, the action shall be tried as aforesaid.

SUBCHAPTER 3

ANIMALS

§7401. Replevy of distrained beasts

Any person, whose beasts are distrained to obtain satisfaction for damages alleged to be done by them, may maintain a writ of replevin therefor against the distrainer before any District Court in the county, in the form prescribed by law or, if the value of the beasts distrained is more than $20, in the Superior Court.

§7402. Writ; service and return

The writ shall be sued out, served and returned and the cause heard and determined like other civil actions before the District Court, except as otherwise prescribed.

§7403. Bond; additional sureties

The writ shall not be served unless the plaintiff or someone in his behalf executes and delivers to the officer a bond to the defendant, with sufficient sureties to be approved by the officer, or with a surety company authorized to do business in this State as surety, in a penalty double the actual value of the property to be replevied, conditioned as in the prescribed form of the writ and to be returned with the writ for the use of the defendant. If it afterwards becomes insufficient, the court may require additional surety or sureties to be furnished, who shall be held as if they had been original parties thereto. If not so furnished, it may dismiss the action and order a return of the property replevied or make such other order as is deemed reasonable.

§7404. Judgment; distraint lawful

If it appears that the beasts were lawfully taken or distrained, the defendant shall have judgment for the sum found due from the plaintiff for the damages for which the beasts were distrained, with legal fees, costs and expenses occasioned by the distress and costs of the replevin action; or, instead thereof, the court may enter judgment for a return of the beasts to the defendant, to be held by him for the original purpose, irrepleviable by the plaintiff, and for the defendant's damages and costs in the replevin action.

§7405. -- distraint unlawful

If it appears that the beasts were taken or distrained without justifiable cause, the plaintiff shall have judgment for his damages and costs.

§7406. Appeals

Either party may appeal as in other civil actions.

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