

CHAPTER 78

REPLEVIN

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78.01 Right of replevin.—Any person whose personal property is wrongfully detained by any other person or officer may have a writ of replevin to recover said personal property and any damages sustained by reason of the wrongful taking or detention as herein provided. Notice of lis pendens to charge third persons with knowledge of plaintiff's claim on the property may be recorded.

History.—s. 1, Mar. 11, 1845; RS 1707; GS 2171; RGS 3476; CGL 5329; s. 1, ch. 28277, 1953; s. 1, ch. 29706, 1955; s. 28, ch. 67-254; s. 1, ch. 73-20.

78.02 What may not be taken by replevin.—No replevin shall lie:

(1) For any property taken by virtue of any warrant for the collection of any tax, assessment, or fine pursuant to any statute;

(2) For defendant in any execution or attachment to recover goods and chattels seized by virtue thereof unless such goods and chattels are exempt from the execution or attachment;

(3) By the original defendant in replevin for property taken in replevin and delivered to plaintiff while it remains in the possession of the original plaintiff or his or her agents.

(4) For any person unless that person has a right to reduce the goods taken into his or her possession.

History.—ss. 2, 3, Mar. 11, 1845; s. 4, ch. 1099, 1861; ch. 1938, 1873; ch. 2040, 1875; RS 1708; GS 2172; RGS 3477; CGL 5330; s. 28, ch. 67-254; s. 1, ch. 73-20; s. 402, ch. 95-147.

78.03 Jurisdiction.—An action for replevin must be brought in a court of competent jurisdiction based on the value of the property sought to be replevied. When property consists of separate articles, the value of any

one of which is within the jurisdiction of a lower court but taken together will exceed that jurisdiction, the plaintiff may not divide the property to give jurisdiction to the lower court to enable the plaintiff to bring separate actions therefor.

History.—s. 14, Mar. 11, 1845; RS 1709; GS 2173; RGS 3478; CGL 5331; s. 28, ch. 67-254; s. 1, ch. 73-20; s. 15, ch. 73-334; s. 1, ch. 93-81.

78.032 Venue.—An action for replevin may be brought in any county where the property sought to be replevied is located, where the contract was signed, where the defendant resides, or where the cause of action accrued. An action that includes a cause of action for replevin and other causes of action may be brought in any county where venue is proper under chapter 47 for any of the other causes of action or in any county where venue for the replevin is proper under this section.

History.—s. 2, ch. 93-81.

78.045 Writ; court order required.—No clerk of court shall issue a writ of replevin prior to final judgment unless there has been filed with the clerk of court an order authorizing the issuance of such writ of replevin.

History.—s. 1, ch. 73-20.

78.055 Complaint; requirements.—To obtain an order authorizing the issuance of a writ of replevin prior to final judgment, the plaintiff shall first file with the clerk of the court a complaint reciting and showing the following information:

(1) A description of the claimed property that is sufficient to make possible its identification and a statement, to the best knowledge, information, and belief of the plaintiff of the value of such property and its location.

(2) A statement that the plaintiff is the owner of the claimed property or is entitled to possession of it, describing the source of such title or right. If the plaintiff's interest in such property is based on a written instrument, a copy of said instrument must be attached to the complaint.

(3) A statement that the property is wrongfully detained by the defendant, the means by which the defendant came into possession thereof, and the cause of such detention according to the best knowledge, information, and belief of the plaintiff.

(4) A statement that the claimed property has not been taken for a tax, assessment, or fine pursuant to law.

(5) A statement that the property has not been taken under an execution or attachment against the property of the plaintiff or, if so taken, that it is by law exempt from such taking, setting forth a reference to the exemption law relied upon.

History.—s. 1, ch. 73-20; s. 3, ch. 76-19.

78.065 Order to show cause; contents.—

(1) The court without delay shall examine the complaint filed; and, if on the basis of the complaint and further showing of the plaintiff in support of it the court finds that the defendant has waived in accordance with

s. 78.075 his or her right to be notified and heard, the court shall promptly issue an order authorizing the clerk of the court to issue a writ of replevin.

(2) If, upon examination of the complaint filed and on further showing of the plaintiff in support of it, the court finds that the defendant has not waived in accordance with s. 78.075 his or her right to be notified and heard, the court shall promptly issue an order directed to the defendant to show cause why the claimed property should not be taken from the possession of the defendant and delivered to plaintiff. Such order shall:

(a) Fix the date and time for hearing on the order. However, the date for the hearing shall not be set sooner than 5 days after the service of the order.

(b) Direct the time within which service of the order and the complaint shall be made upon the defendant.

(c) Fix the manner in which service of the order shall be made on the defendant. The order shall direct that service as provided by law shall be made on the defendant if such service is possible or, in the event the officer serving the order is unable to serve such defendant as provided by law within the time specified in paragraph (b), that the officer shall place the order, together with the summons, on or in the claimed property or on the main entrance of the defendant's residence. The officer's return shall state that the officer was unable to locate the defendant and how the order was served.

(d) State that the nonpersonal service as provided herein shall be effective to afford notice to the defendant of the show cause order, but for no other purpose.

(e) State that the defendant has the right to file affidavits on his or her behalf with the court and may appear personally or by way of an attorney and present testimony on his or her behalf at the time of the hearing, or that the defendant may, upon a finding by the court pursuant to s. 78.067(2) that the plaintiff is entitled to the possession of the claimed property pending final adjudication of the claims of the parties, file with the court a written undertaking executed by a surety approved by the court in an amount equal to the value of the property to stay an order authorizing the delivery of the property to the plaintiff.

(f) State that if the defendant fails to appear the defendant shall be deemed to have waived his or her right to a hearing and that in such case the court may order the clerk of the court to issue a writ of replevin.

History.—s. 1, ch. 73-20; s. 10, ch. 79-396; s. 5, ch. 83-255; s. 403, ch. 95-147.

78.067 Order to show cause; hearing.—

(1) If, after serving a show cause order as provided above, the court finds that the defendant has waived the right to be heard on that order in accordance with s. 78.075, it shall dispense with the hearing on the show cause order and promptly issue an order authorizing the clerk of the court to issue a writ of replevin.

(2) If the court finds that the defendant has not waived the right to be heard on the order to show cause in accordance with s. 78.075, the court shall at the hearing on the order to show cause consider the affidavits and other showings made by the parties appearing and make a determination of which party, with reasonable probability, is entitled to the possession of the claimed property pending final adjudication of the claims of the

parties. This determination shall be based on a finding as to the probable validity of the underlying claim alleged against the defendant. If the court determines that the plaintiff is entitled to take possession of the claimed property, it shall issue an order directing the clerk of the court to issue a writ of replevin. However, the order shall be stayed pending final adjudication of the claims of the parties if the defendant files with the court a written undertaking executed by a surety approved by the court in an amount equal to the value of the property.

History.—s. 1, ch. 73-20; s. 404, ch. 95-147.

78.068 Prejudgment writ of replevin.—

(1) A prejudgment writ of replevin may be issued and the property seized delivered forthwith to the petitioners when the nature of the claim and the amount thereof, if any, and the grounds relied upon for the issuance of the writ clearly appear from specific facts shown by the verified petition or by separate affidavit of the petitioner.

(2) This prejudgment writ of replevin may issue if the court finds, pursuant to subsection (1), that the defendant is engaging in, or is about to engage in, conduct that may place the claimed property in danger of destruction, concealment, waste, removal from the state, removal from the jurisdiction of the court, or transfer to an innocent purchaser during the pendency of the action or that the defendant has failed to make payment as agreed.

(3) The petitioner must post bond in the amount of twice the value of the goods subject to the writ or twice the balance remaining due and owing, whichever is lesser as determined by the court, as security for the payment of damages the defendant may sustain when the writ is obtained wrongfully.

(4) The defendant may obtain release of the property seized under a prejudgment writ of replevin by posting bond within 5 days after serving of the writ in the amount of $1\frac{1}{4}$ the amount due and owing on the agreement for the satisfaction of any judgment which may be rendered against the defendant.

(5) A prejudgment writ of replevin shall issue only upon the signed order of a circuit court judge or a county court judge.

(6) The defendant, by contradictory motion filed with the court within 10 days after service of the writ, may obtain the dissolution of a prejudgment writ of replevin unless the petitioner proves the grounds upon which the writ was issued. The court shall set down such motion for an immediate hearing. This motion shall be in lieu of the provisions of subsection (4).

History.—s. 1, ch. 76-19; s. 1, ch. 77-174; s. 405, ch. 95-147.

78.075 Order to show cause; waiver.—The right to be heard provided in ss. 78.065 and 78.067 is waived if the defendant, after receiving a show cause order, engages in any conduct that clearly shows that he or she wants to forego the right to be heard on that order. The defendant's failure to appear at the hearing duly scheduled on the order to show cause presumptively constitutes conduct that clearly shows that he or she wants to forego the right to be so heard. If the defendant, after service of the order to show cause, sends or

delivers to the plaintiff or the court issuing the order to show cause a writing prepared by anyone but signed by the defendant after service of the order to show cause, indicating in any language that the defendant does not want to be heard on the show cause order, the defendant shall be presumed to have waived the right to be heard. For this purpose, a writing containing the following language is sufficient: "I, (name of the defendant), am aware that I have the right and opportunity to be heard on a show cause order that has been served upon me concerning the right of plaintiff to obtain a writ of replevin authorizing the appropriate officer of the court to take (describe property) from my possession prior to final judgment against me. I hereby state that I do not want to be heard on this matter and that I expressly waive my right to be heard. I understand that the effect of my signing this paper probably will be a court order authorizing the issuance of a writ of replevin directing an officer of the court to take possession of the property described above prior to final judgment against me with respect to the claim under which the property is taken."

History.—s. 1, ch. 73-20; s. 406, ch. 95-147.

78.08 Writ; form.—The writ shall command the sheriff to replevy the described personal property in possession of defendant.

History.—s. 4, Mar. 11, 1845; RS 1714; GS 2178; RGS 3483; CGL 5336; s. 28, ch. 67-254; s. 1, ch. 73-20; s. 6, ch. 83-255.

78.10 Writ; execution on property in buildings or enclosures.—In executing the writ of replevin, if the sheriff has reasonable grounds to believe that the property or any part thereof is secreted or concealed in any dwelling house or other building or enclosure, the sheriff shall publicly demand delivery thereof; and, if it is not delivered by the defendant or some other person, the sheriff shall cause such house, building, or enclosure to be broken open and shall make replevin according to the writ; and, if necessary, the sheriff shall take to his or her assistance the power of the county. However, if the sheriff does not have reasonable grounds to believe that the property to be replevied is secreted or concealed in any dwelling house or other building or enclosure, the plaintiff may petition the court for a "break order" directing the sheriff to enter physically any dwelling house or other building or enclosure. Upon a showing of probable cause by the plaintiff, the court shall enter such "break order."

History.—s. 7, Mar. 11, 1845; RS 1716; GS 2180; RGS 3485; CGL 5338; s. 28, ch. 67-254; s. 1, ch. 73-20; s. 7, ch. 83-255; s. 407, ch. 95-147.

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

History.—RS 1717; GS 2181; RGS 3486; CGL 5339; s. 28, ch. 67-254; s. 1, ch. 73-20.

78.12 Writ; execution on property removed from jurisdiction.—At the time of service of the writ if the

property to be replevied is located outside the county of the court issuing the writ, the party having had the writ issued shall deliver it to the sheriff of the county where the property is located and to whom the writ is directed, and the sheriff shall execute the writ and shall, unless the writ directs otherwise, deliver the property to the plaintiff.

History.—RS 1718; GS 2182; RGS 3487; CGL 5340; s. 28, ch. 67-254; s. 1, ch. 73-20; s. 8, ch. 87-405.

78.13 Writ; disposition of property levied on.—The officer executing the writ by levying on the property described shall deliver the property forthwith to plaintiff unless the writ directs otherwise. The defendant may obtain release of the property seized within 5 days after the seizure by posting with the clerk of the court who issued the writ the amount of 1 1/4 times the amount due and owing, conditioned to have the property forthcoming to abide the result of the action, or on the agreement for the satisfaction of any judgment which may be rendered against the defendant.

History.—s. 1, ch. 1099; 1861; RS 1719; GS 2183; RGS 3488; CGL 5341; s. 28, ch. 67-254; s. 1, ch. 73-20; s. 3, ch. 84-176; s. 408, ch. 95-147.

78.18 Judgment for plaintiff when goods not delivered to defendant.—If it appears that the property described in the complaint was wrongfully taken or detained by defendant and the property has been delivered to plaintiff by the officer executing the writ, plaintiff shall have judgment for his or her damages caused by the taking and detention and costs.

History.—s. 11, Mar. 11, 1845; RS 1724; GS 2188; RGS 3493; CGL 5346; s. 28, ch. 67-254; s. 1, ch. 73-20; s. 409, ch. 95-147.

78.19 Judgment for plaintiff when goods retained by or redelivered to defendant.—

(1) If it appears that the property was retained by, or redelivered to, defendant on his or her forthcoming bond, plaintiff shall take judgment for the property and against defendant and the surety on the forthcoming bond for the value of the property, but when plaintiff's interest in the property is based on a claim of lien or some special interest therein, the judgment shall be only for the amount of the lien or the value of such special interest and costs, and the judgment shall be satisfied by the recovery of the property or the amount adjudged against defendant and defendant's surety.

(2) After rendition of judgment, plaintiff at his or her option may have a writ of possession for the property and execution for plaintiff's costs or have execution against defendant and defendant's surety for the amount recovered and costs. If plaintiff elects to have a writ of possession for the property and the officer returns that he or she is unable to find it or any of it, plaintiff may immediately have execution against defendant and defendant's surety for the whole amount recovered against them or for the amount recovered less the value of the property found by the officer. If he or she has execution for the whole amount, the officer shall release all property taken under the writ of possession.

(3) In any proceeding to ascertain the value of the property so that judgment for the value may be entered, the value of each article shall be found but it is not necessary to ascertain the value of each article of a lot of goods, wares, and merchandise when it has been

replevied, but it is sufficient to ascertain the total value of the entire lot found.

History.—s. 1, ch. 3133, 1879; RS 1724; s. 1, ch. 5159, 1903; GS 2188; RGS 3493; s. 1, ch. 9320, 1923; CGL 5346, 5348; s. 28, ch. 67-254; s. 1, ch. 73-20; s. 410, ch. 95-147.

78.20 Judgment for defendant when goods retained by, or redelivered to, defendant.—When property has been retained by, or redelivered to, defendant on his or her forthcoming bond or upon the dissolution of a prejudgment writ and defendant prevails, he or she shall have judgment against plaintiff for his or her damages for the taking, if any, of the property, attorney fees, and costs. The remedies provided in this section and s. 78.21 shall not preclude any other remedies available under the laws of this state.

History.—s. 12, Mar. 11, 1845; RS 1725; GS 2189; RGS 3494; CGL 5347; s. 28, ch. 67-254; s. 1, ch. 73-20; s. 2, ch. 76-19; s. 411, ch. 95-147.

78.21 Judgment for defendant when goods not retained by, or redelivered to, defendant.—When the property has not been retained by, or redelivered to, defendant and he or she prevails, judgment shall be entered against plaintiff for possession of the property and costs and against plaintiff for the value of the property and costs in the same manner as provided in s. 78.19 for judgment in favor of plaintiff. The value of each article of the goods replevied shall be found as directed in s. 78.19 [F.S. 1973] with the same exception. The remedies provided in s. 78.20 and this section shall not preclude any other remedies available under the laws of this state.

History.—s. 13, Mar. 11, 1845; RS 1725; GS 2189; RGS 3494; s. 1, ch. 9320, 1923; CGL 5347; s. 28, ch. 67-254; s. 1, ch. 73-20; s. 412, ch. 95-147.