

CIVIL PRACTICE AND REMEDIES CODE

TITLE 3. EXTRAORDINARY REMEDIES

CHAPTER 62. SEQUESTRATION

SUBCHAPTER A. AVAILABILITY OF REMEDY

Sec. 62.001. GROUND. A writ of sequestration is available to a plaintiff in a suit if:

(1) the suit is for title or possession of personal property or fixtures or for foreclosure or enforcement of a mortgage, lien, or security interest on personal property or fixtures and a reasonable conclusion may be drawn that there is immediate danger that the defendant or the party in possession of the property will conceal, dispose of, ill-treat, waste, or destroy the property or remove it from the county during the suit;

(2) the suit is for title or possession of real property or for foreclosure or enforcement of a mortgage or lien on real property and a reasonable conclusion may be drawn that there is immediate danger that the defendant or the party in possession of the property will use his possession to injure or ill-treat the property or waste or convert to his own use the timber, rents, fruits, or revenue of the property;

(3) the suit is for the title or possession of property from which the plaintiff has been ejected by force or violence; or

(4) the suit is to try the title to real property, to remove a cloud from the title of real property, to foreclose a lien on real property, or to partition real property and the plaintiff makes an oath that one or more of the defendants is a nonresident of this state.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 62.002. PENDING SUIT REQUIRED. A writ of sequestration may be issued at the initiation of a suit or at any time before final judgment.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 62.003. AVAILABLE FOR CLAIM NOT DUE. A writ of

sequestration may be issued for personal property under a mortgage or a lien even though the right of action on the mortgage or lien has not accrued. The proceedings relating to the writ shall be as in other cases, except that final judgment may not be rendered against the defendant until the right of action has accrued.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

#### SUBCHAPTER B. ISSUANCE

Sec. 62.021. WHO MAY ISSUE. A district or county court judge or a justice of the peace may issue writs of sequestration returnable to his court.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 62.022. APPLICATION. The application for a writ of sequestration must be made under oath and must set forth:

(1) the specific facts stating the nature of the plaintiff's claim;

(2) the amount in controversy, if any; and

(3) the facts justifying issuance of the writ.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 62.023. REQUIRED STATEMENT OF RIGHTS. (a) A writ of sequestration must prominently display the following statement on the face of the writ:

YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY  
BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO  
REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE  
COURT A MOTION TO DISSOLVE THIS WRIT.

(b) The statement must be printed in 10-point type and in a manner intended to advise a reasonably attentive person of its contents.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

#### SUBCHAPTER C. DISSOLUTION AND REPLEVY

Sec. 62.041. MOTION FOR DISSOLUTION; STAY. (a) The

defendant may seek dissolution of an issued writ of sequestration by filing a written motion with the court.

(b) The right to seek dissolution is cumulative of the right of replevy.

(c) The filing of a motion to dissolve stays proceedings under the writ until the issue is determined.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 62.042. HEARING ON MOTION. Unless the parties agree to an extension, the court shall conduct a hearing on the motion and determine the issue not later than the 10th day after the motion is filed.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 62.043. DISSOLUTION. (a) Following the hearing, the writ must be dissolved unless the party who secured its issuance proves the specific facts alleged and the grounds relied on for issuance.

(b) If the writ is dissolved, the action proceeds as if the writ had not been issued.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 62.044. COMPULSORY COUNTERCLAIM FOR WRONGFUL SEQUESTRATION. (a) If a writ is dissolved, any action for damages for wrongful sequestration must be brought as a compulsory counterclaim.

(b) In addition to damages, the party who sought dissolution of the writ may recover reasonable attorney's fees incurred in dissolution of the writ.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 62.045. WRONGFUL SEQUESTRATION OF CONSUMER GOODS. (a) If a writ that sought to sequester consumer goods is dissolved, the defendant or party in possession of the goods is entitled to reasonable attorney's fees and to damages equal to the greater of:

- (1) \$100;
- (2) the finance charge contracted for; or

(3) actual damages.

(b) Damages may not be awarded for the failure of the plaintiff to prove by a preponderance of the evidence the specific facts alleged if the failure is the result of a bona fide error. For a bona fide error to be available as a defense, the plaintiff must prove the use of reasonable procedures to avoid the error.

(c) In this section, "consumer goods" has the meaning assigned by the Business & Commerce Code.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 167, Sec. 3.11, eff. Sept. 1, 1987.

Sec. 62.046. LIABILITY FOR FRUIT OF REPLEVIED PROPERTY.

(a) In a suit for enforcement of a mortgage or lien on property, a defendant who replevies the property is not required to account for the fruits, hire, revenue, or rent of the property.

(b) This section does not apply to a plaintiff who replevies the property.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

SUBCHAPTER D. CARE AND MANAGEMENT OF SEQUESTERED PROPERTY

Sec. 62.061. OFFICER'S LIABILITY AND DUTY OF CARE. (a) An officer who executes a writ of sequestration shall care for and manage in a prudent manner the sequestered property he retains in custody.

(b) If the officer entrusts sequestered property to another person, the officer is responsible for the acts of that person relating to the property.

(c) The officer is liable for injuries to the sequestered property resulting from his neglect or mismanagement or from the neglect or mismanagement of a person to whom he entrusts the property.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 62.062. COMPENSATION OF OFFICER. (a) An officer who retains custody of sequestered property is entitled to just compensation and reasonable charges to be determined by the court

that issued the writ.

(b) The officer's compensation and charges shall be taxed and collected as a cost of suit.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 62.063. INDEMNIFICATION OF OFFICER FOR MONEY SPENT. If an officer is required to expend money in the security, management, or care of sequestered property, he may retain possession of the property until the money is repaid by the party seeking to replevy the property or by that party's agent or attorney.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.