CIVIL PRACTICE AND REMEDIES CODE

TITLE 3. EXTRAORDINARY REMEDIES

CHAPTER 61. ATTACHMENT

SUBCHAPTER A. AVAILABILITY OF REMEDY

Sec. 61.001. GENERAL GROUNDS. A writ of original attachment is available to a plaintiff in a suit if:

(1) the defendant is justly indebted to the plaintiff;

(2) the attachment is not sought for the purpose of injuring or harassing the defendant;

(3) the plaintiff will probably lose his debt unless the writ of attachment is issued; and

(4) specific grounds for the writ exist under Section 61.002.

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

Sec. 61.002. SPECIFIC GROUNDS. Attachment is available if:

(1) the defendant is not a resident of this state or is a foreign corporation or is acting as such;

(2) the defendant is about to move from this state permanently and has refused to pay or secure the debt due the plaintiff;

(3) the defendant is in hiding so that ordinary process of law cannot be served on him;

(4) the defendant has hidden or is about to hide his property for the purpose of defrauding his creditors;

(5) the defendant is about to remove his property from this state without leaving an amount sufficient to pay his debts;

(6) the defendant is about to remove all or part of his property from the county in which the suit is brought with the intent to defraud his creditors;

(7) the defendant has disposed of or is about to dispose of all or part of his property with the intent to defraud his creditors;

(8) the defendant is about to convert all or part of his property into money for the purpose of placing it beyond the

reach of his creditors; or

(9) the defendant owes the plaintiff for property obtained by the defendant under false pretenses.

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

Sec. 61.0021. GROUNDS FOR ATTACHMENT IN SUIT FOR SEXUAL ASSAULT. (a) Notwithstanding any other provision of this code, attachment is available to a plaintiff who:

(1) has general grounds for issuance under Sections 61.001(2) and (3); and

(2) institutes a suit for personal injury arising as a result of conduct that violates:

(A) Section 22.011(a)(2), Penal Code (sexual assault of a child);

(B) Section 22.021(a)(1)(B), Penal Code (aggravated sexual assault of a child);

(C) Section 21.02, Penal Code (continuous sexual abuse of young child or disabled individual); or

(D) Section 21.11, Penal Code (indecency with a child).

(b) A court may issue a writ of attachment in a suit described by Subsection (a) in an amount the court determines to be appropriate to provide for the counseling and medical needs of the plaintiff.

Added by Acts 2009, 81st Leg., R.S., Ch. 946 (H.B. 3246), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 221 (H.B. 375), Sec. 2.04, eff. September 1, 2021.

Sec. 61.003. PENDING SUIT REQUIRED. A writ of attachment may be issued in a proper case at the initiation of a suit or at any time during the progress of a suit, but may not be issued before a suit has been instituted.

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

Sec. 61.004. AVAILABLE FOR DEBT NOT DUE. A writ of

attachment may be issued even though the plaintiff's debt or demand is not due. 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 debt or demand becomes due.

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

Sec. 61.005. CERTAIN TORTS AND UNLIQUIDATED DEMANDS. Nothing in this chapter prevents issuance of a writ of attachment in a suit founded in tort or on an unliquidated demand against an individual, partnership, association, or corporation on whom personal service cannot be obtained in this state.

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

SUBCHAPTER B. ISSUANCE

Sec. 61.021. WHO MAY ISSUE. The judge or clerk of a district or county court or a justice of the peace may issue a writ of original attachment returnable to his court.

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

Sec. 61.022. AFFIDAVIT. (a) Except as provided by Subsection (a-1), to apply for a writ of attachment, a plaintiff or the plaintiff's agent or attorney must file with the court an affidavit that states:

(1) general grounds for issuance under Sections 61.001(1), (2), and (3);

(2) the amount of the demand; and

(3) specific grounds for issuance under Section 61.002.

(a-1) To apply for a writ of attachment under Section 61.0021, a plaintiff or the plaintiff's agent or attorney must file with the court an affidavit that states:

(1) general grounds for issuance under Sections 61.001(2) and (3);

(2) specific grounds for issuance under Section 61.0021(a); and

(3) the amount of the demand based on the estimated

cost of counseling and medical needs of the plaintiff.

(b) The affidavit shall be filed with the papers of the case.

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

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 946 (H.B. 3246), Sec. 2, eff. September 1, 2009.

Sec. 61.023. BOND. (a) Before a writ of attachment may be issued, the plaintiff must execute a bond that:

(1) has two or more good and sufficient sureties;

(2) is payable to the defendant;

(3) is in an amount fixed by the judge or justice issuing the writ; and

(4) is conditioned on the plaintiff prosecuting his suit to effect and paying all damages and costs adjudged against him for wrongful attachment.

(b) The plaintiff shall deliver the bond to the officer issuing the writ for that officer's approval. The bond shall be filed with the papers of the case.

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

SUBCHAPTER C. LEVY

Sec. 61.041. SUBJECT PROPERTY. A writ of attachment may be levied only on property that by law is subject to levy under a writ of execution.

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

Sec. 61.042. ATTACHMENT OF PERSONALTY. The officer attaching personal property shall retain possession until final judgment unless the property is:

(1) replevied;

(2) sold as provided by law; or

(3) claimed by a third party who posts bond and tries his right to the property.

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

Sec. 61.043. ATTACHMENT OF REALTY. (a) To attach real property, the officer levying the writ shall immediately file a copy of the writ and the applicable part of the return with the county clerk of each county in which the property is located.

(b) If the writ of attachment is quashed or vacated, the court that issued the writ shall send a certified copy of the order to the county clerk of each county in which the property is located.

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

Sec. 61.044. CLAIM ON ATTACHED PERSONALTY BY THIRD PARTY. A person other than the defendant may claim attached personal property by making an affidavit and giving bond in the manner provided by law for trial of right of property.

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

Sec. 61.045. ATTACHMENT OF PERSONALTY HELD BY FINANCIAL INSTITUTION. Service of a writ of attachment on a financial institution relating to personal property held by the financial institution in the name of or on behalf of a customer of the financial institution is governed by Section 59.008, Finance Code.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 7.003, eff. Sept. 1, 1999.

SUBCHAPTER D. LIEN

Sec. 61.061. ATTACHMENT LIEN. Unless quashed or vacated, an executed writ of attachment creates a lien from the date of levy on the real property attached, on the personal property held by the attaching officer, and on the proceeds of any attached personal property that may have been sold.

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

Sec. 61.062. JUDGMENT AND FORECLOSURE. (a) If the plaintiff recovers in the suit, the attachment lien is foreclosed as in the case of other liens. The court shall direct proceeds from personal property previously sold to be applied to the satisfaction

of the judgment and the sale of personal property remaining in the hands of the officer and of the real property levied on to satisfy the judgment.

(b) If the writ of attachment on real property was issued from a county or justice court, the court is not required to enter an order or decree foreclosing the lien, but to preserve the lien the judgment must briefly recite the issuance and levy of the writ. The land may be sold under execution after judgment, and the sale vests in the purchaser all of the estate of the defendant in the land at the time of the levy.

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

Sec. 61.063. JUDGMENT ON REPLEVIED PROPERTY. A judgment against a defendant who has replevied attached personal property shall be against the defendant and his sureties on the replevy bond for the amount of the judgment plus interest and costs or for an amount equal to the value of the replevied property plus interest, according to the terms of the replevy bond.

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

SUBCHAPTER E. WORKS OF FINE ART

Sec. 61.081. EXEMPTION WHEN EN ROUTE TO OR IN AN EXHIBITION. (a) Subject to the limitations of this section, a court may not issue and a person may not serve any process of attachment, execution, sequestration, replevin, or distress or of any kind of seizure, levy, or sale on a work of fine art while it is:

(1) en route to an exhibition; or

(2) in the possession of the exhibitor or on display as part of the exhibition.

(b) The restriction on the issuance and service of process in Subsection (a) applies only for a period that:

(1) begins on the date that the work of fine art is en route to an exhibition; and

(2) ends on the earlier of the following dates:

(A) six months after the date that the work of fine art is en route to the exhibition; or

(B) the date that the exhibition ends.

(c) Subsection (a) does not apply to a work of fine art if, at any other time, issuance and service of process in relation to the work has been restricted as provided by Subsection (a).

(d) Subsection (a) does not apply if theft of the work of art from its owner is alleged and found proven by the court.

(e) A court shall, in issuing service of process described by Subsection (a), require that the person serving the process give notice to the exhibitor not less than seven days before the date the period under Subsection (b) ends of the person's intent to serve process.

(f) In this section, "exhibition" means an exhibition:

(1) held under the auspices or supervision of:

(A) an organization exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, as amended, by being listed as an exempt organization in Section 501(c)(3) of the code; or

(B) a public or private institution of higher education;

(2) held for a cultural, educational, or charitable purpose; and

(3) not held for the profit of the exhibitor.

Added by Acts 1999, 76th Leg., ch. 1043, Sec. 1, eff. Aug. 30, 1999.

Sec. 61.082. HANDLING AND TRANSPORTATION. A court may not issue any process of attachment, execution, sequestration, replevin, or distress or of any kind of seizure, levy, or sale on a work of fine art unless the court requires, as part of the order authorizing the process, that the work of fine art is handled and transported in a manner that complies with the accepted standards of the artistic community for works of fine art, including, if appropriate, measures relating to the maintenance of proper environmental conditions, proper maintenance, security, and insurance coverage.

Added by Acts 1999, 76th Leg., ch. 1043, Sec. 1, eff. Aug. 30, 1999.