

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 312

H. P. 232

House of Representatives, January 23, 1973

Referred to Committee on Judiciary. Sent up for concurrence and ordered printed.

E. LOUISE LINCOLN, Clerk

Presented by Mr. Tyndale of Kennebunkport.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT Limiting Prejudgment Attachments and Prejudgment Trustee Process.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 14, §§ 4103 and 4104, additional. Title 14 of the Revised Statutes is amended by adding sections 4103 and 4104 to read as follows:

§ 4103. Prejudgment attachments prohibited; exceptions

Notwithstanding any other provisions of law, no real estate, goods and chattels or any other property may be attached prior to judgment, except upon order of court and for the following reasons:

1. Where the debt was induced by fraud on the part of the defendant;
2. Where the defendant is a nonresident of the State of Maine;
3. Where the defendant is a resident who has left the State and there are circumstances indicating that he does not intend to return;
4. Where the defendant is a resident and there are circumstances indicating that he intends to abscond.

§ 4104. Prejudgment attachment only by court order

1. Simultaneously with or after filing an original claim, counterclaim, cross-claim or a third complaint, any such party who desires to effect a prejudgment attachment may file a motion for an order authorizing attachment.

A. Contents of motion. Such motion shall identify the particular real estate, goods and chattels or other property to be attached, and shall state

the particular exception listed in section 4103 upon which the party claims to be entitled to a prejudgment attachment. The motion shall be accompanied by an affidavit setting forth in detail the facts which substantiate the claimed exception.

B. Court action. Upon the filing of such a motion, the court shall determine forthwith and ex parte whether or not the motion and the supporting affidavit appear to establish a probability that such party comes within one of the exceptions listed in section 4103. If it so appears, the court shall issue an order certifying such determination, authorizing the immediate attachment requested in the motion and directing the defendant to appear on a day fixed to show cause why the authorized attachment should not remain in effect.

C. Service. The complaint and an attested copy of the order authorizing attachment and to show cause shall be served on the debtor at least 14 days before the return day, service to be made in accordance with the Maine Rules of Civil Procedure, and such service shall operate to effect the authorized attachment.

D. Default. If the defendant fails to file a reply to the order to show cause, the attachment shall remain in effect until entry of judgment for the defendant or until judgment for the creditor has been satisfied.

E. Proceedings on order to show cause. After his reply to the order to show cause, the court shall set the matter down for an early hearing. If at such hearing the defendant convinces the court by a preponderance of the evidence either that the creditor does not come within one of the exceptions listed in section 4103 or that the creditor's cause of action is of doubtful merit, the court shall issue an order directing immediate dissolution of the attachment; otherwise, the attachment shall remain in effect until entry of judgment for the debtor or until judgment for the creditor has been satisfied.

2. Notice of attachment. Notice to third parties of the attachment may be given by filing an attested copy of the order authorizing attachment and to show cause and containing a return of service thereof within the registry of deeds for the county where the property is situated.

Sec. 2. R. S., T. 14, §§ 2633 and 2634, additional. Title 14 of the Revised Statutes is amended by adding sections 2633 and 2634 to read as follows:

§ 2633. Prejudgment trustee process prohibited; exceptions

Notwithstanding any other provisions of law, trustee process may not be used prior to judgment except upon order of court and for the following reasons:

1. Where the debt was induced by fraud on the part of the defendant;
2. Where the defendant is a nonresident of the State of Maine;
3. Where the defendant is a resident who has left the State and there are circumstances indicating that he does not intend to return;

4. Where the defendant is a resident and there are circumstances indicating that he intends to abscond.

§ 2634. Prejudgment trustee process only by court order

1. Simultaneously with or after filing an original claim, counterclaim, cross-claim or a 3rd party complaint, any such party who desires to effect a prejudgment trustee process may file a motion for an order authorizing trustee process.

A. Contents of motion. Such motion shall identify the particular subject as to which trustee process is desired and shall state the particular exception listed in section 2633 upon which the party claims to be entitled to a prejudgment trustee process. The motion shall be accompanied by an affidavit setting forth in detail the facts which substantiate the claimed exception.

B. Court action. Upon the filing of such a motion, the court shall determine forthwith and ex parte whether or not the motion and the supporting affidavit appear to establish a probability that such party comes within one of the exceptions listed in section 2633. If it so appear, the court shall issue an order certifying such determination, authorizing the immediate trustee process requested in the motion, and directing the defendant to appear on a day fixed to show cause why the authorized trustee process should not remain in effect.

C. Service. The complaint and an attested copy of the order authorizing trustee process and to show cause shall be served on the debtor at least 14 days before the return day, service to be made in accordance with the Maine Rules of Civil Procedure, and such service shall operate to effect the authorized trustee process.

D. Default. If the defendant fails to file a reply to the order to show cause, the trustee process shall remain in effect until entry of judgment for the defendant or until judgment for the creditor has been satisfied.

E. Proceedings on order to show cause. After his reply to the order to show cause, the court shall set the matter down for an early hearing. If at such hearing the defendant convinces the court by a preponderance of the evidence either that the creditor does not come within one of the exceptions listed in section 2633, or that the creditor's cause of action is of doubtful merit, the court shall issue an order directing immediate dissolution of the trustee process; otherwise, the trustee process shall remain in effect until entry of judgment for the debtor or until judgment for the creditor has been satisfied.

2. Notice of trustee process. Notice to third parties of the trustee process may be given by filing an attested copy of the order authorizing trustee process and to show cause and containing a return of service thereof within the registry of deeds for the county where the goods, effects and credits are located.

Sec. 3. Effective date. This Act shall become effective on January 1, 1974.

STATEMENT OF FACT

The purpose of section 1 of this bill is to limit prejudgment attachments to cases where the debtor has induced the debt by fraud or where he is a non-resident or out of the State with intent not to return or where it appears he may abscond. Even in an excepted case, the attachment can only be effected by court order and the debtor is assured of early opportunity to show cause why the attachment should not remain in effect. This bill is in keeping with the modern concept of due process prior to denial of full use of property.

The purpose of section 2 of this bill is to limit prejudgment trustee process to cases where the debtor has induced the debt by fraud or where he is a non-resident or out of the State with intent not to return or where it appears he may abscond. Even in an excepted case, the trustee process can only be effected by court order and the debtor is assured of early opportunity to show cause why the trustee process should not remain in effect. This bill is in keeping with the modern concept of due process prior to denial of full use of property.