

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1807

S. P. 684

In Senate, January 15, 1980

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

MAY M. ROSS, Secretary of the Senate

Presented by Senator Pierce of Kennebec.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY

AN ACT to Revise the Small Claims Law.

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

Sec. 1. 4 MRSA § 152, first sentence, as last amended by PL 1979, c. 540, § 4, is repealed and the following enacted in its place:

The District Court shall possess the civil jurisdiction exercised by all trial justices and municipal courts in the State on September 16, 1961, and in addition, original jurisdiction, concurrent with that of the Superior Court of all civil actions in which neither damages in excess of \$20,000, nor, except as herein provided, equitable relief is demanded of proceedings under Title 14, section 6651 to 6658 and of actions for divorce, annulment of marriage or judicial separation and of proceedings under Title 19 and original jurisdiction, concurrent with that of the Superior Court, of actions to quiet title to real estate under Title 14, sections 6651 through 6658, and in these actions the District Court may grant equitable relief; and original jurisdiction, concurrent with that of the Superior Court, for breach of implied warranty and covenant of habitability under Title 14, section 6021, and in these actions the District Court may grant equitable relief; and original jurisdiction, concurrent with that of the Superior Court, of actions to quiet title to real estate under Title 36, section 946, and in such actions the District Court may grant equitable relief, of actions to foreclose mortgages under Title 14, chapter 713, subchapter VI; and of small claims actions under Title 14, chapter 738, and in these actions the District Court may grant equitable relief.

Sec. 2. 4 MRSA § 807, 3rd sentence, as amended by PL 1977, c. 593, § 1, is further amended to read:

This section shall not be construed to apply to practice before any Federal Court by any person duly admitted to practice therein; nor to a person pleading or managing his own cause in court; nor to the officer or employee of a corporation, partnership or governmental entity, who is not an attorney, but is appearing for that organization in an action cognizable as a small claim under Title 14, chapter 797 738.

Sec. 3. 14 MRSA c. 737, as amended, is repealed.

Sec. 4. 14 MRSA c. 738 is enacted to read:

CHAPTER 738
SMALL CLAIMS

§ 7461. Definitions

A "small claim" is any right of action cognizable by a court of law not involving the title to real estate in which the debt or damage claimed does not exceed \$800, exclusive of interest and costs.

§ 7462. Procedure

There is established a simple, speedy and informal procedure which a plaintiff or his authorized attorney or representative may pursue in an action commenced before a Judge of a District Court for the determination of a small claim. This procedure shall be alternative and not exclusive.

A corporation, partnership or governmental entity may appear as a plaintiff or a defendant in such an action without an authorized attorney, as provided under Title 4, section 807.

§ 7463. Process

A plaintiff or his authorized attorney or representative shall provide a brief statement of his claim to the clerk of the District Court having jurisdiction thereof who shall briefly record the notice of the claim and set a date for a hearing. The action shall be brought only in the division where the defendant resides, where the defendant has a place of business or, if the defendant is a business entity, where its registered agent resides. The personal jurisdiction in a small claims action shall be coextensive with that of the District Court. The clerk shall cause notice of the hearing to be given to the plaintiff by ordinary mail, addressed to the plaintiff at the address given to the clerk by the plaintiff and an entry made on the docket by the clerk indicating the date of the mailing of the notice to the plaintiff shall be sufficient showing of notice to the plaintiff. The plaintiff or his authorized attorney shall at the same time pay an entry fee of \$5, from which the clerk is authorized to expend the costs of giving notice to the defendant and notice to the plaintiff and the remainder to be retained by the court as costs.

§ 7464. In forma pauperis

Any person who intends to bring a small claim action may, without fee, file an application in the District Court having jurisdiction thereof asking for permission to proceed, without payment of a filing fee. The application, which shall be made on a form to be supplied by the clerk, shall state:

1. **Income and expenses.** The monthly income received for family support and the monthly expenses necessary to maintain the family; and
2. **Lack of other funds.** That the plaintiff possesses no other funds from which filing fees may reasonably be paid.

The clerk shall present the application to the presiding judge as soon as is practicable. If the court finds that the plaintiff is without sufficient funds to pay the filing fee, it shall order that the fee be waived and that the complaint be accepted for filing without fee. The clerk shall promptly notify the plaintiff of the court's decision.

§ 7465. Notice to defendant

The clerk shall cause notice of the claim and a brief statement thereof to be given to the defendant by sending a written statement to the defendant by postpaid registered or certified mail addressed to the defendant at his last known postoffice address and directing the defendant to appear at a time and place of hearing which shall be not less than 14 days from the date the notice is mailed to the defendant.

A return receipt signed by the defendant showing that the defendant has received the statement at least 7 days prior to the time set for the hearing shall constitute an essential part of the service. If service is not effected by registered or certified mail, service on the defendant shall be completed as in other actions at law at the expense of the plaintiff. Arrangements for that service shall be made by the clerk at the request of the plaintiff.

§ 7466. Continuances

While continuances are not favored in small claims cases, a continuance may be granted to either party at any stage of the proceeding for good and sufficient cause shown. Continuances may be granted by the judge and, where service has not been completed, by the clerk.

§ 7467. Removal and transfer

Every cause begun using the small claims procedure shall be decided using that procedure. No cause may be removed for trial in the Superior Court. Transfer is allowed to another division of the District Court for trial using the small claims procedure on motion of either party for good cause shown.

§ 7468. Mediation

Prior to the commencement of a hearing with the parties present, the court shall determine what efforts have been made by the parties to settle their dispute.

1. **Unsatisfactory efforts at settlement.** If not satisfied that previous good faith efforts have been made, the court may, where it deems appropriate, require the parties to meet in the courtroom, in private or before a mediator, at their election, to attempt to settle their dispute.

2. **Satisfactory settlement.** If satisfied that these efforts have been made or are not appropriate, the court shall proceed to a hearing without delay.

3. **Failure of settlement efforts.** If settlement efforts fail, the court shall proceed to a hearing without delay.

Every settlement reached by the parties acting either alone or through mediation shall be submitted to the court for approval. Every reasonable settlement shall be approved by the court and shall have the same force and effect as judgment entered by the court. No appeal may be taken from a settlement once entered as a judgment by the court.

§ 7469. Rules

At the hearing, the technical rules of evidence shall not apply but the judge may admit any evidence he deems material and proper. The court shall assist in the development of all relevant facts in the case.

§ 7470. Judgment

Judgment shall be entered for the prevailing party and if the plaintiff recovers, his costs shall be awarded to him in addition to the judgment in his behalf. The judgment may provide for monetary or equitable relief. Equitable relief shall be granted only as between the parties and shall be limited to orders to repair, replace, reform, refund or rescind. In awarding judgment the judge may provide for payment thereof in installments. The court shall render judgment for the plaintiff when the defendant fails to appear pursuant to the notice, except that the judge may continue the case when he is satisfied that the defendant's failure to appear is for good and sufficient reason.

Whenever the plaintiff or his authorized attorney fails to appear on the return date, the complaint shall be dismissed. The judge may continue the case when he is satisfied that the plaintiff's failure to appear is for good and sufficient reason.

§ 7471. Collection of judgment

Along with entry of judgment, the District Court shall enter and provide both parties with written copies of an order containing the following:

1. **Name of party.** The name of the party in whose favor judgment has been entered;
2. **Time period.** The period of time in which the losing party may file notice of appeal;
3. **Amount of judgment.** The amount of judgment, the costs to be assessed against the losing party, the option to pay the judgment in installments;

4. **Duties.** The duty of the parties to notify the clerk upon satisfaction of judgment and costs;

5. **Statement.** A statement that if the defendant satisfies the judgment and costs prior to the date set for disclosure, the disposition of the case will be entered as “no cause for action” so there will not exist any record of a judgment against the defendant that might adversely affect his credit; and

6. **Disclosure date.** A disclosure date on which both parties shall appear for the purpose of a hearing to determine what assets and income the losing party has which may be used to satisfy the judgment and costs unless:

A. The losing party has satisfied the judgment and costs before the disclosure date;

B. The court has directed that the losing party may satisfy the judgment by paying the judgment in installments; or

C. The losing party has filed timely notice of appeal. If the order is entered when the parties are not present in court, the written copies shall be served upon the absent parties by certified mail.

§ 7472. Proceedings after judgment

If the clerk has not received notice by the prevailing party that judgment and costs have been satisfied and following the lapse of time for appeal, the clerk shall send by certified mail to both parties a 2nd notice containing the date set for the disclosure hearing.

Disclosure proceedings under section 7471 shall comply with and be guided by sections 3124 to 3137, except that the prevailing party or judgment creditor, shall not be required to subpoena the losing party or judgment debtor, to the disclosure hearing. Order of the court and 2nd notice by the clerk served by certified mail shall substitute for subpoena in disclosure in small claims cases.

§ 7473. Appeal

Both the plaintiff and defendant have the right to appeal an adverse decision to the Superior Court by filing notice of appeal with the District Court in which the hearing was held within 10 days from entry of judgment. The District Court clerk shall transmit to the Superior Court in the appropriate county all documents related to the case as well as the recording of the hearing, if any.

Appeal shall be on questions of law only, except that the defendant may file a claim of trial by jury at the same time the appeal is filed with an affidavit that there are questions of fact requiring a trial by jury and that the trial is in good faith. The defendant's claim of trial by jury shall be accompanied by a bond in the penal sum of \$100, payable to the other party to the cause, conditioned to satisfy any judgment for costs which may be entered against him in the Superior Court.

The court shall waive the bond requirement if it is satisfied that the defendant

has insufficient funds available to him to furnish the necessary bond and that the defendant's appeal is not frivolous.

§ 7474. Effect of judgment

Any fact found or issue adjudicated using the small claims procedure shall not be deemed found or adjudicated for the purpose of any other cause of action. While the doctrine of collateral estoppel does not apply to facts found or issues adjudicated using the small claims procedure, the judgment obtained is res judicata as to the amount in controversy. The only recourse of a party to an adverse small claims decision is appeal.

STATEMENT OF FACT

The purpose of this bill is to make necessary revisions in the Small Claims Law.