

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST REGULAR SESSION-2023

Legislative Document

No. 1459

S.P. 577

In Senate, March 30, 2023

**An Act to Reduce Abuse of the Civil Ex Parte Attachment and
Trustee Processes**

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator LIBBY of Cumberland.

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

2 **Sec. 1. 14 MRSA §2911** is enacted to read:

3 **§2911. Effect of modification or dissolution of ex parte order**

4 **1. Costs and attorney's fees.** If the court modifies or dissolves an ex parte order of
5 attachment on trustee process in response to a motion by any person having an interest in
6 goods or credits that have been attached, the court shall order the plaintiff to pay to the
7 moving party:

8 A. The costs and reasonable attorney's fees incurred by the moving party for the
9 motion; and

10 B. Interest, at a rate equivalent to the rate of post-judgment interest under section
11 1602-C, subsection 1, paragraph B, on the value of the amount of cash, if any, that was
12 attached on trustee process pursuant to the ex parte order but that is no longer subject
13 to attachment due to the modification or dissolution of that order. Interest under this
14 paragraph accrues from and after the date of entry of the ex parte order of attachment
15 on trustee process until the date that the order under this paragraph is fully satisfied.
16 On petition of the plaintiff and on a showing of good cause, the court may order that
17 interest awarded under this paragraph be fully or partially waived.

18 **2. Joint and several liability.** If 2 or more plaintiffs joined in the filing of a motion
19 for an ex parte order of attachment on trustee process, those plaintiffs are jointly and
20 severally liable for any award of costs, reasonable attorney's fees and interest under
21 subsection 1.

22 **3. Prima facie evidence.** An order modifying or dissolving an ex parte order of
23 attachment on trustee process in response to a motion by any person having an interest in
24 goods or credits that have been attached is prima facie evidence of abuse of process by the
25 plaintiff or plaintiffs that filed the motion for the ex parte order of attachment on trustee
26 process.

27 **4. Trustee process on counterclaim, cross-claim or 3rd-party complaint.** If an ex
28 parte order for attachment on trustee process was obtained by a party bringing a
29 counterclaim, a cross-claim or a 3rd-party complaint, the word "plaintiff" as used in this
30 section refers to the party to the action that obtained the ex parte order for attachment on
31 trustee process and the word "defendant" as used in this section refers to the party to the
32 action whose property was attached.

33 **Sec. 2. 14 MRSA §4103** is enacted to read:

34 **§4103. Effect of modification or dissolution of ex parte order**

35 **1. Costs and attorney's fees.** If the court modifies or dissolves an ex parte order of
36 attachment in response to a motion by any person having an interest in property that has
37 been attached, the court shall order the plaintiff to pay to the moving party:

38 A. The costs and reasonable attorney's fees incurred by the moving party for the
39 motion; and

40 B. Interest, at a rate equivalent to the rate of post-judgment interest under section
41 1602-C, subsection 1, paragraph B, on the value of the amount of cash, if any, that was
42 attached pursuant to the ex parte order but that is no longer subject to attachment due

1 to the modification or dissolution of that order. Interest under this paragraph accrues
2 from and after the date of entry of the ex parte order of attachment until the date that
3 the order under this paragraph is fully satisfied. On petition of the plaintiff and on a
4 showing of good cause, the court may order that interest awarded under this paragraph
5 be fully or partially waived.

6 **2. Joint and several liability.** If 2 or more plaintiffs joined in the filing of the motion
7 for an ex parte order of attachment, those plaintiffs are jointly and severally liable for any
8 award of costs, reasonable attorney's fees and interest under subsection 1.

9 **3. Prima facie evidence.** An order modifying or dissolving an ex parte order of
10 attachment in response to a motion by any person having an interest in property that has
11 been attached is prima facie evidence of abuse of process by the plaintiff or plaintiffs that
12 filed the motion for the ex parte order of attachment.

13 **SUMMARY**

14 This bill provides that plaintiffs that obtain an ex parte order of attachment or an ex
15 parte order of attachment on trustee process are jointly and severally liable for the court
16 costs and reasonable attorney's fees of a person having an interest in goods or credits that
17 have been attached and that successfully move for modification or dissolution of the ex
18 parte order. If any amount of cash was attached pursuant to the ex parte order but is no
19 longer subject to attachment due to the modification or dissolution of that order, the
20 plaintiffs are also jointly and severally liable for interest, calculated at a rate equivalent to
21 the general post-judgment interest rate, upon the value of that cash from the date that the
22 ex parte order of attachment or attachment on trustee process was granted and through the
23 date that the award of interest is fully satisfied.

24 The bill also provides that an order modifying or dissolving an ex parte order of
25 attachment or an ex parte order of attachment on trustee process constitutes prima facie
26 evidence of the common law tort of abuse of process.