

CIVIL PROCEDURE

SUBCHAPTER B

REPLEVIN

Section 831. Order of Delivery - Procedure

(a) The plaintiff in an action to recover the possession of specific personal property may claim the delivery of the property at the commencement of suit, as provided herein.

(1) The complaint must allege facts which show:

(i) a description of the property claimed,

(ii) that the plaintiff is the owner of the property or has a special ownership or interest therein, stating the facts in relation thereto, and that he is entitled to the immediate possession of the property,

(iii) that the property is wrongfully detained by the defendant,

(iv) the actual value of the property, provided that when several articles are claimed, the value of each shall be stated as nearly as practicable,

(v) that the property was not taken in execution on any order or judgment against said plaintiff, or for the payment of any tax, fine or amercement assessed against him, or by virtue of an order of delivery issued under this Title, or any other mesne or final process issued against said plaintiff; or, if taken in execution or on any order or judgment against the plaintiff, that it is exempt by law from being so taken, and,

(vi) the prayer for relief requests that the Court issue an order for the immediate delivery of the property.

(2) The above allegations are verified by the party or, when the facts are within the personal knowledge of his agent or attorney and this is shown in the verification, by said agent or attorney.

(3) A notice shall be issued by the Clerk and served on the defendant with the summons which shall notify the defendant that an order of delivery of the property described in the complaint is sought and that the defendant may object to the issuance of such an order by a written objection which is filed with the Clerk and delivered or mailed to the plaintiff's attorney within five (5) days of the service of the summons. In the event that no written objection is filed within the five-day period, no hearing is necessary and the Court Clerk shall issue the order of delivery. Should a written objection be filed within the five-day period specified, the Court shall, at the request of either party, set the matter for prompt hearing. At such hearing the Court shall proceed to determine whether the order for prejudgment delivery of the property should issue according to the probable merit of

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the plaintiff's complaint. Provided, however, that no order of delivery may be issued until an undertaking has been executed pursuant to Section 833 of this Title.

(4) Nothing in this Title contained shall prohibit a party from waiving his right to a hearing or from voluntarily delivering the goods to the party seeking them before the commencement of the proceedings or at any time after institution thereof.

(b) Where the notice that is required by subsection (a) of this Section cannot be served on the defendant but the Judge finds that reasonable effort to serve him was made and at the hearing the plaintiff has shown the probable truth of the allegations in his complaint, the Court may issue an order for the prejudgment delivery of the property. If an order for the prejudgment delivery of the property is issued without actual notice being given the defendant, the defendant may move to have said order dissolved and if he does not have possession of the property, for a return of the property. Notice of the right to move for return of said property shall be contained in the order for seizure and delivery of such property which shall be served upon the defendant or left in a conspicuous place where the property was seized, and the Chief of the Tribal Police shall hold said property in such cases for three (3) working days prior to delivery to the plaintiff in order to give the defendant a reasonable opportunity to move for the return of such property. Notice of said motion with the date of the hearing shall be served upon the attorney for the plaintiff in the action. The motion shall be heard promptly, and in any case within ten (10) days after the date it is filed. The Court must grant the motion unless, at the hearing on defendant's motion, the plaintiff proves the probable truth of the allegations contained in his complaint. If said motion and notice is filed before the Chief of the Tribal Police turns the property over to the plaintiff, the Chief of the Tribal Police shall retain control of the property pending the hearing on the motion.

(c) The Court may, on request of the plaintiff, order the defendant not to conceal, damage or destroy the property or a part thereof and not to remove the property or a part thereof from the tribal jurisdiction pending the hearing on plaintiff's request for an order for the prejudgment delivery of the property, and said order may be served with the summons.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 832. Penalty for Damage of Property Subject to Order of Delivery

Any person who willfully and knowingly damages property in which there exists a valid right to issuance of an order of delivery, or on which such order has been sought under the provisions of this Title, or who conceals it, with the intent to interfere with enforcement of the order, or who removes it from the jurisdiction of the Court with the intention of defeating enforcement of an order of delivery, or who willfully refuses to disclose its location to an officer charged with executing an order for its delivery, or, if such property is in his possession, willfully interferes with the office charged with executing such writ, may be held in civil contempt of Court, and shall be guilty of an offense, and if convicted of such offense shall be subject to a fine of not more than Five Hundred Dollars (\$500.00) and imprisonment for a term of not more than six (6) months, or both; and, in addition to such civil and criminal penalties, shall be liable to the plaintiff for double the amount of damage done to the property together with a reasonable attorney's fee to

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be fixed by the Court, which damages and fee shall be deemed bases on tortious conduct and enforced accordingly.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 833. Undertaking in Replevin

The order shall not be issued until there has been executed by one or more sufficient sureties of the plaintiff, to be approved by the Court, an undertaking in not less than double the value of the property as stated in the complaint to the effect that the plaintiff shall duly prosecute the action, and pay all costs and damages which may be awarded against him, including attorney's fees and, if the property be delivered to him that he will return the same to the defendant if a return be adjudged; provided, that where the Tribe or its agents or subdivisions is party plaintiff, an undertaking in replevin shall not be required of the plaintiff, but a writ shall issue upon complaint duly filed as provided by law. The undertaking shall be filed with the Clerk of the Court, and shall be subject to the provisions of Section 805 of this Title.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 834. Replevin Bond - Value

On application of either party which is made at the time of executing the replevin bond or the redelivery bond, or at a later date, with notice to the adverse party, the Court may hold a hearing to determine the value of the property which the plaintiff seeks to replevy. If the value as determined by the Court is different from that stated in the complaint, the value as determined by the Court shall control for the purpose of Sections 833 and 838 of this Title.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 835. Order of Delivery

The order for the delivery of the property to the plaintiffs shall be addressed and delivered to the Chief of the Tribal Police. It shall state the names of the parties, the Court in which the action is brought, and command the Chief of the Tribal Police to take the property, describing it, and deliver it to the plaintiff as prescribed in this Title, and to make return of the order on a day to be named therein.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 836. Order Returnable

The return day of the order of delivery, when issued at the commencement of the suit,

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shall be the same as that of the summons; when issued afterwards, it shall be ten days after it is issued.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 837. Execution of Order

The Chief of the Tribal Police shall execute the order by taking the property therein mentioned. He shall also deliver a copy of the order to the person charged with the unlawful detainer of the property, or leave such copy at his usual place of resident, or at the place such property was seized.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 838. Re-delivery on Bond

If, within three working days after service of the copy of the order, there is executed by one or more sufficient sureties of the defendant, to be approved by the Court or the Chief of the Tribal Police, an undertaking to the plaintiff, in not less than double the amount of the value of the property as stated in the affidavit of the plaintiff, to the effect that the defendant will deliver the property to the plaintiff, if such delivery be adjudged, and will pay all costs and damages that may be awarded against him, the Chief of the Tribal Police shall return the property to the defendant. If such undertaking be not given within three working days after service of the order, the Chief of the Tribal Police shall deliver the property to the plaintiff.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 839. Exception to Sureties

Any party for whose benefit an undertaking is made may except at any time to the sufficiency of the sureties on such undertaking. Such exception shall be made in writing and filed with the Clerk. Upon hearing, the Court shall make such order as is just to safeguard the rights of the parties.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 840. Proceedings on Failure to Prosecute Action

If the property has been delivered to the plaintiff, and judgment rendered against him, or his action be dismissed, or if he otherwise fail to prosecute his action to final judgment, the Court

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shall, on application of the defendant or his attorney, proceed to inquire into the right of property, and right of possession of the defendant to the property taken.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 841. Judgment - Damages - Attorney Fees

In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession, or for the recovery of possession, or the value thereof in case a delivery cannot be had, and of damages for the detention. If the property has been delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be for a return of the property, or the value thereof in case a return cannot be had, and damages for taking and withholding the same. The judgment rendered in favor of the prevailing party in such action may include a reasonable attorney fee to be set by the court, to be taxed and collected as costs.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 842. Officer May Break Into Buildings

The Chief of the Tribal Police or other law enforcement officer, in the execution of the order of delivery issued by the Tribal Court, may break open any building or enclosure in which the property claimed, or any part thereof, is concealed upon probable cause to believe that the property is concealed therein, but not until he has been refused entrance into said building or enclosure and the delivery of the property, after having demanded the same, or if not person having charge thereof is present.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 843. Compelling Delivery by Attachment

In an action to recover the possession of specific personal property, the Court may for good cause shown, before or after judgment, compel the delivery of the property to the officer or party entitled thereto by attachment, and may examine either party as to the possession or control of the property. Such authority shall only be exercised in aid of the foregoing provisions of this Subchapter.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 844. Improper Issue of Order of Delivery

Any order for the delivery of property issued under this Subchapter without the affidavit

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and undertaking required, shall be set aside and the plaintiff shall be liable in damages to the party injured.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 845. Joinder of Cause of Action for Debt - Stay of Judgment

In any action for replevin in the Tribal Court, it shall be permissible for the plaintiff to join with the claim in replevin a claim founded on debt claimed to be owing to the plaintiff if the debt shall be secured by a lien upon the property sought to be recovered in the claim in replevin. In such cases, the execution of the judgment for debt shall be stayed pending the sale of the property and the determination of the amount of debt remaining unpaid after the application of the proceeds of the sale thereto.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]