

## SUBCHAPTER C

### ATTACHMENT

#### Section 851. Grounds for Attachment

The plaintiff in a civil action for the recovery of money may, at or after the commencement thereof, have an attachment against the property of the defendant, and upon proof of any of the following grounds:

- (a) When the defendant, or one of several defendants, is a foreign corporation, or a nonresident of the tribal jurisdiction (but no order of attachment shall be issued on this clause for any claim other than a debt or demand arising upon contract, judgment or decree, unless the claim arose wholly within the tribal jurisdiction), or
- (b) When the defendant, or one of several defendants, has absconded with intention to defraud his creditors, or
- (c) Has left the tribal jurisdiction to avoid the service of summons, or
- (d) So conceals himself that summons cannot be served upon him, or
- (e) Is about to remove his property, or a part thereof, out of the jurisdiction of the Court with the intent to defraud his creditors, or
- (f) Is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors, or
- (g) Has property or rights in action, which he conceals, or
- (h) Has assigned, removed or disposed of, or is about to dispose of, his property, or a part thereof, with the intent to defraud, hinder or delay his creditors, or
- (i) Fraudulently contracted the debt, or fraudulently incurred the liability or obligations for which the suit has been brought, or
- (j) Where the damages for which the action is brought are for injuries arising from the commission of a criminal offense, or
- (k) When the debtor has failed to pay the price or value of any article or thing delivered, which by contract he was bound to pay upon delivery, or
- (l) When the action is brought by the Tribe, or its officers, agents, or political agencies or subdivisions for the purpose of collection of any Tribal tax, levy, charge, fee, assessment, rental, or debt arising in contract or by statute and owed to the Tribe.

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

Section 852. Attachment Affidavit

An order of attachment may be issued by the court when:

(a) There is filed in the office of the court clerk a civil complaint stating a claim for relief and an application that the Court issue an order of attachment which states facts which show:

- (1) The nature of the plaintiff's claim,
- (2) That it is just,
- (3) The amount which the affiant believes the plaintiff ought to recover, and,
- (4) The existence of some one of the grounds for an attachment enumerated in Section 851 of this Subchapter.

(b) The application must be verified by the plaintiff, or, where his agent or attorney has personal knowledge of the facts, by said agent or attorney.

(c) The defendant has been served with a notice, issued by the Clerk, which shall notify the defendant that an order of attachment of property is requested and that he may object to the issuance of such an order by a written objection which is filed with the Court Clerk and mailed or delivered to the plaintiff's attorney within five (5) days of the receipt of the notice. A copy of plaintiff's application shall be attached to and served with the notice, and the notice and application may be served with the summons in the action.

(d) If no written objection is filed within the five day period, no hearing is necessary and the clerk may issue the order of attachment. If a written objection is filed within the five day period, the Court shall, at the request of either party, set the matter for a prompt hearing with notice to the adverse party. If the plaintiff proves the probable merit of his cause and the truth of the matters asserted in his application for an order of attachment, the Court may issue the order of attachment. Provided, however, before an order of attachment is issued by either the Court or the Clerk, the Plaintiff has executed an undertaking pursuant to Section 853 of this Title. The Tribe and its agents shall not be required to execute an understanding.

(e) If the Court finds that the defendant cannot be given notice as provided herein, although a reasonable effort was made to notify him, but at the hearing the plaintiff proves the probable merit of his claim and the truth of the matters asserted in his application, the Court may

issue the order of attachment. The defendant may subsequently move to have the attachment vacated as provided in Section 891.19 of this Title.

[History: PUBLIC LAW #SF-85-59, June 21, 1985.]

Section 853. Attachment Bonds

The attachment bond for the benefit of the party whose property is attached shall be in such form and in such amount, not less than double the amount of the plaintiff's claim, as the Court shall direct, and shall guarantee payment of all damages, costs, and reasonable attorney fees incurred as a result of a wrongful attachment. No bond shall be required of the Tribe.

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

Section 854. Order of Attachment

The order of attachment shall be directed and delivered to the Chief of the Tribal Police. It shall require him to attach the lands, tenements, goods, chattels, stocks, rights, credits, moneys and effects of the defendant within the tribal jurisdiction not exempt by law from being applied to the payment of the plaintiff's claims, or so much thereof as will satisfy the plaintiff's claim, to be stated in the order as in the affidavit, and the probable cost of the action not exceeding One Hundred Dollars (\$100.00).

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

Section 855. When Returnable

The return day of the order of attachment when issued at the commencement of the action, shall be the same as that of the summons, and otherwise within twenty (20) days of the date of issuance.

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

Section 856. Order of Execution

Where there are several orders of attachment against the defendant, they shall be executed in the order in which they are received by the Chief of the Tribal Police.

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

Section 857. Execution of Attachment Order

The order of attachment shall be executed by the Chief of the Tribal Police without delay. He shall go to the place within the tribal jurisdiction where the defendant's property may be found, and declare that, by virtue of said order, he attaches said property at the suit of the plaintiff; and the officer shall make a true inventory and appraisal of all the property attached, which shall be signed by the officer and returned with the order, leaving a copy of said inventory with the person or in the place from which the property was seized.

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

Section 858. Service of Order

(a) When the property attached is real property, the officer shall leave a copy of the order with the occupant, or, if there be no occupant, then a copy of the order shall be posted in a conspicuous place on the real property. Where it is personal property, and he can get possession, he shall take such into his custody, and hold it subject to the order of the Court.

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

Section 859. Re-delivery on Bond

The Chief of the Tribal Police shall re-deliver the property to the person in whose possession it was found, upon the execution by such person, in the presence of the Chief of the Tribal Police, an undertaking to the plaintiff, with one or more sufficient sureties, to the effect that the parties to the same are bound in double the appraised value thereof, that the property, or its appraised value in money, shall be forthcoming to answer the judgment of the Court in the action.

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