

## **RULE 4:60. Attachment And Sequestration**

### **4:60-1. Definitions**

As used in R. 4:60, "plaintiff" includes any party asserting a claim in a complaint, counterclaim, cross-claim, third-party complaint or any other pleading, upon whose application a writ of attachment is issued. "Defendant" includes any party against whom any such claim is asserted. "Applying claimant" includes any person having a claim against the defendant who shall have been admitted as a party by court order.

**Note:** Source-R.R. 4:77-1.

### **4:60-2. Commencement of Action; Venue**

An action in which a writ of attachment is sought shall be commenced by filing a complaint. Venue in such an action in the Superior Court shall be governed by R. 4:3-2, except that if no mandatory provision thereof is applicable, venue shall be laid in any county in which any of the real or personal property to be attached is situated.

**Note:** Source-R.R. 4:77-3, 4:77-4.

### **4:60-3. Attachment and Summons**

A writ of attachment may be issued as initial or sole process in the action or as additional process pursuant to R. 4:60-5. A summons against the same defendant and additional summonses against other defendants may issue in the same action before or after issuance of the writ. If a summons or writ of attachment is not issued within 10 days after the filing of the complaint, the action may be dismissed as provided by R. 4:37-2(a).

**Note:** Source-R.R. 4:77-5; amended July 24, 1978 to be effective September 11, 1978.

### **4:60-4. Attachment and Arrest**

No writ of attachment shall issue against a defendant who has been arrested upon a writ of *capias ad respondendum* or *ne exeat* in the same action, and no order to hold to bail shall be made as to a defendant whose property shall have been attached under a writ issued in the same action, unless the court shall determine upon proof, with or without notice to the defendant, that the second writ is not oppressive and is required in the interest of justice under the special circumstances of the case. If the second writ is issued without notice, the order therefor shall provide that defendant may move to vacate it on not more than 2 days' notice to the plaintiff.

**Note:** Source-R.R. 4:77-6.

### **4:60-5. Order Directing Issuance of Writ**

- **(a) Issuance of Writ on Notice.** A writ of attachment shall issue only in cases where the defendant is subject to the exercise of jurisdiction by the State consistent with due process of law. The writ shall issue upon court order on the plaintiff's motion. Except as otherwise provided by paragraph (b) of this rule, the motion shall be heard on no less than three days' notice to the defendant, who shall file and serve any opposing affidavits or cross-motions at least one day prior to the hearing. The motion shall be granted only upon the court's finding, based on the moving papers, any opposing affidavits which may

have been filed, and any testimony taken pursuant to R. 1:6-6, that (1) there is a probability that final judgment will be rendered in favor of the plaintiff; (2) there are statutory grounds for issuance of the writ; and (3) there is real or personal property of the defendant at a specific location within this State which is subject to attachment.

- **(b) Issuance of Writ Ex Parte.** An order for issuance of writ of attachment without notice to the defendant may be entered by the court only if the defendant is about to abscond or if the court finds from specific facts shown by affidavit or verified complaint that the giving of such notice is likely to defeat the execution of the writ.
- **(c) Contents of Order.** Upon satisfactory proof of plaintiff's right to the writ, the court by order shall direct the issuance of the writ fixing the amount or value of property to be attached, and providing the manner in which notice of the attachment shall be given to the defendant, and such terms and conditions as the court deems appropriate.
- **(d) Bond by Plaintiff.** Before or after issuance of the writ, the court may, in its discretion, order the plaintiff to post a bond with sufficient sureties and in an amount sufficient to indemnify defendant for all damages resulting from the attachment and for taxed costs, if the writ is vacated, or if the action is dismissed, or if judgment therein is given for defendant.

Note: Source-R.R. 4:77-7(a) (b), 4:77-8(a) (b), 4:77-9. Paragraphs (a) and (b) deleted and new paragraphs (a) and (b) adopted June 29, 1973 to be effective September 10, 1973; paragraph (a) amended July 24, 1978 to be effective September 11, 1978.

#### **4:60-6. Issuance of Writ; Further Writs**

- **(a) Issuance by Clerk of the Superior Court.** Upon the filing with the court of the complaint, affidavits, order, and bond, if any is required, either the court or the clerk thereof shall issue a writ, in duplicate, which shall be addressed to the sheriff of the county in which the property to be attached is located or found, or in Superior Court actions where the property to be attached is located in more than one county, a writ shall issue to the sheriff of each such county.
- **(b) Issuance by Deputy Clerk.** In Superior Court actions, the court in its discretion may mark the papers filed and order the issuance of the writ forthwith by the deputy clerk of the Superior Court of a county in which any property to be attached is located, who shall issue the writ and forward a copy thereof to the office of the Superior Court Clerk in Trenton on the same day. The Clerk of the Superior Court shall enter the writ in the Civil Judgment and Order Docket.
- **(c) Further Writs.** Further writs may be issued prior to judgment on further affidavit and order.

Note: Source-R.R. 4:77-10(a) (b) (c), 4:77-11, 5:2-2; paragraph (b) amended June 28, 1996 to be effective September 1, 1996.

#### **4:60-7. Levy**

The sheriff shall make the levy within 30 days from the date of the writ, in the following manner:

- **(a)** In the case of tangible personal property in the possession of a bailee for which a negotiable document of title is outstanding, by complying with the provisions of N.J.S. 12A:7-602, and serving a certified copy of the writ upon the bailee.
- **(b)** In the case of tangible personal property other than personal property referred to in paragraph (a) of this rule, by taking the same into custody or by serving a certified copy of the writ upon the person holding the same.
- **(c)** In the case of choses in action evidenced by negotiable commercial paper, by taking the said paper into custody, or by serving a certified copy of the writ upon the person

owing the same and also serving upon the person in possession of said paper an order of the court enjoining its negotiation.

- **(d)** In the case of negotiable investment securities, by complying with the provisions of N.J.S. 12A:8-317.
- **(e)** In the case of choses in action not referred to in paragraphs (c) or (d) of this rule, by serving a certified copy of the writ upon the person owing the same.
- **(f)** In the case of legacies or distributive shares in an estate of a decedent or a beneficial interest in a trust, by serving a certified copy of the writ upon the fiduciary.
- **(g)** In the case of real property, by endorsing upon the writ a description of the property, and by serving a certified copy of the writ upon any person in possession of the same, provided, however, that failure to complete a levy as herein provided shall not defeat the lien of the writ as provided in N.J.S. 2A:26-9.
- **(h)** The copy of the writ to be served pursuant to the preceding paragraphs of this rule, shall be certified to be a true copy by the Clerk of the Superior Court, a deputy clerk of the Superior Court or by an attorney.

Note: Source-R.R. 4:77-12; paragraph (h) amended June 28, 1996 to be effective September 1, 1996.

#### **4:60-8. Inventory and Return**

The sheriff shall make a true inventory of all real property attached and an appraisalment of all personal property attached and shall endorse upon the writ and duplicate thereof each levy made and the date thereof, and shall annex thereto a copy of the inventory and appraisalment. The sheriff shall file the same with the court and mail to the plaintiff or plaintiff's attorney within 5 days after the levy a notice of the levy and a copy of the inventory and appraisalment.

Note: Source-R.R. 4:77-13; amended July 13, 1994 to be effective September 1, 1994.

#### **4:60-9. Notice to Defendant; Defense**

- **(a) Time for Service of Notice.** Within one week after the sheriff's return is filed or within such time as fixed by court order, plaintiff shall serve upon the defendant notice of the attachment together with a copy of the order for attachment, the affidavits upon which the order was based and the complaint, if they have not previously been served upon defendant.
- **(b) Contents of Notice.** The notice shall specify at whose suit, against whose property, and for what amount the attachment was issued; describe the property attached; state when the attachment was returned and the time within which the defendant is required to serve and file an answer or move against the complaint, the writ of attachment or the sheriff's return thereunder; and the name and address of the attorney or party upon whom the answer or motion is required to be served.
- **(c) Service.** Service of the notice upon a defendant who has previously appeared in the action shall be made as provided by R. 1:5-2, upon a defendant who has not previously appeared in accordance with R. 4:4-4 or R. 4:4-5, or upon any defendant, as the court by order directs. If service cannot be made except by publication, a copy of the complaint, order for attachment and affidavits upon which the order was based need not be served, but plaintiff shall furnish defendant or defendant's attorney with a copy thereof within 5 days after written request therefor.

Note: Source-R.R. 4:77-14(a)(b)(c)(d)(e)(f). Paragraph (a) amended June 29, 1973 to be effective September 10, 1973; paragraphs (a), (b) and (c) amended July 13, 1994 to be effective September 1, 1994.

#### **4:60-10. Time to Defend**

- **(a) Where No Summons Is Served.** A defendant who has not been served with summons in the action shall serve and file an answer, or move against the complaint, the writ of attachment or the sheriff's levy thereunder within 35 days after service or publication of the notice of attachment, or within such time as has been fixed by order of the court.
- **(b) Where Summons Is Served.** A defendant who has been served with summons in the action but has not appeared therein or has failed to defend the same shall move against the attachment or the sheriff's levy thereunder within 35 days after service of the notice of the attachment and levy, or if service is made by publication alone, then within 35 days after the publication.
- **(c) Where Defendant Appears and Defends.** A defendant who appears in the action and defends the same may move against the attachment or levy at any time before final judgment as provided by R. 4:60-11.

Note: Source-R.R. 4:77-15(a)(b)(c). Paragraphs (a) and (b) amended July 7, 1971 to be effective September 13, 1971; paragraphs (a) and (b) amended July 13, 1994 to be effective September 1, 1994.

#### 4:60-11. Motion to Vacate Writ or Levy

- **(a) Effect of Motion.** Any attack by the defendant upon the writ of attachment or the levy shall be by motion and shall not constitute a general appearance. No objection raised by a defendant in a motion is waived by being joined with an objection to the complaint as to whether it states a claim upon which relief can be granted, or with any other objection.
- **(b) Proof on Motion.** Upon such motion, proof may be presented by affidavits, depositions, or oral testimony. The burden of proof shall be on the plaintiff. The court may allow amendments and the submission of additional affidavits or other proof to sustain the writ or levy. All questions of fact and law shall be determined by the court without a jury.
- **(c) Vacation; Discharge.** If the court finds that the writ of attachment should not have issued, it shall order it vacated and the levy discharged. If it finds that the levy is defective, it may order it discharged or corrected.
- **(d) Continuation of Action.** The action shall not abate by reason of the discharge of the levy or vacation of the writ of attachment, and the court may order the issuance of other process or a new writ of attachment as the circumstances require.

Note: Source-R.R. 4:77-16(a) (b) (c) (d) (e).

#### 4:60-12. Appearance; Judgment

- **(a) Effect of Appearance.** At any time before final judgment defendant may enter an appearance of record in the action, and thereafter no applying claimant may intervene. Notwithstanding the appearance, the lien of the attachment, unless discharged, shall continue in favor of the plaintiff and applying claimants theretofore admitted; and proceedings may be had with respect to the attached property.
- **(b) Special or General Judgment.** If the defendant has not been legally served with summons in the action and does not enter an appearance therein, any judgment in favor of the plaintiff shall be special against the attached property only. If the defendant has been legally served with summons in the action or if the defendant has entered an appearance therein, any judgment in favor of the plaintiff shall be general.

Note: Source-R.R. 4:77-17(a)(b)(c); paragraph (b) amended July 13, 1994 to be effective September 1, 1994.

#### 4:60-13. Discharge From Attachment

The defendant or any person who had possession or control of the attached property at the time levy was made thereon under the writ may, at any time during the course of the action, secure the discharge of the property, in whole or in part, from the lien of the attachment and obtain the return thereof to defendant, by filing with the clerk a bond in such amount and form and with such sureties as the court by order directs and approves, after notice to the plaintiff and any applying claimants. The bond shall be conditioned to pay any judgments obtained by plaintiff and by any applying claimants, and costs, to an amount not exceeding the value of the attached property to be discharged. The filing of such bond shall not constitute a general appearance in the action.

**Note:** Source-R.R. 4:77-18(a)(b)(c); amended July 13, 1994 to be effective September 1, 1994.

#### **4:60-14. Claim of Property**

Any person claiming any of the property attached may proceed in the action on order to show cause pursuant to R. 4:67. The right to trial by jury or by the court without a jury shall be governed by R. 4:35.

**Note:** Source-R.R. 4:77-19.

#### **4:60-15. Applying Claimants**

- **(a) Order of Admission.** At any time before the defendant shall have entered an appearance of record in the action, any person having a liquidated or unliquidated claim against the defendant, whether the claim is due or not, may apply to the court to be admitted as an applying claimant under the attachment, on verified complaint entitled in the action, and on notice to the plaintiff and to all applying claimants previously admitted, and the court shall make an order admitting such claimant upon prima facie proof of the cause of action alleged.
- **(b) Notice of Order.** Within 10 days after the date of the order admitting the claimant as a party to the action, or within such other period of time as the court may designate in the order, the applying claimant shall serve notice thereof and, if possible, a copy of the verified complaint and order of admission as a party to the action upon the defendant in the same manner as hereinabove provided for the service by the plaintiff of notice of the attachment, and the defendant shall have the same time after such service within which to answer or move against the complaint as is allowed for answering the plaintiff's complaint.
- **(c) Proceedings After Admission.** Proceedings on the claims of applying claimants shall not suspend or affect the course of the plaintiff's action against the defendant. Each applying claimant may defend against the claim of the plaintiff and of any other applying claimant by serving and filing notice of contest of such claim at least 10 days prior to the time fixed for the trial or proof thereof. Pending final judgment as to all claims, any surplus funds available to be applied to the judgments of applying claimants may be ordered retained by the sheriff or other officer holding the same subject to court order, or may be ordered paid into court to be paid out on court order.
- **(d) Special or General Judgment.** If the defendant does not enter an appearance in the action, any judgment in favor of an applying claimant shall be special against the attached property only. If the defendant enters an appearance in the action, the claim of each applying claimant previously admitted to the action shall proceed in the same manner as a separate action and any judgment obtained against the defendant shall be a general judgment.
- **(e) Participation in Proceeds.** Applying claimants shall participate, in proportion to but not in excess of their respective judgments against the defendant and costs, in the surplus, if any, of the proceeds of the attached property after the payment of costs and

charges directed by court order to be paid therefrom and after payment of the plaintiff's judgment and costs, if any.

**Note:** Source-R.R. 4:77-20(a)(b)(c)(d)(e)(f)(g)(h)(i)(j); paragraphs (a) and (b) amended July 13, 1994 to be effective September 1, 1994.

#### **4:60-16. Consolidation of Actions**

Whenever 2 or more plaintiffs in separate actions shall obtain writs of attachment against the same defendant and levy upon the same property, the several actions may be consolidated for the purpose of determining the disposition of the attached property. The plaintiff whose writ of attachment first became a lien on the property shall be deemed to be the plaintiff in the consolidated action and all other plaintiffs shall be in the position of applying claimants. If such actions are pending in the same court and are triable in the same county or vicinage, the order of consolidation shall be made by any judge sitting in the court. If any of such actions are pending in different courts or are triable in different counties or vicinages, the order of consolidation shall be made by the Assignment Judge of the county where the first writ of attachment was issued, and the procedure shall be governed by R. 4:38-1 insofar as applicable.

**Note:** Source-R.R. 4:77-21(a) (b) (c).

#### **4:60-17. Auxiliary Proceedings**

- **(a) Orders to Preserve Property.** The court shall fix the compensation and other costs and expenses of safekeeping the personal property attached, and shall provide for payment thereof by the parties or out of the proceeds of the attached property. The court may order sale of personal property before judgment, and may order the sheriff to take possession of attached real estate, to collect the rents, issues and profits thereof, and to manage the same. The court may order the institution and prosecution of appropriate actions and proceedings by the sheriff to obtain possession of any attached property in the hands of a third person, including the collection of attached choses in action, trust income or corpus, and legacies or distributive shares in the estate of a decedent, and may make such further orders as are necessary to protect and preserve the attached property pending the determination of the proceedings.
- **(b) Appointment of Receiver.** The court may appoint a receiver of any attached real or personal property and may direct the sheriff to deliver the same to such receiver and may empower the receiver to perform any of the aforesaid duties and any other acts necessary to preserve the property, to collect attached assets, and to apply them as the court directs.

**Note:** Source-R.R. 4:77-22(a) (b).

#### **4:60-18. Order for Dismissal**

If there are no applying claimants, or if all claims have been satisfied or dismissed, the plaintiff may obtain an order dismissing the action and setting the attachment aside.

**Note:** Source-R.R. 4:77-23.

#### **4:60-19. Sequestration**

Writs of sequestration or proceedings in the nature thereof are superseded except to enforce a judgment or order of the court. When a judgment or order is obtained against a defendant the

court may order sequestration of defendant's real and personal estate, or so much thereof as may be sufficient to satisfy the judgment or order.

**Note: Source-R.R. 4:77-24; amended July 13, 1994 to be effective September 1, 1994.**