

CPLR 6511(b): Absolute Conformity with Statutory Content Provisions Not Required

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subsequent time extension would not restore the initial order of priority.¹⁶⁹

CPLR 6511(b): Absolute conformity with statutory content provisions not required.

CPLR 6501 effectuates the policy that an action should not be defeated (and justice thereby evaded) by the alienation of a defendant's property during the pendency of an action.¹⁷⁰ Under this section, the filing of a notice of pendency constitutes constructive notice that an action affecting the title, possession, use, or enjoyment of real property has been commenced. Thus, any subsequent purchaser from, or encumbrancer against, a defendant in the action is bound by the outcome as if he were himself a party.

In *Mechanics Exchange Bank v. Chesterfield*,¹⁷¹ the sufficiency of a notice of pendency was challenged by the successful bidder at a foreclosure sale. The filed notice declared that the action was brought for the "foreclosure of a mortgage" for the sum of \$13,500, while actually this sum was the total of two mortgages which had been combined; the second mortgage reciting that "they shall constitute in law but one first mortgage . . . for \$13,500.00."¹⁷² Both mortgages were recorded.

The defect was derived from the Real Property Actions and Proceedings Law, which requires that the notice contain the date of the mortgage, the names of the parties, and the time and place of recording.¹⁷³ The notice fulfilled these requirements only as to the second mortgage.

The court, in determining the adequacy of the notice of pendency, reasoned that the policy considerations underlying such notice¹⁷⁴ only require that the statutory provisions be followed to the extent "that a purchaser or encumbrancer will be informed of the statutory items, or given such information as to be put on inquiry as to them. . . ."¹⁷⁵ Since a prospective purchaser or encumbrancer could have ascertained that there were two mortgages involved by an examination of the mortgage properly described in the notice of pendency, the court held that the notice was sufficient and that the sale should be completed.

¹⁶⁹ See 7B MCKINNEY'S CPLR 6214, supp. commentary (1968).

¹⁷⁰ *Hailey v. Ano*, 136 N.Y. 569, 576, 32 N.E. 1068, 1070 (1893); *Lamont v. Cheshire*, 65 N.Y. 30, 36 (1875).

¹⁷¹ 34 App. Div. 2d 111, 309 N.Y.S.2d 548 (3d Dep't 1970).

¹⁷² *Id.* at 113, 309 N.Y.S.2d at 549.

¹⁷³ RPAPL § 1331.

¹⁷⁴ See 7 WK&M ¶ 6511.06.

¹⁷⁵ 34 App. Div. 2d at 114, 309 N.Y.S.2d at 550 (emphasis added).

While the content requirements of CPLR 6511(b) were met,¹⁷⁶ if a notice of pendency fails to completely conform to that section, but does give such information as to put a potential purchaser or encumbrancer on inquiry notice concerning the items omitted, a court, utilizing the rationale of the Third Department, should find the notice sufficient.

CPLR 7102: Court upholds constitutionality of replevin provision.

In *Sniadach v. Family Finance Corp.*,¹⁷⁷ the Supreme Court declared unconstitutional a Wisconsin statute¹⁷⁸ which authorized wage garnishment without first affording the debtor an opportunity for a hearing.¹⁷⁹ Reasoning that wages are a "specialized type of property,"¹⁸⁰ the Court held that prejudgment garnishment violated the due process clause. Recently, in *Lawson v. Mantell*,¹⁸¹ New York's replevin provision — CPLR 7102 — was attacked on the grounds that it denied due process and equal protection of the laws.

In holding that CPLR 7102 was not violative of due process, the *Lawson* court cited the essential safeguards contained in article 71: (1) an action to recover the chattel must be commenced, and defendant must be served personally;¹⁸² (2) the replevied chattel is not immediately awarded to the plaintiff;¹⁸³ and, (3) the defendant may challenge the adequacy of plaintiff's surety, or move to impound the chattel during the pendency of the action.¹⁸⁴

Under the guidelines set by the Supreme Court in *Sniadach*, this phase of *Lawson* is justified. For, the New York statute provides substantial opportunity for a hearing, and it should be emphasized that the Wisconsin statute dealt with wages: a special kind of property which requires stricter vigilance.

The plaintiff in *Lawson* also asserted that compelling an undertaking by a poor person in order to secure the return of the chattel¹⁸⁵

¹⁷⁶ CPLR 6511(b) requires that the notice of pendency contain:

(a) the names of the parties to the action;

(b) the object of the action; and

(c) a description of the property affected.

¹⁷⁷ 395 U.S. 337 (1969), *rev'g* 37 Wis. 2d 163, 154 N.W.2d 259 (1967).

¹⁷⁸ WIS. STAT. ANN. § 267.07(1) (1963).

¹⁷⁹ The statute provided for wage garnishment merely by service on the debtor's employer and notice to the debtor within ten days thereafter. *Id.*

¹⁸⁰ "A prejudgment wage garnishment . . . is a taking which may impose tremendous hardship on wage earners and their families." 395 U.S. at 340. *See also* Comment, *Wage Garnishment as a Collector's Device*, 1967 Wis. L. Rev. 759, 767.

¹⁸¹ 62 Misc. 2d 307, 306 N.Y.S.2d 317 (Sup. Ct. Albany County 1969).

¹⁸² CPLR 7102(a) & (b).

¹⁸³ Under CPLR 7102(f) the chattel is held for a period of three days, during which time the defendant has an opportunity to reclaim it.

¹⁸⁴ CPLR 7102(f); CPLR 7103(a) & (b).

¹⁸⁵ CPLR 7103(a).