

IN THE JUSTICE OF THE PEACE COURT
OF THE STATE OF DELAWARE

ORDER AMENDING JUSTICE OF THE PEACE COURT
CIVIL RULE 4(b)

ORDER

This 18th day of MAY, 2021, it appears to the Court that it is necessary to amend Justice of the Peace Court Civil Rule 4(b) to reflect the raising of the jurisdictional limit of the Court from \$15,000 to \$25,000, and the removal of a jurisdictional limit for monetary claims, counter-claims, or cross-claims asserted in an action for summary possession arising from or relating to a commercial lease.

Rule 4. Process.

(b) Attachment in lieu of summons. –

(1) Proof. -- An affidavit must be filed by the plaintiff, or any credible person for the plaintiff, stating that the defendant is justly indebted to the plaintiff in a stated sum not exceeding \$25,000, provided, however, that the \$25,000 limit shall not apply to monetary claims, counter-claims, or cross-claims asserted in an action for summary possession arising from or relating to a commercial lease, and has absconded, or is as that person believes, about to remove the defendant's person or property out of the State with intent to defraud the defendant's creditors, or intentionally conceals himself or herself so that process of summons cannot be served on him or her, or is a nonresident of the State, as the case may be. A judge shall not issue a writ of attachment unless the affidavit provides specific facts demonstrating the validity of the debt and for believing that the defendant has absconded or is about to remove the defendant's person or property out of the State, with intent to defraud the defendant's creditors, or intentionally concealed himself or herself so that process of summons cannot be served on him or her, or is a nonresident of the State. The affidavit must include the defendant's last known address or a statement that such address is unknown and cannot with due diligence be ascertained.

(2) Bond required of plaintiff. -- No writ of attachment in lieu of summons shall be issued until the plaintiff gives bond in an amount and with surety to be approved by the Court out of which the writ is to be issued, conditioned that if the suit shall not be prosecuted with effect, or if the judgment

rendered therein shall be in favor of a defendant, the plaintiff will pay any and all costs which may be awarded to a defendant, together with any and all damages, not exceeding the amount of the bond, which a defendant in the suit may have sustained by reason of such attachment; for this purpose, a bond executed by an approved surety company along, without joinder of plaintiff, shall be deemed a compliance with the provisions of this rule. In fixing the amount of such bond, the Court may consider the kind of property to be seized, the estimated value thereof, the possibility of loss to a defendant as the result of the seizure, and other relevant matters. No attachment shall be authorized of any property of an estimated value greater than \$25,000, provided, however, that the \$25,000 limit shall not apply to monetary claims, counter-claims, or cross-claims asserted in an action for summary possession arising from or relating to a commercial lease.

(3) Release of attached property. -- If the defendant appears at the court and enters an appearance acknowledging that the defendant will answer the plaintiff's demand and satisfy any judgment rendered against them in such suit, the attachment shall be dissolved, and the cause proceed as in other cases. If the defendant appears at the Court at any time before final judgment and contests a wage attachment, an ex parte post deprivation hearing on the seizure of the defendant's wages shall be held. If it is determined that there is no longer a factual basis supporting the need for the writ, the attachment shall be dissolved, and the cause proceed as in other cases. In cases not falling within the above categories, the attachment shall, in any event, be dissolved, and the cause proceed as in other cases, 30 days from the date on which the writ of attachment issued.

(4) A writ of foreign attachment may issue against any individual or unincorporated association not an inhabitant of this State or against a foreign corporation, although joined as parties defendant with other nonresident or resident parties, with the same effect as if such nonresident defendant were the only defendant.

(5) When either goods are attached, or garnishee summoned, the Court shall, at the plaintiff's expense, cause a copy of such writ to be published in a newspaper of general circulation in the county in which the writ is issued at least once within 20 days after the issuance of such writ. The Court shall also send by certified or registered mail to every defendant whose appearance is sought to be compelled, at the address furnished by plaintiff, if such address is known, certified copies of the complaint, affidavit, writ and return. No publication shall be required if all defendants have been personally served prior to the time publication would otherwise take place and no mailing will be required to any defendant who has been personally served.

(6) If any goods, or chattels, are taken on any attachment in lieu of

summons, the constable or sheriff shall make an inventory, and cause them to be appraised by two (2) judicious persons, under oath, or affirmation, and annex the inventory to the attachment. If the constable or sheriff takes any goods on attachment, the constable shall be responsible for the safe keeping of the goods.

(7) Omitted.

(8) In any action by attachment in lieu of summons, the defendant shall serve the answer within 30 days after the date of the attachment of the property or the service of the writ upon a garnishee, as the case may be. After the expiration of such 30 day period, or after the defendant's appearance, whichever first occurs, the action shall proceed as in suits commenced by summons.

(9) If any attached property is of a perishable nature, or will cause undue expense in its keeping, the Court may order the attaching officer, on due notice, to sell the same, and retain the proceeds of the sale, subject to the order of the Court. No property attached under a writ of attachment in lieu of summons or garnishment shall be sold except upon order of the Court, which order shall specify the notice required and all other pertinent matters relating to such sale.

FOR THE COURT:



Chief Magistrate Alan G. Davis

