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HOUSE BILL 983

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Al Park

AN ACT

RELATING TO PROPERTY; CLARIFYING THE REQUIREMENTS PRIOR TO THE  
ISSUANCE OF A WRIT OF REPLEVIN.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 42-8-5 NMSA 1978 (being Laws 1907,  
Chapter 107, Section 1 (232), as amended) is amended to read:

"42-8-5. AFFIDAVIT. --

A. Except as provided in Subsection B of this section, before the writ of replevin is issued, the defendant shall be given notice and an opportunity to be heard and the plaintiff or ~~some~~ a creditable person in his stead shall file in the district court an affidavit stating that:

[A. ~~that~~] (1) the plaintiff is lawfully entitled to the possession of the property mentioned in the complaint along with specific facts that support the truth of

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1 the plaintiff's statement; and

2 [~~B. that the same~~] (2) the property was  
3 wrongfully taken or wrongfully detained by the defendant.

4 B. The writ of replevin may be issued before the  
5 defendant is given notice and an opportunity to be heard only  
6 if:

7 (1) the requirements provided in Subsection A  
8 of this section are satisfied and if the plaintiff or some  
9 credible person in his stead files an affidavit in the district  
10 court stating [~~€-~~] that the plaintiff has reason to believe  
11 that the defendant may conceal, dispose of or waste the  
12 property or the revenues [~~therefrom~~] from it or remove the  
13 property from the jurisdiction during the pendency of the  
14 action along with specific facts that support the truth of the  
15 plaintiff's statement;

16 (2) the plaintiff has complied with all  
17 applicable rules of civil procedure for the district courts,  
18 except that the security requirement in those rules shall be  
19 satisfied by the posting of the bond as required pursuant to  
20 Section 42-8-6 NMSA 1978; and

21 (3) a hearing to determine whether the writ  
22 was properly issued is scheduled before the issuing court  
23 within ten days after issuance of the writ; and prior to the  
24 hearing, the defendant is served with notice of the hearing and  
25 a copy of the writ of replevin in the same manner as is

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required for service of a summons pursuant to the rules of  
civil procedure for the district courts

~~[D. that the right of action accrued within one  
year; and~~

~~E. specific facts from which it clearly appears  
that the above allegations are justified]. "~~

Section 2. Section 42-8-16 NMSA 1978 (being Laws 1975,  
Chapter 249, Section 4) is amended to read:

"42-8-16. FORM OF AFFIDAVIT. --Affidavits for writs of  
replevin shall be in substantially the following form:

"State of New Mexico

County of \_\_\_\_\_

(Name), Plaintiff )

)

v. Civil Docket No. \_\_\_\_\_

)

(Name), Defendant )

AFFIDAVIT IN REPLEVIN

I, \_\_\_\_\_ (plaintiff or attorney) \_\_\_\_\_, being duly sworn,  
state that \_\_\_\_\_ (plaintiff) \_\_\_\_\_ is lawfully entitled to the  
possession of \_\_\_\_\_ (property) \_\_\_\_\_; that the same was  
wrongfully taken or wrongfully detained by \_\_\_\_\_ (defendant) \_\_\_\_\_.

Facts in support of this statement are:

\_\_\_\_\_  
\_\_\_\_\_

1 \_\_\_\_\_  
2 \_\_\_\_\_  
3 or that (plaintiff) has reason to believe that (defendant)  
4 may conceal, dispose of or waste the property or the  
5 revenues therefrom or remove the property from the  
6 jurisdiction during the pendency of the action; that the  
7 right of action originated within one year; and that the  
8 following facts, from which it clearly appears that the  
9 above allegations are justified, are true: \_\_\_\_\_  
10 \_\_\_\_\_

11 Sworn \_\_\_\_\_  
12 Plaintiff

13 Approved:

14 \_\_\_\_\_  
15 District Court Judge. ". "

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