

CHAPTER EIGHT

PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

Section 801. Seizure of Person or Property

At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the Tribe, existing at the time the remedy is sought.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 801]

Section 802. Receivers Appointed by Tribal Court

An action wherein a receiver has been appointed shall not be dismissed except by order of the Court. The practice in the administration of estates by receivers or by other similar officers appointed by the Court shall be in accordance with Tribal probate law, or if none, then the practice heretofore followed in the courts of the United States or as provided in rules promulgated by the Tribal District Court. In all other respects the action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by this Title.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 802]

Section 803. Deposit in Court

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of the Court, may deposit with the Court all or any part of such sum or thing. Money paid into Court under this Section shall be deposited and withdrawn in accordance with tribal law detailing accounting procedures for the Court Clerk's Office, and if there be none, then in accordance with the Tribal procedure for t he

administration and accounting of federal grant monies, upon order of the Court.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 803]

Section 804. Process in Behalf of and Against Persons not Parties

When an order is made in favor of a person who is not a party to the action, he may enforce obedience to the order by the same process as if he were a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, he is liable to the same process for enforcing obedience to the order as if he were a party.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 804]

Section 805. Security - Proceedings Against Sureties

Whenever this Title or other Tribal law requires or permits the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits himself to the jurisdiction of the Court and irrevocably appoints the Clerk of the Court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the Court prescribes may be served on the Clerk of the Court, who shall forthwith mail copies to the sureties if their addresses are known.

Any surety authorized to give a bond or stipulation or other undertaking in either the Federal courts or the State courts within the State within which any portion of the tribal jurisdiction lies, and any individual approved by the Court who resides within the jurisdiction of the Tribe (except officers of the Court or elected Tribal officials) shall be eligible to give such bond or stipulation, or undertaking in the Tribal District Court under this Title or other Tribal law unless otherwise prohibited by Tribal law.

[History: L. 1993, January 6; R-30-92]

PUBLIC LAW # T 6 § 805]

Section 806. Execution

(a) **In General.** Process to enforce a judgment for the payment of money shall be a writ of execution, unless the Court directs otherwise. In aid of the judgment or execution, the judgment creditor or his successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in this Title.

(b) **Against Certain Public Officers.** When a judgment otherwise authorized has been entered against a collector or other officer of revenue of the Tribe or against any officer, or employee, or agency of the Tribe in their official capacity; or if judgment is entered against an individual in his personal capacity who purported to act as an officer or employee of the Tribe, and the Court has given certificate of probable cause for his act wherein the Court determines that the individual had probable cause to believe that his action was authorized by the Tribe in his official capacity, execution shall not issue against the officer or his property but the final judgment shall be satisfied as may be provided by appropriation of such judgment (or such part thereof as the legislative body of the Tribe deems permissible considering the extent of available tribal resources) from available tribal funds. This Section is not intended, nor shall it be construed, as a waiver of sovereign immunity.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 806]

SUBCHAPTER A

INJUNCTIONS

Section 811. Injunction Defined

The injunction provided for by this Chapter is a command to refrain from or to do a particular act for the benefit of another. It may be the final judgment in an action, or may be allowed as a provisional remedy, and when so allowed, it shall be by order.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 811]

Section 812. Cause for Injunction - Temporary Restraining Order

When it appears, by the verified complaint or an affidavit that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which, during the litigation, would produce injury to the plaintiff; or when, during the litigation, it appears that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, a temporary restraining order and preliminary injunction may be granted to restrain such act. And when, during the pendency of an action, it shall appear, by affidavit or proof, that the defendant threatens or is about to remove or dispose of his property with intent to defraud his creditors, or to render the judgment ineffectual, a temporary restraining order and preliminary injunction may be granted to restrain such removal or disposition. It may, also, be granted in any case where it is specially authorized by statute.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 812]

Section 813. Temporary Restraining Order; Notice; Hearing; Duration

A temporary restraining order may be granted after commencement of the action without written or oral notice to the adverse party or his attorney only if:

(a) It clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition; and

(b) The applicant's attorney certifies to the Court in writing the efforts, if any, which have been made to give the notice and the reasons supporting his claim that notice should not be required.

Temporary restraining orders should not be granted except in cases of extreme urgency. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the Clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed ten (10) days, as the Court fixes, unless within the time so fixed the order, for good cause shown, is extended for like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and take precedence of all matters except older matter of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the Court shall dissolve the temporary restraining order. On two (2) days notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the Court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the Court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 813]

Section 814. Temporary Restraining Order - Service

Temporary restraining orders shall be served in the same manner as provided for service of the summons and complaint.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 814]

Section 815. Preliminary Injunction

(a) **Notice.** No preliminary injunction shall be issued without notice to the adverse party. Notice may be in the form of an order to appear at a designated time and place and show cause why a proposed preliminary injunction should not be issued, or in such form as the Court shall direct. The burden of showing the criteria for issuance of a preliminary injunction remains with the moving party.

(b) **Consolidation of Hearing With Trial on Merits.** Before or after the commencement of the hearing of an application for a preliminary injunction, the Court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This subsection shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 815]

Section 816. Preliminary Injunction - Criteria

Unless a statute of the Tribe provides specifically for preliminary injunctive relief upon a showing of particular circumstances, no preliminary injunction shall be granted unless upon hearing the evidence presented by the parties the Court determines that:

(a) There is a substantial likelihood that the moving party will eventually prevail on the merits of their claim for a permanent injunction or other relief; and

(b) The moving party will suffer irreparable injury unless the preliminary injunction issues. Irreparable injury means an injury which cannot be adequately remedied by a judgment for money damages; and

(c) The threatened injury to the moving party outweighs whatever damage or injury the proposed preliminary injunction may cause the opposing party; and

(d) The preliminary injunction, if issued, would not be adverse to the public interest, and would not violate the public policy of the Tribe or the United States.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 816]

Section 817. Form and Scope of Injunction or Restraining Order

Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 817]

Section 818. Employer and Employee; Interpleader; Constitutional Cases

This subchapter does not modify any statute of the Tribe relating to temporary restraining orders and preliminary injunctions in actions affecting employer and employee; or relating to preliminary injunctions in actions of interpleader or in the nature of interpleader; or any other case where temporary restraining orders or preliminary injunctions are

expressly authorized or prohibited upon certain express terms or conditions.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 818]

Section 819. Security

(a) No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the Court deems proper, for the payment of such costs, damages, and a reasonable attorney fee as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the Tribe or of an officer or agency thereof.

(b) The provisions of Section 805 of this Title apply to a surety upon a bond or undertaking under this Section.

(c) A party enjoined by a preliminary injunction may, at any time before final judgment, upon reasonable notice to the party who has obtained the preliminary injunction, move the Court for additional security, and if it appears that the surety in the undertaking has removed from the Tribal jurisdiction, or is insufficient, the Court may vacate the preliminary injunction unless sufficient surety be given in a reasonable time upon such terms as may be just and equitable.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 819]

Section 820. Use of Affidavits

On the hearing for a restraining order or preliminary injunction, each party may submit affidavits which shall be filed as a part of the record.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 820]

Section 821. Injunction by Defendant

A defendant may obtain a temporary restraining order or preliminary injunction upon filing his answer containing an

appropriate counterclaim. He shall proceed in the manner hereinbefore prescribed.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 821]

Section 822. Injunction is Equitable

Relief by way of a restraining order, preliminary, or permanent injunction is of equitable cognizance and shall be issued or refused in the sound discretion of the Court. Relief by way of injunction shall be denied where the moving party may be adequately compensated for his injuries in money damages. The Tribal District Court shall not enjoin the enforcement of the Tribal tax laws or the collection of tribal taxes except to the extent that such relief is specifically provided for in those tax laws. No injunction shall issue to control the discretion or action of a Governmental officer or employee when such officer or employee has been delegated the authority to exercise his discretion in determining how to act upon the subject matter, and is acting or refusing to act in a manner not prohibited by tribal law or the Indian Civil Rights Act.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 822]

Section 823. Modification of Preliminary Injunction

If the preliminary injunction be granted, the defendant, at any time before trial, may apply, upon notice, to the Court to vacate or modify the same. The application may be made upon the complaint and affidavits upon which the injunction is granted, or upon affidavits on the part of the party enjoined, with or without answer. The order of the Judge, allowing, dissolving or modifying an injunction, shall be returned to the Office of the Clerk of the Court and recorded.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 823]

Section 824. Modification of Permanent Injunction

A final judgment containing a permanent injunction may be modified or dissolved by separate action upon a showing that the

facts and circumstances have changed to the extent that the injunction is no longer just and equitable, or that the injunction is no longer needed to protect the rights of the parties.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 824]

Section 825. Injunctions Tried to the Court

All injunctive actions shall be tried to the Court and not to a jury unless the Court orders an advisory jury pursuant to Section 704(c) of this Title.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 825]

Section 826. Enforcement of Restraining Orders and Injunctions

A restraining order or injunction granted by a Judge may be enforced as the act of the Court. Disobedience of any injunction may be punished as a contempt, by the Court or any Judge who might have granted it. An attachment may be issued by the Court or Judge, upon being satisfied, by affidavit or testimony, of the breach of the injunction, against the party guilty of the same, who may be required to make immediate restitution to the party injured, and give further security to obey the injunction; or, in default thereof, he may be committed to close custody, until he shall fully comply with such requirements, or be otherwise legally discharged, or be punished by fine not exceeding two hundred dollars (\$200.00) for each day of, or separate act of, contempt, to be paid into the Court fund, or by confinement in the Tribal jail for not longer than sixty (60) days.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 826]

SUBCHAPTER B

REPLEVIN

Section 831. Order of Delivery - Procedure

(a) The plaintiff in an action to recover the possession of specific personal property may claim the delivery of the property at the commencement of suit, as provided herein.

(1) The complaint must allege facts which show:

(i) a description of the property claimed;

(ii) that the plaintiff is the owner of the property or has a special ownership or interest therein, stating the facts in relation thereto, and that he is entitled to immediate possession of the property;

(iii) that the property is wrongfully detained by the defendant;

(iv) the actual value of the property, provided that when several articles are claimed, the value of each shall be stated as nearly as practicable;

(v) that the property was not taken in execution on any order or judgment against said plaintiff, or for the payment of any tax, fine or amercement assessed against him, or by virtue of an order of delivery issued under this Title, or any other means or final process issued against said plaintiff; or, if taken in execution or on any order or judgment against the plaintiff, that it is exempt by law from being so taken; and

(vi) the prayer for relief requests that the Court issue an order for the immediate delivery of the property.

(2) The above allegations are verified by the party or, when the facts are within the personal knowledge of his agent or attorney and this is shown in the verification, by said agent or attorney.

(3) A notice shall be issued by the Clerk and served on the defendant with the summons which shall notify the defendant that an order of delivery of the property described in the complaint is sought and that the defendant may object to the issuance of such an order by a written objection which is filed with the Clerk and delivered or mailed to the plaintiff's attorney within five (5) days of the service of the summons. In the event that no written objection is filed within the five-day period, no hearing is necessary and the Court Clerk shall issue the order of delivery. Should a written objection be filed within the five-day period specified, the Court shall, at the request of either party, set the matter for prompt hearing. At such hearing the Court shall proceed to determine whether the order for prejudgment delivery of the property should issue according to the probable merit of the plaintiff's complaint. Provided, however, that no order of delivery may be issued until an undertaking has been executed pursuant to Section 833 of this Title.

(4) Nothing in this Title contained shall prohibit a party from waiving his right to a hearing or from voluntarily delivering the goods to the party seeking them before the commencement of the proceedings or at any time after institution thereof.

(b) Where the notice that is required by subsection (a) of this Section cannot be served on the defendant but the Judge finds that a reasonable effort to serve him was made and at the hearing the plaintiff has shown the probable truth of the allegations in his complaint, the Court may issue an order for the prejudgment delivery of the property. If an order for the prejudgment delivery of the property is issued without actual notice being given the defendant, the defendant may move to have said order dissolved and if he does not have possession of the property, for a return of the property. Notice of the right to move for return of said property shall be contained in the order for seizure and delivery of such property which shall be served upon the defendant or left in a conspicuous place where the property was seized, and the Chief of the Tribal Police shall hold said property in such cases for three (3) working days prior to the delivery to the plaintiff in order to give the defendant a reasonable opportunity to move for the return of such property. Notice of said motion with the date of the hearing shall be served upon the attorney for the plaintiff in the action. The motion shall be heard promptly, and in any case within ten (10) days after the date it is filed. The Court must

grant the motion unless, at the hearing on the defendant's motion, the plaintiff proves the probable truth of the allegations contained in his complaint. If said motion and notice is filed before the Chief of the Tribal Police turns the property over to the plaintiff, the Chief of Tribal Police shall retain control of the property pending the hearing on the motion.

(c) The Court may, on request of the plaintiff, order the defendant not to conceal, damage or destroy the property or a part thereof and not to remove the property or a part thereof from the tribal jurisdiction pending the hearing on plaintiff's request for an order for the prejudgment delivery of the property, and said order may be served with the summons.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 831]

Section 832. Penalty for Damage of Property Subject to Order of Delivery

Any person who willfully and knowingly damages property in which there exists a valid right to issuance of an order of delivery, or on which such order has been sought under the provisions of this Title, or who conceals it, with the intent to interfere with enforcement of the order, or who removes it from the jurisdiction of the Court with the intention of defeating enforcement of an order of delivery, or who willfully refuses to disclose its location to an officer charged with executing an order for its delivery, or, if such property is in his possession, willfully interferes with the officer charged with executing such writ, may be held in civil contempt of Court, and shall be guilty of an offense, and if convicted of such offense shall be subject to a fine of not more than five hundred dollars (\$500.00) and imprisonment for a term of not more than six (6) months, or both; and, in addition to such civil and criminal penalties, shall be liable to the plaintiff for double the amount of damage done to the property together with a reasonable attorney's fee to be fixed by the Court, which damages and fee shall be deemed bases on tortuous conduct and enforced accordingly.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 832]

Section 833. Undertaking in Replevin

The order shall not be issued until there has been executed by one or more sufficient sureties of the plaintiff, to be approved by the Court, an undertaking in not less than double the value of the property stated in the complaint to the effect that the plaintiff shall duly prosecute the action, and pay all costs and damages which may be awarded against him, including attorney's fees and, if the property be delivered to him, that he will return the same to the defendant if a return be adjudged; provided, that where the Tribe or its agents or subdivisions is a party plaintiff, an undertaking in replevin shall not be required of the plaintiff, but a writ shall issue upon complaint duly filed as provided by law. The undertaking shall be filed with the Clerk of the Court, and shall be subject to the provisions of Section 805 of this Title.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 833]

Section 834. Replevin Bond - Value

On application of either party which is made at the time of executing the replevin bond or the redelivery bond, or at a later date, with notice to the adverse party, the Court may hold a hearing to determine the value of the property which the plaintiff seeks to replevy. If the value as determined by the Court is different from that stated in the complaint, the value as determined by the Court shall control for the purpose of Sections 833 and 8387 of this Title.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 834]

Section 835. Order of Delivery

The order for the delivery of the property to the plaintiff shall be addressed and delivered to the Chief of Tribal Police. It shall state the names of the parties, the Court in which the action is brought, and command the Chief of the Tribal Police to take the property, describing it, and deliver it to the plaintiff as prescribed in this Title, and to make return of the order on a day to be named therein.

[History: L. 1993, January 6; R-30-92]

PUBLIC LAW # T 6 § 835]

Section 836. Order Returnable

The return day of the order of delivery, when issued at the commencement of the suit, shall be the same as that of the summons; when issued afterwards, it shall be ten (10) days after it is issued.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 836]

Section 837. Execution of Order

The Chief of the Tribal Police shall execute the order by taking the property therein mentioned. He shall also deliver a copy of the order to the person charged with the unlawful detainer of the property, or leave such copy at his usual place of residence, or at the place such property was seized.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 837]

Section 838. Re-delivery on Bond

If, within three (3) working days after service of the copy of the order, there is executed one or more sufficient sureties of the defendant, to be approved by the Court or the Chief of the Tribal Police, and undertaking to the plaintiff, in not less than double the amount of the value of the property as stated in the affidavit of the plaintiff, to the effect that the defendant will deliver the property to the plaintiff, if such delivery be adjudged, and will pay all costs and damages that may be awarded against him, the Chief of Tribal Police shall return the property to the defendant. If such undertaking be not given within three (3) working days after service of the order, the Chief of Tribal Police shall deliver the property to the plaintiff.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 838]

Section 839. Exception to Sureties

Any party for whose benefit an undertaking is made may except at any time to the sufficiency of the sureties on such undertaking. Such exception shall be made in writing and filed with the Clerk. Upon hearing, the Court shall make an order as is just to safeguard the rights of the parties.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 839]

Section 840. Proceedings on Failure to Prosecute Action

If the property has been delivered to the plaintiff, and judgment rendered against him, or his action be dismissed, or if he otherwise fails to prosecute his action to final judgment, the Court shall, on application of the defendant or his attorney, proceed to inquire into the right of property, and right of possession of the defendant to the property taken.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 840]

Section 841. Judgment - Damages - Attorney Fees

In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession, or for the recovery of possession, or the value thereof in case a deliver cannot be had, and of damages for the detention. If the property has been delivered to the plaintiff, and the defendant claims a return thereof, judgment for the defendant may be for a return of the property, or value thereof in case a return cannot be had, and damages for taking and withholding the same. The judgment rendered in favor of the prevailing party in such action may include a reasonable attorney fee to be set by the Court, to be taxed and collected as costs.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 841]

Section 842. Officer May Break Into Buildings

The Chief of the Tribal Police or other law enforcement officer, in the execution of the order of delivery issued by the

Tribal Court, may break open any building or enclosure in which the property claimed, or any part thereof, is concealed upon probable cause to believe that the property is concealed therein, but not until he has been refused entrance into said building or enclosure and the delivery of the property, after having demanded the same, or if no person having charge thereof is present.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 842]

Section 843. Compelling Delivery by Attachment

In an action to recover the possession of specific personal property, the Court may for good cause shown, before or after judgment, compel the delivery of the property to the officer or party entitled thereto by attachment, and may examine either party as to the possession or control of the property. Such authority shall only be exercised in aid of the foregoing provisions of this subchapter.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 843]

Section 844. Improper Issue of Order of Delivery

Any order for the delivery of property issued under this subchapter without the affidavit and undertaking required, shall be set aside and the plaintiff shall be liable in damages to the party injured.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 844]

Section 845. Joinder of Cause of Action for Debt - Stay of Judgment

In any action for replevin in the Tribal District Court, it shall be permissible for the plaintiff to join with the claim in replevin a claim founded on debt claimed to be owing to the plaintiff if the debt shall be secured by a lien upon the property sought to be recovered in the claim in replevin. In such cases, the execution of the judgment for debt shall be stayed pending the sale of the property and the determination of

the amount of debt remaining unpaid after the application of the proceeds of the sale thereto.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 845]

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 a 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: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 851]

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 objections 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 undertaking.

(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 891.9 of this Title.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 852]

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: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 853]

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 claim, 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: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 854]

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: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 855]

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: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 856]

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 appraisement 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: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 857]

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.

(b) When the property attached is real property, third parties shall not be affected until a copy of the attachment order and the legal description of the real property attached shall be filed and placed of record in the land tract book maintained by the Court Clerk.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 858]

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: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 859]

SUBCHAPTER D

GARNISHMENT

RESERVED FOR FUTURE PROVISIONS RELATING TO GARNISHMENT.

SUBCHAPTER E

PROVISIONS RELATING TO ATTACHMENT AND GARNISHMENT

RESERVED FOR FUTURE PROVISIONS RELATING TO BOTH ATTACHMENT AND GARNISHMENT.

SUBCHAPTER F

RECEIVERS

Section 892.1. Appointment of Receiver

A receiver may be appointed by the Supreme Court, the Tribal District Court, or any Judge of either:

(a) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed or materially injured.

(b) In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt.

(c) After judgment, to carry the judgment into effect.

(d) After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceeding in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment.

(e) In the cases provided in this Title, and by special statutes, when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

(f) In all other cases where receivers should be appointed to protect the property and rights of the parties thereto in dispute by the usages of the Court in equity.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 892.1]

Section 892.2. Persons Ineligible

No party, or attorney, or person so interested in an action, shall be appointed receiver therein except by consent of all parties thereto.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 892.2]

Section 892.3. Oath and Bond

Before entering upon his duties, the receiver must be sworn to perform them faithfully, and with one or more sureties, approved by the Court, execute an undertaking to such person and in such sum as the Court shall direct, to the effect that he will faithfully discharge the duties of receiver in the action, and obey the orders of the Court therein.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 892.3]

Section 892.4. Powers of Receiver

The receiver has, under the control of the Court, power to bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, to collect debts, to compound for and compromise the same, to make transfers, and generally to do such act respecting the property as the Courts may authorize.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 892.4]

Section 892.5. Investment of Funds

Funds in the hands of a receiver may be invested upon interest, by order of the Court; but no such order shall be made, except upon the consent of all the parties to the action, or except by order of the Court when the principal and interest earned thereon are guaranteed by the Federal Government and may be withdrawn within a reasonable time.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 892.5]

Section 892.6. Disposition of Property Litigated

(a) When it is admitted, by the pleadings or on oral or written examination of a person, that he has in his possession or under his control any non-exempt money or other thing capable of delivery, which, is held by him as trustee for a party, or which belongs or is due to a party, the Court may order the same to be deposited in Court or delivered to such party, with or without security, subject to the further direction of the Court.

(b) Any person abiding by an order of the Court in such cases and paying or delivering the money or other property subject to said order into Court, shall not thereafter be liable to the party for whom he held as trustee, or to whom the money or property belonged or was due, in any civil action for the collection or return of the property or money delivered or paid into Court.

(c) Such order may be made by ordering the party to procure the deposit or payment into Court of the property, which order may be enforced by contempt, or the Court, upon proper application, may order the person holding said property to be served with summons and brought into the action as a special defendant for the sole purpose of determining the nature and amount of property in his possession subject to payment into Court under this Section, and ordering said person to pay or deliver such non-exempt property into Court. After such payment has been made, the person shall be dismissed for the action.

(d) In cases where judgment has been obtained against the party whose property or money is to be paid into Court, it is not necessary to formally appoint a receiver for the money or property paid into Court under this Section, but the Court Clerk shall act as receiver as an aid to the enforcement of a judgment, and shall pay such money or deliver such property over to the person entitled thereto in conformity with the order of the Court.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 892.6]

Section 892.7. Punishment for Disobedience of Court

Whenever, in the exercise of its authority, the Court shall have ordered the deposit or delivery of money or other thing, and the order is disobeyed, the Court, besides punishing the disobedience as for contempt, may make an order requiring the Chief of the Tribal Police to take the money, or thing, and deposit or deliver it, in conformity with the direction of the Court.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 892.7]

Section 892.8. Vacation of Appointment by Supreme Court

In all cases in the Supreme Court in which a receiver has been appointed, or refused, by any Justice of the Supreme Court, the party aggrieved may, within ten (10) days thereafter have the right to file a motion to vacate the order refusing or appointing such receiver, and hearing on such motion may be had before the Supreme Court, if the same be in session, or before a quorum of the Justices of said Court in vacation, at such time and place as the said Court or the Justices thereof may determine, and pending the final determination of the cause, if the order was one of the appointment of a receiver, the moving party shall have the right to give bond with good and sufficient sureties, and in such amount as may be fixed by the order of the Court or a Justice thereof, conditioned for the due prosecution of such case, and the payment of all costs and damages that may accrue to the Tribe, or any officer, or person by reason thereof, and the authority of any such receiver shall be suspended pending a final determination of such cause, and if such receiver shall have taken possession of any property in controversy in said action, the same shall be surrendered to the rightful owner thereof, upon the filing and approval of said bond.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 892.8]

SUBCHAPTER G

EMINENT DOMAIN

Section 893.1. Who May Exercise Authority

The Tribal Legislative Body, and any officer or Agency of the Tribe specifically authorized to do so by statute may obtain real or personal property by eminent domain proceedings in conformance with the Tribal Constitution, the Indian Civil Rights Act, and this subchapter.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 893.1]

Section 893.2. What Property May be Condemned by Eminent Domain

Except property made exempt from eminent domain by the Tribal Constitution and statutes, all property real and personal within the tribal jurisdiction, not owned by the Tribe and its agencies, shall be subject to eminent domain except title to property held in trust by the United States for an Indian or Tribe, or property held by an Indian or Tribe subject to a restriction against alienation imposed by the United States unless the United States has consented to the eminent domain of said property. Any lease or tribally granted assignment, or other non-trust right to sue such trust or restricted property conveyed by tribal or federal law shall be subject to eminent domain in conformance with the Tribal Constitution and statutes and the Indian Civil Rights Act.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 893.2]

Section 893.3. Condemnation of Property

(a) **Applicability of Other Rules.** The Rules of Civil Procedure for the Courts of the Tribe govern the procedure for the condemnation of real and personal property under the power of eminent domain, except as otherwise provided in this subchapter.

(b) **Joinder of Properties.** The plaintiff may join in the same action one or more separate pieces of property, whether in

the same or different ownership and whether or not sought for the same use.

(c) **Amount to Be Paid.** The owner shall be entitled to receive just compensation for all property or rights to property taken from him in eminent domain proceedings.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 893.3]

Section 893.4. Complaint

(a) **Caption.** The complaint shall contain a caption as provided in Section 110(a) of this Title, except that the plaintiff shall name as defendants the property, designated generally by kind, quantity, and location, and at least one of the owners of some part of or interest in the property.

(b) **Contents.** The complaint shall contain a short and plain statement of the authority for the taking, the use for which the property is to be taken, a description of the property sufficient for its identification, the interests to be acquired, and as to each separate piece of property a designation of the defendants who have been joined as owners thereof or of some interest therein. Upon commencement of the action, the plaintiff need join as defendants only the persons having or claiming an interest in the property whose names are then known, but prior to any hearing involving the compensation to be paid for a piece of property, the plaintiff shall add as defendants all persons having or claiming an interest in that property whose names can be ascertained by a reasonably diligent search of the records, considering the character and value of the property involved and the interest to be acquired and also those whose names have otherwise been learned. All others may be made defendants under the designation "Unknown Owners." Process shall be served as provided in Section 893.5 of this subchapter upon all defendants, whether names as defendants at the time of the commencement of the action or subsequently added, and a defendant may answer as provided in Section 893.6 of this subchapter. The Court meanwhile may order such distribution of a deposit as the facts warrant.

(c) **Filing.** In addition to filing the complaint with the Court, the plaintiff shall furnish to the Clerk at least one copy thereof for the use of the defendants and additional copies at the request of the Clerk or of a defendant.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 893.4]

Section 893.5. Process in Eminent Domain

(a) **Notice; Delivery.** Upon the filing of the complaint the plaintiff shall forthwith deliver to the Clerk joint or several notices directed to the defendants named or designated in the complaint. Additional notices directed to defendants subsequently added shall be so delivered. The delivery of the notice and its service have the same effect as the delivery and service of the summons.

(b) **Same; Form.** Each notice shall state the Court, the title of the action, the name of the defendant to whom it is directed, that the action is to condemn property, a description of his property sufficient for its identification, the interest to be taken, the authority for the taking, the uses for which the property is to be taken, that the defendant may serve upon the plaintiff's attorney an answer within twenty (20) days after service of the notice, and that the failure so to serve an answer constitutes a consent to the taking and to the authority of the Court to proceed to hear the action and to fix the compensation. The notice shall conclude with the name of the plaintiff's attorney and an address where he may be served. The notice need contain a description of no other property than that to be taken from the defendants to whom it is directed.

(c) **Service of Notice.**

(1) Personal Service. Personal service of the notice shall be made in accordance with the rules for personal service of summons upon a defendant who resides within the United States or its territories or insular possessions and whose residence is known. A copy of the complaint may, but need not, be served.

(2) Service by Publication. Upon the filing of a certificate of the plaintiff's attorney stating that he believes a defendant cannot be personally served, because after diligent inquiry his place of residence cannot be ascertained by the plaintiff or, if ascertained, that it is beyond the territorial limits of personal service as provided in this Section, service of the notice shall be made on that defendant by publication in a newspaper

published in the county where the property is located, or if there is no such newspaper, then in a newspaper having a general circulation where the property is located, once a week for not less than three (3) successive weeks. Prior to the last publication, a copy of the notice shall also be mailed to a defendant who cannot be personally served as provided in this Section but whose place of residence is then known. Unknown owners may be served by publication in a like manner by a notice addressed to "Unknown Others."

(c) When Publication Service Complete. Service by publication is complete upon the date of the last publication. Proof of publication and mailing shall be made by certificate of the plaintiff's attorney, to which shall be attached a printed copy of the published notice with the name and dates of the newspaper marked thereon.

(d) **Return; Amendment.** Proof of service of the notice shall be made and amendment of the notice of proof of its service allowed in the manner provided for the return and amendment of the summons.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 893.5]

Section 893.6. Appearance or Answer

If a defendant has no objection or defense to the taking of his property, he may serve a notice of appearance designating the property in which he claims to be interested. Thereafter he shall receive notice of all proceedings affecting it. If a defendant has any objection or defense to the taking of his property, he shall serve his answer within twenty (20) days after the service of notice upon him. The answer shall identify the property in which he claims to have an interest, state the nature and extent of the interest claimed, and state all his objections and defenses to the taking of his property. A defendant waives all defenses and objections not so presented, but at the trial of the issue of just compensation, whether or not he has previously appeared or answered, he may present evidence as to the amount of the compensation to be paid for his property, and he may share in the distribution of the award. No other pleading or motion asserting any additional defense or objection shall be allowed.

[History: L. 1993, January 6; R-30-92]

PUBLIC LAW # T 6 § 893.6]

Section 893.7. Amendment of Pleadings

Without leave of Court, the plaintiff may amend the complaint at any time before the trial of the issue of compensation and as many times as desired, but no amendment shall be made which will result in a dismissal forbidden by Section 893.9 of this subchapter. The plaintiff need not serve a copy of an amendment, but shall serve notice of the filing, as provided in Section 231(b) of this Title, upon any party affected thereby who has appeared and, in the manner provided in Section 893.9 of this subchapter, upon any party affected thereby who has not appeared. The plaintiff shall furnish to the Clerk of the Court for the use of the defendants at least one copy of each amendment, and he shall furnish additional copies on the request of the Clerk or of a defendant. Within the time allowed by Section 893.6 of this subchapter, a defendant may serve his answer to the amended pleading, in the form and manner and with the same effect as there provided.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 893.7]

Section 893.8. Substitution of Parties

If a defendant dies or becomes incompetent or transfers his interest after his joinder, the Court may order substitution of the proper party upon motion and notice of hearing. If the motion and notice of hearing are to be served upon a person not already a party, service shall be made as provided in Section 893.5(c).

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 893.8]

Section 893.9. Dismissal of Action

(a) **As of Right.** If no hearing has begun to determine the compensation to be paid for a piece of property and the plaintiff has not acquired the title or a lesser interest in the property or taken possession thereof, the plaintiff may dismiss the action as to that property, without an order of the Court,

by filing a notice of dismissal setting forth a brief description of the property as to which the action is dismissed.

(b) **By Stipulation.** Before the entry of any judgment vesting the plaintiff with title or a lesser interest in or possession of property, the action may be dismissed in whole or in part, without an order of the Court, as to any property by filing a stipulation of dismissal by the plaintiff and the defendant affected thereby; and, if the parties so stipulate, the Court may vacate any judgment that has been entered.

(c) **By Order of the Court.** At any time before compensation for a piece of property has been determined and paid and after motion and hearing, the Court may dismiss the action as to that property, except that it shall not dismiss the action as to any part of the property of which the plaintiff has taken possession or in which the plaintiff has taken title or a lesser interest, without awarding just compensation of the possession, title or lesser interest so taken, or, if the possession, title, or interest in such property is to be returned to the defendant upon dismissal by motion of the plaintiff, the Court may also award reasonable actual damages incurred, not to exceed one thousand dollars (\$1000.00) in excess of fair rental value of the premises during the period in which the plaintiff held possession or title against the plaintiff notwithstanding the doctrine of sovereign immunity. The Court at any time may drop a defendant unnecessarily or improperly joined.

(d) **Effect.** Except as otherwise provided in the notice, or stipulation of dismissal, or order of the Court, any dismissal is without prejudice.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 893.9]

Section 893.10. Deposit and Its Distribution

The plaintiff shall deposit with the Court any money required by law as a condition to the exercise of the power of eminent domain; and, although not so required, may make a deposit when permitted by statute. In such cases the Court and attorneys shall expedite the proceedings for the distribution of the money so deposited and for the ascertainment and payment of just compensation. If the compensation finally awarded to any defendant exceeds the amount which has been paid to him on distribution of the deposit, the Court shall enter judgment

against the plaintiff and in favor of that defendant for the deficiency. If the compensation finally awarded to any defendant is less than the amount which has been paid to him, the Court shall enter judgment against him and in favor of the plaintiff for the overpayment.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 893.10]

Section 893.11. Costs

Costs shall normally be paid by the plaintiff in condemnation actions unless the Court, in its discretion determines that a defendant should pay their own costs, which may include a reasonable portion of plaintiff's costs because of inequitable conduct or other statutory reason.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 893.11]

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