

Supreme Court of Florida

No. SC10-144

IN RE: AMENDMENTS TO THE FLORIDA SMALL CLAIMS RULES.

[September 2, 2010]

PER CURIAM.

The Florida Bar Small Claims Rules Committee (Committee) has filed its regular-cycle report of proposed amendments to the Florida Small Claims Rules (Small Claims Rules). We have jurisdiction. See art. V, § 2(a), Fla. Const.; Fla. R. Jud. Admin. 2.140(b).

The Committee proposes amendments to rules 7.050 (Commencement of Action; Statement of Claim) and 7.090 (Appearance; Defensive Pleadings; Trial Date). The Committee also proposes amendments to several forms, including Form 7.335 (Statement of Claim (For Return of Stolen Property)); Form 7.342 (Ex Parte Motion and Order for Hearing in Aid of Execution); and Form 7.343 (Fact

Information Sheet).¹ The Court, on its motion, has severed from this case the Committee's proposed amendments to rule 7.090. Those amendments will be considered in In re Amendments to Florida Small Claims Rule 7.090, No. SC10-1227 (Fla. order to sever entered July 1, 2010). Thus, only the proposed amendments to rule 7.050 and the forms are at issue here. The Board of Governors of The Florida Bar unanimously approved the Committee's proposals. Both the Committee and the Court published the proposals for comment in The Florida Bar News; there were no comments addressed to the amendments at issue in this case.²

Upon consideration, we amend rule 7.050(a)(1) (Statement of Claim) to reflect that all documents served upon the defendant with initial process shall also be filed with the court. We also amend form 7.335 (Statement of Claim (For Return of Stolen Property)),³ form 7.342 (Ex Parte Motion and Order for Hearing in Aid of Execution), and form 7.343 (Fact Information Sheet), as proposed by the Committee.

1. Proposed amendments to Form 7.343 are also pending in In re Implementation of Committee on Privacy & Court Records Recommendations, No. SC08-2443 (Fla. petition filed Dec. 22, 2008).

2. The Committee and the Court received several comments addressing the proposed amendments to rule 7.090. Those comments will be considered in In re Amendments to Florida Small Claims Rule 7.090, No. SC10-1227.

3. The title of form 7.335, as amended, is "Statement of Claim (For Return of Stolen Property from Pawnbroker)."

Accordingly, we amend the Florida Small Claims Rules as set forth in the appendix to this opinion. New language is indicated by underscoring; deletions are indicated by struck-through type. The committee notes are offered for explanation only and are not adopted as an official part of the rules. These amendments shall take effect on January 1, 2011, at 12:01 a.m.

It is so ordered.

CANADY, C.J., and PARIENTE, LEWIS, QUINCE, POLSTON, LABARGA, and PERRY, JJ., concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE AMENDMENTS.

Original Proceeding – The Florida Small Claims Rules Committee

Michele A. Cavallaro, Chair, Small Claims Rules Committee, Fort Lauderdale, Florida, John F. Harkness, Jr., Executive Director and Krys Godwin, Bar Staff Liaison, The Florida Bar, Tallahassee, Florida,

for Petitioner

APPENDIX

RULE 7.050. COMMENCEMENT OF ACTION; STATEMENT OF CLAIM

(a) Commencement.

(1) Statement of Claim. Actions are commenced by the filing of a statement of claim in concise form, which shall inform the defendant of the basis and the amount of the claim. If the claim is based on a written document, a copy or the material part thereof shall be attached to the statement of claim. All documents served upon the defendant with initial process shall be filed with the court.

(2) [No change]

(b) - (e) [No change]

Committee Notes

1988 Amendment. [No change]

2010 Amendment. A sentence is added to subdivision (a)(1) to ensure that the courts have access to all documents served with initial process.

Court Commentary

[No change]

FORM 7.335. STATEMENT OF CLAIM (FOR RETURN OF STOLEN PROPERTY FROM PAWNBROKER)

IN THE COUNTY COURT, IN AND FOR _____, COUNTY, FLORIDA

CASE NO.: _____

Plaintiff,

vs.

Defendant/Pawnbroker.

STATEMENT OF CLAIM FOR RETURN OF PROPERTY FROM PAWNBROKER

Plaintiff, _____, sues defendant/pawnbroker, _____, and says:

1. This is an action for the return of stolen or misappropriated property pursuant to section 539.001, Florida Statutes.

2. Plaintiff is the owner of the following described property:

_____.

3. The above-described property was stolen or otherwise misappropriated from plaintiff on or about the day of _____, 20..... A copy of the law enforcement report outlining the theft/misappropriation is attached hereto and incorporated into this statement of claim.

4. The above-described property is currently in the possession of defendant and is located at a pawnshop as defined in section 539.001, Florida Statutes, the address of which is _____.

5. Plaintiff has complied with the procedural requirements of section 539.001, Florida Statutes. Specifically, plaintiff notified the pawnbroker of plaintiff's claim to the property:

_____ by certified mail, return receipt requested, OR
_____ in person evidenced by a signed receipt.

The notice contains a complete and accurate description of the purchased or pledged goods and was accompanied by a legible copy of the aforementioned police report regarding the theft or misappropriation of the property. No resolution between plaintiff and defendant pawnbroker could be reached within 10 days after the delivery of the notice.

WHEREFORE, the plaintiff demands judgment for the return of the property. Plaintiff further asks this court to award plaintiff the costs of this action, including reasonable attorneys' fees.

Plaintiff (signature)

Name

Address

City, State, Zip code

Day telephone number

State of Florida
County of _____

The foregoing instrument was acknowledged before me on(date)....., by, who is personally known to me or has produced as identification and whodid/did not..... take an oath.

WITNESS my hand and official seal, on(date).....

Notary Public
State of Florida

Note to Clerk of Court and to Sheriff: Pursuant to Section 539.001(15), filing fees and service fees shall be waived. Waiver does not require the filing of an affidavit of insolvency.

FORM 7.342. EX PARTE MOTION AND ORDER FOR HEARING IN AID OF EXECUTION

(CAPTION)

EX PARTE MOTION FOR HEARING IN AID OF EXECUTION

The judgment creditor,, pursuant to Florida Small Claims Rule 7.221, moves for an order requiring the judgment debtor(s),, to appear at a hearing in aid of execution for the purpose of examining the judgment debtor(s) regarding his/her/their ability to satisfy the final judgment entered in this cause and requiring the judgment debtor(s) to complete a FACT INFORMATION SHEET and bring it to the hearing in aid of execution.

Judgment Creditor

ORDER FOR HEARING IN AID OF EXECUTION

IT IS ORDERED AND ADJUDGED that the judgment debtor(s),, Address:, shall:

1. appear before Judge on(date)....., at o'clockm., in Courtroom, located at:,, Florida, to be examined as to the judgment debtor('s)(s') ability to satisfy the final judgment entered in this cause; and
2. bring to the hearing all documents and papers that relate to the judgment debtor('s)(s') financial condition and the completed, notarized fact information sheet attached hereto.

Judgment debtor('s)(s') failure to comply with this order shall be grounds for contempt.

ORDERED at, Florida, on(date).....

County Court Judge

FORM 7.343. FACT INFORMATION SHEET

(a) For Individuals

(CAPTION)

FACT INFORMATION SHEET — INDIVIDUAL

Full Legal Name: _____

Nicknames or Aliases: _____

Residence Address: _____

Mailing Address (if different): _____

Telephone Numbers: (Home) _____ (Business) _____

Name of Employer: _____

Address of Employer: _____

Position or Job Description: _____

Rate of Pay: \$ _____ per _____. Average Paycheck: \$ _____ per _____

Average Commissions or Bonuses: \$ _____ per _____. Commissions or bonuses are based on _____

Other Personal Income: \$ _____ from _____

(Explain details on the back of this sheet or an additional sheet if necessary.)

Social Security Number: _____ Birthdate: _____

Driver's License Number: _____

Marital Status: _____ Spouse's Name: _____

Spouse's Address (if different): _____

Spouse's Social Security Number: _____ Birthdate: _____

Spouse's Employer: _____

Spouse's Average Paycheck or Income: \$ _____ per _____

Other Family Income: \$ _____ per _____ (Explain details on back of this sheet or an additional sheet if necessary.)

Names and Ages of All Your Children (and addresses if not living with you): _____

Child Support or Alimony Paid: \$ _____ per _____

Names of Others You Live With: _____

Who is Head of Your Household? _____ You _____ Spouse _____ Other Person

Checking Account at: _____ Account # _____

Savings Account at: _____ Account # _____

(Describe all other accounts or investments you may have, including stocks, mutual funds, savings bonds, or annuities, on the back of this sheet or an additional sheet if necessary.)

For Real Estate (land) You Own or Are Buying:

Address: _____

All Names on Title: _____

Mortgage Owed to: _____

Balance Owed: _____

Monthly Payment: \$ _____
(Attach a copy of the deed or mortgage, or list the legal description of the property on the back of this sheet or an additional sheet if necessary. Also provide the same information on any other property you own or are buying.)

For All Motor Vehicles You Own or Are Buying:

Year/Make/Model: _____ Color: _____

Vehicle ID #: _____ Tag No: _____ Mileage: _____

Names on Title: _____ Present Value: \$ _____

Loan Owed to: _____

Balance on Loan: \$ _____

Monthly Payment: \$ _____ (List all other automobiles, as well as other vehicles, such as boats, motorcycles, bicycles, or aircraft, on the back of this sheet or an additional sheet if necessary.)

Have you given, sold, loaned, or transferred any real or personal property worth more than \$100 to any person in the last year? If your answer is "yes," describe the property and sale price, and give the name and address of the person who received the property.

Does anyone owe you money? Amount Owed: \$ _____

Name and Address of Person Owing Money: _____

Reason money is owed: _____

Please attach copies of the following:

_____ a.1. Your last pay stub.

_____ b.2. Your last 3 statements for each bank, savings, credit union, or other financial account.

_____ c.3. Your motor vehicle registrations and titles.

_____ d.4. Any deeds or titles to any real or personal property you own or are buying, or leases to property you are renting.

UNDER PENALTY OF PERJURY, I SWEAR OR AFFIRM THAT THE FOREGOING ANSWERS ARE TRUE AND COMPLETE.

Judgment Debtor

STATE OF FLORIDA
COUNTY OF

The foregoing instrument was acknowledged before me on(date)....., by, who is personally known to me or has produced as identification and whodid/did not..... take an oath.

WITNESS my hand and official seal, on(date).....

Notary Public
State of Florida

My Commission expires:

~~MAIL OR DELIVER THIS FORM TO THE CLERK OF THE COURT, AND MAIL OR DELIVER A COPY OF THE COMPLETED FORM TO THE JUDGMENT CREDITOR OR THE JUDGMENT CREDITOR'S ATTORNEY.~~

(b) For Corporate Entities

(CAPTION)

FACT INFORMATION SHEET— BUSINESS ENTITY

Name/Title of person filling out this form: _____

Address: _____

Telephone Number: Home: _____ Business: _____

Address of Business Entity: _____

Type of Entity: (Check One) Corporation Partnership Limited Partnership Sole Proprietorship Limited Liability Corporation (LLC) Professional Association (PA) Other: (Please Explain)

Does Business Entity own/have interest in any other business entity? If so please explain.

Gross/Taxable income reported for Federal Income Tax purposes last three years:

\$ _____ \$ _____ \$ _____

Taxpayer Identification Number: _____

List Partners (General or Limited and Designate Percentage of Ownership): _____

Average No. of Employees/Month: _____

Names of Officers and Directors: _____

Checking Account at: _____ Account No: _____

Savings Account At: _____ Account No: _____

Does the Business Entity own any vehicles: _____

Years/Makes/Models: _____

Vehicle I.D. Nos.: _____

Tag Nos.: _____

Loans Outstanding: _____

Does the Business Entity own any real property: YES _____ NO _____

If Yes: Address: _____

Please check if the business entity owns the following:

- | | |
|-------------------------------|---------------------------|
| _____ Boat | _____ Camper |
| _____ Stocks/Bonds | _____ Other Real Property |
| _____ Other Personal Property | _____ Intangible Property |

Please attach copies of the following:

1. All tax returns for the past 3 years, including but not limited to state and federal income tax returns and tangible personal property tax returns.
2. All bank, savings and loan, and other account books or statements for accounts in institutions in which the defendant had any legal or equitable interest for the past 3 years.
3. All canceled checks for the 12 months immediately preceding the date of this judgment for accounts in which the defendant held any legal or equitable interest.
4. All deeds, leases, mortgages, or other written instruments evidencing any interest in or ownership of real property at any time within the 12 months immediately preceding the date of this judgment.
5. Bills of sale or other written evidence of the gift, sale, purchase, or other transfer of any personal or real property to or from the defendant within the 12 months immediately preceding the date of filing this lawsuit. Any transfer of property within the last year other than ordinary course of business transactions.
6. Motor vehicle documents, including titles and registrations relating to any motor vehicles owned by the defendant alone or with others.
7. Financial statements and any other business records, including but not limited to accounts payable and accounts receivable ledgers, as to the defendant's assets and liabilities prepared within the 12 months immediately preceding the date of this judgment.
8. Copies of articles, by-laws, partnership agreement, operating agreement, and any other governing documents, and minutes of all meetings of the defendant's shareholders, board of directors, or members held within 2 years of the date of this judgment.
9. Resolutions of the shareholders, board of directors, or members passed within 2 years of the date of this judgment.
10. A list or schedule of all inventory and equipment.

UNDER PENALTY OF PERJURY, I SWEAR OR AFFIRM THAT THE FOREGOING ANSWERS ARE TRUE AND COMPLETE.

 Defendant's Designated Representative
 Title:

STATE OF FLORIDA
 COUNTY OF

The foregoing instrument was acknowledged before me on(date)....., by,
as the defendant's duly authorized representative, who is personally known to me or has
produced as identification and whodid/did not..... take an oath.

WITNESS my hand and official seal, on(date).....

Notary Public
State of Florida

My Commission expires:

~~MAIL OR DELIVER THIS FORM TO THE CLERK OF THE COURT, AND MAIL OR
DELIVER A COPY OF THE COMPLETED FORM TO THE JUDGMENT CREDITOR OR
THE JUDGMENT CREDITOR'S ATTORNEY.~~