

Connecticut's Prejudgment Remedy

By Lucas B. Rocklin, Esq.

Connecticut has a powerful debt collection tool called the Prejudgment Remedy¹. A prejudgment remedy allows creditors, at the beginning of a lawsuit, to attach property of the debtor in order to secure debt that is otherwise unsecured prior to the creditor obtaining a final judgment.

The Process to Obtain a Prejudgment Remedy

The creditor begins by filing a prejudgment remedy application at the beginning of its lawsuit. The court then holds a settlement conference on the application. If a settlement is not reached, the court schedules a mini-trial at which the creditor has the burden to establish that “there is probable cause that a judgment in the amount of the prejudgment remedy sought” will ultimately enter in favor of the creditor. If the court grants the creditor’s application, the creditor is permitted to attach property of the debtor to the amount of the award, which should be equal to the creditor’s unsecured claim. Property of the debtor that is subject to attachment includes real estate, bank accounts and all other forms of personal property (e.g. machinery and equipment). If the creditor is unaware of what property the debtor owns or its location, the creditor can file a motion requiring the debtor to disclose its assets.

Two notable exceptions allow the creditor to attach debtor’s property without providing notice to the debtor in advance. The first exception is if the debtor in a commercial transaction waived the right to notice and a court hearing before the creditor can attach its property. This often occurs in commercial lending as the loan documents typically include this borrower waiver language. The second exception is when the creditor can demonstrate, in addition to probable cause that a judgment will enter for the creditor, that the debtor intends to remove property from Connecticut or is about to fraudulently dispose of its property. In this case, the creditor can apply for an “Ex Parte” prejudgment remedy, which the court can grant without giving notice to the debtor or holding a court hearing on the creditor’s application.

¹ Connecticut General Statutes § 52-278a et seq.

The Benefits of a Prejudgment Remedy Can Be Significant

- A prejudgment remedy attachment can prevent the dissipation of the debtor’s assets during litigation. This can be the difference in whether the creditor will be able to satisfy its judgment that may not enter until years after the prejudgment remedy attachment is made.
- Early settlements with the debtor often occur when a creditor seeks a prejudgment remedy. This can save the creditor the delay and expense of protracted litigation.
- A prejudgment remedy attachment sets the priority of the creditor’s claim. If third-party liens are filed on the debtor’s property after the creditor’s prejudgment remedy attachment is made, this can be the difference in whether the creditor has security to satisfy its judgment.
- A creditor who records a prejudgment remedy attachment may be treated as a “secured creditor” in a bankruptcy later filed by the debtor, even though judgment has not entered in the creditor’s lawsuit, as long as the bankruptcy is filed more than ninety days after the creditor made the prejudgment remedy attachment on the debtor’s property.

Connecticut’s prejudgment remedy is a powerful debt collection tool. Banks, lenders and other creditors who are unsecured or undersecured should consider seeking a prejudgment remedy as a way to secure their future judgment.



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