6-18/000.00 Attachment of A Vessel

6-18/100.00 Attachment of A Vessel

6-18/200.00 Issuance of Writ of Attachment

6-18/300.00 Seizure

6-18/400.00 Undertaking for Release

6-18/500.00 Claim for Wages

6-18/600.00 Sale After Judgment

References

CCP - Code of Civil Procedure

GC – Government Code

HNC - Harbors and Navigation Code

Updated December 10, 2020

Edited December 10, 2020

• 6-18/100.00 Attachment of A Vessel

The Harbors and Navigation Code (HNC) sets forth specific obligations of the owner of a vessel which are liens against the vessel. HNC490 et seq. allow for a writ of attachment to be issued against the vessel after commencement of an action against the owner based on a lien, and specifies the procedures for sale of the vessel after judgment.

A proceeding in rem against a vessel, treating the boat itself as the debtor and seizing it and impleading it as the defendant, is within the exclusive jurisdiction of the federal court. However, actions which are not of that character but which are personal actions may be maintained in the state courts, notwithstanding the fact that there may be a concurrent attachment which is levied on a vessel. (Crofton v. Pappas, 75 CA 2d 814)

The attachment provided in this section is distinct from the general attachment section provided in CCP 481.010 et seq. Under the general attachment section, a secured claim is not subject to attachment; however, under this section, the attachment presupposes the existence of a lien, and is issuable only where there is such lien and for the purpose of aiding in its performance. (Jensen v. Dorr, 157 CA 437)

Although the attachment provided in this section is distinct from the general attachment law, it is not exclusive, and an attachment issued under the general attachment section would not necessarily be irregular. The lien on the vessel is not of such a fixed and determinate nature as to bar a right of action under the general attachment law. (Graham v. Annis, 28 CA 754)

• 6-18/100.00 Issuance of Writ of Attachment

A writ of attachment for a vessel may be issued at the time the summons is issued or any time thereafter. The procedure for issuance is the same as for ex parte writs under the general attachment law (CCP 485.010 et seq.) except there is no requirement to show that great or irreparable injury would result if the writ were not immediately issued. (HNC 495.1)

The writ shall be directed to the sheriff of the county within which the vessel lies, or the marshal of the court, and direct him or her to attach the vessel, with its tackle, appurtenances, appliances, furnishings, and furniture, and keep the same in his or her custody until discharged in due course of law. (HNC 495.3)

A writ issued under this section is a special writ and must limit the authority of the levying officer to seize only the vessel with its tackle, etc. A writ issued against a vessel which allowed other property to be seized would be improper under this section and, consequently, irregular. (Jensen v. Dorr, 157 CA 437)

A right to attach order or writ of attachment may be issued in a case where a defendant has failed to pay a debt underlying the attachment and he or she is insolvent in the sense that the defendant is not paying his or her debts as they become due.

• 6-18/200.00 Seizure

After receipt of the writ, together with the fee deposit and written instructions, the levying officer shall seize the vessel named in the writ with its tackle, appurtenances, appliances, furnishings and furniture. The levying officer may not interfere with the discharge of any merchandise or cargo from the vessel or with the removal of any trunks or other property of passengers or employees. (HNC 495.4)

• 6-18/300.00 Undertaking for Release

After the attachment is levied, the owner, or the master, agent, or consignee of the vessel may, in behalf of the owner, have the attachment discharged, upon filing with the court, subject to the provisions of CCP 489.060, an undertaking in an amount sufficient to satisfy the demand in the suit, besides costs. Upon receiving notice of the filing of the undertaking with the court, the sheriff, marshal, or constable shall restore to the owner, or the master, agent, or consignee of the owner, the vessel attached. (HNC 495.6)

• 6-18/400.00 Claim for Wages

A claim for wages may be asserted by a person employed in the service of the vessel attached. Such employee must file an affidavit with the clerk of the court, setting forth his claim. After the filing of such affidavit, the attachment cannot be discharged upon the filing of an undertaking to release unless the amount of such claim is included. If the vessel is sold under execution after a claim for wages has been made, the proceeds of the sale shall be applied as follows: (HNC 495.9)

1. To the payment of any wage claims, as shown on the writ.

2. To the payment of judgment and costs.

• 6-18/500.00 Sale After Judgment

If a judgment is recovered in favor of the plaintiff, the levying officer shall sell at public auction, after publication of notice pursuant to GC 6062, the vessel with its tackle, appurtenances, appliances, furnishings, and furniture, or such interest therein as may be necessary. (HNC 495.8)

The notice of sale shall be published for 10 days in a newspaper of general circulation, commencing upon the first day of publication and terminating at the end of the tenth day, including therein the first day. Publication shall be made on each day the newspaper is published during the period. (GC 6062) The notice of sale must contain a statement of the measurement and tonnage of the vessel and a general description of her condition. (HNC 497)

The proceeds of the sale are applied as follows: (HNC 495.8)

1. When the action is brought for demands other than the wages of mariners, boatmen, and others employed in the service of the vessel sold, to the payment of the amount of such wages, as specified in the execution.

2. To the payment of the judgment and costs.

3. Any balance remaining shall be paid to the owner, or to the master, agent or consignee who may have appeared on behalf of the owner, or if there is no appearance, then into court, subject to the claim of any party or parties legally entitled thereto.