

RULE 43
INTERPLEADER

GENERAL

Definition

43.01(1) In Rules 43.02 to 43.04, "property" means personal property and includes a debt.

Claimant

- (2) For the purpose of rules 43.02 to 43.04, the following persons are claimants:
- (a) in the case of an application or motion for an interpleader order under subrule 43.02(1), each person who makes a claim in respect of the property.
 - (b) in the case of an application or motion for an interpleader order under subrule 43.02(2),
 - (i) the judgment debtor against whom the enforcement process has been filed;
 - (ii) every creditor who has filed with the sheriff an enforcement process against the judgment debtor; and
 - (iii) each person who makes a claim in respect of the property.

WHERE AVAILABLE

Person Claiming No Beneficial Interest

- 43.02** (1) A person may seek an interpleader order (Form 43A) in respect of property if,
- (a) two or more other persons have made adverse claims in respect of the property; and
 - (b) the first-named person,
 - (i) claims no beneficial interest in the property, other than a lien for costs, fees or expenses, and
 - (ii) is willing to deposit the property with the court or dispose of it as the court directs.

Claims Under Rule 60.14

- (2) A claimant who is entitled to do so under subrule 60.14(4) or (5) may seek an interpleader order (Form 43A).

HOW OBTAINED

Application or Motion under Subrule 43.02(1)

- 43.03** (1) The following requirements apply when a person seeks an interpleader order under subrule 43.02(1):
- (a) if no proceeding has been commenced in respect of the

property, the person shall make an application naming the claimants as respondents;

- (b) if a proceeding has been commenced in respect of the property, the person shall make a motion in the proceeding on notice to the claimants;
- (c) the notice of application or notice of motion shall require the claimants to attend the hearing to substantiate their claims;
- (d) the application or motion shall be supported by an affidavit identifying the property, containing the names and addresses of every claimant of whom the deponent has knowledge, and stating that the applicant or moving party,
 - (i) claims no beneficial interest in the property, other than a lien for costs, fees or expenses;
 - (ii) does not collude with any of the claimants; and
 - (iii) is willing to deposit the property with the court or dispose of it as the court directs.

Motion under Subrule 43.02(2)

- (2) The following requirements apply when a claimant seeks an interpleader order under subrule 43.02(2):
 - (a) the claimant shall make a motion, on notice to the other claimants, in the proceeding in which the writ of execution was issued against the debtor;
 - (b) the notice of motion shall require the other claimants to attend the hearing to substantiate their claims.

DISPOSITION

Powers of Court

- 43.04** (1) On the hearing of an application or motion for an interpleader order, the court may,
- (a) order that the applicant or moving party deposit the property with an officer of the court, sell it as the court directs or, in the case of money, pay it into court to await the outcome of a specified proceeding;
 - (b) declare that, on compliance with an order under clause (a), the liability of the applicant or moving party in respect of the property or its proceeds extinguished; and
 - (c) order that the costs of the applicant or moving party be paid out of the property or its proceeds.
- (2) In an order under subrule (1), the court may,
- (a) order a claimant to be made a party to a proceeding already commenced in substitution for or in addition to the moving party;
 - (b) order the trial of an issue between the claimants, define the issue to be tried and direct which claimant is to be plaintiff and which defendant;

- (c) where the question is one of law and the facts are not in dispute, decide the question without directing the trial of an issue;
 - (d) on the request of a claimant, determine the rights of the claimants in a summary manner, if, having regard to the value of the property and the nature of the issues in dispute, it seems desirable to do so;
 - (e) where a claimant fails to attend the hearing, or attends and fails to comply with an order made in the course of the proceeding, make an order declaring that the claimant and all persons claiming under the claimant are forever barred from making a claim against the applicant or moving party and all persons claiming under the applicant or moving party, without affecting the rights of the claimants as between themselves;
 - (f) stay any further step in a proceeding in respect of the property; and
 - (g) make such other order as is just.
- (3) Where a motion for an interpleader order is made to the prothonotary and raises a genuine issue of fact or of law, the motion shall be adjourned to be heard by a judge.