

RULE 43
INTERPLEADER

DEFINITION

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

WHERE AVAILABLE

43.02 Where two or more persons make adverse claims in respect of property against a person who,

- (a) claims no beneficial interest in the property, other than a lien for costs, fees or expenses; and
- (b) is willing to deposit the property with the court or dispose of it as the court directs, that person may seek an interpleader order (Form 43A).

HOW OBTAINED

By Application Where no Proceeding Commenced

43.03 (1) Where no proceeding has been commenced in respect of the property in question, a person seeking an interpleader order shall make an application to a judge naming all the claimants as respondents and shall, in the notice of application, require them to attend the hearing to substantiate their claims.

By Motion Where Proceeding has been Commenced

(2) Where a proceeding has been commenced in respect of the property, a person seeking an interpleader order shall make a motion in the proceeding to the court on notice to all the claimants and shall, in the notice of motion, require them to attend the hearing to substantiate their claims.

Affidavit in Support

(3) The application or motion shall be supported by an affidavit identifying the property and containing the names and addresses of all claimants to the property of whom the deponent has knowledge and stating that the applicant or moving party,

- (a) claims no beneficial interest in the property, other than a lien for costs, fees or expenses;
- (b) does not collude with any of the claimants; and

- (c) is willing to deposit the property with the court or dispose of it as the court directs.

DISPOSITION OF APPLICATION OR MOTION

- 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 is 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 prosecuting a claim against 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.

SHERIFF'S INTERPLEADER

Definition

- 43.05** (1) In this rule,
- (a) "property" means real or personal property and includes a debt.

Sheriff May Move in Respect of Property Seized

- (2) A sheriff may make a motion for an interpleader order (Form 43B) in respect of property or the proceeds of property taken or intended to be taken by the sheriff in the execution of any enforcement process where,
 - (a) the sheriff has received a claim in respect of the property; and
 - (b) an execution creditor has given the sheriff notice under Rule 60.14 disputing the claim or the execution creditor at whose direction the sheriff took or intended to take the property has not given the notice required by subrule 60.14(2) within the time prescribed by that subrule.

Procedure

- (3) The sheriff shall make only one motion in respect of the property.
- (4) The motion may be made in any proceeding in which a writ of execution was issued against the debtor and shall name as responding parties every claimant and all execution creditors, even though their executions were not issued in the same proceeding.

Sale of Property that is Security for Debt

- (5) Where personal property has been seized in execution by a sheriff, and a claimant claims to be entitled to the property as security for a debt, the court may order a sale of the property and direct that the proceeds of sale or an amount sufficient to answer the claim be paid into court pending determination of the claim.