

Remedies Outline

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I. Repossession

A. General rule against self-help repossession of consumer goods

1. On-reservation repossession

- Personal property may only be removed from the Navajo Nation with consent from the debtor at the time of repossession or by order of Navajo Nation court. *Green Tree Servicing v. King*, 8 Nav. R. 833 (W.R. Dist. Ct. 2005).
- Navajo law prohibits self help repossession, and to remove property from the Navajo Nation a creditor must get the written approval of the debtor at the time of the repossession or a court order from a Navajo court allowing the repossession. 7 N.N.C. § 621 (as amended by Navajo Nation Council Resolution No. CO-72-03 (October 24, 2003)). *Duncan v. Shiprock Dist. Ct.*, 8 Nav. R. 581 (Nav. Sup. Ct. 2004).
- Res. No. CF-26-61 is specifically intended to protect Navajo citizens from contractual overreaching and to provide each member an opportunity to have a day in court before their property is taken. *Singleton's Mobile Home Sales v. Crosby*, 7 Nav. R. 553 (Ship. Dist. Ct. 1997).
- Res. No. CF-26-61 declares that self-help repossession is illegal. *Singleton's Mobile Home Sales v. Benally*, 7 Nav. R. 512 (Ship. Dist. Ct. 1997).
- Res. No. CF-26-61 is specifically intended to protect Navajo citizens from contractual overreaching and to provide each member an opportunity to have a day in court before their property is taken. *Reservation Bus. Svcs. v. Albert*, 7 Nav. R. 123 (Nav. Sup. Ct. 1995).
- The preamble to Res. No. CF-26-61 insists on "strict compliance" with the statute. *Reservation Bus. Svcs. v. Albert*, 7 Nav. R. 123 (Nav. Sup. Ct. 1995).
- The law permits repossession of personal property only with the written consent of the purchaser at the time of repossession, or repossession pursuant to a court order. *Nelson v. Basin Motor Co.*, 6 Nav. R. 399 (Nav. Sup. Ct. 1991).
- Personal property of Navajos shall not be taken from the territorial jurisdiction without the written consent of the purchaser at the time repossession is sought or by order of the Navajo Nation District Court. *Amigo Chevrolet v. Lee*, 6 Nav. R. 31 (Nav. Sup. Ct. 1988).
- Navajo repossession laws are the result of a necessary exercise of tribal sovereign powers and are designed to protect the health safety and welfare of Navajo Nation citizens. *Amigo Chevrolet v. Lee*, 6 Nav. R. 31 (Nav. Sup. Ct. 1988).
- The Council enacted the repossession laws to avoid breaches of peace and possible violence, and sought to prevent Navajos in remote areas from being stranded. *Amigo Chevrolet v. Lee*, 6 Nav. R. 31 (Nav. Sup. Ct. 1988).
- The Council also sought to prevent creditor overreaching by giving the Navajo debtor his day in Court before repossession. *Amigo Chevrolet v. Lee*, 6 Nav. R. 31 (Nav. Sup. Ct. 1988).
- Written consent must be obtained at the time of the repossession and may not be waived through prior agreements, such as security agreements made at the time of the purchase. This is so even if the property, after repossession, would remain on the Navajo Nation. *Russell v. Donaldson*, 3 Nav. R. 209 (W.R. Dist. Ct. 1982).

2. Off-reservation repossession

- Self-help repossession is generally allowed off reservation. *Nelson v. Basin Motor Co.*, 6 Nav. R. 399 (Nav. Sup. Ct. 1991).

- Where debtor in default allowed vehicle to be towed off reservation for repairs, he may not object to off-reservation repossession. *Nelson v. Basin Motor Co.*, 6 Nav. R. 399 (Nav. Sup. Ct. 1991).

B. Replevin

- The proper remedy for repossession is replevin. *Singleton's Mobile Home Sales v. Crosby*, 7 Nav. R. 553 (Ship. Dist. Ct. 1997).
- The proper remedy for repossession is replevin. *Reservation Bus. Svcs. v. Albert*, 7 Nav. R. 123 (Nav. Sup. Ct. 1995).
- Replevin is one of the most ancient and well-defined writs known to the common law. *Reservation Bus. Svcs. v. Albert*, 7 Nav. R. 123 (Nav. Sup. Ct. 1995).

C. Jurisdiction

- Any person seeking repossession is deemed to have submitted to the jurisdiction of the court for the purposes of determining the rights of all parties to the credit transaction. *Singleton's Mobile Home Sales v. Crosby*, 7 Nav. R. 553 (Ship. Dist. Ct. 1997).

D. Pleadings and procedure

1. Generally

- When a plaintiff seeks repossession by means of a court order, there are two different ways it may proceed: via the Navajo Rules of Civil Procedure (civil rules) or the Navajo Rules for Repossession of Personal Property Proceedings (repossession rules). The repossession rules were adopted in 1982 and have been affirmed as a valid means to effect the repossession of personal property by our Supreme Court. *Green Tree Servicing v. King*, 8 Nav. R. 833 (W.R. Dist. Ct. 2005).
- The initial difference between the civil rules and the repossession rules is the notice to the defendant and the time within which the hearing is scheduled. If a plaintiff proceeds according to the civil rules, a 30-day civil summons is issued and the defendant has the opportunity to file an answer with the Court, after which the case proceeds according to the procedures (pretrial conferences, discover, etc.) required by the civil rules. *Green Tree Servicing v. King*, 8 Nav. R. 833 (W.R. Dist. Ct. 2005).
- The Repossession Rules create a streamlined process for creditors to repossess property located on the Navajo Nation. *Green Tree Servicing v. King*, 8 Nav. R. 833 (W.R. Dist. Ct. 2005).
- The Repossession Rules create a streamlined process for creditors to repossess property located on the Navajo Nation. *Duncan v. Shiprock Dist. Ct.*, 8 Nav. R. 581 (Nav. Sup. Ct. 2004).
- The Rules set out the procedure to obtain a court order for repossession. *Duncan v. Shiprock Dist. Ct.*, 8 Nav. R. 581 (Nav. Sup. Ct. 2004).
- Repossession actions are governed by the Rules of Repossession and to the extent the repossession rules do not address the specific procedural issue, it is resolved by the Rules of Civil Procedure. *Singleton's Mobile Home Sales v. Crosby*, 7 Nav. R. 553 (Ship. Dist. Ct. 1997).
- Repossession actions are special actions governed by the Rules of Repossession and to the extent the repossession rules do not address the specific procedural issue, it is resolved by the Rules of Civil Procedure. *Reservation Bus. Svcs. v. Albert*, 7 Nav. R. 123 (Nav. Sup. Ct. 1995).
- There should be no effort to repossess personal property while repossession action is pending. *G.E. Credit Corp. v. Vandever*, 1 Nav. R. 352 (Crwn. Dist. Ct. 1978).

2. Venue

- Repossession actions must be brought in the judicial district where the personal property is normally used by the consumer or the place of residence of the consumer. *Reservation Bus. Svcs. v. Albert*, 7 Nav. R. 123 (Nav. Sup. Ct. 1995).
- The only exception is where the consumer or the property cannot be located using reasonable diligence. In that event the proper venue is the place of residence indicated in the loan papers or the last known mailing address of the debtor. *Reservation Bus. Svcs. v. Albert*, 7 Nav. R. 123 (Nav. Sup. Ct. 1995).

3. Petition

- Under the Rules, a creditor files a petition for repossession. *Duncan v. Shiprock Dist. Ct.*, 8 Nav. R. 581 (Nav. Sup. Ct. 2004).

4. Default

- Rule 55, Nav.R.Civ.P. governs default in repossession proceedings. *Reservation Bus. Svcs. v. Albert*, 7 Nav. R. 123 (Nav. Sup. Ct. 1995).

5. Time of hearing

- Under the repossession rules, once a petition is filed the Court issues an order to show cause to the defendant and a hearing to determine repossession is set not less than fourteen days and not more than thirty days after the date the court issues the order. *Green Tree Servicing v. King*, 8 Nav. R. 833 (W.R. Dist. Ct. 2005).
- Repossession rule 7 requires that the hearing be set no less than five days and no more than ten days after the issuance of the OSC, but our Supreme Court has extended the time period as a matter of due process. *Green Tree Servicing v. King*, 8 Nav. R. 833 (W.R. Dist. Ct. 2005).
- Under the Rules, the trial court issues an order to show cause, Rule 6, and sets a hearing not less than fourteen days and not more than thirty days after the date the court issues the order. *Duncan v. Shiprock Dist. Ct.*, 8 Nav. R. 581 (Nav. Sup. Ct. 2004).
- There must be a minimum of fourteen days between the issuance of the order to show cause and the hearing. More than thirty days would be excessive. *Reservation Bus. Svcs. v. Albert*, 7 Nav. R. 123 (Nav. Sup. Ct. 1995).

6. Conduct of hearing

a) Response by debtor

- The debtor does not need to file an answer to the petition, but can appear at the hearing to give oral "defenses" or "objections" to the petition. Rule 8(a). *Duncan v. Shiprock Dist. Ct.*, 8 Nav. R. 581 (Nav. Sup. Ct. 2004).

b) Issues considered

- Once the Court determines that the property sought to be repossessed is a security under an agreement, its sole consideration is whether or not there has been a breach of the agreement so as

to justify repossession. Repossession Rules 8(b). *Green Tree Servicing v. King*, 8 Nav. R. 833 (W.R. Dist. Ct. 2005).

- At the hearing, the court is restricted to considering "whether or not the property is a security under an agreement, and whether or not there has been a breach of the agreement so as to justify repossession." Rule 8(b). *Duncan v. Shiprock Dist. Ct.*, 8 Nav. R. 581 (Nav. Sup. Ct. 2004).
- The court cannot consider "any counterclaim, setoff or other independent claim" at the hearing. Rule 8(c). *Duncan v. Shiprock Dist. Ct.*, 8 Nav. R. 581 (Nav. Sup. Ct. 2004).
- The Rules of Repossession required repossession where the right to repossess is clear unless the provision of the rule placing limitations on repossession will not be satisfied. *Singleton's Mobile Home Sales v. Benally*, 7 Nav. R. 512 (Ship. Dist. Ct. 1997).
- Where the right to repossess is governed by contract, the Court is bound to follow the contract unless they are unconscionable or contrary to law. *Singleton's Mobile Home Sales v. Benally*, 7 Nav. R. 512 (Ship. Dist. Ct. 1997).
- The Court is required only to consider whether or not the property is a security under an agreement and whether or not there has been a breach of the agreement so as to justify repossession. Furthermore, no counterclaim, setoff or other independent claims in ruling upon the question of repossession are to be considered by the Court. *Singleton's Mobile Home Sales v. Benally*, 7 Nav. R. 512 (Ship. Dist. Ct. 1997).
- Where creditor caused debtor's confusion, repossession would be disallowed, but debtor would be ordered to bring payments current. *G.E. Credit Corp. v. Vandever*, 1 Nav. R. 352 (Crwn. Dist. Ct. 1978).

c) Repossession order

- If the creditor has proven the case, the court then issues a repossession order. Rule 8(c). *Duncan v. Shiprock Dist. Ct.*, 8 Nav. R. 581 (Nav. Sup. Ct. 2004).

7. Counterclaims by debtor

- If a counterclaim defeats, directly or indirectly, an element of the claim, the debtor should assert the counterclaim at the repossession hearing. The court should make a preliminary inquiry on the validity of the counterclaim and condition or even delay the repossession based on its assessment of the validity of the counterclaims. *Duncan v. Shiprock Dist. Ct.*, 8 Nav. R. 581 (Nav. Sup. Ct. 2004).
- If the court believes there may be a valid counterclaim, it can (1) order the property impounded pending a ruling on the counterclaims, (2) allow the repossession if the creditor posts a bond in the amount of the counterclaims; (3) allow the debtor to keep the property if he or she posts a bond in the amount of the property's value or the alleged balance due or, with the creditor's consent, makes monthly payments to the court, or (4) allow the repossession of the creditor submits to the jurisdiction of the court to hear the counterclaims at a later time. *Duncan v. Shiprock Dist. Ct.*, 8 Nav. R. 581 (Nav. Sup. Ct. 2004).
- Where repossession claim has been filed, counterclaim on credit transaction is compulsory. *Singleton's Mobile Home Sales v. Crosby*, 7 Nav. R. 553 (Ship. Dist. Ct. 1997).
- The Court has discretion to make a preliminary inquiry as to whether or not there is probable cause to believe that Respondent may have a valid claim. *Singleton's Mobile Home Sales v. Benally*, 7 Nav. R. 512 (Ship. Dist. Ct. 1997).

E. Unlawful repossession

- The penalty for unlawful repossessions is damages in the amount of not less than 10% of the cash price plus the finance charge. *Amigo Chevrolet v. Lee*, 6 Nav. R. 31 (Nav. Sup. Ct. 1988).
- Navajo courts have subject matter jurisdiction over wrongful repossession action. *Thompson v. Wayne Lovelady's Frontier Ford*, 1 Nav. R. 282 (Ship. Dist. Ct. 1978).

F. Release of claims

- A release of claims under Navajo repossession laws made as a part of a settlement agreement after an unlawful repossession does not further infringe on the public interest, but will be carefully scrutinized to ensure the agreement was made openly and fairly. *Amigo Chevrolet v. Lee*, 6 Nav. R. 31 (Nav. Sup. Ct. 1988).
- Form documents which do not specify claims being released and which form part of a general release of a vehicle are not likely to pass the close scrutiny necessary for waivers of the Navajo repossession laws. *Amigo Chevrolet v. Lee*, 6 Nav. R. 31 (Nav. Sup. Ct. 1988).

G. Repossession defined

- Repossession is the act of recovering goods sold on credit (or in installments) when the buyer fails to pay for them. In the Navajo Nation repossession is statutorily governed by 7 N.N.C. §§ 621-624. *Green Tree Servicing v. King*, 8 Nav. R. 833 (W.R. Dist. Ct. 2005).

H. Repossession of dwelling units (*see also I(I) Due Process*)

- Window Rock District Court will no longer allow repossession of dwelling units under the repossession rules. *Green Tree Servicing v. King*, 8 Nav. R. 833 (W.R. Dist. Ct. 2005).
- The practical reality is that the repossession rules encourage the separation of Navajos from their homes without due process. *Green Tree Servicing v. King*, 8 Nav. R. 833 (W.R. Dist. Ct. 2005).
- For dwelling units, the Navajo Rules of Civil Procedure better protect due process. First, the 30-day civil summons and answer period provides adequate time for defendants to seek either settlement with the plaintiff or legal counsel to explain the action. If they fail to respond, the plaintiff may avail itself of the civil default remedies in the same manner as it does pursuant to the repossession rules. Second, the pretrial procedures built into the civil rules will help clarify the issues before the Court for the parties without forcing the Court into a position of advocate, and give more opportunity for settlement between the parties as the issues and facts are clarified. *Green Tree Servicing v. King*, 8 Nav. R. 833 (W.R. Dist. Ct. 2005).

I. Due process

- Debtors have the absolute right to due process in repossession proceedings. *Green Tree Servicing v. King*, 8 Nav. R. 833 (W.R. Dist. Ct. 2005).
- The repossession rules do not afford the requisite due process when seeking to separate a Navajo person and his or her home. *Green Tree Servicing v. King*, 8 Nav. R. 833 (W.R. Dist. Ct. 2005).
- That the repossession rules allow for the potential separation of a Navajo person from his or her home in a mere fourteen days does not give in reality, a defendant the meaningful opportunity to appear or to prepare for the hearing. *Green Tree Servicing v. King*, 8 Nav. R. 833 (W.R. Dist. Ct. 2005).

- In repossession action, often the defendant argues offers a counterclaim or setoff, or argues that he or she is in fact up to date in payments but testifies that they were unable to obtain documentation before the hearing or that they had not been able to contact the creditor before the hearing. In these situations, even if the Court finds probable cause to believe that the defendant has a valid claim for relief pursuant to Rule 9, it still must either order the repossession or order that defendant post a bond to prevent the repossession. In this Court's experience, defendants are rarely able to post the bond required and are therefore separated from their home despite the probable validity of their claim. The Court finds that this is certainly not the due process contemplated by the Supreme Court in *Lowe. Green Tree Servicing v. King*, 8 Nav. R. 833 (W.R. Dist. Ct. 2005).
- Another practical problem with effecting a repossession in the short period of time contemplated within the repossession rules is that defendants who want to retain or consult legal counsel do not have the opportunity to do so before the hearing at which a repossession is likely to be ordered. The typical OSC hearing goes like this: when the Court asks the defendant if he or she knows what the hearing is about and what the possible outcomes of the hearing will be, it becomes clear that the defendant is not well-informed about the nature of the proceedings. The defendant often explains that he or she attempted to contact legal counsel but were unable to do so before the hearing. Another common scenario is that after the judge explains the nature of the case, the defendant requests additional time so that he or she can contact legal counsel. The Repossession Rules authorize only a five-day continuance (Rule 7) which rarely provides enough time for legal counsel to become involved on the defendant's behalf. *Green Tree Servicing v. King*, 8 Nav. R. 833 (W.R. Dist. Ct. 2005).

II. Execution on judgments

A. Applicable law

- Supreme Court will not hold that the remedies for the execution of judgments is limited to the Navajo civil execution statutes at 7 NNC §§ 705-711 and Rule 68 of the Navajo Rules of Civil Procedure because the civil execution statutes are old and because the Court has an interest in finding the means to make certain that Navajo Nation judgments are enforced. *Pelt v. Shiprock Dist. Ct.*, 8 Nav. R. 111 (Nav. Sup. Ct. 2001).
- Rule 68 of the Navajo Rules of Civil Procedure permits any proceeding on and in aid of execution that is provided by law. *Pelt v. Shiprock Dist. Ct.*, 8 Nav. R. 111 (Nav. Sup. Ct. 2001).

B. Enforcement of non-Navajo judgments

- Navajo Courts will honor and enforce foreign judgments upon consideration of the rights of the foreign court to issue the judgment, of the propriety of the proceedings and of any relevant public policy of the Navajo Nation. *Boyd & McWilliams Energy Group v. Tso*, 7 Nav. R. 458 (Ship. Dist. Ct. 1994).
- Navajo Courts will honor and enforce foreign judgments upon consideration of the rights of the foreign court to issue the judgment, of the propriety of the proceedings and of any relevant public policy of the Navajo Nation. *Anderson v. Chuska Energy & Petroleum Company*, 4 Nav. R. 187 (W.R. Dist. Ct. 1983).
- Tribal courts do not give full faith and credit to federal, state or other tribal courts. Tribes were not signatories to the U.S. Constitution and are not bound by its provisions. *Anderson v. Chuska Energy & Petroleum Company*, 4 Nav. R. 187 (W.R. Dist. Ct. 1983).

- Indian tribes are not states, territories or possessions within the definition of 28 U.S.C. § 1738 so Navajo courts are not required to give full faith and credit to judgments from federal, state or other tribal courts. *Anderson v. Chuska Energy & Petroleum Company*, 4 Nav. R. 187 (W.R. Dist. Ct. 1983).
- When considering whether to enforce a foreign judgment on the grounds of comity, the Court must first examine whether the foreign court had personal jurisdiction over the defendant. *Anderson v. Chuska Energy & Petroleum Company*, 4 Nav. R. 187 (W.R. Dist. Ct. 1983).

C. General right to writ of execution

- A writ of execution is an order of the court (issued by the clerk) which commands a Navajo Nation Police Officer to seize enough unrestricted and nonexempt personal property of the debtor to satisfy a judgment and costs. *Billie v. Nez*, 7 Nav. R. 253 (Nav. Sup. Ct. 1996).
- A writ of execution may be issued to the Navajo Police to seize property to enforce the judgment. *NTUA v. Foster*, 4 Nav. R. 86 (Nav. Ct. App. 1983).
- Where divorce degree had awarded property to party, Court may issue write of assistance to enforce judgment. *Begay v. Brown*, 3 Nav. R. 103 (Nav. Ct. App. 1982).

D. Procedure

- No motion is necessary. The writ is simply presented to the clerk for execution. *Howard Dana & Assoc. v. NHA*, 3 Nav. R. 69 (Nav. Ct. App. 1981).

E. Liberal construction

- The Navajo Nation judgment execution statute is remedial legislation which must be construed liberally to carry out its purposes. *Billie v. Nez*, 7 Nav. R. 253 (Nav. Sup. Ct. 1996).

F. Execution on specific property

1. Bank accounts

- A bank account is “personal property” that may be reached by a writ of execution. *Billie v. Nez*, 7 Nav. R. 253 (Nav. Sup. Ct. 1996).

2. Property belonging to Navajo Housing Authority

- The Native American Housing Assistance and Self-Determination Act (NAHASDA) provides that an annual appropriation be made by Congress, and be distributed by the Department of Housing and Urban Development (HUD) to recipients such as the NHA. *Tso v. NHA*, No. SC-CV-20-06, slip op. (Nav. Sup. Ct. December 6, 2007).
- Nothing in NAHASDA directly prohibits use of granted funds for the payment of civil judgments against the grantee, nor does NHA argue that anything in its annual contribution contract prohibits such payments. *Tso v. NHA*, No. SC-CV-20-06, slip op. (Nav. Sup. Ct. December 6, 2007).
- All grant recipients are subject to 2 CFR Part 225, Cost Principles for State, Local, and Indian Tribal Governments (OME Circular A-S7). This circular establishes principles and standards for determining costs for federal awards carried out through grants, cost reimbursement contracts, and

other agreements with state and local governments and federally-recognized Indian tribal governments. *Tso v. NHA*, No. SC-CV-20-06, slip op. (Nav. Sup. Ct. December 6, 2007).

- Appendix B to the circular discusses selected items of cost, and identifies those items as either allowable or unallowable. One of the items of cost discussed in the appendix is Fines and penalties. The language states that: “Fines, penalties, damages, and other settlements resulting from violations (or alleged violations) of, or from failure of the governmental unit to comply with, federal, state, local, or Indian tribal laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the federal award or written instructions by the awarding agency authorizing in advance such payments.” *Tso v. NHA*, No. SC-CV-20-06, slip op. (Nav. Sup. Ct. December 6, 2007).
- Where judgment against NHA was the result of the violation of the Navajo Preference in Employment Act, which is a Navajo statute, payment of the judgment is not an allowable cost pursuant to the language of the circular. Therefore, NHA may not use federal money to satisfy the judgment against it. *Tso v. NHA*, No. SC-CV-20-06, slip op. (Nav. Sup. Ct. December 6, 2007).
- If NHA possesses or can obtain non-federally-granted money, that money must be used to satisfy the judgment in favor of judgment creditor. Nothing in Navajo law, as it was in effect for the purposes of this case, relieves NHA from its responsibility to judgment creditor. *Tso v. NHA*, No. SC-CV-20-06, slip op. (Nav. Sup. Ct. December 6, 2007).
- NHA must satisfy judgment with non-federally granted money. *Tso v. NHA*, No. SC-CV-20-06, slip op. (Nav. Sup. Ct. December 6, 2007).
- Because of the broad terms used in defining the word “employer” in the Navajo Preference in Employment Act, the NPEA impliedly revoked NHA’s statutory exemption from levy on judgments in employment cases. *Tso v. NHA*, No. SC-CV-10-02, slip op. (Nav. Sup. Ct. August 26, 2004).
- Certain property and funds of NHA are exempt from execution. *NHA v. Howard Dana and Assoc.*, 5 Nav. R. 157 (Nav. Sup. Ct. 1987).
- NHA’s exemption from execution may be waived by clear and express language in a contract. *NHA v. Howard Dana and Assoc.*, 5 Nav. R. 157 (Nav. Sup. Ct. 1987).

3. Federal benefits

- The Secretary of the Interior may pay out monies from Individual Indian Money accounts for judgments rendered by a tribal court under tribal law. *Willie v. Willie*, 4 Nav. R. 31 (Nav. Ct. App. 1983).

G. Exemptions from execution

- In enforcement of a judgment, the Navajo Police may seize livestock in excess of 75 sheep units and personal property in excess of \$500. *Johnson v. Dixon*, 4 Nav. R. 108 (Nav. Ct. App. 1983).
- Land cannot be lost to adverse possession, laches, delay or execution on a judgment. Judgments may not be enforced against grazing permits, homesite leases or land-use permits. *Johnson v. Dixon*, 4 Nav. R. 108 (Nav. Ct. App. 1983).

III. Distraint and statutory liens

A. Distraint forbidden

- Distraint is a common law procedure by which a person takes possession of the personal property of another, without legal process, as security for a debt. *Gordon v. James*, 6 Nav. R. 525 (W.R. Dist. Ct. 1989).
- Navajo law does not permit distraint. If a person leasing a mobile home falls behind on rent, the forcible entry and detainer statutes must be followed. *Gordon v. James*, 6 Nav. R. 525 (W.R. Dist. Ct. 1989).
- Distraint is not a lawful remedy for back rent owed. It constitutes illegal forcible entry. *Gordon v. James*, 6 Nav. R. 525 (W.R. Dist. Ct. 1989).

B. Liens

- Because there is no mechanic's lien statute, Navajo courts will not recognize mechanic's liens. *Bahe v. Arthur*, 6 Nav. R. 536 (Chin. Dist. Ct. 1990).
- In the absence of a lien created by law, neither party can create one without the consent or agreement of the other. *Gordon v. James*, 6 Nav. R. 525 (W.R. Dist. Ct. 1989).
- Liens may only be created by statute or by agreement. *Gordon v. James*, 6 Nav. R. 525 (W.R. Dist. Ct. 1989).

IV. Wage garnishments

A. Garnishment defined

- Garnishment is a proceeding by a creditor to obtain satisfaction of the indebtedness out of property or credits of the debtor in the possession of, or owing by, a third person. *NTUA v. Foster*, 4 Nav. R. 86 (Nav. Ct. App. 1983).
- Garnishment is also a warning to a person in whose hands the effects of another are attached, not to pay the money or deliver the property of the defendant in his hands to him, but to appear and answer the plaintiff's suit. *NTUA v. Foster*, 4 Nav. R. 86 (Nav. Ct. App. 1983).
- Garnishment is also a statutory proceeding whereby a person's property, money, or credits in possession or under control of, or owing by, another are applied to payment of former's debt to third person by proper statutory process against debtor and garnishee. *NTUA v. Foster*, 4 Nav. R. 86 (Nav. Ct. App. 1983).
- Garnishment is regarded in derogation of the common law and to exist only by virtue of statute. Consequently resort to the statute is necessary to determine the extent and scope of the process. *NTUA v. Foster*, 4 Nav. R. 86 (Nav. Ct. App. 1983).
- A writ of garnishment is the same sort of remedy as a writ of execution. *Becenti v. Laughlin*, 4 Nav. R. 147 (W.R. Dist. Ct. 1983).
- Garnishment is a proceeding by a creditor to obtain satisfaction of the indebtedness out of property or credits of the debtor in the possession of, or owing by, a third person. *Foster v. Lee*, 3 Nav. R. 203 (W.R. Dist. Ct. 1982).
- Garnishment is an action against the garnishee where plaintiff is subrogated to the rights of the defendant. It has been termed a compulsory novation. *Foster v. Lee*, 3 Nav. R. 203 (W.R. Dist. Ct. 1982).

- Garnishment is supported by the court's general power to enforce its judgments. *Foster v. Lee*, 3 Nav. R. 203 (W.R. Dist. Ct. 1982).
- Garnishment is a proceeding by a creditor to obtain satisfaction of the indebtedness out of property or credits of the debtor in the possession of, or owing by, a third person. *Matter of Interest of Tsosie*, 3 Nav. R. 182 (Chin. Dist. Ct. 1981).
- Garnishment is an action against the garnishee where plaintiff is subrogated to the rights of the defendant. It has been termed a compulsory novation. *Matter of Interest of Tsosie*, 3 Nav. R. 182 (Chin. Dist. Ct. 1981).
- Garnishment is supported by the court's general power to enforce its judgments. *Matter of Interest of Tsosie*, 3 Nav. R. 182 (Chin. Dist. Ct. 1981).

B. Available only in child support cases

- Courts may order wage garnishment in child support cases and no exemptions apply. *Heredia v. Heredia*, 4 Nav. R. 124 (Nav. Ct. App. 1983).
- The Courts of the Navajo Nation are not going to allow wage garnishment for other than child support enforcement. *Heredia v. Heredia*, 4 Nav. R. 124 (Nav. Ct. App. 1983).
- The Court may order a third person to pay moneys due for support of a child not in its own home. *NTUA v. Foster*, 4 Nav. R. 86 (Nav. Ct. App. 1983).
- ~~Property of the debtor may be levied even though it is in the possession of another.~~ *NTUA v. Foster*, 4 Nav. R. 86 (Nav. Ct. App. 1983). [Note: Wage garnishments were limited to child support cases in *Heredia v. Heredia*, 4 Nav. R. 124 (Nav. Ct. App. 1983)].
- ~~Garnishment and wage executions are available as remedies on the Navajo Nation.~~ *NTUA v. Foster*, 4 Nav. R. 86 (Nav. Ct. App. 1983) [Note: Wage garnishments were limited to child support cases in *Heredia v. Heredia*, 4 Nav. R. 124 (Nav. Ct. App. 1983)].
- ~~The Court has full authority to issue writs of garnishment under its general authority to create a plastic remedy appropriate to the enforcement of its judgment.~~ *Tracey v. Heredia*, 4 Nav. R. 149 (Dist. Ct. 1983). [Note: On appeal, the Navajo Court of Appeals limited the garnishment power to child support cases. *Heredia v. Heredia*, 4 Nav. R. 124 (Nav. Ct. App. 1983)].
- Child support orders may be enforced by wage executions. *Foster v. Lee*, 3 Nav. R. 203 (W.R. Dist. Ct. 1982).
- Child support orders may be enforced by a wage execution. *Matter of Interest of Tsosie*, 3 Nav. R. 182 (Chin. Dist. Ct. 1981).

C. Procedure

- The garnishment action must be first proven and substantiated at the Order to show Cause hearing which is but one of many due process protections to be afforded all the necessary parties to such action. *Heredia v. Heredia*, 4 Nav. R. 124 (Nav. Ct. App. 1983).
- Employer needs an opportunity to be heard. Employer may object or pay over clearly permissible amounts. *Heredia v. Heredia*, 4 Nav. R. 124 (Nav. Ct. App. 1983).
- Garnishment orders must specify in reasonable certainty the schedule of wages to be garnished, the amount or sum certain and the duration of such equitable attachment. *Heredia v. Heredia*, 4 Nav. R. 124 (Nav. Ct. App. 1983).
- If a judgment is unpaid, and if the losing party has sufficient funds to his credit at the agency office, application may be made to the Secretary and the Secretary may direct the disbursing office to pay the injured party on the judgment. *NTUA v. Foster*, 4 Nav. R. 86 (Nav. Ct. App. 1983).

- A writ of garnishment must require the third party to appear in court and state in what amount moneys are owed to the judgment debtor. *NTUA v. Foster*, 4 Nav. R. 86 (Nav. Ct. App. 1983).
- Applications for wage garnishment will be served by the Navajo Police, and sums shall be received that are permitted by Federal law. *NTUA v. Foster*, 4 Nav. R. 86 (Nav. Ct. App. 1983).

D. Federal law

- Federal limits on garnishment (15 USC §1673) do not apply to child support orders. *Foster v. Lee*, 3 Nav. R. 203 (W.R. Dist. Ct. 1982).