

affidavit alleging that the property is not exempt within the meaning of the section or sections relied upon, or if the claim to exemption be based on Sections 690.1, 690.3, 690.6, 690.8, 690.9, 690.12, 690.17, 690.18, 690.21, 690.24, alleging that the value of the property claimed to be exempt is in excess of the value stated in the applicable section or sections, together with proof of service of a copy of such counteraffidavit upon the debtor.

(4) *Counter-affidavit, release for failure to file.* If no such counteraffidavit, with such proof of service, is so filed with the levying officer within the time allowed, the officer shall forthwith release the property.

(5) *Hearing, right, motion, time, notice.* If such counteraffidavit, with such proof of service, is so filed, either the creditor or the debtor shall be entitled to a hearing in the court in which the action is pending or from which the writ issued for the purpose of detremining the claim to exemption, or the value of the property claimed to be exempt. Such hearing must be granted by the court upon motion of either party made within five days after the counteraffidavit is filed with the levying officer, and such hearing must be had within 15 days from the date of the making of such motion unless continued by the court for good cause. The party making the motion for hearing must give not less than five days' notice in writing of such hearing to the levying officer and to the other party and specify therein that the hearing is for the purpose of determining the claim to exemption. The notice may be of motion or of hearing and upon the filing of the notice with the clerk of court, the motion is deemed made.

(6) *Hearing, release for failure to request.* If neither party makes such motion within the time allowed, or if the levying officer shall not have been served with a copy of the notice of hearing within 10 days after the filing of the counteraffidavit, the levying officer shall forthwith release the property to the debtor.

(7) *Orders pending hearing, sale of perishable property.* At any time while the proceedings are pending, upon motion of either party or upon its own motion, the court may (a) order the sale of any perishable property held by such officer and direct disposition of the proceeds of such sale; and (b) make such other orders as may be proper under the particular circumstances of the case. Any orders so made may be modified or vacated by the court or judge granting the same, or by the court in which the proceedings are pending, at any time during the pendency of the proceedings, upon such terms as may be just.

(8) *Possession pending hearing.* The levying officer in all cases shall retain physical possession of the property levied upon if it be capable of physical possession, or in the case of property not capable of physical possession, the levy shall remain in full force and effect, pending the final determination of the claim to exemption; provided, however, that no sale under execution shall be had prior to such final determination unless an order of the court hearing the claim for exemption shall so provide.

(9) *Procedure, pleadings, evidence and judgment.* At such hearing, the party claiming the exemption shall have the burden of proof. The affidavits and counteraffidavits shall be filed by the levying officer with the court and shall constitute the pleadings, subject to the power of the court to permit an amendment in the interests of justice. The affidavit of exemption shall be deemed controverted by the counter-affidavit and both shall be received in evidence. Nothing herein contained shall be construed to deprive anybody of the right to a jury trial in any case where by the Constitution such right is given, but a jury trial shall be waived in any such case in like manner as in the trial of an action. No findings shall be required in a proceeding under this section. When the hearing is before the court sitting without a jury, and no evidence other than the affidavit and counteraffidavit is offered, the court if satisfied that sufficient facts are shown thereby, may make its determination thereon; otherwise, it shall order the hearing continued for the production of other evidence, oral or documentary, or the filing of other affidavits and counteraffidavits. At the conclusion of the hearing, the court shall give judgment determining whether the claim to exemption shall be allowed or not, in whole or in part, which judgment shall be determinative as to the right of the creditor to have the property taken and held by the officer or to subject the property to payment or other satisfaction of his judgment. In such judgment the court shall make all proper orders for the disposition of such property or the proceeds thereof.