

**STATE OF VERMONT
VERMONT SUPREME COURT
OCTOBER TERM, 2023**

Order Promulgating Amendments to Rule 64 of the Vermont Rules of Civil Procedure

Pursuant to the Vermont Constitution, Chapter II, § 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 64 of the Vermont Rules of Civil Procedure be amended as follows (deleted matter struck through; new matter underlined):

RULE 64. REPLEVIN

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(b) Writ of Replevin: Issuance.

(1) The writ of replevin shall be filled out as provided in subdivision (c) of this rule and issued to the plaintiff's attorney by the clerk of the superior court in the county where the goods are located. Such writ shall issue only upon the order of a superior judge ~~or District Judge~~ approving the writ and the replevin bond in an amount found as provided in paragraph (2) or (3) of this subdivision. The order shall specifically state the grounds of its issuance and shall be incorporated in and made part of the writ.

(2) Except as provided in paragraph (3) of this subdivision, an order of approval may be issued only upon motion after 7 days' notice to the defendant, or on such shorter notice as the judge may prescribe for good cause shown, and upon hearing and findings by the court that there is a reasonable likelihood that the plaintiff will prevail in the replevin action, that the bond required by law has been given by plaintiff, and that the amount of the bond is based upon a reasonable valuation for the property of which replevin is sought, ~~and that the amount of the valuation is within the jurisdiction of the superior court.~~ The motion shall be filed with the complaint and shall be supported by an affidavit or affidavits meeting the requirements set forth in Rule 4.1(i). The motion and affidavit or affidavits, together with the notice of hearing thereon, shall be served upon the defendant in the manner provided in Rule 4 at the same time that the summons and complaint are served upon the defendant.

(3) An order of approval may be issued ex parte upon motion and findings by the court:

(A) that there is a reasonable likelihood that the plaintiff will prevail in the replevin action, that the bond required by law has been given by plaintiff, and that the amount of the bond is based upon a reasonable valuation for the property of which replevin is sought, ~~and that the amount of the valuation is within the jurisdiction of the superior court;~~ and

(B) that either:

(i) the person of the defendant is not subject to the jurisdiction of the court in the action; or

- (ii) there is a clear danger shown by specific facts that the defendant if notified in advance of the replevin of the property will remove it from the state or conceal it; or
- (iii) there is immediate danger that the defendant will damage, destroy, or sell to a bona fide purchaser, the property to be replevied. The motion shall be filed with the complaint and shall be supported by an affidavit or affidavits meeting the requirements set forth in Rule 4.1(i). The motion and affidavit or affidavits shall be served upon the defendant with the writ of replevin as provided in subdivision (d) of this rule.

(4) For good cause shown and recited in the order, the court may accept a personal bond, without surety.

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(i) Return of Property Replevied on Ex Parte Order. On two days' notice to the plaintiff or on such shorter notice as the court may prescribe, a defendant from whom property has been replevied pursuant to an ex parte order issued in accordance with paragraph (3) of subdivision (b) of this rule may appear and move the judge who ordered issuance of the writ or the Presiding Judge of the court in which the action is pending for an order for the return to the defendant of the property replevied. Such appearance shall not submit the person of the defendant to the jurisdiction of the court. The judge shall proceed to hear and determine such motion as expeditiously as the ends of justice require. At the hearing, the plaintiff shall have the burden of justifying the continuance of the replevin. Unless the judge finds that there is a reasonable likelihood that the plaintiff will prevail in the replevin action, that the bond required by law has been given by plaintiff, and that the amount of the bond is based upon a reasonable valuation of the property replevied, ~~and that the amount of the valuation is within the jurisdiction of the superior court,~~ the judge shall order return of the property to the defendant. Nothing herein shall be construed to abolish or limit any means, otherwise available by law, for obtaining return of the replevied property or damages or a lien, or for obtaining an adjudication of the rights of the parties in the replevied property.

Reporter's Notes—2024 Amendment

Rule 64(b)(1) is amended to delete an obsolete reference to a District Judge. Rule 64(b)(2), Rule 64(b)(3) and Rule 64(i) are amended to delete an obsolete requirement of a finding "that the amount of the valuation is within the jurisdiction of the superior court." The superior court has no monetary jurisdictional limit.

2. That these amendments be prescribed and promulgated, effective on January 1, 2024. The Reporter's Notes are advisory.

3. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this 10th day of October, 2023.



Signed by the Vermont Supreme Court

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice

Nancy J. Waples, Associate Justice