

§ 1-440.39. Discharge of attachment upon giving bond.

(a) Any defendant whose property has been attached may move, either before the clerk or the judge, to discharge the attachment upon his giving bond for the property attached. If no prior general appearance has been made by such defendant, such motion shall constitute a general appearance.

(b) The court hearing such motion shall make an order discharging such attachment upon such defendant's filing a bond as follows:

(1) If it is made to appear to the satisfaction of the court by affidavit that the property attached is of a greater value than the amount claimed by the plaintiff, the court shall require a bond in double the amount of the judgment prayed for by the plaintiff, and the condition of such bond shall be that if judgment is rendered against the defendant, the defendant will pay to the plaintiff the amount of the judgment and all costs that the defendant may be ordered to pay, the surety's liability, however, to be limited to the amount of the bond.

(2) If it is made to appear to the satisfaction of the court by affidavit that the property attached is of less value than the amount claimed by the plaintiff, the court shall, upon affidavits filed, determine the value thereof and shall require a bond in double the amount of such value, and the condition of the bond shall be that if judgment is rendered against the defendant, the defendant will pay to the plaintiff an amount equal to the value of such property.

(c) If a bond is filed as provided in subsection (b) of this section, all property of such defendant then remaining in the possession of the sheriff pursuant to such attachment, including, but not by way of limitation, money collected and the proceeds of sales, shall be delivered to the defendant and shall thereafter be free from the attachment.

(d) The discharge of an attachment as provided by this section does not bar the defendant from exercising any right provided by G.S. 1-440.36, 1-440.37 or 1-440.40. (1947, c. 693, s. 1.)