

CHAPTER 32-06 INJUNCTION

32-06-01. Injunction by order.

An injunction by order may be made by the court in which an action is brought, or by a judge thereof, in the cases provided in section 32-06-02, and, when made by a judge, may be enforced as the order of the court.

32-06-02. Injunction - In what cases granted.

An injunction may be granted in any of the following cases:

1. When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce injury to the plaintiff.
2. When, during the litigation, it shall appear that the defendant is doing or threatening, or is about to do, or is procuring or suffering, some act to be done in violation of the plaintiff's rights respecting the subject of the action and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act.
3. When, during the pendency of an action, it shall appear by affidavit that the defendant threatens, or is about to remove or dispose of the defendant's property, with intent to defraud the defendant's creditors, a temporary injunction may be granted to restrain such removal or disposition.

32-06-03. Injunction - When granted - Limitation.

The injunction may be granted at the time of commencing the action, or at any time afterwards before judgment, upon its appearing satisfactorily to the court or judge, by the affidavit of the plaintiff, or of any other person, that sufficient grounds exist therefor. A copy of the affidavit must be served with the injunction. In no case shall a longer period than six months elapse before the hearing of the merits of the case shall be had for the purpose of deciding the question as to the justice or necessity of making the temporary restraining order permanent.

32-06-04. When injunction allowed after answer.

An injunction shall not be allowed after the defendant shall have answered unless upon notice or upon an order to show cause, but in such case the defendant may be restrained until the decision of the court or judge granting or refusing the injunction.

32-06-05. Security upon an injunction - Damages.

When no provision is made by statute as to security upon an injunction, the court or judge shall require a written undertaking on the part of the plaintiff, with or without sureties, to the effect that the plaintiff will pay to the party enjoined such damages, not exceeding an amount to be specified, as the party may sustain by reason of the injunction, if the court shall finally decide that the plaintiff was not entitled thereto. The damages may be ascertained by a reference or otherwise as the court shall direct.

32-06-06. Order to show cause.

If the court or judge deems it proper that the defendant, or any of the several defendants, should be heard before granting the injunction, an order may be made requiring cause to be shown at a specified time and place why the injunction should not be granted, and the defendant in the meantime may be restrained.

32-06-07. Restraining orders - When issued.

A restraining order, or an order to show cause in the nature of a restraining order, will not be issued ex parte or without a hearing, unless it shall be shown in the moving papers that there exists such an exigency or occasion as requires the immediate issuance of an order so that the rights of the parties may be preserved.

32-06-08. Injunction against corporation or limited liability company - When granted.

An injunction to suspend the general and ordinary business of a corporation or limited liability company must not be granted without due notice of the application therefor to the proper officer of the corporation or to the proper manager of the limited liability company, except when the state is a party to the proceeding.

32-06-09. Application to vacate - When injunction granted without notice.

If an injunction is granted by a judge of a court without due notice, the defendant at any time before the trial may apply, upon notice, to a judge of the court in which the action is brought, to vacate or modify the same. The application may be made upon the complaint and the affidavits on which the injunction was granted or upon affidavits on the part of the defendant, with or without the answer.

32-06-10. Counteraffidavits to vacate injunction.

If the application to vacate an injunction is made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavit or other proofs in addition to those on which the injunction was granted.

32-06-11. Restraining orders - Orders to show cause - Motions.

Upon the hearing on an application for a restraining order, or on an order to show cause, or on a motion, oral testimony will not be received unless the court shall direct otherwise. The moving party shall have the opening and closing of the argument. Upon default of any party to appear, the court nevertheless shall proceed to hear or to dismiss, as the case may be.