

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
CIVIL DIVISION

AMERICAN FAMILY INSURANCE, CO.,	□	CASE NO. 13CVH04-4005
]]	
PLAINTIFF,	□	JUDGE LYNCH
]]	
vs.	□	MAGISTRATE McCARTHY
]]	
THREE-C BODY SHOP,	□	
]]	
DEFENDANT.	□	

MAGISTRATE’S AMENDED DECISION FOLLOWING BENCH TRIAL

This matter came on for a bench trial before this magistrate on September 29, 2014. Thereafter, and on January 21, 2015, the magistrate issued his decision. Shortly thereafter, defendant filed a motion to reconsider. That motion is granted. The magistrate has reconsidered his decision and has concluded his initial undertaking was ill advised and based upon flawed cogitation. This magistrate’s amended decision is intended to supplant the initial decision which is hereby vacated.

In this case, the parties’ controversy surrounds the circumstance wherein plaintiff’s insured, Sloan, was involved in a vehicular collision at which time Sloan’s vehicle was notably damaged. Shortly thereafter, Sloan had the vehicle taken to defendant’s repair facility. It is not known what communication existed at that time between Sloan and defendant. In any event, it is understood the vehicle was taken to defendant to be repaired.

Importantly, it is also the case that the matter proceeded along customary lines with plaintiff agreeing to pay the insured’s claim of loss, with plaintiff winding up with the legal title to the vehicle and with the financial adjustments worked out

by the parties. Here, plaintiff received legal title to the vehicle on September 19, 2011 and received actual physical possession of the car on October 5, 2011. About the foregoing, there is no dispute.

Thereafter, and on April 10, 2013 plaintiff filed the within lawsuit for replevin. Undisputedly, at the time the suit was filed, plaintiff had been given both the title to the vehicle and actual possession of the vehicle. Clearly, the filing of the action for replevin was improper in view of the fact that possession of the car had already been given to plaintiff.

Replevin is a statutory cause of action. *America Rents v. Crawley* 1991), 77 Ohio App.3d 801, 603 N.E.2d 1079. Replevin has been defined as:

* * * [A] remedy and a civil action by which the owner or one who has a general or special interest in specific and identifiable personal property and the right to its immediate possession seeks to recover the possession of such property in specie, the recovery of damages, if it is sought, being only incidental.

Holstein v. Holstein (May 4, 1982), 7th Dist. No. 559, 1982 Ohio App. LEXIS 13369, quoting 18 Ohio Jurisprudence 3d 536-37, Conversion and Replevin, Section 66.

"[C]onversion is the wrongful exercise of dominion over property to the exclusion of the rights of the owner, or withholding it from his possession under a claim inconsistent with his rights." *Joyce v. General Motors Corp.* (1990), 49 Ohio St.3d 93, 96, 551 N.E.2d 172. See also *Boston v. Sealmaster Industries*, 6th Dist. No. E-03-040, 2004 Ohio 4278.

Additionally, and on the matter of a possible violation of the Ohio Consumer Protection Act, it is found there was none.

Plaintiff's existing motion for findings of fact and conclusions of law is denied.

Counsel for defendant shall prepare the appropriate judgment entry for the court's consideration of approval of this decision within twenty days of the filing of this amended decision. This decision contains the magistrate's current findings of fact and conclusions of law. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law, unless the party timely and specifically objects in writing to that factual finding or legal conclusion within fourteen days of the filing of this decision.

Copies electronically to:

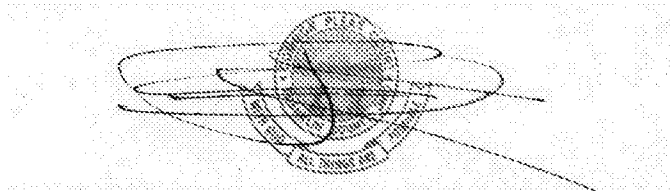
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Counsel for Defendant

Franklin County Court of Common Pleas

Date: 04-29-2015
Case Title: AMERICAN FAMILY INSURANCE CO -VS- THREE-C BODY SHOP
Case Number: 13CV004005
Type: AMENDED MAGISTRATE DECISION

So Ordered

A handwritten signature in black ink, appearing to read 'Timothy P. McCarthy', is written over a faint, circular official seal or stamp. The signature is somewhat stylized and overlaps the seal.

/s/ Magistrate Timothy P McCarthy

Court Disposition

Case Number: 13CV004005

Case Style: AMERICAN FAMILY INSURANCE CO -VS- THREE-C
BODY SHOP

Motion Tie Off Information:

1. Motion CMS Document Id: 13CV0040052015-02-1699980000
Document Title: 02-16-2015-MOTION TO RECONSIDER
Disposition: MOTION GRANTED