IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

ROLAND C. ANDERSON,	)	
	)	
Plaintiff, Below	)	
Appellant,	)	
	)	
v.	)	Civil Action No. 2004-07-430
	)	
R.A. MIDWAY TOWING,	)	
	)	
Defendant, Below	)	
Appellee.	)	

Submitted: February 6, 2007
Decided: March 12, 2007

Roland C. Anderson
113 Lloyd Street
Wilmington, DE 19804
Pro Se

James B. Kipp, Esquire
2500 Wrangle Hill Road, Suite 210
Bear, DE 19701
Attorney for Defendant

ORDER

Plaintiff brings this matter back before the Court pursuant to *Civil Rule 59* moving for a new trial. A trial on the merits was held in these proceedings on January 19, 2007. The motion pursuant to *Civil Rule 59* was filed on January 24, 2007; therefore, the motion is timely. The provisions of *Civil Rule 59* provide that a new trial may be granted to any of the parties and on all or part of the issues in an action which there has been a trial, for any of the reasons for which new trials have heretofore been granted in this Court. The Rule also requires that the motion shall be accompanied by a brief and an

affidavit, if any. The motion is required to briefly state and distinctly set forth the grounds for such motion.

Plaintiff institutes the first action for loss of the value of a 1985 Audi 5000 alleging that defendant after towing the vehicle pursuant to an AAA service call delivered the vehicle to a repair center other than that which he had directed. He claimed a loss in the amount of $23,574.00. Defendant in its responsive pleading admitted responding to an AAA request to tow plaintiff's vehicle on May 5, 2002. However, Defendant alleged that at the express direction and instruction of plaintiff, the vehicle was towed to an establishment known as Station Auto Body, 715 Stanton-Christiana Road, Stanton, Delaware.

The trial was held on January 19, 2007 where plaintiff introduced as Exhibit 1 a call detail report generated by AAA. Entries on that document for May 1, 2003 indicate that a call was made by a person of the name Elise Stewart of 113 Lloyd Street, Wilmington, Delaware 19804, requesting that a blue 1985 Audi 5000 with no tag number, be towed to Station Auto Body on Stanton Road. The AAA representative James Jones testified he spoke with plaintiff regarding this matter. He identified the records and the notes for the alleged missing vehicle. The first entry in the narrative is reflected on February 3, 2003, which indicates that plaintiff called AAA regarding his missing car on May 7, 2003. At that time, AAA inquired why he had waited approximately 6 months to inquire about the vehicle, and he indicated that he was attempting to use other methods.

James Jeandell testified that he is the owner and tow truck driver for R. A. Midway Towing. He indicated he had an independent recollection of towing this vehicle.

He testified that at the time the vehicle was picked up, it was towed directly to the address given by the plaintiff, which was Station Auto Body Shop, 715 Stanton-Christiana Road in Stanton, Delaware. He delivered the vehicle to that location and placed it on a shared lot. He also testified, it was his understanding that the owner of Roca's Automotive Service was expecting the vehicle and the vehicle was accepted.

Jessie Amaido testified that he is the owner of Roca's Automotive Service and he did not have any discussion about the 1985 Audi Model 5000. He further testified he never had custody of the vehicle.

Plaintiff did not testify and did not put any evidence into the record to establish the value of the vehicle he alleged was converted or was loss as a result of the alleged negligent towing of Station Auto Body. The only other document plaintiff introduced into the record is Exhibit 2, which is a written statement by Station Auto Body that they had no report or invoice for a 1985 Audi tow.

At the conclusion of the testimony and introduction of all exhibits, the Court concluded plaintiff had failed to prove R. A. Midway Towing negligently towed his vehicle to a place other than that which he had specified. The Court further concluded that he had also failed to establish the vehicle's value. Therefore, the Court ruled plaintiff had failed to prove an essential element of the case which was damages. Having so concluded, the Court entered judgment for the defendant.

A motion for reargument is the proper device when seeking reconsideration by the trial court of its finding of facts, conclusions of law, or judgment, after a non-jury trial. *Husband H., v. Wife H.,* Del. Super. 314 A.2d 420 (1973) citing *Hessler, Inc. v. Farrell*, Del. Super. 260 A.2d 701 (1969). However, under Delaware law, reargument or a

motion for a new trial will usually be denied unless it is shown that the Court in reaching its conclusion misapprehended the law or the facts such as would affect the outcome of the decision. A motion for reargument should not be used to merely rehash the arguments or the evidence already decided by the Court. *Wilmington Trust Company v. Nicks* 2002 WL 356371 (Del. Super.)

Plaintiff argues that the Court committed error when it entered judgment for the defendants because the witness Thomas Jeandell, who testified for the defendant, lied under oath when he stated that he towed plaintiff's car to Station Auto Body. He also lied in his letter dated February 20, 2003 when he indicated that he towed plaintiff's vehicle to Station Auto Body. He relies upon the testimony of a witness for Roca's Automotive Service, Jessie Amaido, who plaintiff claims testified that the vehicle was never towed and there is no report or invoice for the 1985 Audi in question. Secondly, plaintiff argues that the Court committed error by entering judgment for defendant because the AAA report also states the car was not to be towed to Station Auto Body. Thirdly, he argues that he did not give permission for R.A. Towing to give the car to Station Auto Body. Because of these lacks of credibility, plaintiff argues that the Court did not have a basis to enter judgment for the defendant. Finally, defendant argues the Court committed error when it concluded that even if the Court found plaintiff's version of the facts credible, plaintiff had failed to prove a necessary element to recover, which was damages. Plaintiff argues that this is an appeal from the Justice of the Peace Court where the action was in replevin and he is not required to prove damages in a replevin action.

The plaintiff in his initial proceeding filed in the Court of Common Pleas, i.e. the complaint, alleges that on May 5, 2002, Midway Towing towed his vehicle to a location which he had not designated. He alleged a book value in the amount of $23,574.00. He further alleged that he had filed a replevin action in the Justice of the Peace Court and when he moved for a default judgment on the basis that defendant had failed to file the appropriate Form 50 to represent the artificial entity, it was denied by the Justice of the Peace Court. Within the statutory period, he brought the case on appeal to the Court of Common Pleas. In his complaint, he demanded the ADA book value of vehicle in the amount of $23,574.00. Therefore, the complaint while raising the issue of replevin, sought monetary damages for the value of the car.

A motion for a new trial or reargument does not permit the moving party or movant to reargue issues previously decided by the Court. In the Court's conclusion, it stated that the plaintiff failed to establish damages. Therefore, in a complaint where damages for loss or negligent towing of its property was alleged, I found that he had failed to put prove damage by a preponderance of the evidence. There is no basis to reconsider that issue in these proceedings.

An action for replevin lies for the possession of goods and chattels unlawfully detained from the owner, or the person entitled to the possession thereof. The primary object of the action is for recovery of the property itself with damages for the taking and the detention thereof. Secondarily, and usually, the object is a recovery of a sum of money equivalent to the value of the property. *Frick v. Miller*, 107 A. 391, (Del. Super. 1918). The question which is then posed is whether plaintiff in this action at the time it was brought owned or had such an interest in the property subject to replevin which

would entitle him to immediate possession. There is no dispute as to this inquiry, but to recover on a claim in replevin, plaintiff was required: 1) to prove by a preponderance of the evidence that defendant was in possession of his property, 2) that he had was entitled to or the owner of the property for which defendant was in possession; and 3) that the property was of some value or if defendant was not in possession of the property, it had been wrongfully converted and he was entitled to the value thereof.

The testimony in the record indicates plaintiff requested that the alleged vehicle be towed on February 5, 2003 from a location at 113 Lloyd Street to a location which was to be on Stanton Road. During trial, plaintiff did not put any evidence in the record which established the registration of the vehicle, the value of the vehicle or that the vehicle was in the immediate possession of R.A. Midway Towing. The testimony in the record indicates that the vehicle was towed on the day in question to Station Auto Body parking lot on 715 Stanton-Christiana Road, Stanton, Delaware. The witnesses for the defendant and the adjoining business testified that they did not have possession of the vehicle at the time the defendant filed the complaint or at the time of trial. Plaintiff did not put any evidence into the record to establish the value of the property which he claimed is subject to the replevin. Having failed to establish that defendant was in possession of the vehicle or the value of such vehicle, plaintiff did not meet his burden of proving his case.

Accordingly, I find no basis to alter or modify the decision entered by the Court on January 19, 2007. The motion for reargument/new trial is hereby Denied.

IS SO ORDERED this 12th day of March 2007

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Alex J. Smalls
Chief Judge

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