IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

STEPHENSON C. JARVIS and SEASIDE BUILDERS, INC., Petitioners, v. RICK T. ELLIOTT and ADVANCED MOTORSPORTS, INC., Respondents.	)))))))))))	Civil Action No. 4753-CC

MEMORANDUM OPINION

Date Submitted: January 22, 2010
Date Decided: March 5, 2010

K. William Scott, of SCOTT AND SHUMAN, LLC, West Fenwick, Delaware, Attorney for Petitioners.

David J. Weidman, of HUDSON, JONES, JAYWORK & FISHER, LLC, Georgetown, Delaware, Attorney for Respondents.

CHANDLER, Chancellor

Success on the track does not guarantee success off the track. With regret that a winning team fell apart, I must now sort through the wreckage of a failed relationship between racecar owner and racecar driver to determine: 1) whether the driver has illegally detained the owner's property, and, if so, what the value of that property is; and 2) whether the owner owes the driver for unpaid race winnings, open invoices, and conversion and destruction of a racing engine.

For the reasons I describe below, I determine that the driver has illegally detained the owner's property and owes the owner $20,267.23. I also determine, however, that the owner owes the driver $1966.40 in unpaid race winnings, $4561.50 in unpaid invoices, and $15,000 for conversion and destruction of a racing engine. The net consequence of my determination is that the owner owes the driver $1260.67.

I. BACKGROUND[1]

Petitioner Stephenson C. Jarvis, a resident of Frankford, Delaware, is the owner and operator of Petitioner Seaside Builders, Inc.[2] and Charles Jarvis Racing. Jarvis has been involved in auto racing since the mid-1970s. In 2004, he formed the Charles Jarvis Racing team. Through his racing team, Jarvis is the owner of two custom-built racing cars bearing the number "45" ("45 cars"), which are raced

[1] For purposes of narration, the background as described here implicitly includes the outcome of my fact finding from the evidence presented at trial on December 21, 2009. In the section following this narration, I will more explicitly discuss the reasoning behind my fact finding.
[2] Seaside Builders, Inc. is a Delaware corporation.

on a professional racing circuit throughout the fine states of Delaware, Maryland, and New York; the fine commonwealths of Virginia and Pennsylvania; and in our fine neighbor to the north, Canada.

Respondent Rick "The Rocket" Elliott, a resident of Seaford, Delaware, is the majority shareholder of Respondent Advanced Motorsports, Inc.[3] Elliott, through Advanced Motorsports, operates an auto repair and speed shop in Seaford, Delaware.

For some period of time, Elliott was the driver of the Jarvis 45 car. Jarvis alleges that the driver-owner relationship began in the Spring of 2006 and ended on June 9, 2009,[4] though according to Elliott the relationship formally began on January 31, 2007 and ended on May 28, 2009.[5] Although the parties' descriptions of the length of the owner-driver relationship differ by nearly one year, the parties have not indicated—nor do I believe—that this divergence bears on any factual or legal issue before the Court. What is sufficiently clear is that The Rocket drove the Jarvis 45 car over the course of multiple racing seasons, and into Victory Lane (or an equally celebratory parking spot) on more than one occasion. What is also clear is that at the time of entering this driver-owner relationship, Jarvis and Elliott

[3] Advanced Motorsports, Inc. is a Delaware corporation and was formed on May 29, 1997. Resp't's Answer ¶ 6.
[4] Pet'r's Compl. ¶ 10.
[5] Resp't's Answer ¶ 10.

reached an agreement on how to divide Elliott's race winnings: Jarvis was to retain 60% of all race winnings, and Elliott was to retain 40% of all race winnings.[6]

The driver-owner relationship between Elliott and Jarvis was not one in which the driver simply drove the car and the owner simply provided all the parts, equipment, and financing. Rather, Elliott and Jarvis engaged in business dealings beyond their driver-owner relationship. For example, during the time that Elliott was the driver of the 45 car, Jarvis and Seaside Builders purchased numerous parts and equipment from Advanced Motorsports.[7] Additionally, Elliott did not rely only on the parts and equipment that Jarvis provided him. Of significant relevance to the matter now before the Court, Elliott acquired a 460 SB 2 Clements racing engine ("First Engine") from Jack Starrette. Starrette, a long-time resident of Belvedere, South Carolina, is a friend of Elliott's and the owner of Starrette Trucking Company, Inc., whose business activities include construction and hauling operations in Georgia and South Carolina.[8] Elliott acquired the First Engine from Starrette in May 2007 and raced the engine in the 45 car until the end of the 2007 racing season.[9] Contrary to Jarvis's assertions that he, not Elliott, had

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[6] Pet'r's Compl. ¶ 10. *See also* Resp't's Countercl. ¶ 1; Pet'r's Answer ¶ 1 (confirming more clearly that the 60/40 split was to apply to race winnings from all races, rather than only to winnings from the races in which The Rocket crossed the finish line first).
[7] Pet'r's Answer ¶ 2.
[8] Tr. 157:12-14.
[9] Resp't's Answer ¶ 12. *See also* Tr. 149:23-24 ("I [Starrette] gave [Elliott] a motor about three years ago."); Tr. 150:20-22 ("I just loaned it to [Elliott] to start with and then a few months later

acquired the First Engine from Starrette,[10] Jarvis had no role in acquiring the engine.[11]

In December 2007 and without any objection from Starrette, Elliott sold the First Engine. The sale price of the First Engine was $15,000.[12] On February 27, 2008, Elliott purchased a new 430 SB 2 racing engine ("Second Engine") from Buckler Motorsports,[13] to use in the 45 car. The purchase price of the Second Engine was $20,000. Elliott paid for the Second Engine with the $15,000 proceeds from the sale of the First Engine, and with an additional $5,000 provided by Jarvis.[14]

In March 2009 and with the help of Elliott, Jarvis removed the Second Engine from the 45 car so that he could adapt the Second Engine for use in a mud truck.[15] Three weeks later, Elliott provided Jarvis estimates of the cost of adapting

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I told him he could just have it, I gave it to him."); Tr. 151:9-10 ("I talked to [Jarvis], but I did not give [Jarvis] the motor.").

[10] Pet'r's Compl. ¶ 12 ("[A] motor … was provided to the Charles Jarvis Racing Team by Starrette Trucking Company, Inc. in May of 2007 in return for advertising on the 45 cars of the Charles Jarvis Racing Team.").

[11] Tr. 151:13-14 ("I [Starrette] didn't give [Jarvis] no motor because I didn't even ask who owned the car at that time."); Tr. 152:4-6 ("Advertising [in Delaware] is no good for me. I don't haul in there. I haul South Carolina and Georgia."); Tr. 154:10-14 ("To tell you the truth, I didn't even know Mr. Jarvis owned the car. I saw my name on it, but like I told the other lawyer, I don't haul in Delaware. Advertising means nothing to me. I gave the motor to Ricky.").

[12] Resp't's Countercl. ¶ 3. *See also* Tr. 153:7-9 ("No, I [Starette] never told [Jarvis] to sell no motor, no. I gave it to Ricky. If [Ricky] wants to sell it, that's [Ricky's] business.").

[13] Resp't's Countercl. ¶ 3.

[14] *Id.*

[15] Tr. 9:11-18. It is not clear that Elliott ever used the Second Engine in a race with the 45 car. *See* Tr. 19:4-6. Elliott did, however, rely on the Second Engine as a backup engine for Elliott's own racecar, which was independent of the Jarvis 45 car. *See* Tr. 25:12-20.

the Second Engine.[16] At that time, relations were warm. Elliott did not take any issue with Jarvis's plans to use the Second Engine in a mud truck, because in no way would Elliott be competing directly against the Second Engine.[17] Relations soon cooled, however. At approximately the same time Elliott provided Jarvis with the cost estimates of reworking the Second Engine, Jarvis transferred the Second Engine to the 12 car, a car that non-party Kevin Scott, Jr. drove for Jarvis. Although Elliott was displeased with Jarvis's decision to transfer the Second Engine to the 12 car rather than use the Second Engine in a mud truck, Elliott did not demand return of the Second Engine. The reasons for this were twofold. First, the configuration of the Second Engine was different from the Jarvis engines available to Elliott,[18] and Elliott preferred to use an engine with a more conventional configuration rather than use the Second Engine.[19] Second, at that time in 2009, Scott, Jr. was new to racing and, in Elliott's eyes, not a threat to Elliott's racing success.[20] Elliott expressed displeasure to Jarvis because the Second Engine had not reached its original destination—the underside of a mud

[16] Tr. 9:19-22.
[17] Tr. 16:21-22.
[18] Tr. 17:4-11.
[19] In fact, Elliott had suggested that Jarvis give Scott, Jr. the Second Engine rather than one of Jarvis's other, more conventional (and somewhat more powerful) engines. Tr. 17:15-21. The Second Engine had sufficient horsepower, but it was "down a little bit of power…." Tr. 19:21-22.
[20] Tr. 17:22-18:8.

truck's hood—but Elliott wanted to maintain harmony between all parties and did not, therefore, demand return of the Second Engine.[21]

A caution-flag moment arrived in mid- to late May, when Jarvis switched the Second Engine to the 48 car, a Jarvis car driven by non-party Ray Davis, Jr. In response to this switch, Elliott demanded a meeting with Jarvis. The two men met at Advanced Motorsports on or about May 28, 2009, along with non-party Wayne Todd, a mutual friend of more than twenty years.[22] At this May 28 meeting, Elliott demanded that Jarvis return the Second Engine to Elliott. Again, Elliott's reasoning was twofold: 1) Jarvis had never asked Elliott if Davis, Jr. could race with the Second Engine, and 2) Elliott and Davis, Jr. were direct competitors, meaning Elliott would be competing against the Second Engine.[23] Jarvis denied Elliott's request that Jarvis return the engine. Moreover, Jarvis asserted the Second Engine was his, not Elliott's.[24] I will now leap forward a few months, rather than let the suspense build: in midsummer 2009, the Second Engine met its doom under the hood of the 48 car, when it was damaged beyond repair due to the connecting rod breaking and, consequently, a hole being punched in the engine's base.[25]

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[21] Tr. 17:2-14. One specific reason Elliott wanted to maintain harmony was that Scott, Jr. was a customer of Advanced Motorsports.

[22] Todd has known Elliott for approximately twenty years and Jarvis for approximately twenty-six years. Tr. 161:11-15.

[23] Tr. 18:17-19:3.

[24] Tr. 24:16-20. *See also* Tr. 164:4-6.

[25] Resp't's Countercl. ¶ 5; Tr. 24:21-25:11.

The sudden disagreement in May 2009 over the ownership of the Second Engine thwarted the intent of both men to resolve their differences and continue racing together and, consequently, at the May 28 meeting Elliott and Jarvis discussed settling other outstanding issues. These issues included: 1) a forty-percent share of certain previous race winnings that Jarvis owed Elliott, and 2) payments for parts that Jarvis had purchased from Advanced Motorsports.[26] Given that they were not able to reach resolution of those issues on May 28, on June 2, 2009, Jarvis and Elliott met again, though at the house of Todd rather than at Advanced Motorsports. At the June 2 meeting, Elliott and Jarvis again were unable to overcome their disagreements. The June 2 meeting concluded with Jarvis pledging to reimburse Elliott for three groups of items: Elliott's forty-percent share of race winnings that remained unpaid, parts Jarvis purchased from Advanced Motorsports but for which Jarvis had not yet paid, and the Second Engine.[27]

Soon after the June 2 meeting, Elliott called Jarvis to notify him that Elliott wished to end their driver-owner relationship and to receive the payment that Jarvis had promised.[28] This call came sometime after the Jarvis racing team had prepped the 45 cars for a race during the first week of June, in Williams Grove,

[26] Tr. 164:10-18.
[27] Tr. 170:24-171:12; Tr. 177:14-178:6.
[28] Tr. 142:3-9.

Pennsylvania, but before the Williams Grove race itself.[29] Jarvis traveled to Advanced Motorsports to pick up his hauler, only to find that items had been removed from the hauler.[30] Jarvis called Wayne Benson, who was the crew chief for the 45 car during the time that Elliott and Jarvis raced together,[31] to ask for assistance at Jarvis's shop in identifying what parts and equipment were missing. Benson had met Jarvis only after assuming the position of crew chief for the 45 team but had known Elliott for more than ten years, including as a member of other racing teams for which Elliott drove.[32] Together with non-party Russ Lecates,[33] Jarvis and Benson inspected the contents of the hauler and determined that several items were missing and that the hauler was no longer "race ready,"[34] as it had been the most recent time the men had seen the hauler and its contents. There is not a clear videotape of the inspection, however. Although Jarvis did begin to videotape the inspection, he ended his recording before examining close-up the hauler's interior and contents. Jarvis believed that the outdated video camera, which seems

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[29] Tr. 31:20-32:11.
[30] Tr. 142:20-24.
[31] Tr. 28:16-29:13.
[32] Tr. 30:6-13.
[33] Lecates was an employee at Advanced Motorsports in 2008 and a member of the 45 car's pit crew during the 2008 racing season. Tr. 48:12-46:15. At times, Lecates had observed Elliott removing parts and equipment from Jarvis's hauler and storage shed at Advanced Motorsports and selling those parts and equipment to customers. Tr. 50:15-51:3.
[34] Tr. 29:14-20. "Race ready" is a term that indicates a hauler or car is prepared for a race. A race-ready hauler would contain the parts and equipment a team might need during a race.

to have lacked a built-in lamp, would not record well in the hauler's interior.[35] For whatever reason, Jarvis also believed that the hauler's interior lights—which provide sufficient lighting during night-time races—would not have provided enough lighting for him to record the inspection of the hauler.[36] Most interestingly, Jarvis opted not to use a flashlight as a supplement to the video camera, even though Jarvis had a flashlight on hand.[37]

After discovering the extent to which his hauler was no longer race ready, Jarvis demanded a return of his cars, parts, and equipment from Elliott. On July 7, 2009, Jarvis filed a suit against Elliott in the Superior Court in Georgetown, Delaware, seeking return of the cars, parts, and equipment, as well as damages for the lost race winnings that Jarvis's racing team could not earn while the 45 cars were in Elliott's possession. At a July 17 replevin hearing before the Honorable T. Henley Graves, Elliott asserted that he and Jarvis had entered into a partnership and, on that basis, indicated his intent to seek dismissal for lack of jurisdiction. Jarvis responded by filing a suit in the Court of Chancery on July 23, seeking a determination that no partnership existed between the parties and an order that Elliott return to Jarvis the 45 cars and all parts and equipment, as well as an award for all damages and attorney's fees. In an August 7, 2009 bench ruling, I ordered

[35] Tr. 117:17-118:15.
[36] Tr. 131:11-132:4.
[37] Tr. 132:5-21.

Elliott to return the 45 cars to Jarvis, though I simultaneously directed Jarvis not to race the 45 cars until I had determined whether a partnership existed. After receiving the 45 cars back from Elliott, Jarvis contacted Benson to ask for his assistance in determining whether parts were missing from the cars.[38] Evidently at some time in early August, Jarvis and Benson determined that, like the hauler, the 45 cars were no longer race ready, though they had been the last time Benson and Jarvis had seen the cars. In other words, several parts were missing from the cars.[39]

On September 3, 2009, Elliott withdrew his claim that a partnership had existed between himself and Jarvis, and a hearing on the remaining matters was continued. The next day, September 4, Elliott returned to Jarvis a small number of items of parts and equipment. Then, on September 14, Elliott filed counterclaims, seeking damages for Jarvis's wrongful conversion of the Second Engine, as well as damages for unpaid race winnings, unpaid invoices, and wrongfully detained property. Elliott's racing season ended in early November. In or around December 4, 2009, Elliott returned to Jarvis a second and larger batch of parts that belonged to Jarvis. A one-day trial was held in Georgetown on Monday, December 21, 2009, with the key issues being: 1) whether the parts, equipment, tools, racing fuel, and tires claimed by and belonging to petitioner for use in the 45

[38] Tr. 33:16-34:5.
[39] Tr. 34:6-13.

cars were returned by respondent, or, if they were not so returned, the value of those items; and 2) whether petitioner owes respondent for unpaid race winnings, unpaid invoices, and conversion and destruction of the Second Engine. This is my post-trial decision.

II. ANALYSIS

My analysis will be swifter than Richard Petty's race-clinching pit stop at the 1981 Daytona 500. The chassis of this case is a replevin action. Replevin traditionally is a form of action for recovery of personal property that has been taken or withheld from the owner unlawfully,[40] though it also has become a useful method to determine the title to goods and chattels.[41] The verdict in a replevin action should be for the party in whose favor is the preponderance of the evidence.[42] Although there have been replevin actions in which the Court of Chancery was found not to have subject matter jurisdiction,[43] the Court may take jurisdiction over an entire controversy for which the Court has jurisdiction over part of the controversy.[44] It was on the basis of a partnership claim that the present controversy was transferred from the Superior Court to the Court of Chancery, and even though the partnership claim has since been withdrawn, the Court of

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[40] *Kohury Factory Outlets, Inc. v. Snyder*, 1996 WL 74725, at *9 (Del. Ch. Jan. 8, 1996) (citing *Harlan & Hollingsworth Corp. v. McBride*, 69 A.2d 9 (1949)).
[41] *In re Markel*, 254 A.2d 236, 239 (Del. 1969).
[42] *Stafford v. Williams*, 76 A. 626 (Del. Super. 1910).
[43] *See, e.g.*, *In re Markel*, 254 A.2d at 239-40.
[44] *Rash v. Rash*, 1984 WL 136927, at *1 (Del. Ch. Oct. 18, 1984) (citing *Park Oil, Inc. v. Getty Refining and Marketing Co.*, 407 A.2d 533 (Del. 1979)).

Chancery may and does take jurisdiction over the remaining components of the matter in the interest of the efficient administration of justice.

In addition to the replevin claim, there is a conversion claim relating to the Second Engine. In order to win recovery under this claim, Elliott must prove that at the time of the alleged conversion he had a property interest in the Second Engine, he had a right to possession of the Second Engine, and that there was a conversion.[45] A conversion is the wrongful possession or disposition of another's property as if the property were one's own.[46]

In applying the facts of this case to the law of Delaware, I attach little-to-no weight to the trial testimony from Jarvis and Elliott, and I find Benson, Todd, and Starrette to have provided the most credible testimony relating to any points on which there is a factual dispute. None of the three men has a dog in the fight or, more aptly perhaps, a car in the race. All three men know both Elliott and Jarvis, and I saw no evidence of any bias in their testimonies, undue or otherwise. Pitted with the fierce contention between Jarvis and Elliott in the recounting of who owes whom what, the credibility in the testimony of these three non-party witnesses is the most persuasive basis for reaching a conclusion.

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[45] *See Facciolo Const. Co. v. Bank of Delaware*, 541 A.2d 413 (Del. 1986).
[46] *General Video Corp. v. Kertesz*, 2008 WL 5247120 (Del. Ch. Dec. 17, 2008) (quoting BLACK'S LAW DICTIONARY 356 (8th ed. 2004)).

Benson testified that the hauler and 45 cars were race ready in early June, before Elliott and Jarvis parted ways, but that neither the hauler (in early June) nor the 45 cars (in July or August) were race ready at the time Jarvis regained possession of them. Specific parts and equipment had been removed. I conclude that these parts and equipment were removed by or with the blessing of Elliott. I further conclude that there is insufficient evidence to establish: 1) that Elliott had in fact returned any of the disputed items to Jarvis[47] and 2) that Elliott was the true owner of the any of the disputed items.[48] It is clear that there was some flexibility in the race operations for the 45 team. At times, Elliott removed parts from Jarvis's hauler and storage shed and sold the parts directly to customers at Advanced Motorsports. At other times, Elliott would sell Jarvis parts that would immediately go on the 45 cars or in the hauler for use on the 45 cars. Elliott may even have provided parts for the 45 car directly from Advanced Motorsports. Yet based on the preponderance of the evidence before me—namely, the inability of

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[47] There is a notable lack of any time-stamped photo evidence that establishes Jarvis did in fact receive from Elliott the disputed parts and equipment.

[48] There simply were too many similar or identical parts flying around the shop in too many different directions for a basic presentation of non-specific invoices to satisfy my thirst for persuasive evidence. Furthermore, I am not persuaded that specific items, such as tires, were donated to Elliott as an independent driver. Rather, I find that those items were donated to the 45 racing team in light of its performance on the race track, even if the tires spun through Elliott. What Elliott brought to the table in that regard belonged to the 45 team, and in return Elliott was entitled to 40 percent of all race winnings. He was not, however, entitled to retain possession of those, or any similarly donated, items. Not only do the facts of this case persuade me that these items were donated for the use of the 45 team, but so do the wise words of the great Richard Petty: "[W]inning isn't necessarily a driver thing or a car thing. It's a *team* thing." *See* Steve Waid, *Credit the Crew for Petty's 1981 Daytona 500 Win*, ESPN CLASSIC, Nov. 19, 2003, http://espn.go.com/classic/s/petty_daytona_waid_020601.html (emphasis added).

the parties to provide me with specific evidence establishing the source of the specific parts in question—and given the high credibility I see in Benson's testimony, I find in large part for Jarvis. On the basis of Benson's and Lecates's item-by-item accounting at trial, I determine that Elliott is liable to Jarvis for many, though not all, of the missing-parts list that Jarvis submitted, with damages totaling $20,267.23.

Jarvis, however, is liable to Elliott for unpaid race winnings, unpaid invoices, and conversion and destruction of the Second Engine.[49] The amounts of the unpaid winnings and invoices total $1966.40 and $4561.50, respectively. These obligations and their amounts were not disputed earlier in the proceedings. What was disputed was to whom Starrette gave the First Engine and, thus, who was the rightful owner of the Second Engine. My finding on that point was as easy to gauge as the 1992 Indianapolis 500 finish was difficult to determine: Starrette clearly had given Elliott the First Engine, free and outright from any agreement or requirement that Elliott (or Jarvis) provide advertising on the side of the 45 car. The First Engine came with no strings attached. No one was required to include Starrette's name when saying grace at dinner,[50] or to win a critical race in order to

[49] I do not see sufficient evidence to convince me that Jarvis has wrongfully possessed any other items that rightfully belong to Elliott.

[50] *See, e.g.*, TALLADEGA NIGHTS: THE BALLAD OF RICKY BOBBY (Columbia Pictures 2006) (providing an example of a driver contractually obligated to incorporate the name of his sponsor, Powerade, into all pre-meal blessings).

receive Starrette's support.[51] Rather, Starrette simply gave the First Engine to Elliott *as Ricky "The Rocket" Elliott*, and not to Elliott as the driver of Jarvis's 45 team. Accordingly, after the First Engine was sold and the Second Engine purchased largely with the proceeds of the First Engine's sale, Elliott had a continuing property interest in the Second Engine and a right to its possession. I do note here that Jarvis assisted Elliott with purchase of the Second Engine, via the $5000 difference between the amount received for the First Engine and the higher price of the Second Engine. But Elliott does not dispute this; Elliott simply seeks the amount of money he contributed to the purchase of the engine—that is, $15,000.

The third requirement of the recovery test for conversion must still be met: whether a conversion even occurred. The answer here clearly is that a conversion did occur. Elliott was the rightful owner of the Second Engine and, although Elliott played a role in helping Jarvis to remove the Second Engine from the 45 car, Elliott's cooperation and willingness to be flexible did not give Jarvis license to do with the Second Engine what Jarvis ultimately did: give it to another competitor, after which it suffered damages beyond repair.[52] Elliott first agreed to

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[51] *See, e.g.*, CARS (Disney/Pixar 2006) (demonstrating the importance of winning the big, end-of-season race in order to secure the sponsorship and support of a large company, Dinoco, and its racing team).

[52] Had the engine been Jarvis's, he could freely have given it to another driver, even if that driver was not on the owner's team. *See, e.g.*, DAYS OF THUNDER (Paramount Pictures 1990) (providing hope that a car owner would be so generous as to give another driver one of the

allow Jarvis to remove the Second Engine and adapt it for use in a mud truck. When Jarvis instead placed the Second Engine under the hood of the 12 car, Elliott expressed his concern, though he ultimately consented. Elliott's consent was not, however, a *carte blanche* for Jarvis to provide the Second Engine to whomever Jarvis chose.[53] I find Elliott's reasoning persuasive—that Scott, Jr. as a driver of the 12 car was not a competitive threat and, thus, providing Scott, Jr. with the Second Engine would not limit the likelihood of Elliott's on-track success. This reasoning does not apply to providing the Second Engine to Davis, Jr. in the 48 car, however, and, further, Elliott was none too shy about expressing his discontent to Jarvis. The immediacy of Elliott's demand that the Second Engine be removed from the 48 car is consistent with the narrative that Elliott was the rightful owner of the Second Engine, and that he would prefer it remain as his backup engine rather than see it under the hood of a direct competitor. I find that providing the Second Engine to the 48 car was the moment of conversion.

There is a question, however, of the Second Engine's value at the time of conversion. I cannot take the Second Engine's backup status in Elliott's engine

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owner's spare engines, so that the driver could exorcise his racing demons, win the final race, and begin one of Hollywood's more closely watched romances).

[53] It is on this point that the present case differs from a case Jarvis asserts is similar: *General Video Corp. v. Kertesz*, 2008 WL 5247120 (Del.Ch. Dec. 17, 2008). In *Kertesz*, the conversion claim was based on the argument that one of the parties had changed his mind about the appropriate disposal of the property in question. Here, Elliott was clear all along that he did not want the Second Engine to go to a competitor, and certainly clear in time for the Second Engine to have been taken back out of the 48 car and returned to Elliott, rather than end up damaged beyond repair.

hierarchy as evidence that the engine was not worth its purchase price. Backup engines, and backup cars and equipment in general, can be critical to a racer's success. Just ask Jimmie Johnson, who recently won one of the 2010 Daytona 500 qualifiers in a backup car. So the mere fact that the Second Engine actually was Elliott's second engine does not diminish in any way its value. Furthermore, and perhaps critically, given the low number of laps on the engine between the time of its purchase and the time of its conversion, I believe not only that the Second Engine did have value to Elliott, but that the purchase price is an appropriate indicator of the value of the Second Engine at the time of its conversion. If the $20,000 paid for the Second Engine was a fair indicator of its value at the time of purchase—and I have been presented with no evidence that suggests otherwise—then that price is a fair indicator of its value at the time of conversion, a point in time before which the Second Engine had been used so infrequently. Jarvis did contribute $5000 to the $20,000 purchase price of the Second Engine, however, and therefore is only liable to Elliott for $15,000.

III. CONCLUSION

For the reasons I describe above, I determine that Elliott has illegally detained the Jarvis's property and owes Jarvis damages in the amount of $20,267.23. I also determine, however, that Jarvis owes Elliott $1966.40 in unpaid race winnings, $4561.50 in unpaid invoices, and $15,000 for conversion and

destruction of the Second Engine. The net consequence of my determination is that Jarvis owes Elliott $1260.67, to be paid free of interest within one week of this Opinion. Each party is to bear its own attorney's fees.