

IN THE COURT OF COMMON PLEAS IN THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

Morgan Russum,	)	
	)	C.A. No. CPU5-08-000530
Plaintiff-Below,	)	
Appellant,	)	
	)	
v.	)	
	)	
Trisha Glenn,	)	
	)	
Defendants-Below,	)	
Appellee.	)	

August 28, 2009

Ms. Morgan Russum  
494 Silver Leaf Lane  
Dover, DE 19901  
*Pro Se* Appellant

Ms. Trisha Glenn  
607 Providence Drive  
Smyrna, DE 19977  
*Pro Se* Appellee

**DECISION AFTER TRIAL**

Plaintiff-Below, Appellant, Morgan Russum (“Plaintiff”), has filed a civil appeal with this Court for a trial *de novo* of a final order of a Justice of the Peace Court on a replevin action pursuant to 10 *Del. C.* §9571. Plaintiff contends that she is entitled to the return of a motor vehicle from the Defendant-Below, Appellee, Trisha Glenn (“Defendant”), because she did not receive full payment for the car pursuant to a written contract. I find that the Plaintiff is not entitled to a replevin of the motor vehicle that she sold to the Defendant. However, she is entitled the balance due on the written contract

that she had with the Defendant in the amount of \$650.00, plus interest at the legal rate and court costs.

### **FACTS**

The Plaintiff sold her black, 1996 Honda Civic DX to the Defendant for \$1,250.00. At the time of sale, a contract of agreement was signed by both parties with the Defendant making an initial cash payment of \$600.00. The terms of the agreement were that the Defendant would pay the \$650.00 balance in full by October 1, 2008. The Plaintiff signed the title of the vehicle over to the Defendant without placing any lien on the automobile. Although the Defendant claims that she made one additional payment of \$300.00 to the Plaintiff, the Court finds that no additional payments were made to the Plaintiff by the Defendant. However, the Plaintiff refused a \$350.00 cash payment that the Defendant attempted to make to her on December 9, 2008. The Honda Civic is still in the possession of the Defendant.

The Plaintiff has filed this action in replevin in order to regain possession of the automobile. The Defendant contends that she should be able to keep the automobile. However, she acknowledges that she owes the Plaintiff the balance due on the total purchase price.

### **DECISION**

#### **A. Replevin**

“An action in replevin seeks to recover personal property which has been unlawfully taken or withheld from its rightful owner. In order to maintain an action in replevin, a party must demonstrate that it has title and the right to immediate possession

of the property at issue.” *WSFS v. Chillibilly’s, Inc.*, 2005 WL 730060, at \*4 (Del. Super. Ct.). Such is not the case in this instance.

The sale of goods, such as a car, is governed by Article 2 of the Uniform Commercial Code. 6 *Del. C.* §2-102. The sale of goods over \$500 is subject to the Statute of Frauds and requires that the contract be in writing. 6 *Del. C.* §2-201. This Statute of Frauds requirement was met in this case as the Plaintiff and Defendant signed a written contract for the sale of the car. The obligation of the seller is to transfer and deliver the car and the obligation of the buyer is to accept and pay in accordance with the contract. 6 *Del. C.* §2-301. The title of the Honda Civic was transferred to the Defendant at the time of sale without any lien being placed on the car. This transfer of title at the time of delivery of the car was in accordance with 6 *Del. C.* §2-401(2). At the time of transfer, the Defendant became the rightful owner of the car without any lien on it. Therefore, an action in replevin is not applicable in this case.

## **B. Debt**

The Defendant accepted the Honda Civic and has not presented any evidence of any problems with the car or rejection of the car for any reason. The car is presently in the possession of the Defendant. Under 6 *Del. C.* §2-607(1), the Defendant must then pay the contract rate for any goods accepted, i.e. the car. The Defendant does not dispute the contracted sale price. When the buyer fails to pay the price as it becomes due, the seller may recover, together with any incidental damages, the price of goods accepted. 6 *Del. C.* §2-709(1)(a). Incidental costs to which the seller is entitled include any commercially reasonable charges or expenses resulting from the breach. 6 *Del. C.* §2-710. Thus, rather

than an action in replevin, this is a debt action for the balance due to the seller on the car. Since the Defendant agreed to pay a total sum of \$1,250.00 for the Honda Civic and has only paid the initial amount of \$600.00, the Plaintiff is entitled to the recovery of \$650.00.

### **CONCLUSION**

Although the Plaintiff is not entitled to regain the possession of the 1996 Honda Civic DX that she sold to the Defendant through an action in replevin, she is entitled to receive the balance due on the purchase price for the car. Therefore, the Court awards judgment in favor of Plaintiff and against the Defendant in the amount of \$650.00, plus pre-judgment interest at the legal rate of 6.75% in the amount of \$21.00, and post judgment interest at the legal rate of 6.75% and court costs.<sup>1</sup>

**IT IS SO ORDERED this 28<sup>th</sup> day of AUGUST, 2009.**

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CHARLES W. WELCH  
JUDGE

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<sup>1</sup> It should be noted that no pre-judgment interest has been awarded on the amount of \$350.00 of the judgment from December 9, 2008, as the Plaintiff refused the \$350.00 cash payment that the Defendant attempted to make to her on that date. Therefore, Plaintiff is not entitled to pre-judgment interest for that amount from the date that payment was refused.