COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE
WILMINGTON, DELAWARE 19801

JOHN K. WELCH
JUDGE

October 7, 2010

Michael Morris and Angela McCardle
P.O. Box 1732
Bear, Delaware 19701
Pro-Se Plaintiffs

Daria McClain
2008 Waters Edge Drive
Newark, Delaware 19702
Pro-Se Defendant

Re: ***Michael Morris and Angela McCardle v. Daria McClain***
C.A. No.: CPU4-09-007460

Date Submitted: September 13, 2010
Date Decided: October 7, 2010

MEMORANDUM OPINION

Dear Mr. Morris, Ms. McCardle and Ms. McClain:

Trial in the above captioned matter took place on September 13, 2010 in the Court of Common Pleas, New Castle County, State of Delaware. Following the receipt of documentary evidence[1] and sworn testimony, the Court reserved decision. This is the Court's Final Decision and Order.

[1] The Court received into evidence the following items: All of the following Exhibits are Plaintiffs' Exhibit # 1; however, they are further identified as A-Q: Plaintiffs' Exhibit A (Unsigned Partners - Cohabitation - Agreement); Plaintiffs' Exhibit B (Partners/Cohabitation/Agreement); Plaintiffs' Exhibit C (Inspection and

I. Procedural Posture

The instant action is a debt action for which the Plaintiffs claim Defendant did not pay for services, materials, labor in the renovation of her residence as well as for personal loans made to the Defendant by the Plaintiffs. Plaintiffs request this Court award judgment to Plaintiffs in the amount of $17,450.00.

Release Form signed by Michael Morris and Angela McCardle); Plaintiffs' Exhibit D (Letter from Plaintiffs to Defendant seeking repayment of loans and costs of remodeling in the amount of $17,450.00; Letter to Williams & Crosse from Michael Morris stating that Defendant is not being honest regarding the living arrangement); Plaintiffs' Exhibit E (Summons for Defendant from Court of Common Pleas); Plaintiffs' Exhibit F (Alias Summons for Defendant in Court of Common Pleas); Plaintiffs' Exhibit G (Alias Summons for Defendant in Court of Common Pleas); Plaintiffs' Exhibit H (Addresses with handwritten indication "Daria McClain gave me for emergency contacts (her daughters) Michael Morris"; PNC Account Identification with handwritten indication "Also this PNC bank card she gave me and showed me and my wife checks with Daria McClain and Michael Morris and the checks had the same #."; Copies of handwritten lists of "House Bills" with handwritten indication "Daria McClain gave me for the bills would not show the actual bills – she gave (one of the problems)"; Plaintiffs' Exhibit I (Penske Truck Leasing Invoice for Drivers Michael Morris and Michael Trinceri in the amount of $226.49); Plaintiffs' Exhibit J (Copies of two Certified Mail Receipts to Daria McClain and one Certified Mail Receipt to Williams and Crosse, Attorneys At Law; Post Office receipts); Plaintiffs' Exhibit K (Check # 1015 drawn on Wachovia Bank to Daria McClain from Michael Morris on 11-03-08 in the amount of $680.00 "For Loan; Check # 1019 drawn on Wachovia Bank to Cash – Daria McClain from Michael Morris on 12-2-08 in the amount of $550.00" For Loan; Check # 1024 drawn on Wachovia Bank to Daria McClain from Michael Morris on 3-3-09 in the amount of $1000.00; Check # 1120 drawn on Wachovia Bank to Daria McClain from Michael Morris on 4-9-09 in the amount of $1000.00 "For Loan & Bills"; Check # 1125 drawn on Wachovia Bank to Daria McClain to Michael Morris on 5-5-09 in the amount of $1100.00 "For Money Loan Bills"; Check # 1126 drawn on Wachovia Bank to Daria McClain from Michael Morris on 6-4-09 in the amount of $1150.00 "For Mortgage and Bills"; Check # 96 drawn on Wachovia Bank to Daria McClain from Michael Morris on 8-5-09 in the amount of $460.00; Voided Check # 1152 drawn on Wachovia Bank to Daria McClain from Michael Morris on 9-4-09 in the amount of $960.78 "For Mortgage – Condo – All Bills"; Voided Check # 1153 drawn on Wachovia Bank to Daria McClain from Michael Morris on 9-5-09 in the amount of $450.00 "For Bills – Gas – Electric – Storage – Condo"; Voided Check # 1154 drawn on Wachovia Bank to Daria McClain from Michael Morris on 10-5-09 in the amount of $450.00 "For Bills – Gas – Electric – Storage – Condo"; Plaintiffs' Exhibit M (Thirty-nine receipts from Home Depot; thirty receipts from Lowe's one of which has an X through it); Plaintiffs' Exhibit N (American Van & Storing Corp. Local Moving Estimate given on 11-18-09 for Mr. & Mrs. Michael Morris in the amount of $480.00; Plaintiffs' Exhibit O (Photographs depicting a television in wooden entertainment set; white dresser with drawers; daybed; washer and dryer and television); Plaintiffs' Exhibit Q (Photographs depicting a kitchen table and chairs; grill; patio furniture set; television; lamp and end table; stereo; television; lamp and end table; couch and wooden coffee table; lawnmower and garden tools; microwave and air conditioner); Defendant's Exhibit # 1 (Thirty-three photographs of the residence depicting living areas, furniture and personal belongings with the notation "My home before they moved in. 2008 Waters Edge Dr." The pictures bore a date of 10-17-02.); Defendant's Exhibit # 2 (Forty-seven photographs with the notation "After they were evicted on Nov 30, 2010. Washer, dryer, refrigerator and bed set all gone 3 colors of paint in kitchen, holes all over the place, nails so many I couldn't count them. Personal items taken."); Defendant's Exhibit # 3 (Twenty-six photographs of the residence after Plaintiffs had moved out).

Defendant has filed a counterclaim (a debt action and replevin action) in the present action in the amount of $4592.24 for unpaid rent, utilities and appliances as well for the return of her personal property.

The issues pending before this Court are whether Plaintiffs and Defendant have proved their respective causes of action beyond a preponderance of the evidence.

For the reasons set forth below, the Court does not enter judgment in the present action. The Court awards Plaintiffs no sum certain on their cause of action. The Court awards Defendant no sum certain on the counterclaim. Each party is to bear their own costs. Plaintiffs' Claim is therefore DENIED. Defendant's Counterclaims are therefore DENIED.

II. The Facts

The Plaintiffs moved into Defendant's residence in approximately mid-December 2009. The decision to reside together by the parties was formed out of tough financial times experienced by both parties. The parties entered cohabitation with the understanding that they would assist each other during their trying times. McCardle and McClain became acquainted with one another through their job. McCardle and McClain worked together for three years and were good friends who took care of each other.

The Plaintiffs in their case-in-chief called counterclaimant Daria McClain (hereinafter "McClain") to the stand. McClain testified that there was a co-habitation partnership agreement drafted by the Plaintiffs; however, McClain never signed the agreement nor agreed to the drafting of such agreement by Plaintiffs. McClain stated that she was not sure how many months Plaintiff Morris completed renovations in the home.

McClain testified that checks given to her by Morris and McCardle were not personal loans but rather their share of the rent. McClain stated that Morris and McCardle would give her their share of the rent and she would put her share of the rent in and pay the rent. McClain testified that on two occasions she did request a loan from the Morris and McCardle but that loan was to pay the mortgage on the residence. McClain testified that she provided Morris and McCardle a place to stay and she denied that Morris and McCardle asked her to move in with them rather than they move in with her.

In reference to the renovations in the residence performed by Morris, McClain did not dispute that the renovations were performed but rather disputed the workmanship of the renovations. McClain stated that she did not know how much money was put into the renovations of the residence because she did not ask Morris to undertake such renovations. One of the renovations – replacement of a floor – McClain testified that she picked out the floor and that Morris laid the floor but that he laid the floor wrong. McClain also testified that Morris and McCardle removed the washer and dryer from the residence because Morris and McCardle informed her that they had a better washer and dryer for the residence.

Plaintiffs called Michael Trinceri (hereinafter "Trinceri") to the stand. Trinceri knew McClain through his sister, McCardle. Trinceri met McClain in 2008 and 2009 when he came to help Morris re-do the house. Trinceri testified that McClain and Morris and McCardle decided to live together so that they did not both lose their homes. Trinceri testified that he received items from Morris and McCardle and from McClain such as a small dresser, washer and dryer, a television, a daybed and an entertainment center.

Trinceri stated that he assisted in the renovations of the home including ripping up carpeting, painting walls and installing flooring occurring from March 2009 to May 2009. Trinceri stated that the house looked "500 times better" after the renovations than it did prior. Trinceri further testified that the residence was in poor condition prior to the renovations and was in good condition the last time he had seen it, primarily with the addition of hardwood flooring and painting. Trinceri also stated that the kitchen was not done nor was the hallway finished. Trinceri testified that he helped McClain dispose of some items such as a sewing machine and refrigerator.

Plaintiffs then called Michael Trinceri Jr. (hereinafter "Trinceri Jr.") to the stand. Trinceri Jr. knows McClain from assisting with the renovations in the residence approximately eight or nine occasions, specifically ripping up rugs, painting ceilings and walls, moved furniture. Trinceri Jr. stated that the renovations were about 95% complete. Trinceri Jr. testified that Morris and McCardle and McClain decided to reside together to help McClain pay some bills and that both parties were struggling so it made sense to pay one bill rather than two bills.

Testimony in their case-in-chief revealed that Plaintiffs attempted for McClain to perform a walk-through inspection of the residence prior to their departure but to no avail.

Defendant called Amy Chess (hereinafter "Chess") to the stand in the Defendant's case-in-chief. Chess testified that after Morris and McCardle moved out, there were holes in the walls, no light bulbs, missing shower glass doors, missing appliances, hardware (door knobs) missing from the doors, trimming off, the door missing to the bathroom, fuses missing, covers missing off of the air vents and ripped down fixtures.

Defendant's Exhibit # 1 was presented as photographs of the condition of the residence before Morris and McCardle moved in. Chess stated that the residence was absolutely destroyed and that the photographs[2] depict how the residence looked right after Morris and McCardle moved out. Chess stated that McClain occupied the upstairs portion of the residence and remained upstairs while the renovations where occurring. Chess further testified that she was not invited to the residence when Morris and McCardle resided there because McClain was embarrassed of the way the residence looked. When asked about the renovations, Chess stated that the molding in the residence did not match. Further, Chess testified that she became aware of the renovations by McClain since she did not see the renovations as McClain did not invite to the residence during that time due to McClain's embarrassment of the condition of the residence.

III. The Law

The instant action is a civil debt action. As such, plaintiff has the burden of proving the underlying debt action by a preponderance of the evidence.[3]

Defendant in the counterclaim also has the burden of proving the underlying debt action by a preponderance of the evidence.[4] Further, Defendant must prove by a preponderance of the evidence the action of replevin.

---

[2] Defendant's Exhibit # 3.
[3] *Flores v. Santiago*, 2009 WL 2859049, 1, 2 (Del. C.P. Welch, J.) citing *See e.g. Orsini Topsoil v. Carter*, 2004 Del. C.P. LEXIS 17, May 18, 2004 (Welch, J.); *Mantyla v. Wilson*, 2004 Del. C.P. LEXIS 44, February 4, 2004 (Welch, J.); and *Wirt v. Matthews*, 2002 Del. C.P. LEXIS 17, January 11, 2002 (Welch, J.).
[4] *Id.*

The Court in *Paul v. Sturevant,*[5] articulated the law of replevin. The Court stated: Replevin is primarily a form of action for the recovery of possession of personal property which has been taken or withheld from the owner unlawfully.[6] Replevin may be brought to recover any specific property unlawfully detained from the owner thereof.[7]

In *Gianakis v. Koss,*[8] the Superior Court of Delaware stated the law of replevin. The Court stated "Replevin is a form of action for the recovery of the possession of personal property which has been taken or withheld from the owner unlawfully."[9] The Court further stated "In order to obtain relief, Plaintiffs must establish that they have a right to the immediate and exclusive possession of the item in controversy."[10]

The Court in *Sammons & Sammons v. Jones,*[11] articulated the standard to be met for a replevin action. The Court stated, "Since replevin is a possession action, the party seeking to recover the property must establish the right to immediate and exclusive possession."[12] "The moving party must establish by a preponderance of the evidence that he or she has a clear and unequivocal right to the item sought."[13]

---

[5] *Paul v. Sturevant*, 2006 WL 1476888 at *1-*2 (Del.Com.Pl.)
[6] *Harlan and Hollingsworth Corp. v. McBride*, 69 A.2d 9, 11 (Del.1949).
[7] 77 C.J.S. Replevin Sec. 10 (1994).
[8] *Gianakis v. Koss*, 2003 WL 21481014 (Del.Super.).
[9] *Gianakis v. Koss*, 2003 WL 21481014 at *1 (Del.Super.) citing to *In the Matter of: Michael J. Richardson*, 2000 WL 1162291 (Del.Super.)(citing *Harlan and Hollingsworth Corporation v. McBride, et. al.*, 69 A.2d 9 (Del.Supr.1949); *Bennett v. Brittingham*, 33 Del. 519, 140 A. 154, 3 W.W. Harr. 519; McClemy v. Brown 6 Boyce 253, 99A. 48; 2 Woolley's Delaware Practice, §§ 1526, 1528, 1541, 1555).
[10] *Gianakis v. Koss*, 2003 WL 21481014 at *1 (Del.Super.) citing *In the Matter of: Michael J. Richardson*, 2000 WL 1162291 (Del.Super.)(citing 2 *Woolley*, § 1541).
[11] *Sammons & Sammons v. Jones*, 1999 WL 1847367 (Del.Com.Pl.)
[12] *Sammons & Sammons v. Jones*, 1999 WL 1847367 at *1 (Del.Com.Pl.) citing to *JLJ Enter., Inc. v. Keyek*, Del.Super., 1992 WL 148093, Civ. A. No. 92C-04-013 (June 5, 1992)(Graves, J.) (citations omitted).
[13] *Sammons & Sammons v. Jones*, 1999 WL 1847367 at *1 (Del.Com.Pl.) citing to *Frick v. Miller*, Del.Super., 107 A.2d 391, 393 (1918).

Furthermore, the Court in *WSFS v. Chillibilly's Inc.*,[14] stated, "In order to maintain a claim of replevin, a party must demonstrate that it has title and the right to immediate possession of the property at issue." "A successful replevin action will result in the return of the specified property or, in the alternative, the proceeds or value derived from the sale or disposition of the property."[15]

The Court in *Frick v. Miller*,[16] articulated the law of replevin. The Court stated:

> The primary object of the action is the recovery of the property itself with damages for the taking and detention thereof. Secondarily, and usually, the object is the recovery of a sum of money equivalent to the value of the property claimed if the defendant cannot or will not surrender possession.[17]

The *Frick* Court further stated:

> The action is a possessory one and lies only to one entitled to possession at the time of the commencement of the action. The right to possession of the goods replevied must be coupled with ownership either general or special. The wrongful detention from the plaintiff by the defendant of the goods and chattels replevied at the time they were replevied is a material fact for the plaintiff to prove to maintain the action of replevin.[18]

---

[14] *WSFS v. Chillibilly's Inc.*, 2005 WL 730060 at *4 (Del.Super.) citing to *Harlan & Hollingsworth v. McBride*, 69 a.2d 9, 11 (Del.1949).

[15] *WSFS v. Chillibilly's Inc.*, 2005 WL 730060 at *4 (Del.Super.) citing to *Allstate Ins. Co. v. Rossi Auto Body, Inc.*, 787 A.2d 742, 745 (Del.Super.2000).

[16] 7 Boyce 366, 107 A. 391 (Del.Super.1918).

[17] *Frick v. Miller*, 7 Boyce 366, 107 A. 391 at 393 (Del.Super.1918) citing to *McClemy v. Brown*, 6 Boyce, 253, 99 Atl. 48; *Harlan & Hollingsworth Corporation v. McBride et. al.*, 6 Terry 85, 45 Del. 85, 69 A.2d 9 at *11 (Del.1949) citing to *Bennett v. Brittingham*, 33 Del. 519, 140 A. 154, 3 W.W. Harr. 519; *McClemy v. Brown*, 6 Boyce 253, 99 A. 48; Pritchard's Admr. v. Culver, 2 Har. 129; 2 *Woolley's* Del. Pr. §§ 1555, 1556.

[18] *Frick v. Miller*, 7 Boyce 366, 107 A. 391 at 393 (Del.Super.1918).

This Court addressed the action of replevin in *Stickney v. Goldstein.*[19] The Court stated:

> The law of conversion provides, inter alia, that "... conversion in the broad sense consists of an act of willful interference with any chattel without lawful justification, where any person entitled thereto is deprived of the possession of it.[20]

IV. Discussion

There exists no real estate contract in writing in the present action for the improvements performed to the residence thus providing no evidence to indicate that the parties entered into an agreement for the renovations to the residence. There exists no testimony and/or evidence to suggest that the parties even formed a verbal agreement regarding renovations in the residence. There exists no testimony that McClain was to reimburse Morris for the renovations that he performed. This is supported by McClain's testimony that she did not ask Morris to perform the renovations. Given the lack of written evidence regarding the renovations, the renovations were nothing more than a gratuitous contract between the parties. The renovations and living situation between Morris and McCardle and McClain was one of *quid pro quo.*

McClain testified that there was a co-habitation partnership agreement drafted by the Plaintiffs; however, McClain never signed the agreement nor agreed to the drafting of such agreement by Plaintiffs.

---

[19] *Stickney v. Goldstein*, 2002 WL 31999358 at *10-*11 (Del.Com.Pl.)
[20] Salmond Torts, 8th Ed., 314 *Vandike v. Pennsylvania R.R. Co.*, Del.Supr., 86 A.2d 346 (1952).

This fact is further supported by Plaintiffs Michael Morris and Angela McCardle (hereinafter "Morris" and "McCardle") in Plaintiffs' Exhibit A in which a handwritten notation appears that states "We tried 3 or 4 times to get Daria McClain to meet us at the Notary Public at Callahan Agency." The testimony clearly indicates that McClain never signed the cohabitation agreement drafted by Morris and McCardle and three times refused to sign such. The Landlord-Tenant Code does not apply in the present situation due to the lack of an executed writing. Morris and McCardle were at best in a quasi month-to-month lease situation with McClain with no formal agreement. There exists no lease and no per se landlord-tenant agreement.

In regard to both Plaintiffs' and Defendant's debt causes of action, there exists no written contract nor an oral contract. The cohabitation agreement was never executed. The situation was one of shared living expenses in a month per month manner. The record is devoid of proof of debt as to Plaintiffs and Defendant.

Defendant has failed to prove a replevin cause of action. Applying relevant case law in the area of replevin in this jurisdiction, there exists no proof, other than the initial pleading, to support the claim that Plaintiffs possessed personal property of Defendant which was never returned. Defendant failed to introduce evidence in the record in the form of testimony and/or exhibits to support the claim.

V. Opinion and Order

Based upon the totality of evidence received into the record at trial including the oral testimony of all witnesses, exhibits entered by both parties and the credibility of the witnesses, this Court finds that the Plaintiffs have not proven beyond a preponderance of the evidence that a debt was owed by the Defendant to them and Defendant has not proven beyond a preponderance of the evidence that a debt was owed by the Plaintiffs to her as well as that Defendant's personal property was taken by Plaintiffs and not returned to her.

Based on the foregoing facts and analysis discussed *supra*, the Court finds that the record is insufficient to support Plaintiff's Debt action against the Defendant and the record is also insufficient to support Defendant's counterclaim Debt action and Replevin action against the Plaintiffs. The actions are simply not supported by a preponderance of the evidence. Thus, the Court does not enter judgment in favor of either party. Each party shall bear their own costs.

IT IS SO ORDERED this 7th day of October, 2010.

John K. Welch
Judge

Cc: Tamu White, Court Clerk
CCP, Civil Division