

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

RICHARD DEVINCENTIS,)
)
 Plaintiff,)
) C.A. No. N10C-08-069 MMJ
 v.)
)
 EUROPEAN PERFORMANCE, INC.,)
)
 Defendant.)

Submitted: May 4, 2012
Decided: May 9, 2012

ORDER

*Upon Defendant's Motion for Interlocutory Appeal
Pursuant to Supreme Court Rule 42*

DENIED

Paul E. Bilodeau, Esquire, Daniel R. Losco, Esquire, Losco & Marconi, P.A.,
Wilmington, Delaware, Attorneys for Plaintiff

Arthur D. Kuhl, Esquire, Cheryl A. Ward, Esquire, Reger Rizzo & Darnall LLP,
Wilmington, Delaware, Attorneys for Defendant

JOHNSTON, J.

1. Following briefing and argument, the Court denied defendant European Performance, Inc.'s Motions for Summary Judgment on April 17, 2012. The Court found that plaintiff Richard Devinentis had standing, even though his right to possession of the vehicle had been extinguished by an order of replevin. Further, the Court held that a genuine issue of material fact exists as to the valuation of the vehicle. Finally, plaintiff's claims were deemed governed by the three-year statute of limitations for contract actions, instead of the two-year statute of limitations for torts.

2. On April 27, 2012, defendant filed a Motion for Interlocutory Appeal Pursuant to Supreme Court Rule 42. Defendant argues that pursuant to Supreme Court Rules 41(b)(i) and (iii), the issue of which statute of limitations applies is an unsettled question of law. Additionally, according to Rule 42(b)(v), interlocutory review of the standing and damages (specifically, whether plaintiff is entitled to loss of use damages) determinations may terminate all or part of the litigation.

3. Supreme Court Rule 42(b) provides the criteria for determining whether an issue should be certified for interlocutory appeal. To consider whether certification is proper, one of the five criteria set forth in

Supreme Court Rule 42(b)(i) - (v) must be satisfied. Under Rule 42(b)(i), the Court may look to the criteria established by Rule 41.

4. The Court finds that its ruling on the applicable statute of limitations is not an original question of law within the meaning Supreme Court Rule 41(b)(i). As set forth in its April 17, 2012 decision, the Court found that its interpretation is consistent with controlling precedent. It is well-settled Delaware law that the nature of the damages, and not the cause or type of action, determines what statute of limitations controls. Plaintiff seeks damages for diminution in value, and loss of use, of the vehicle, on theories of breach of contract and breach of bailment. Such relief falls squarely within recovery contemplated by contract law. Although a finding that the tort two-year limitations period applies would terminate the litigation, the Court finds that the interests of justice do not require interlocutory appeal of its ruling that the three-year contract statute of limitations does not bar this action.

5. In the same way, interlocutory review of the standing and damages rulings may terminate all or part of the litigation. However, interlocutory review is not mandated to serve considerations of justice under Rule 42(b)(v). These are the types of issues that, in the absence of extraordinary or exceptional circumstances, are properly reviewed after trial on the merits.

THEREFORE, defendant European Performance, Inc. has failed to demonstrate that any Delaware Supreme Court Rule 42(b) criteria require that this Court exercise its discretion to certify interlocutory appeal. The Motion for Interlocutory Appeal Pursuant to Supreme Court Rule 42 is hereby **DENIED**.

IT IS SO ORDERED.

/s/ Mary M. Johnston _____
The Honorable Mary M. Johnston