

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

CHARLES GIANAKIS and)
JOANNA GIANAKIS,)

Plaintiff,)

v.)

C.A. No. 02C-12-021 HLA

JERRY KOSS d/b/a ACCU-BODY,)

Defendant.)

Date Submitted: January 16, 2003

Date Decided: January 21, 2003

DECISION AFTER REPLEVIN HEARING

On this 21st day of January 2003, upon consideration of the Complaint filed and the Replevin Hearing held January 16, 2003, it appears to the Court that:

(1) Charles Gianakis and Joanna Gianakis (“Plaintiffs”) filed a Complaint for Replevin against Jerry Koss d/b/a/ Accu-Body (“Defendant”) on December 3, 2002. A Replevin Hearing was held on January 16, 2003. Mr. Jerry Koss appeared *pro se* at this hearing. Mr. Andrew G. Ahern, III, appeared on behalf of the Plaintiffs.

(2) Plaintiffs' complaint arose out of a dispute regarding a storage fee for Plaintiffs' automobile in Defendant's automobile repair shop. On or about June 27, 2002 Plaintiffs' 1996 Lexus LS 400 ("Lexus") was involved in a collision and received damage to the body of the vehicle. On or about July 25, 2002, Plaintiffs and Defendant agreed that Defendant would repair the vehicle for the sum of \$4,300.00. It is in dispute as to whether the car was properly repaired and as to the date Plaintiffs stated they would pick up the vehicle. It is not disputed that when Plaintiffs went to retrieve the Lexus from the Defendant's Body Shop, Plaintiffs were told that in addition to the agreed upon sum of \$4,300.00, a storage fee of \$1,020.00 was also owed. Plaintiffs refused to pay the storage fee. As a result, Defendant has refused to return the vehicle to Plaintiffs despite demand and agreement to pay the \$4,300.00 repair fee. Plaintiffs now seek replevin of said motor vehicle.

(3) 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.¹ In order to obtain relief, Plaintiffs must establish that they have a right to the immediate and exclusive

¹*In the Matter of: Michael J. Richardson*, 2000 WL 1162291 (Del. Super.)(citing *Harlan v. Hollingsworth Corporation v. McBride, et al.*, 69 A.2d 9 (Del. Supr. 1949); *Bennett v. Brittingham*, 3 W.W. Harr. 519, 33 Del. 519; *McClemy v. Brown* 6 Boyce 253, 99A. 48; 2 *Woolley's Delaware Practice*, §§ 1526, 1528, 1541, 1555).

possession of the item in controversy.² If Plaintiffs do not have the right to the immediate possession of the item, Plaintiffs cannot maintain replevin.³

(5) It appears to the Court that Plaintiffs have an immediate and exclusive possessory interest in the Lexus. Defendant has no possessory interest in the vehicle, only in the allegedly owed storage fee. There is no dispute between the parties as to ownership of the motor vehicle.

(6) Thus, in light of these facts, the Plaintiffs' writ of replevin is **GRANTED**.

IT IS SO ORDERED.

ALFORD, J.

Original: Prothonotary's Office - Civil Div.

²*In the Matter of: Michael J. Richardson*, 2000 WL 1162291 (Del. Super.)(citing 2 Woolley, § 1541).

³*In the Matter of: Michael J. Richardson*, 2000 WL 1162291 (Del. Super.)(citing 2 Woolley, § 1524).