

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

AFFORDABLE AUTOS INC.,	)	
Plaintiff,	)	
v.	)	C.A. No. 15C-05-197 ALR
	)	
IRVIN A. DIETERT,	)	
Defendant.	)	

Date Submitted: December 18, 2015

Date Decided: December 30, 2015

*Upon Plaintiff's Motion in Limine for an Adverse  
Inference Due to Spoliation*  
**DENIED**

This matter involves claims for replevin and conversion arising from alleged damages sustained by Affordable Autos Inc. (“Plaintiff”) when Plaintiff’s former landlord, Irvin A. Dietert (“Defendant”), removed four vehicles from the leased premises. Plaintiff requests this Court find an adverse inference that is unfavorable to Defendant with respect to the value of the vehicles at the time of Defendant’s alleged conversion because Defendant destroyed the evidence by disposing of the vehicles. Specifically, Plaintiff contends that Defendant removed the vehicles from the leased premises, sold the vehicles to a third-party, and valuable parts were removed from the vehicles which reduced the value of the vehicles.

For the reasons stated in Defendant’s Response to Plaintiff’s Motion *in Limine*, Plaintiff’s Motion is hereby **DENIED**. Specifically, although Plaintiff

relies on the Court of Common Pleas' holding in *Stickney v. Goldstein* with respect to the applicability of the doctrine of spoliation,<sup>1</sup> the facts in *Stickney* are significantly distinguishable from the present matter. Of most importance is that the defendants in *Stickney* intentionally failed to preserve any evidence.<sup>2</sup> In contrast in the case before this Court, Defendant or Defendant's agent took approximately thirty (30) photographs of the leased premises, which included depictions of the vehicles at issue and their components. Further, Plaintiff has not plead sufficient facts for this Court to make a necessary initial determination that Defendant acted intentionally or recklessly in failing to preserve evidence which is required for an adverse inference.<sup>3</sup>

**NOW, THEREFORE, this 30th day of December, 2015, Plaintiff's Motion *in Limine* for an adverse inference is hereby DENIED.**

**IT IS SO ORDERED.**

*Andrea L. Rocanelli*

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**Hon. Andrea L. Rocanelli**

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<sup>1</sup> See *Stickney v. Goldstein*, 2002 WL 31999358, at \*12 (Del. Com. Pl. Mar. 14, 2002).

<sup>2</sup> *Id.*

<sup>3</sup> See *Sears, Roebuck & Co. v. Midcap*, 893 A.2d 542, 548 (Del. 2006) (finding that seller intentionally or recklessly destroyed a document was a predicate to issuance of an adverse inference instruction).