

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

FRED H. JENSEN & SONS, INC.,)
) C.A. No. 00C-07-002
Plaintiff,)
)
5.)
)
KATHRYN COVERDALE,)
)
Defendant.)

Submitted: February 1, 2001

Decided: April 27, 2001

Cynthia J. Longabardi, Esq., Dover, Delaware. Attorney for Plaintiff.

William M. Chasanov, Esq., Georgetown, Delaware. Attorney for Defendant.

Upon Consideration of Plaintiff's Complaint

For Writ of Replevin

GRANTED in part and

DENIED in part

VAUGHN, Resident Judge

MEMORANDUM OPINION

Jensen v. Coverdale
C. A. No. 00C-07-002
April 27, 2001

Fred H. Jensen & Sons, Inc. is a Delaware corporation which has been involved in the logging business. The corporation is the namesake of Fred H. Jensen who, for years, was its primary owner and operator. As his son, John, also known as Tom, grew up, he became involved in the business. As time went on Fred gradually gave shares of the corporation's stock to John, until eventually John owned 51 percent of the shares and Fred 49 percent. The corporation's business location is 501 Chestnut Street, Milton, Delaware. It owns various tools and equipment used in the logging business. In 1989 Fred moved to Greenwood and began living with the defendant, Kathryn Coverdale, although he continued to be active in the logging company. After he moved, he began to accumulate tools and equipment at his new residence in Greenwood. There was evidence that tools were taken back and forth between the business site and the Greenwood property. He died March 27, 2000. Shortly before his death he gave his remaining 49 percent interest in the corporation to his son, John.

The corporation has filed this replevin action against Ms. Coverdale, claiming that 31 designated items of tools and equipment owned by the corporation are in her possession at the Greenwood residence. It seeks recovery of those items and claims that she refuses to return them.

At the outset of the non-jury trial, it was agreed that one of the 31 items, a skidder, does in fact belong to the corporation and will be returned to it. As to all of the remaining items, however, a dispute remains. This is the Court's decision after trial. At trial a considerable amount of evidence was introduced. The Court will not endeavor to make findings of fact as to each and every element of evidence introduced, but will confine its findings to those necessary to decide the case. Before

Jensen v. Coverdale
C. A. No. 00C-07-002
April 27, 2001

considering the evidence as to the individual items of tools and equipment, I note that it would appear that anything that belonged to the corporation should go to the corporation; and that anything which belonged to Fred H. Jensen individually should go to the defendant based upon documentation which he signed shortly before death indicating his intent that anything that he owned at the Greenwood property go to her.

The Court will turn first to what would appear to be the most valuable single piece of equipment involved, a Fiatallis Model 10-C Crawler Tractor, referred to as the dozer. The dozer was bought over a number of months in 1991. The evidence clearly indicates that Ms. Coverdale paid three checks of \$4,000 from her personal account toward its purchase. The corporate business records show two payments of \$4,000 each. It would appear that one of these business account payments may have been covered by a personal check which Fred H. Jensen wrote to the corporation in the same \$4,000 amount. Although the corporate check was apparently covered by Mr. Jensen's personal check, I conclude that the payment was intended to be a corporate payment. The evidence also includes a check in the amount of \$1,000 written on Mr. Jensen's personal account which is noted "Dozer paid in full." There was testimony that total purchase price was \$25,000. There was some confusion as to the source of the final \$4,000 payment. There was testimony it may have come from a business account, the records of which are lost or otherwise not available to plaintiff. In addition, there is also another personal check of Mr. Jensen in the amount of \$4,315.91 written to the same company after the \$1,000 "Dozer paid in full" check. The extent to which this check may have included a part of the purchase price of the

Jensen v. Coverdale
C. A. No. 00C-07-002
April 27, 2001

dozer, if it did, is unclear. The evidence indicated that the dozer was used by Mr. Jensen to do improvements to Ms. Coverdale's property and that it was sometimes used in the corporation's logging business. Based upon my evaluation of all the evidence, I conclude that the purchase price of the dozer was \$25,000, that \$12,000 was contributed by Ms. Coverdale personally, and that \$13,000 was paid for by the corporation and/or Mr. Jensen. I further conclude that at the time of its purchase the dozer became the joint property of both the corporation on one part and Mr. Jensen and/or Ms. Coverdale on the other and was available for use by either. I also conclude that the root rake was built for use with the dozer and that it goes with the dozer.

An action for replevin is primarily one for recovery of possession of personal property and is dependent upon the plaintiff having a right of immediate possession to the property.¹ In this case, since the defendant is an owner of the dozer, possession by her is lawful. The plaintiff has established no greater right to possession than the right of possession held by the defendant, and the plaintiff's request for a writ of replevin for the dozer and the root rake must be denied.

There was also evidence that the dozer went through some repairs in 1996 which cost \$7,291.86. While these repairs may have been paid for by a corporate check, the defendant produced a check which she wrote Mr. Jensen in the amount of

¹ *Harlan & Hollingsworth Corp. v. McBride*, Del. Supr., 69 A.2d 9 (1949).

Jensen v. Coverdale
C. A. No. 00C-07-002
April 27, 2001

\$7,300 which corresponded in time with the date of the repairs. Given the closeness in time and amount of the dozer repairs and Ms. Coverdale's check, I infer that the actual source of the repair money was Ms. Coverdale. The evidence also established that in 1997 Ms. Coverdale spent \$6,715.90 of her funds to repair the dozer. In other words, over a period of approximately two years in 1996 and 1997, Ms. Coverdale spent about \$13,715.90 of her money to do repairs on the dozer. Under these circumstances, the Court concludes that the plaintiff has not established grounds for the just or appropriate grant of any relief concerning the dozer.

Turning to the remainder of the items, after a careful consideration of all the evidence, I reach the following conclusions.

The Lo-Boy was bought in 1980. The invoice is listed in Mr. Jensen's name and does not mention the corporation. The fact that the invoice is in Mr. Jensen's name is not itself, however, a sufficient basis upon which to conclude that the Lo-Boy was not business property. Persons owning their own small business operating in the corporate form often become casual about the difference between them and their corporation. However, after Mr. Jensen moved in with Ms. Coverdale, he apparently used it regularly to mow the grass at her property, and as the years progressed, Ms. Coverdale paid several repair bills which aggregated more than \$1,000. Under the circumstances taken as a whole, I find that the Lo-Boy belonged to Mr. Jensen. Therefore, the plaintiff's application for a writ of replevin as to that item is denied.

The weight of the evidence supports the conclusion that the large air compressor and the small air compressor were purchased by Mr. Jensen and Ms. Coverdale after he went to live with her. I also find that the Blue Point air impact

Jensen v. Coverdale
C. A. No. 00C-07-002
April 27, 2001

wrench, the vice mounted on a wheel, the two and one-half ton jack, the chop saw with vise, the engine motor hoist, the commercial landscape rake and the shop press were bought or otherwise acquired by Mr. Jensen and/or Ms. Coverdale after he went to live with her. Therefore, they are not corporate property and the application for a writ of replevin as to those items is denied. The evidence does not establish that a porter cable circular saw with metal case is present on the defendant's property, and a writ of replevin for that item is, therefore, also denied.

As to the Homelite chainsaws, the evidence as to their presence on the defendant's property was conflicting. Based upon my evaluation of that evidence, I am not persuaded that those chainsaws are, in fact, in the possession of the defendant or have been present on her property at any time relevant to this proceeding. Therefore, the application for a writ of replevin as to those items is denied.

The plaintiffs produced a registration form showing that the Sachs-Dolmar chainsaw, serial no. 043598 was purchased by John T. Jensen, now the owner of Fred H. Jensen & Sons, Inc. on February 23, 1995. Therefore, a writ of replevin will be issued for return of that item to the plaintiff.

As to the miscellaneous chain saw parts, the evidence did not clearly establish the quantity or type of chainsaw parts that are present on the defendant's property. I conclude, however, that any chain saw parts that are useable were probably were business property, and a writ of replevin will be granted as to chain saw parts.

With regard to benches, the weight of the evidence suggests to me that they were intended to belong to Mr. Jensen for his personal use. The plaintiff's application for a writ of replevin as to the benches is, therefore, denied.

Jensen v. Coverdale
C. A. No. 00C-07-002
April 27, 2001

As to the welder, there was evidence that it had been acquired in the '70's and had come out of the Milton shop. I therefore conclude that it belonged to the corporation and a writ of replevin will be granted for return of the welder.

As to jumper cables, the miscellaneous electric power tools, miscellaneous air power tools, miscellaneous hand tools, wooden stepladder, aluminum stepladder and miscellaneous shelving, I find that the evidence fails to establish that they were business property as opposed to Mr. Jensen's personal property. The application for a writ of replevin as to those items is, therefore, denied. Finally, I conclude that the bank account documents and related papers, if ever on Ms. Coverdale's property, are lost, misplaced, or disposed of and that there is no basis for issuing a writ of replevin as to such items.

Therefore, the plaintiff's application for issuance of a writ of replevin is **granted** as to the Sachs-Dolmar chainsaw, the chainsaw parts, the welder, and the skidder. It is **denied** as to all other items.

IT IS SO ORDERED.

Resident Judge

oc: Prothonotary
cc: Counsel