

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TRANSPORT INTERNATIONAL POOL, INC. : CIVIL ACTION  
:   
v. :   
:   
UNITED TRANSPORT CARRIERS : NO. 02-8163

MEMORANDUM

**Padova, J.**

**April 21, 2003**

Plaintiff Transport International Pool, Inc. ("TIP") has brought this action against United Transport Carriers for breach of contract and unjust enrichment arising from Defendant's alleged failure to make payments for the use of trailers which it leased from Plaintiff. Before the Court is Defendant's Motion for Summary Judgment. For the reasons which follow, the Motion is denied.

I. FACTUAL BACKGROUND

The Complaint in this action, which was filed in the Chester County Court of Common Pleas, docket number 02-07389, alleges the following facts. Defendant entered into numerous agreements to lease trailers owned by Plaintiff. (Compl. ¶ 8.) Defendant agreed to make payments to Plaintiff in the manner set forth in the Lease Agreements and Plaintiff delivered the trailers to Defendant. (Compl. ¶¶ 10-11.) Defendant defaulted under the Lease Agreements by failing to pay Plaintiff a total of \$392,779.65 for use of the trailers. (Compl. ¶ 12.) Defendant failed to return ten of the trailers to Plaintiff and Plaintiff has a legal right to the return of those trailers. (Compl. ¶¶ 13 and 15.) Exhibit A to the Complaint is comprised of partial copies of Lease Agreements

between Plaintiff and Defendant for seventeen (17) trailers. The Complaint does not state which, if any, of these seventeen Lease Agreements pertain to the ten trailers that Defendant allegedly failed to return to Plaintiff. The Complaint does not allege any VIN numbers, serial numbers, or other descriptive information by which the ten unreturned trailers could be identified. The Complaint asserted causes of action for breach of contract, unjust enrichment, and conversion against Defendant United Transport Carriers and its owner, Perry Muller, and requested monetary damages in the amount of \$565,279.65, comprising the unpaid lease payments for the trailers leased by Defendant and the replacement value of the ten trailers which Defendant had failed to return.

On the same day that the instant action was filed in the Chester County Court of Common Pleas, Plaintiff filed an action in replevin against United Transport Carriers, also in the Chester County Court of Common Pleas, case number 02-07386 (the "Replevin Action"). The Replevin Action sought the return of ten trailers leased by Plaintiff to United Transport Carriers which had not been returned. The Replevin Action Complaint contains the following allegations. Defendant entered into numerous leases for the rental of trailers owned by Plaintiff. (Replevin Action Compl. ¶ 5.) Defendant agreed to make payments to Plaintiff in the manner set forth in the Lease Agreements and Plaintiff delivered the trailers to Defendant. (Replevin Action Compl. ¶¶ 7-8.) Defendant

defaulted under the Lease Agreements by failing to pay Plaintiff a total of \$392,779.65 for use of the trailers. (Replevin Action Compl. ¶ 9.) Defendant failed to return ten of the trailers to Plaintiff and Plaintiff has a legal right to the return of those trailers. (Replevin Action Compl. ¶¶ 10 and 12.) Exhibit A to the Replevin Action Complaint is comprised of partial copies of Lease Agreements between Plaintiff and Defendant for twenty-five (25) trailers. The Replevin Action Complaint does not state which, if any, of the trailers identified in the Lease Agreements are the subject of the action, i.e., those ten trailers that Defendant allegedly failed to return to Plaintiff. The Replevin Action Complaint does not allege any VIN numbers, serial numbers, or other descriptive information by which the ten unreturned trailers could be identified. The Replevin Action Complaint asserted a cause of action for replevin and asked for return of the ten trailers, plus costs, attorney's fees and such other relief as the court may deem appropriate.

Defendant removed both actions to the United States District Court for the Eastern District of Pennsylvania on October 29, 2002. On November 13, 2002, Defendant moved to dismiss the instant action pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiff responded by filing an Amended Complaint against Defendant United Transport Carriers only alleging causes of action for breach of contract and unjust enrichment. The Amended Complaint alleges that

Defendant has failed to pay to Plaintiff \$424,253.49 for the use of trailers which it leased from Plaintiff. (Am. Compl. ¶ 9.) Exhibit A to the Amended Complaint is comprised of Lease Agreements between Plaintiff and Defendant for sixty-seven (67) trailers. By the time the Amended Complaint was filed, Defendant had returned the ten previously unreturned trailers.

On November 12, 2002, Defendant moved to dismiss the Replevin Action pursuant to Federal Rule of Civil Procedure 12(b)(6) because the Replevin Action Complaint failed to plead the required factual information for a replevin action pursuant to Pennsylvania law. (Def.'s Ex. E.) Most notably, Defendant argued that the Replevin Action Complaint was deficient because it failed to identify the specific trailers that Plaintiff sought to replevy. (Def.'s Ex. E ¶¶ 3-4 and 6.) Plaintiff failed to respond to that motion to dismiss and the Replevin Action was dismissed, with prejudice, on December 30, 2002. (Def.'s Ex. A.)

## II. LEGAL STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). An issue is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty

Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is "material" if it might affect the outcome of the case under governing law. Id.

A party seeking summary judgment always bears the initial responsibility for informing the district court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the movant's initial Celotex burden can be met simply by "pointing out to the district court that there is an absence of evidence to support the non-moving party's case." Id. at 325. After the moving party has met its initial burden, "the adverse party's response, by affidavits or otherwise as provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). That is, summary judgment is appropriate if the non-moving party fails to rebut by making a factual showing "sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex, 477 U.S. at 322. "Speculation, conclusory allegations, and mere denials are insufficient to raise genuine issues of material fact." Boykins v. Lucent Tech., Inc., 78 F. Supp. 2d 402, 407 (E.D. Pa. 2000). Indeed, evidence introduced to defeat or support a motion for

summary judgment must be capable of being admissible at trial. Callahan v. AEV, Inc., 182 F.3d 237, 252 n.11 (3d Cir. 1999)(citing Petruzzi's IGA Supermarkets, Inc. v. Darling-Delaware Co., 998 F.2d 1224, 1234 n.9 (3d Cir. 1993)).

### III. DISCUSSION

Defendant argues that the instant action for breach of contract and unjust enrichment is barred by the doctrine of claim preclusion based on the dismissal of the Replevin Action. Claim preclusion, also referred to as res judicata is:

a doctrine by which a former adjudication bars a later action on all or part of the claim which was the subject of the first action. Any final, valid judgment on the merits by a court of competent jurisdiction precludes any future suit between the parties or their privies on the same cause of action. Res judicata applies not only to claims actually litigated, but also to claims which could have been litigated during the first proceeding if they were part of the same cause of action.

Balent v. City of Wilkes-Barre, 669 A.2d 309, 313 (Pa. 1995) (citing Allen v. McCurry, 449 U.S. 90, 94 (1980)). The purpose of claim preclusion is "to avoid the cost and annoyance of multiple litigation, conserve scarce judicial resources, and promote reliance on judicial decisions by minimizing the possibility of conflicting rulings." Breiner v. Litwhiler, No.3:CV-00-0594, 2003 WL 463104, at \*11 (M.D. Pa. Feb. 21, 2003). Pennsylvania law requires the presence of the following four factors for the application of claim preclusion: "the two actions must share an

identity of the: (1) thing sued upon or for; (2) cause of action; (3) persons and parties to the action; and (4) capacity of the parties to sue or be sued." O'Leary v. Liberty Mutual Ins. Co., 923 F.2d 1062, 1065 (3d Cir. 1991).

Defendant's Motion for Summary Judgment turns on the first factor, i.e., whether the subject matter of both actions, "the thing sued upon or for," is the same. If the subject matter of both actions is not the same, claim preclusion cannot apply to bar the instant proceeding. In order to determine whether the subject matter of both actions is the same, the Court must examine the special nature of an action in replevin.

Replevin is an action at law to recover the possession of personal property and to recover damages incurred as a result of the defendant's illegal detention of plaintiff's personal property:

[replevin is] a legal form of action ordinarily employed only to recover possession or the value of specific personal property unlawfully withheld from the plaintiff plus damages for its detention. 10 Standard Penna. Practice, chap. 43, § 1 et seq. It is primarily a possessory action in which the issues ordinarily are limited to the plaintiff's title or right to possession of the goods. Ibid.

Brandt v. Hershey, 182 A.2d 219, 221 (Pa. Super. Ct. 1962). In order to succeed in an action for replevin, a plaintiff must "show not only that he has title, but that he has also the right of immediate possession." International Elec. Co. v. N.S.T. Metal Prod. Co., 88 A.2d 40, 42-43 (Pa. 1952) (citation omitted).

Although a plaintiff may obtain damages for a defendant's unlawful possession of its personal property in an action for replevin, "[t]he focus in a replevin actions [sic] is strictly limited to title and right of possession; all matters foreign to those limited issues are expressly excluded from consideration. . . ." Ford Motor Credit Co. v. Caiazzo, 564 A.2d 931, 933 (Pa. Super. Ct. 1989). Consequently, even though Plaintiff alleged in the Replevin Action Complaint that Defendant had failed to pay \$392,779.65 for the use of Plaintiff's trailers, the only relief Plaintiff could seek in that action was the return of the ten unreturned trailers and damages for the unlawful detention of those trailers. The "thing sued upon or for" in the Replevin Action was, therefore, the ten unreturned trailers which Plaintiff sought to replevy. Plaintiff could not use the Replevin Action to seek unpaid rent for the trailers which Defendant had returned to Plaintiff because the "title and right of possession" of those trailers was not at issue in that action.

To the extent that any of the seventeen trailers which are the subjects of the Lease Agreements attached to the initial Complaint in this action, or the sixty-seven trailers which are the subjects of the Lease Agreements attached to the Amended Complaint, were illegally detained by Defendant and, therefore, the subject of the Replevin Action, there could very well be a viable argument in favor of claim preclusion with respect to those trailers. However,

nowhere in the record before the Court are the specific ten trailers which Defendant allegedly failed to return to Plaintiff, which are the subject of the Replevin Action, identified. Consequently, the Court cannot reach any conclusion about the identity of the subject matter of the instant action and the subject matter of the Replevin Action and cannot find that claim preclusion bars this action. Defendant's Motion for Summary Judgment is, accordingly, denied.

An appropriate order follows.

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O R D E R

**AND NOW**, this 21st day of April, 2003, in consideration of Defendants' Motion for Summary Judgment (Docket No. 27), Plaintiff's response thereto, and the oral argument of the parties held on the record on April 10, 2003, **IT IS HEREBY ORDERED** that the Motion is **DENIED**.

BY THE COURT:

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John R. Padova, J.