

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

LAWRENCE GILLEN)	
and MICHELLE GILLEN)	
)	
Plaintiffs,)	C.A. No. N13C-09-250 RRC
v.)	
)	
JOSEPH T. KEENAN)	
and SONS, INC., a Delaware Corp.,)	
D/B/A/ Keenan Auto Body, Inc.,)	
HAGERTY INSURANCE)	
AGENCY, LLC and ESSENTIA)	
INSURANCE COMPANY)	
)	
Defendants.)	

Submitted: September 19, 2014
Decided: November 7, 2014

Upon Plaintiffs' Motion for Reconsideration of Commissioner's
Recommendation.
COMMISSIONER'S RECOMMENDATION ACCEPTED.

ORDER

Leo J. Ramunno, Esquire, Wilmington, Delaware, Attorney for Plaintiffs

Gary W. Aber, Esquire, Wilmington, Delaware, Attorney for Defendant Joseph
T. Keenan and Sons, Inc., A Pennsylvania Corporation

COOCH, R.J.

This 7th day of November, 2014, it appears to the Court that:

1. Plaintiffs Lawrence and Michelle Gillen filed a complaint against Defendant Joseph T. Keenan and Sons., Inc and two insurance companies in September 2013. The complaint stems from repairs allegedly not completed on an antique vehicle, which, through a series of events this Court need not detail, remains in the possession of Defendant Keenan in Pennsylvania. Count I of the complaint plead Replevin against Defendant Keenan only. Defendant Keenan has challenged the right of Plaintiffs' to pursue a replevin action in Delaware when the property was located in another state.¹
2. This Court referred Count I to a Commissioner in November 2013 for a hearing on the issue of whether this Court has jurisdiction over a replevin action for a vintage automobile which is not actually located in Delaware. After briefing and argument on Count I, the Commissioner submitted a report on July 10, 2014 that contained findings of fact and recommendations. The Commissioner found that the Court lacked *in rem* jurisdiction for purposes of a replevin action and recommended that Count I of Plaintiffs' complaint be dismissed.²
3. Plaintiffs filed an appeal from the Commissioner's Report, arguing that this Court "has personal jurisdiction of the Defendant and doesn't need *in rem* jurisdiction over the vehicle."³
4. Defendant Keenan responded to Plaintiffs' appeal. Defendant argues that the vehicle is located in Pennsylvania, and because the vehicle is not within this state, this Court lacks the *in rem* jurisdiction needed to preside over the replevin action.⁴
5. This Court finds no *in rem* jurisdiction in this case. "An action for replevin cannot be successfully maintained unless the property is within the state and is subject to the jurisdiction of the courts."⁵

¹ See Comm'r's Report, Findings of Fact and Recommendations at 2-3.

² See Comm'r's Report, Findings of Fact and Recommendations at 5-6.

³ Plaintiffs' Appeal from Comm'r's Report at 1.

⁴ See Defendant's Response to Plaintiffs' Appeal from Comm'r's Report.

⁵ See *R.J. Casho Marine Towing Corp. v. Dann*, 1985 WL 5860 (Del. Super. Oct. 28, 1985); See also 66 Am. Jur. 2d Replevin § 40 (2014) ("Generally speaking, replevin is a possessory action, and therefore, it requires *in rem* jurisdiction over the subject matter . . .").

6. There is no dispute amongst the parties that the vehicle is currently, and has at all relevant times been, located in Pennsylvania. As a result, this Court does not have the necessary *in rem* jurisdiction to proceed with the adjudication of Plaintiffs' replevin action. Rather, "the proper forum for a replevin action is the state where the subject matter is situated."⁶
7. Finally, this Court notes Plaintiffs' contention that this Court has personal jurisdiction over the Defendant, but finds that personal jurisdiction is not the relevant consideration at this juncture. Plaintiffs are pursuing a replevin action, and *in rem* jurisdiction is required to maintain such an action.

Therefore, the Commissioner's Recommendation is **ACCEPTED** and Count I of Plaintiff's complaint is **DISMISSED**.

IT IS SO ORDERED.

Richard R. Cooch, R.J.

cc: Prothonotary

⁶ *DVI Fin. Serv., Inc. v. Imaging Mgmt. Assoc., Inc.*, 1995 WL 269073 (Del. Super. Apr. 13, 1995) (citing *Hanson v. Denckla*, 357 U.S. 235 (1958)).