

THOMAS A. RANDALL,  
SANDRA K. RANDALL,  
Plaintiffs

vs.

GEORGE R. SOBER, GEORGE R.B.  
SOBER and ANNA MAE SOBER,  
Defendants

: IN THE COURT OF COMMON PLEAS OF  
: LYCOMING COUNTY, PENNSYLVANIA  
:  
:  
: NO. 01-01,653  
:  
:  
:  
: PRELIMINARY OBJECTIONS

**Date: June 28, 2002**

**OPINION AND ORDER**

Before the Court are Defendants’ Preliminary Objections filed on February 4, 2002 to Plaintiffs’ First Amended Complaint. The First Amended Complaint was filed on January 15, 2002 and asserted claims against Defendants in which Plaintiffs seek recovery of various items of personal property which they assert were pledged and/or transferred to them by Defendant George R. Sober but are now wrongfully removed from Plaintiffs’ possession by and/or held by Defendants George R.B. Sober and Anna Mae Sober. By Order of February 27, 2002 the Court sustained the preliminary objections to strike the allegations asking for a recommendation of criminal prosecution or seeking criminal prosecution. The Court deferred action on the demurrer. The balance of the Order of February 27, 2002 shall remain in effect.

Plaintiffs’ Amended Complaint, although somewhat vaguely worded, essentially asserts claims of both conversion and replevin against Defendants George R.B. Sober and Anna Mae Sober. The Preliminary Objections challenge the Complaint on the basis that the said Defendants are not a party to the said contract between Plaintiffs and Defendant George R.B. Sober, secondly that there was no allegation that Defendant George R.B. Sober acted with

knowledge that the items belonged to Plaintiffs and finally that the pleadings do not claim that the items are now in the possession of Anna Mae Sober or George R.B. Sober.

This Court believes that the element of knowledge is not required at least as asserted by Defendants at this time. The basis for the Complaint of conversion and replevin is that Defendants exercised control of ownership over goods that belonged to Plaintiffs. This may include the misdelivery of an item or the refusal of surrender of an item. *See generally*, the Restatement of Torts 2<sup>nd</sup> Section 223. The Court does believe that Plaintiffs sufficiently alleged that the said Defendants effected an actual appropriation of the property to which Plaintiffs claim they are the owner. In addition, taken as a whole, the Complaint does assert that Defendant Anna Mae Sober is believed to possess these items or controls possession of them by virtue of the fact they are located at her residence. Accordingly, the following Order denying the Preliminary Objections will be entered.

**ORDER**

The Preliminary Objections of Defendants filed February 4, 2002, which were not sustained by the Order of Court, filed March 7, 2002 are hereby DENIED. Defendants shall file a responsive pleading within twenty days after notice of the entry of this Order.

BY THE COURT:

William S. Kieser, Judge

cc: G. Scott Gardner, Esquire  
Thomas A. Randall and Sandra K. Randall  
212 Caraway Drive; Cogan Station, PA 17728  
Judges  
Paul J. Petcavage, Law Clerk  
Gary L. Weber, Esquire (Lycoming Reporter)