

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

RALPH MUSSINA FEAVER,	:
	:
Plaintiff	:
	:
vs.	: NO. 99-02,008
	: 01-00,198
NATT EMERY and SUSAN EMERY,	: CIVIL ACTION - LAW
a/k/a SUSAN WILLOUGHBY,	:
	:
Defendants	: VERDICT

ORDER

AND NOW, this 8th day of December 2003, after completion of the Non-Jury Trial to the above case numbers, the Court enters verdict on behalf of Plaintiff Ralph Mussina Feaver in replevin against the Defendants, Natt Emery and Susan W. Emery, a/k/a Susan L. Willoughby, as follows:

Within sixty (60) days (unless both Plaintiff and Defendant agree to a timeframe beyond sixty days), Plaintiff shall pay Defendant Natt Emery the sum of \$1,036.32,¹ which shall discharge and satisfy the artisan's lien, and Defendants shall return the following personal property to Plaintiff Ralph Mussina Feaver :

1. The Tall Clock
2. The Alarm Clock
3. Samsung Fax/Telephone Answering Machine
4. The Original Painting Known as "Market Day"

¹ The amount of the lien was calculated by the Court as follows: Labor -- \$658.50; Parts -- \$209.92, Tax -- \$117.90. The Court also added a \$50 fee for Defendant's delivery of the property to Plaintiff. If Plaintiff or a representative of Plaintiff picks up the property from Defendants, the \$50 fee may be deducted from this award.

5. The Approximately 200 Limited Edition Prints of “Market Day”

In considering Plaintiff’s count for Replevin, the Court notes that it looked at and considered the equities of the entire situation. The Court believes it can consider the equity of the result in considering a Replevin claim. *See Gemini Equipment v. Pennsy Supply*, 595 A.2d 1211 (Pa.Super. 1991).

The Court finds it makes the most sense to have the property returned to Plaintiff Ralph Feaver. The property comes from a deceased relative of Mr. Feaver and he had plans to gift the property to other members of his family.²

The Court is not awarding Defendant Natt Emery the storage cost he has requested because it finds the parties never agreed to storage in their oral contract. Rather, it was understood that Natt Emery would take his time in repairing the three clocks. In fact, Mr. Emery obtained possession of the clocks in 1995 and he did not complete work on the tall clock until 1998. Mr. Emery’s request for storage payment of \$1,096.66, as shown in Defendant’s Exhibit 14, is for the timeframe of April 20, 1995 to December 1, 1997. Mr. Emery’s written bill was rendered August 22, 1998. *See* Plaintiff’s Exhibit 1. The Court also notes Mr. Emery stipulated at trial he worked on the tall clock into 1998. It does not appear appropriate to charge for storage while one is still working on the involved repairs.

The Court believes the clear equities of this entire case indicate the appropriateness of this decision. The Court believes there was a bailment interest between the

² The Court has entered verdict for Plaintiff Ralph Feaver and not Plaintiff George Feaver, Ralph’s son, because Ralph Feaver intended to gift much of the property to George but had not yet done this when the property left his hands.

parties concerning the property in question. The Court does not believe the Sheriff sale of February 10, 2000 was fair or appropriate to Plaintiff Feaver because he never gave up his interest in the property, and Defendants utilized the Sheriff sale to unfairly circumvent Plaintiff's interest in the property.³

The Court believes fairness dictates that Defendant Emery be compensated for parts and labor in regard to his work on the clocks.

Defendant's counterclaim is denied as being beyond the applicable statute of limitations.

Plaintiff may praecipe for Judgment if Post Verdict Motions are not filed or if Post-Verdict Motions are filed and denied.

BY THE COURT,

Kenneth D. Brown, Judge

cc: William Carlucci, Esquire
Charles Szybist, Esquire

³ Defendants had even less interest in the painting, the prints and the fax machine. They simply kept this property without permission or right and provided it for the Sheriff sale to try to obtain an arguable title interest in the property.