

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

GM-DI LEASING CORPORATION,	:	NO. 11 - 02,072
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
DAVID M. SHIRN and MAXINE SHIRN,	:	
Defendants	:	Preliminary Objections

OPINION AND ORDER

Before the Court are Defendants' Preliminary Objections, filed November 21, 2011. Argument on the objections was heard January 3, 2012.

In its complaint in replevin, Plaintiff seeks an order allowing it to remove certain signs located on Defendants' property. The signs were leased by Plaintiff to Shirn's Pontiac-GMC, Inc., an automobile dealership operated by Mr. Shirn on the property, pursuant to several Dealer Identification Lease Agreements, the most recent of which was terminated in connection with bankruptcy proceedings filed by both the Shirn's dealership and General Motors Corporation, which resulted in a Wind-Down Agreement. That Agreement indicates that "Dealer shall provide ... GMDI access to the Dealership Premises in order for GMDI to remove all GM Signs leased to the Dealer by GMDI."

In their preliminary objections, Defendants contend Plaintiff has failed to join an indispensable party, namely, the Dealership, on the basis that the Dealership entered the Dealer Identification Lease Agreements, not the individual defendants. This argument overlooks the fact that Plaintiff has not brought an action for breach of contract, however, but in replevin, and, in that regard, need join only the parties in possession of the property. The lease agreements are cited only to support Plaintiff's right to possession. Therefore, the objections are without merit and the Court will enter the following:

ORDER

AND NOW, this 4th day of January 2012, for the foregoing reasons, Defendants' preliminary objections are hereby OVERRULED. Defendants shall file an Answer to the Complaint within twenty (20) days of this date.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Ricky Guerra, Esq., Lavin, O'Neil, Ricci, Cedrone & DiSipio
190 North Independence Mall West, Suite 500
6th & Race Streets, Philadelphia, PA 19106
Andrew Smalley, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson