

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JOHN WETTLAUFER,  
*Plaintiff*

CIVIL ACTION NO. 16-739

v.

SANDRA JONES AND HEATH BASS,<sup>1</sup>  
*Defendants*

**PRELIMINARY OBJECTIONS**

OPINION AND ORDER

AND NOW, this 25<sup>th</sup> day of **April 2017**, following argument held April 17, 2017, it is ORDERED and DIRECTED that the preliminary objection pursuant to Pa. R.C.P. 1028(a)(4) in the nature of a demurrer filed on March 2, 2017 by Defendant Heath Basnick (incorrectly named Heath Bass in the caption) is SUSTAINED. The claim against Heath Basnick (incorrectly named Heath Bass) is DISMISSED without prejudice.

A complaint for Replevin “should set forth clearly and fully the plaintiff’s title and right of possession, and the defendant’s wrongful possession.” 42 P.L.E. REPLEVIN § 31 (2015). “The action of replevin is founded upon the wrongful taking and detention of property and seeks to recover property in the possession of another.” Valley Gypsum v. Pa. State Police, 135 Pa. Commw. 548, 581 A.2d 707, 710 (Pa. Commw. 1990)). “To successfully assert a replevin action, “the plaintiff must show not only title, but also the exclusive right of immediate possession of the property in question.”” Mason v. Threshman, No. 3:12cv259, 2012 U.S. Dist. LEXIS 121093, at \*10 (M.D. Pa. Aug. 27, 2012)<sup>2</sup>, *citing*, Susquehanna Commercial Fin., Inc. v. French, No. 10-7481, 2011 U.S. Dist. LEXIS 49148, 2011 WL 1743503, at \*4 (E.D. Pa. May 5, 2011) (quoting Ford Motor Credit Co. v. Caiazza, 387 Pa. Super. 561, 564 A.2d 931, 933 (Pa. Super. 1989)).

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<sup>1</sup> Heath Bashnick is the correct name of the Defendant.

<sup>2</sup>These cases are cited in Zahm & Matson, Inc. v. Challenger, Civil Action No. 14-155E, 2015 U.S. Dist. LEXIS 48828, at \*5-6 (W.D. Pa. Apr. 14, 2015).

In the present case, Plaintiff sets forth only a potential equitable claim to title. Plaintiff fails to allege a wrongful taking or possession by defendant Basnick. Plaintiff also fails to allege that he has a right to immediate and exclusive possession.

BY THE COURT,

April 25, 2017  
Date

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Richard A. Gray, J.

c: Joseph Orso, Esquire  
Jennifer Heverly, Esquire  
Prothonotary (SF – claims dismissed as to Bass/Bashnick)