

Replevin Practice Guide in Pa
(from Standard Pennsylvania Practice)

General

Replevin is an action undertaken to regain possession of goods and chattels and to recover damages for their detention by the illegal act of the defendant. [FN1] Replevin is also defined as an action for the repossession of personal property wrongfully taken or detained by the defendant, whereby the plaintiff gives security for and holds the property until the court decides who owns it. [FN2]

The action of replevin is in part a proceeding in rem to regain possession of goods and chattels,[FN1] and in part a proceeding in personam to recover damages for the taking and detention of such goods and chattels.[FN2] The primary relief sought is the return of the property itself, the damages being merely incidental.[FN3] An action for replevin can rest on a number of legal theories. In particular, an action for replevin can be based on a breach of contract.[FN4]

The focus in a replevin action is strictly limited to title and right of possession.[FN5] All other matters foreign to those limited issues are expressly excluded from consideration.[FN6]

Replevin is a distinct form of legal action and relief and is not a term that can be equated or used interchangeably with attachment, receivership, custodianship or injunction.[FN1]

Replevin may not be used as a substitute for an action to recover damages. [FN2] Further, replevin may not be employed as an indirect attempt to force the equitable specific performance of a contract.[FN3] However, equitable principles are applicable to a legal action in replevin.[FN4]

The action of replevin without bond is a personal action[FN1] by which a plaintiff can obtain a determination of his or her rights in particular goods and a judgment for their value.[FN2] The repossession of the goods, together with damages for their unlawful detention, need not be sought,[FN3] and the posting of security for their recovery is not required.[FN4]

This form of action has been compared to a proceeding for a declaratory judgment on the right to possession of property,[FN5] since the subject property is never seized pending the litigation.[FN6] The property instead remains in the possession of the defendant, who is free to dispose of it during the course of the proceedings, with the plaintiff running the risk of such possible unavailability.[FN7]

Observation:

The procedure of replevin without bond is particularly useful in cases where the defendant has substantial means and can respond to a judgment for the value of the goods or is of such character that the plaintiff can rely upon the defendant retaining the goods pending the disposition of the action.[FN8]

Who has the right to Replevin

An administrator may bring replevin to recover stock certificates against one in possession of the certificates, standing in the name of his or her decedent at the time of the death of the latter, who claims them as a gift.[FN1]

Although a spouse may have an action for replevin to recover separate property, [FN2] the action of replevin is not appropriate or available to recover an undivided interest in personal property owned by the entireties.[FN3]

Replevin is an appropriate remedy for a franchisor to recover from a franchisee, upon termination of the franchise, items of personal property loaned to the franchisee as part of the venture.[FN4]

In transactions subject to the Pennsylvania Uniform Commercial Code (UCC), where the seller of goods discovers that the buyer has received goods on credit while insolvent, the seller may reclaim the goods upon demand made within 10 days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three months before delivery, the 10- day limitation does not apply.[FN1] However, the right of a seller to reclaim goods under such provision is subject to the rights of a buyer in ordinary course or other good-faith purchaser.[FN2]

Observation:

A holder of a perfected security interest in after-acquired inventory is a good-faith purchaser that may defeat the seller's reclamation rights, unless the secured party violated the good-faith standard of the UCC.[FN3]

A corporate seller of goods whose transfer is voidable because it was made in violation of statutes governing transactions between a corporation and its officers and directors, retains its property interest in the subject property and is entitled to regain possession in a replevin action.[FN4]

A security interest, though not full ownership, when coupled with a right of immediate possession, satisfies the requirements for maintaining an action in replevin.[FN1] The Pennsylvania Uniform Commercial Code (UCC) provides that after default, a secured party may take possession of the collateral.[FN2] Pursuant to the UCC, a secured party may, as an alternative to taking peaceful possession of the collateral without judicial process, elect to proceed by process of law, which includes the right to proceed by an action in replevin to recover the collateral.[FN3]

Caution:

If the contract between the parties affords the debtor a right to redeem the subject property after repossession by paying a specified amount within a specified period of time, the creditor is required to prove that the debtors failed timely to tender the required payment in order to sustain its cause of action for replevin.[FN4]

A creditor holding a security interest in personal property may not enforce such security interest in a replevin action where such property has been granted an exemption in a bankruptcy proceeding.[FN5]

What Property is Subject to Replevin

Generally, replevin is the proper remedy to recover the possession of any kind of personal property of which the plaintiff has the right to present possession,[FN1] which is in the possession of and claimed by another. [FN2] An action in replevin may be appropriate to recover the possession of various goods and chattels,[FN3] including an engagement ring;[FN4] certificates of corporate stock;[FN5] and the books, records, and papers of an organization.[FN6] In addition, money, if easily susceptible to ready and positive identification, may be the subject property in a replevin action. [FN7]

Replevin may be maintained only for specific property capable of identification and delivery and will not lie for an undivided interest in personal property. [FN8]

Prerequisites Prior to Replevin

To sustain a cause of action in replevin, the plaintiff must establish his or her exclusive right to possession of the goods in question.[FN1] An "exclusive right" means only a right that excludes the defendant.[FN2] In addition, in order to maintain replevin, the plaintiff must have a general or special property right in the thing taken or

detained.[FN3] Thus, a plaintiff in a replevin action must show good title and a right to possession as against the defendant.[FN4] One may maintain replevin if he or she has the right of possession irrespective of whether or not he or she has ever had actual possession.[FN5] Generally, unless the plaintiff shows such title or right to possession, the defendant, even though without title or right to possession, will not be compelled to deliver the property.[FN6] In a replevin action, the fact that a third party has a better right to the goods than that of the plaintiff does not in itself aid the defendant.[FN7]

Ordinarily, replevin lies only as against goods owned solely by the plaintiff and not by one joint or common owner against another.[FN8] In addition, where a plaintiff in a replevin action fails to show a cause of action in him or herself, he or she may not cure such defect by the joinder of an additional party plaintiff who might have a cause of action.[FN9]

There is no right of action in replevin unless the plaintiff has a right to immediate possession of the property claimed.[FN1]

Caution:

A replevin action brought before the plaintiff has the right to possession of the property may be subject to dismissal.[FN2]

Generally, a demand must be made for possession before commencing an action of replevin in those cases where it is necessary to terminate the right of possession in the defendant and confer it upon the plaintiff. Thus, a demand must be made where the goods come into the defendant's possession lawfully, and the demand is necessary to establish a wrongful detention.[FN1]

Generally, the action of replevin lies to recover possession of personal chattels that are unlawfully detained, whether the taking was wrongful or otherwise.[FN1]

An action of replevin cannot be maintained against one not in the actual or constructive possession of the property sought to be recovered[FN2] at the time of the commencement of the action.[FN3]