

# Civil practice – Replevin – Dog

## District Court/BMC Appellate Division

By: Tom Egan November 22, 2016

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Where two plaintiffs brought a replevin action pursuant to G.L.c. 247, §7, of a dog the defendant found on a beach in Aruba, the trial judge committed no error in finding that the plaintiffs failed to prove ownership of the dog.

Judgment for defendant affirmed.

"The trial judge credited [plaintiff Howard E.] Tromp's testimony that he had obtained the dog 'at some point circa 2010 and thereafter provided medical care,' but did not credit 'the balance of his testimony.' He also credited [plaintiff Cornelia] Hajdinyak's testimony that she paid for medical treatment to the dog in 2013, but discredited other testimony relating to her ownership of the dog. Essentially, the judge rejected any claim to ownership of the dog by either or both plaintiffs. ...

"... The plaintiffs' claims of ownership were entirely undercut by the defense witnesses' description of the dog's medical and physical condition as it wandered on the beach. The plaintiffs complain that their own testimony strains the 'credulity' of the judge's findings. Yet the inferences the judge drew were reasonable in view of his credibility findings.

"The trial judge carefully analyzed the testimony of each witness and articulated the inferences he drew in deciding that the plaintiffs did not prove ownership of the dog or the wrongful detention of the dog by the defendant. While the plaintiffs argued their ownership rested on their ongoing care of the dog, the judge based his decision on the condition of the dog when recovered by the defendant and as corroborated by an independent witness. The plaintiffs' argument before this Division, then, is nothing more than a request to make our own independent, and contrary, findings without having seen and heard the witnesses. We decline to do so.

"Nevertheless, the plaintiffs assert that the trial judge failed to recognize a coownership agreement between the plaintiffs that was subject to the apostille procedure of an international convention. Because that procedure was followed, the plaintiffs appear to claim that the judge was precluded from finding the agreement invalid because it was self-authenticating. ...

"The apostille is a form of authentication of signatures to a document pursuant to an international convention. In this case, it is similar to a notary seal. That authentication, however, is not presumptive verification that the plaintiffs entered into an agreement binding on the trial court. In other words, the apostille only goes to verify a signatory was whom she or he claimed to be, and not the truth of the content of the document bearing a signature. ... Moreover, the document at issue is not an official foreign government document as defined by Rule 44 (for example, a title to a motor vehicle); rather, it is an unofficial document (agreement of ownership) prepared by the plaintiffs. The mere fact that the plaintiffs may have agreed to shared ownership of the dog, does not establish that the dog is in fact owned by the plaintiffs. In other words, it is hearsay that was subject to challenge and rejection by the trial court on the grounds stated in the court's decision. In any event, given the trial judge's findings with respect to other facts of nonownership, his finding that the agreement was not valid for purposes of replevy was not clearly erroneous. ...

"Because of the trial judge's specific findings that the credible evidence lacked sufficient proof of Coco's ownership by the plaintiffs, there was no need for his further interpretation of Aruban law. But based on the facts he found that the dog presented as a stray and haggard, the judge committed no error in his interpretation of Aruban law. In sum, the plaintiffs may have had control of the dog at some point in its life, but there was insufficient credible evidence that they owned the dog at the time the defendant took possession of her."

*Hajdinyak, et al. v. O'Connell (Lawyers Weekly No. 13-039-16) (7 pages) (Kirkman, J.) (Appellate Division, Southern District) Appealed from a decision by Mathers, J., in Attleboro District Court. Keith G. Langer for the plaintiffs; Alfred A. Gray Jr., of Rubin and Rudman, for the defendant (App. Div. No. 16-ADMS-40001) (Nov. 14, 2016).*