

Replevin Actions: What You Should Know

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Construction and Surety Alert
10.25.21

A contractor client of White and Williams recently found itself in a prickly situation. They had default terminated a subcontractor on a major commercial project and withheld payment to that subcontractor on an outstanding invoice as permitted under the terms of the subcontract until the project was completed. Clearly irate over being terminated, the subcontractor walked-off of the project with thousands of dollars' worth of project materials and equipment that had been paid for by the owner. While on some projects this may amount to nothing more than an annoyance or inconvenience, in this case it was a significant problem because some of the wrongfully removed materials were custom manufactured overseas and not easily replaceable. The client therefore needed to take immediate action to retrieve the stolen materials so that the project would not be delayed. Specifically, it needed to file a replevin action against the subcontractor.

A replevin action is a little known but powerful area of the law. In its simplest terms, replevin is a procedure whereby seized goods may be provisionally restored to their owner pending the outcome of an action to determine the rights of the parties concerned. The requirements of a replevin action differ by jurisdiction. For example, in Pennsylvania, the Rules of Civil Procedure devote an entire section to replevin actions and spell out in precise detail the steps that must be taken. While you should be sure to strictly comply with the rules in your jurisdiction, here are a few general points to keep in mind:

- **Where to File:** A replevin action is typically commenced by filing a complaint in the appropriate jurisdiction. Generally speaking, it is best to file the action in the jurisdiction where the improperly seized materials are being held. If that location is unknown, you can also typically file the action in the jurisdiction where the project is located.
- **The Complaint:** The complaint in replevin typically must include: (i) a description of the property to be replevied; (ii) its value; (iii) its location if known; and (iv) the material facts upon which the claim is based – in other words, why the filing party is entitled to seize the property that has been taken. The complaint generally must be verified by the filing party upon personal knowledge or information and belief.
- **Writs of Seizure:** When time is of the essence or there is a concern that the removed materials will be harmed or destroyed by the holding party, most jurisdictions allow for the sheriff to seize the property pursuant to a writ of seizure. In general, a writ of seizure is issued upon an order of court entered upon notice and a hearing during which the moving party must establish through the complaint, affidavits, testimony, admissions or other evidence, that it has a high probability of successfully demonstrating its claim to possession of the subject materials.
- **Posting of a Bond:** The plaintiff typically will be required to post a bond with a penal sum that is at least the value of the materials at issue (in Pennsylvania, the bond must be double the value of the materials). In some instances, a counterbond may be filed with the court by a defendant or intervenor claiming the right to possession of the property.
- **Final Judgment:** Following service of the complaint, a judgment may be entered by the court either before or after a trial. The judgment will determine which party has the right to retain possession of the property and any special damages to be awarded to the plaintiff or the defendant resulting from an improper claim to possession of the property. Typically, if a trial is necessary to determine the amount of special damages, if any, the trial will be a bench trial rather than a jury trial.

In the case of our contractor client, the replevin action was a complete success. Following an evidentiary hearing, the judge entered an order granting our Emergency Motion for the Issuance of a Writ of Seizure and directing the prothonotary (Pennsylvania's name for the court clerk) to issue a Writ of Seizure to the sheriff's office commanding him to take possession of the project materials upon the posting of a bond. After complying with the necessary procedural requirements, we were accompanied by several uniformed police officers to retrieve the wrongfully removed project materials from the subcontractor's warehouse. The materials were then transported to the project and immediately put into use. The whole process took weeks rather than the months (or more) it may have taken for the client to obtain suitable replacement materials.

If you ever find yourself in the unfortunate position of needing to retrieve wrongfully removed project materials or equipment from a terminated contractor or subcontractor, the replevin action is a very useful tool to keep in mind. Be sure to strictly follow the procedural requirements in your jurisdiction and you may end up retrieving your wrongfully removed items in relatively short order.

If you have any questions or need more information, contact Craig O'Neill (oneillc@whiteandwilliams.com | 215.864.6309) or another member of the Construction and Surety Group.

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