

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

BUCKEYE DIAMOND LOGISTICS, INC. :	:	
fka BUCKEYE RECYCLERS, INC. :	:	
	:	
Plaintiff, :	:	
	:	Case No. C3-01-440
	:	
v. :	:	
	:	Judge Walter Herbert Rice
CHEP USA, a general partnership :	:	
	:	
Defendant. :	:	

**COUNTERCLAIM DEFENDANT BUCKEYE DIAMOND MOTION FOR
SUMMARY JUDGMENT AS TO CHEP USA’S REPLEVIN COUNTERCLAIM**

Counterclaim Defendant Buckeye Diamond Logistics (“Buckeye”) hereby moves for summary judgment on CHEP USA’s counterclaim for replevin on the ground that this claim is moot. A memorandum in support is attached.

_____ s/ James A. Wilson
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MEMORANDUM IN SUPPORT

CHEP USA's counterclaim in this case states two substantive causes of action – for conversion and for replevin. CHEP's replevin claim, however, is moot. "Chapter 2737, in clear and unambiguous language, states that replevin is a prejudgment remedy that is available only if specific procedures are followed." America Rents v. Crawley, 77 Ohio App.3d 801, 803-04 (Franklin County 1991). CHEP has never sought to avail itself of the procedure to seek the remedy of replevin during the prejudgment phases of this case. Moreover, CHEP admits that Buckeye's returned all pallets bearing CHEP's logo in its possession immediately after receipt of the Court's August 11, 2003 Decision and Entry. See, e.g., Defendant CHEP USA's Memorandum in Opposition to Plaintiff Buckeye Diamond Logistics Motion in Limine (Dock. # 82) at 2. Because CHEP's replevin counterclaim is moot, Buckeye should be granted summary judgment on this counterclaim.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this Motion was served on
September 14, 2004, by electronic delivery or facsimile upon:

John C. McDonald
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250 West Street
Columbus, OH 43215

s/ James A. Wilson
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