

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

Josh Hammond,

Plaintiff,

v.

Richard Tod Hammond,

Defendant / Third-Party Plaintiff,

v.

Titan Logging, LLC,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

C/A No.: 2014-CP-29-00442

ORDER GRANTING PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT

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SC Court of Appeals

Initial Hearing Date: August 24, 2015
Presiding Judge: The Honorable DeAndrea G. Benjamin
Plaintiff's Attorneys: Stephen L. Goldfinch, Jr. and Ryan P. Compton
Defendant's Attorney: Francis L. Bell, Jr.

Pending before this Court is Plaintiff Josh Hammond's ("Plaintiff") motion for partial summary judgment made pursuant to Rule 56 of the *South Carolina Rules of Civil Procedure* (SCRCP). On August 24, 2015, this Court heard arguments on Plaintiff's motion and the opposition of Defendant Richard Tod Hammond ("Defendant"). At the hearing, this Court took Plaintiff's motion under advisement and, from the bench, ruled that the record would be held open for an additional 15 days during which time any party could supplement the record before the Court. After reviewing all affidavits and exhibits submitted, for the reasons set forth below, this Court grants Plaintiff's motion for partial summary judgment.

I. BACKGROUND

In this action, Plaintiff asserts claims against Defendant for conversion of certain items of equipment. Defendant, in turn, asserts counterclaims against Plaintiff for alleged conversion of the same items of equipment as well as conversion of certain funds comprised of two checks. Plaintiff has moved for partial summary judgment as to the ownership of three items of equipment and the two checks which Defendant has asserted counterclaims concerning. Specifically, the items of equipment at issue in this motion are: (1) 2004 Tigercat 720D Timber Cutter (S/N 7203890); (2) 2004 Tigercat 724D Timber Cutter (S/N 724065); and (3) 2004 Tigercat 620C Skidder (S/N 6200569). The checks at issue in this motion are: (1) Check #2927; and (2) Check #2933.

II. FACTS

The relevant uncontroverted and undisputed facts are as follows. The Plaintiff personally signed each of the purchase documents for all three at issue items of equipment. (Affidavit of Josh Hammond, Exhibits 3, 8, and 13). The Plaintiff personally obtained, in his own name, loans for the purchase of all three at issue items of equipment. (Affidavit of Josh Hammond, Exhibits 4, 9, and 14). The Plaintiff personally made down payments for the purchase of all three at issue items of equipment. (Affidavit of Josh Hammond, and Exhibits 5 and 10). The Plaintiff personally paid the remaining amount of the purchase price for each of the three at issue items of equipment. (Affidavit of Josh Hammond, Exhibits 6, 11, and 15). Further, the Plaintiff made all said payments from checking accounts which the



Plaintiff personally opened and of which the Plaintiff was the sole owner. (Affidavit of Josh Hammond, Exhibits 7 and 12).

III. ANALYSIS

Conversion is a tortious act, and may arise either by wrongful taking of chattel or by some other illegal assumption of ownership, by illegally using or misusing it, or by wrongful detention. See *Castell v. Stephenson Finance Co.*, 244 S.C. 45, 135 S.E.2d 311 (1964). A party claiming conversion must establish either title to or right to the possession of the personal property. See *Moseley v. Oswald*, 376 S.C. 251, 656 S.E.2d 380 (2008); see also *Jones v. Equicredit Corp.*, 347 S.C. 535, 556 S.E.2d 713 (Ct. App. 2001) (no conversion where claimant cannot establish ownership). Furthermore, a party's "claim for conversion fails where the [opposing party] proves a legal right to the property." *Mackela v. Bentley*, 365 S.C. 44, 48, 614 S.E.2d 648, 650 (2005). This same standard is applicable to Defendant's counterclaim regarding conversion of the at issue checks because S.C. Code Section 36-3-420(a) mandates that the "law applicable to conversion of personal property applies to instruments."

Summary judgment must be granted if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. In considering this motion for summary judgment, this Court viewed the facts in the light most favorable to the Defendant, as the non-movant. Nevertheless, this Court cannot

ignore facts unfavorable to the Defendant as the non-movant, but must determine whether a verdict for the Defendant would be reasonably possible under the facts. See *Bloom v. Ravoir*, 339 S.C. 417, 423, 529 S.E.2d 710, 713 (2000).

The Plaintiff, as the movant, must initially show that there is no genuine issue of material fact. "This initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the nonmoving party's case, and it is not necessary for the moving party to support its motion with affidavits or other similar materials negating the opponent's claim." *D.R. Horton, Inc. v. Wescott Land Co., LLC*, 398 S.C. 528, 542, 730 S.E.2d 340 (Ct. App. 2012). The moving Plaintiff discharged this initial responsibility by pointing out to this Court that there is an absence of evidence to support the non-moving Defendant's claim of ownership over the three items of equipment and two checks in question.

Because the Plaintiff made this showing, the Defendant must come forward with specific facts showing there is a genuine and material issue for trial and must do more than rest upon the mere allegations or denials of his pleadings. See *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 392 S.E.2d 789 (1990). Defendant failed to come forward with any specific facts showing there is a genuine and material issue for trial, even despite being afforded 15 days additional days in which he could produce affidavits or similar materials showing an ownership interest to support his alleged title to or right to possession of the three items of equipment and two checks in question.

IV. CONCLUSION

For the foregoing reasons, it is hereby ordered that Plaintiff's motion for partial summary judgment is granted in its entirety as there is no genuine issue of any material fact as to the: (1) existence of Plaintiff's title to or right to possession of the 2004 Tigercat 720D Timber Cutter (S/N 7203890), 2004 Tigercat 724D Timber Cutter (S/N 724065), and 2004 Tigercat 620C Skidder (S/N 6200569); (2) complete absence and lack of Defendant's title to and right to possession of the 2004 Tigercat 720D Timber Cutter (S/N 7203890), 2004 Tigercat 724D Timber Cutter (S/N 724065), and 2004 Tigercat 620C Skidder (S/N 6200569); (3) existence of Plaintiff's title to or right to possession of Check #2927 and Check #2933; and (4) complete absence and lack of Defendant's title to and right to possession of Check #2927 and Check #2933. Because Defendant has no ownership interest, whether by title to or right to possession, and because Plaintiff does have said ownership interest, the Defendant shall immediately relinquish the 2004 Tigercat 620C Skidder (S/N 6200569) to the Plaintiff in substantially the same working condition as when he came into possession thereof.

Therefore, the Plaintiff has satisfied the essential element of title to or right to possession sufficient for his claim for conversion of the three at issue items of equipment. Partial summary judgment is granted. Furthermore, the Defendant's cross-claims for conversion are dismissed based on the above. As for the third-party complaint, this was not before the court at this time.

IT IS ORDERED.



The Honorable DeAndrea G. Benjamin
Fifth Judicial Circuit

11-10-15, ~~2015~~
Columbia, South Carolina.