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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY COURT OF COMMON PLEAS
Charles B. Simmons, Jr., Special Referee

Case No. 2008-CP-39-56
Appellate Case No. 2013-002154

Palmetto State Enterprises,
LLC,

Respondent,

v.

Clegg Lamar Greene a/k/a
Lamar Greene, Juleene
Greene, a/k/a Julie Greene, J
& P Enterprises of the
Carolinas, Inc., and Gaston
Engineering, Inc.,

Of Which

Defendants,

J & P Enterprises of the
Carolinas, Inc. is the

Appellant.

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SC Court of Appeals

APPELLANT J&P ENTERPRISES OF THE CAROLINAS, INC.'S FINAL BRIEF

Dated: April 17, 2014

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I. Statement of Issues on Appeal

A. Is the judgment against J & P Enterprises of the Carolinas, Inc. supported by a preponderance of the evidence, given that Lamar Greene could not have converted funds to which he was legally entitled?

B. Is the judgment against J & P Enterprises of the Carolinas, Inc. supported by a preponderance of the evidence, given that J & P could not have converted funds which Palmetto State legally loaned to J & P and did not demand to be returned to Palmetto State?

II. Statement of the Case

Palmetto State Enterprises, LLC ("Palmetto State") sued Lamar Greene, J & P Enterprises of the Carolinas, Inc. ("J & P"), Gaston Engineering, Inc. and Morgan and Bartos Builders, LLC in Pickens County on January 10, 2008. Palmetto State alleged that Lamar Greene, who served as its managing member, used Palmetto State funds in an unauthorized manner. The evidence at the bench trial on May 9 and 10, 2013 showed Mr. Greene was also a majority shareholder of J & P, and he deposited funds into a J & P account without the knowledge of other J & P shareholders. Palmetto State claimed that J & P was liable for conversion of those funds. J & P argued that Mr. Greene paid himself salary from Palmetto State and deposited those funds into the J & P account. Thus, Mr. Greene's transfer of those funds was not unauthorized, and J & P did not convert those funds.

Further, J & P argued the amounts deposited into the J & P account were labeled "loans." J & P argued Mr. Greene had the authority to make loans on behalf of Palmetto State, and there was no evidence entered that Palmetto State demanded return of those loan funds. J & P argued it cannot be liable for conversion without Plaintiff's showing J & P took or retained the funds in an unauthorized manner. In his Order dated August 28, 2013 and filed with the Clerk of Court for Pickens County on August 30, 2013, the Honorable Charles B. Simmons, Jr. found J & P liable for conversion in the amount of \$120,449.00. J & P appeals this decision, on the grounds that the judgment was not supported by the preponderance of the evidence. J & P served Notice of its Appeal on October 3, 2013.

III. Argument

J & P Enterprises of the Carolinas, Inc. ("J & P") hereby appeals the August 28, 2013 Order of the Honorable Charles B. Simmons, Jr. on the grounds that the judgment was not supported by the preponderance of the evidence. In that Order, J & P was found liable to Palmetto State Enterprises, LLC ("Palmetto State") for conversion. This finding was based only on evidence showing that a majority shareholder of J & P (Lamar Greene), who was also a managing member of Palmetto State, wrote checks from a Palmetto State account to a J & P account. The parties, however, did not contest Mr. Greene's authority to write checks from or otherwise manage Palmetto State's account(s) as managing member. Most importantly, testimony of witnesses showed Mr. Greene was owed salary by Palmetto State in the amount of \$10,000 per month from 2005 through 2007 (R. p. 102, Reduced Transcript p. 208, lines 4-19). Jeff Greene, Mr. Greene's son and another shareholder of J & P, testified that Lamar Greene deposited his salary into a J & P account, and there was no other evidence of Mr. Greene receiving his salary from Palmetto State (R. p. 102, Reduced Transcript p. 208, lines 4-19; R. p. 141, Reduced Transcript p. 359, lines 16-21). The amounts J & P allegedly converted are less than the salary owed to Mr. Greene by Palmetto State (R. p. 63, Reduced Transcript p. 50, line 20 through p. 51, line 8 (Mr. Greene was managing member of Plaintiff from 2005 through 2007, and he was owed a total of at least \$270,000.00); R. p. 152, Reduced Transcript, p. 402, line 7 (noting Mr. Greene may have been owed as much as \$435,000.00 in salary from Palmetto State); R. p. 154, Reduced Transcript, p. 408, line 17 (the Court found J & P liable to Palmetto State for \$120,449.00)).

J & P appeals the judgment against it, because Mr. Greene could not have converted funds to which he was legally entitled. In the alternative, Mr. Greene was authorized to make loans to J & P, and J & P cannot be found liable for conversion based on unauthorized detention of funds when Palmetto State has not shown it demanded return of those loaned funds.

A. **The Judgment Against J & P Should Be Reversed Because the Evidence Shows Lamar Greene had Authority and the Right to Convey His Salary from a Palmetto State Account into a J&P Account.**

Lamar Greene, as managing member of Palmetto State Enterprises, had the authority to write checks from Palmetto State for his salary and deposit those amounts into an account he operated as majority shareholder of J & P. *See* S.C. CODE ANN. §§ 33-44-404(b)(1) (a manager of an LLC has the right to conduct company business); 33-44-201(b)(1) (the manager's act binds the company unless the manager had no authority to act for the company and the person dealing with the manager knew the manager lacked authority); (R. p. 55, Reduced Transcript p. 18, lines 9-13 (stating that Mr. Greene ran Palmetto State and handled its accounts)).

Quite simply, J & P cannot be liable for converting funds to which one of its shareholders was legally entitled. A cause of action for conversion requires that a defendant, ***without authorization*** from the plaintiff, take the plaintiff's property and use it for defendant's own benefit. *See Richardson's Restaurants, Inc. v. Nat'l Bank of S.C.*, 403 S.E.2d 669, 672 (S.C. Ct. App. 1991). A plaintiff alleging conversion must prove the plaintiff, and not the defendant, has the legal right to the property in question, as "[c]onversion cannot arise from the defendant's exercise of a legal right over the

property.” *Id.* Where a plaintiff fails to enter evidence showing it has a legal right to the property in question, a conversion action cannot lie. *Id.* (finding no conversion action could be maintained where plaintiff did not introduce evidence showing it had a legal right to the funds in question); *see also Owens v. Zippy Mart of S.C., Inc.*, 234 S.E.2d 217, 218 (S.C. 1977) (“[c]onversion is a wrongful act and cannot arise from the exercise of a legal right”). For example, a plaintiff cannot allege that its funds were converted where the defendant is owed those funds. *See Owens*, 234 S.E.2d at 218 (finding “there can be no conversion where there is a mere obligation to pay a debt.”); *see also Brannon v. Palmetto Bank*, 638 S.E.2d 105, 109 (S.C. Ct. App. 2006) (finding no unauthorized taking of funds where defendant had a right to the funds).

Lamar Greene did not convert Plaintiff’s property because he had both the authority and right to transfer Plaintiff’s funds into a J & P account. Mr. Greene was managing member of Plaintiff until 2007 (R. p. 54, Reduced Transcript p. 15, line 23). As managing member of Plaintiff, Mr. Greene had the authority to write checks on Plaintiff’s behalf for Plaintiff’s financial obligations, and this is not contested (R. p. 55, Reduced Transcript p. 18, lines 9-13 (stating that Mr. Greene ran Palmetto State and handled its accounts)). It is also not contested that Plaintiff owed Mr. Greene a salary of \$10,000 per month during the time he was managing member of Plaintiff (R. p. 63, Reduced Transcript p. 50, line 20 through p. 51, line 8; R. p. 102, Reduced Transcript p. 208, lines 4-19). Mr. Greene was managing member of Plaintiff from 2005 through 2007, and he was owed a total of at least \$270,000.00 (R. p. 63, Reduced Transcript p. 50, line 20 through p. 51, line 4; R. p. 152, Reduced Transcript, p. 402, line 7 (noting Mr.

Greene may have been owed as much as \$435,000.00 in salary from Palmetto State)). Jeff Greene, Mr. Greene's son, however, testified that Mr. Greene deposited Mr. Greene's salary from Plaintiff directly into a J & P account (R. p. 102, Reduced Transcript p. 206, lines 7-12; R. p. 141, Reduced Transcript p. 359, lines 16-21). These deposits of Mr. Greene's salary were called a "loan" to J & P, and there can be no question that Mr. Greene was entitled to loan his salary from Plaintiff to J & P (R. pp. 121-22, Reduced Transcript, p. 279, line 23 through p. 280, line 5 (discussing "loans" from Palmetto State into J & P account); R. p. 102, Reduced Transcript p. 206, lines 7-12 (Lamar Greene deposited his salary from Palmetto State into J & P's account)).

The Court found J & P was liable to Plaintiff for conversion of the "loans" to J & P, plus one additional payment made by Mr. Greene on Plaintiff's behalf for payment of a debt incurred by J & P, in the total amount of \$120,449.00 (R. p. 154, Reduced Transcript, p. 408, line 17 (J & P "loans" in the amount of \$112,303.00 and a payment made for J & P's benefit in the amount of \$8,146.00)). Quite clearly, the amounts Mr. Greene deposited into a J & P account as his salary (totaling \$112,303.00) are less than the amount Plaintiff actually owed Mr. Greene as salary (at least \$270,000.00 and potentially as much as \$435,000.00) (R. p. 63, Reduced Transcript, p. 50, line 20 through p. 51, line 8 (Mr. Greene was managing member of Plaintiff from 2005 through 2007, and he was owed a total of at least \$270,000.00); R. p. 152, Reduced Transcript, p. 402, line 7 (noting Mr. Greene may have been owed as much as \$435,000.00 in salary from Palmetto State)).

Mr. Greene was owed these funds from Plaintiff, and thus, he had the legal right

to transfer the funds into a J & P account. J & P cannot be liable for conversion to Plaintiff, and J & P respectfully requests the ruling against it be reversed.

B. The Judgment Against J & P Should Be Reversed Because the Evidence Shows Lamar Greene had Authority to Make Loans to J & P from a Palmetto State Account.

In the alternative, the judgment against J & P for conversion of funds should be reversed because the evidence is clear that the amounts transferred from Palmetto State to J & P were loans, for which Palmetto State did not make a demand for repayment. Of course, one company may loan another funds. As manager of Palmetto State, Mr. Greene had the authority and the right to make loans to other companies (R. p. 55, Reduced Transcript p. 18, lines 9-13 (stating that Mr. Greene ran Palmetto State and handled its accounts)); *see also* S.C. CODE ANN. §§ 33-44-404(b)(1) (manager of LLC has the right to conduct company business); 33-44-201(b)(1) (manager's act binds the company unless manager had no authority to act for company and person dealing with manager knew manager lacked authority). The evidence clearly shows that transactions to J & P were titled "loans" by Lamar Greene (R. p. 121, Reduced Transcript, p. 279, line 23 through p. 280, line 5 (discussing "loans" from Palmetto State into J & P account)).

Again, conversion requires that a defendant, ***without authorization*** from the plaintiff, take the plaintiff's property and use it for defendant's own benefit. *See Richardson's Restaurants, Inc. v. Nat'l Bank of S.C.*, 403 S.E.2d 669, 672 (S.C. Ct. App. 1991). Palmetto State cannot show that Lamar Greene was not authorized by Palmetto State to make loans on behalf of Palmetto State or that J & P is liable for conversion for accepting such loans. Importantly, when a party claims conversion based on the

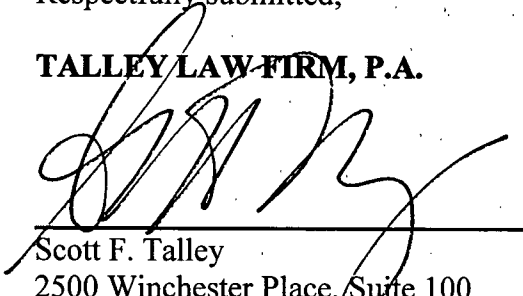
unauthorized detention of funds, it must show that ***the defendant continued to detain the funds after demand was made***. See *Hennes v. Shaw*, 725 S.E.2d 502, 509 (S.C. Ct. App. 2012) (finding “a conversion action may lie when the plaintiff shows unauthorized detention of property [in that case, loan funds], after demand”). Palmetto State cannot prove it made a demand for the repayment of the loans (R. p. 74, Reduced Transcript p. 97, lines 18-20). Thus, J & P was not shown to have detained the loan funds without authorization after demand was made, and J & P cannot be held liable for conversion by merely accepting loans. See *Hennes*, 725 S.E.2d at 509. The conversion finding against J & P should be reversed because the evidence entered in trial simply did not support such a finding.

IV. Conclusion

The trial court’s finding that J & P is liable to Palmetto State for conversion should be reversed, because a cause of action for conversion of funds cannot lie where either 1) the alleged converting party has a legal right to the funds at issue, or 2) the funds were granted as a loan and return was not demanded.

Respectfully submitted,

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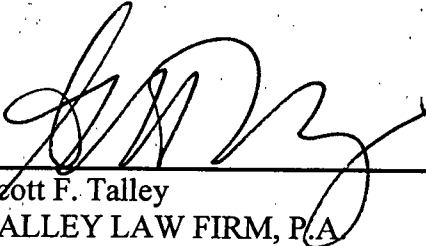
CERTIFICATE OF COUNSEL

IT IS HEREBY CERTIFIED that Appellant's Final Brief in this matter complies with South Carolina Rule of Appellate Procedure 211(b). This Certification was served upon Counsel for Respondent, David R. Price, Jr., and Counsel for the Estate of Lamar Greene, Dan Hunt, by placing copies of same in the United States Mail this date, with sufficient postage affixed thereto, addressed as follows:

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