

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. No. 2020-CP-23-01886

ARO-D Enterprises, LLC,

Plaintiff,

v.

Tiger Enterprises & Trading, Inc., Bonnie
Walker and Dwight Walker,

Defendants/Counterclaimants.

**ORDER ON PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY
JUDGMENT**

Tiger Enterprises and Trading, Inc.,

Third-Party Plaintiffs,

v.

Rudy A. Dixon, Frank T. Gangi, and T3
Aviation, LLC,

Third-Party Defendants.

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SC Court of Appeals

This matter came before the Court on Plaintiff's Motion for Partial Summary Judgment. On March 9, 2021, a hearing was held on this motion along with several other motions filed in this case. Plaintiff and Third-Party Defendant Rudy A. Dixon were represented at the hearing by J.J. Andrighetti, Esq. Defendants/Third-Party Plaintiffs were represented at the hearing by Wesley D. Few, Esq. Third-Party Defendants Frank T. Gangi and T3 Aviation, LLC were represented by Steven Edward Buckingham, Esq and Frank Gangi was also present. After hearing arguments from the parties and considering the pleading, affidavits, memoranda, and other evidence previous of record and presented at the hearing, the Court finds that Plaintiff is entitled to summary judgment as to its Claim and Delivery cause of action.

DISCUSSION

a. Summary Judgment Standard

A motion for summary judgment should be granted when “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; Wells v. City of Lynchburg*, 331 S.C. 296, 301, 501 S.E.2d 746, 749 (Ct. App. 1998). In determining whether any triable issues of fact exist, the reviewing court must consider all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party. *Willis v. Wu*, 362 S.C. 146, 151, 607 S.E.2d 63, 65 (2004).

Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Nelson v. Charleston County Parks & Recreation Comm’n*, 362 S.C. 1, 5, 605 S.E.2d 744, 746 (Ct. App. 2004). However, “when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” *Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004).

The moving party has the initial responsibility of demonstrating the absence of a genuine issue of material fact. *Rule 56(c), SCRPC*. Once the moving party carries its initial burden, the non-moving party must “do more than simply show that there is some metaphysical doubt as to the material facts” but “must come forward with ‘specific facts showing that there is a genuine issue for trial.’” *Baughman v. American Telephone and Telegraph Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (emphasis in original) (citation omitted). The non-moving party must set forth facts, “as would be admissible in evidence,” to show that a true jury issue exists. *Rule 56(e)*,

SCRCP. “Ultimate or conclusory facts and conclusions of law, as well as statements on ‘information and belief’ cannot be utilized on a summary judgment motion.” *Dawkins v. Fields*, 354 S.C. 58, 68, 580 S.E.2d 433, 438 (2003) (quoting Charles Alan Wright et al., *Federal Practice and Procedure* § 2738 (3d ed. 2007)).

b. Factual Background

Plaintiff is engaged in the business of buying and deconstructing damaged or inoperable planes for the purpose of selling parts to third party airline operators and part suppliers. In the instant case, Plaintiff purchased the rights to a Hawker 4000 business jet from the Nigerian government. The Plaintiff traveled to Nigeria in the summer of 2019 to begin deconstructing the Hawker 4000. He shipped the parts removed from the Hawker 4000 (“Hawker Inventory”) to Defendant Tiger Enterprises & Trading, Inc. (“TET”) at TET’s warehouse in Greenville County.

It is clear from the record that prior to shipping the Hawker Inventory, Plaintiff and Defendants had several discussions related to the sale of the Hawker Inventory. Plaintiff and Defendants acknowledge that the discussions were lengthy but, ultimately, unfruitful. (Aff. Dwight Walker, Pars. 4-14; Hansen Dep. 59:1-6; Aff. Rudy Dixon, Par. 6). Defendants and Plaintiff further testified that no written contract was ever agreed to or executed by either party (Aff. Rudy Dixon, Par. 6; Hansen Dep. 59:15-17).

It is also undisputed that Plaintiff is the rightful owner of the Hawker Inventory. (Aff. Rudy Dixon, Par. 5; Hansen Dep. 149:6-10). Plaintiff, as rightful owner, demanded the return of the Hawker Inventory when he visited the warehouse and offices of TET in late August, 2019. (Hansen Dep. 149:21-23). TET did not release the Hawker Inventory to Plaintiff and instead, retained it for debts allegedly owed by Plaintiff to TET. (Hansen Dep. 149:23-25).

c. **Discussion**

Plaintiff argues it is entitled to summary judgment on its second cause of action for Claim and Delivery of the Hawker Inventory. Plaintiff seeks immediate possession of the Hawker Inventory. Defendant TET argues that it has a consignment agreement with the Plaintiff and is entitled to retain the Hawker Inventory to secure payment for breach of the consignment agreement and other damages. Plaintiff denies any such consignment agreement or security interest exists.

"An action in claim and delivery is an action at law for the recovery of specific personal property." First Palmetto State Bank and Trust Co. v. Boyles, 394 S.E.2d 313, 302 S.C. 136 (S.C. 1990). However, such recovery may be limited by a security interest as set forth in the South Carolina Uniform Commercial Code. S.C. Code § 36-9-203(b) provides, in part “. . . a security interest is enforceable against the debtor and third parties with respect to collateral only if: . . . (3) one of the following conditions is met: . . . (A) the debtor has authenticated a security agreement that provides a description of the collateral” The finding of this Court thus rests on the determination of whether an authenticated security agreement exists. SC Code § 36-9-102(7)(A) is clear unequivocal; “‘Authenticate’ means to sign”

Defendant TET's Vice-President Dan Hansen testified that no signed agreement existed, as previously cited herein. Similarly, Defendant Dwight Walker, TET's co-owner, acknowledged that Plaintiff refused to sign consignment agreement. (Aff. Dwight Walker, Par. 34). The Defendants have failed to provide any evidence or testimony claiming the existence of a contract or written, signed agreement between the parties. Defendants further argue that summary judgment is premature because discovery is not yet completed. Notwithstanding the fact that this case is nearly one year old, Defendants have not provided any indication that additional discovery

would lead to admissible evidence that a written agreement exists, which the Defendants have already testified does not exist.

WHEREFORE, based on the foregoing, the Court hereby orders as follows:

1. Plaintiff's motion for partial summary judgment is granted.
2. Defendants shall release the Hawker Inventory into the care and custody of Plaintiff or its authorized agents and representatives within twenty (20) days of the entry of this Order.
3. This Court shall retain jurisdiction for the purpose of ensuring the release of the Hawker Inventory is conducted in accordance with this Order.

IT IS SO ORDERED.

Judge Gravely's E-Signature Page to Follow



Greenville Common Pleas

Case Caption: ARO D Enterprises LLC , plaintiff, et al vs. Tiger Enterprises & Trading Inc , defendant, et al
Case Number: 2020CP2301886
Type: Order/Summary Judgment

So Ordered

s/ Honorable Perry H. Gravely, #2755