

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Master in Equity

Case No. 2010-CP-46-04278

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MAY 06 2013

SC Court of Appeals

Lejla Tihic, Respondent,

v.

Yani Arnautovic, Appellant.

INITIAL BRIEF OF APPELLANT

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RULES

RULE 59, S.C.R.C.P.

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1 AM.JUR.2D *Accession and Confusion* Section 29 (1962)

18 AM.JUR.2D *Conversion* § 112 (2002)

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RESTATEMENT OF TORTS 2D [927(1)(a)]

STATEMENT OF ISSUES ON APPEAL

- I. THE MEASURE OF DAMAGES FOR CONVERTED PERSONAL PROPERTY IS PLAINTIFF'S TRUE INTEREST THEREIN.

STATEMENT OF THE CASE

Appellant YANI ARNAUTOVIC and Respondent LEJLA TIHIC lived together as domestic partners. During the relationship, the parties purchased and financed a 2008 Chevrolet Aspen SUV. Title to the car was in Mr. ARNAUTOVIC' name. After their separation, he returned the car to its Seller.

Trial was before the Honorable S. Jackson Kimball, sitting as Special Circuit Court Judge without a jury. The Court concluded that the Defendant was the equitable owner of the car and that ARNAUTOVIC' return of the car amounted to a conversion. The Court found that TIHIC' evidence showed a value for the car (unaffected by the security interest) of \$12,000.00. The Court limited her recovery on this claim to the amount plead of \$10,750.00. It also awarded punitive damages against the Appellant.

The Court issued its Order on May 25, 2011. The same was filed on June 13, 2011 and received by Appellant on June 15, 2011. By Motion served by mail on June 27th, Appellant moved for a new trial on damages or to alter or amend the judgment pursuant to Rule 59, S.C.R.C.P.

After hearing on September 15, 2011, the Circuit Court denied the Motion by Order dated September 16, 2011, filed September 23, 2011 and received by the Appellant on September 26, 2011. Notice of Appeal was served on October 26, 2011.

ARGUMENT

- I. THE MEASURE OF DAMAGES FOR CONVERTED PERSONAL PROPERTY IS PLAINTIFF'S TRUE INTEREST THEREIN.

The Order of the Honorable Court finds and concludes that the Plaintiff was the equitable owner of the car titled to, and ultimately sold by, the Defendant.¹ It concludes that the Defendants action in selling the same amounted to conversion, and that punitive damages are

1. RECORD ON APPEAL, Order of June 13, 2011, p.____.

allowed and proven.²

In discussing the amount of damages awarded to the Plaintiff, the Court found that:

Plaintiff's losses caused by Defendant's taking and selling of the car are the down payment she contributed, plus payments made by her. While the evidence offered in proof of her loss totaled more than \$12,000.00, her complaint seeks damages of only \$10,750. Plaintiff offered no proof of the value of the car at the time defendant disposed of it, and there was no proof of the sale price received by Defendant.³

In its *Conclusions of Law* from the same order, the Court states:

The measure of damages in an action for conversion is value of the property converted with interest from date of the conversion to the date of trial. *King v. All-State Ins. Co.*, 272 S.C. 259, 251 S.E.2d 194 (1979).⁴

The Court goes on from the statement above to note that the Defendant, then a *pro se* litigant, failed to object to the fact that "there is no proof of such value" as stated in the quote above, nor did he move for a directed verdict.⁵ The Court then concludes:

Thus, the evidence of Plaintiff's payments made toward the purchase of the cars stands as proof of her loss. That amount is limited to \$10,750 by the prayer of her complaint and I so conclude.⁶

At trial, oral and written evidence was admitted that ARNAUTOVIC had paid off the loan on the car.⁷ Thus, competent evidence of the security interest existing on the car, and the amount of the loan at the time of its sale, was before the Trial Court.⁸

The commentators of 22 AM.JUR.2D *Damages* 399 (2002) set out the general rule as to

2. *Ibid.*

3. RECORD ON APPEAL, Order of June 13, 2011, p.____.

4. *Id.*, Order of June 13, 2011, p.____.

5. *Id.*, Order of June 13, 2011, p.____.

6. *Id.*, Order of June 13, 2011, p.____.

7. RECORD ON APPEAL, Transcript, p.-.

8. While the Court found the testimony of ARNAUTOVIC contradictory and unworthy of belief (RECORD ON APPEAL, Order of June 13, 2011, p.____.), no reason was cited as why the printed "Payoff Agreement" from the seller (admitted without objection: (RECORD ON APPEAL, Transcript, p.-.), or opposing counsel's admission of the same (RECORD ON APPEAL, Transcript, p.-.) could be disregarded.

the measure of tortious damage for the taking of personal property. That commentary states in relevant part:

The rule of damages for wrongful property damage, or the wrongful taking, detention, or destruction of property, is no different than the general principle of damages applied in all tort cases: the injured party is entitled to such recovery as will compensate him fully for the losses which are the proximate result of the wrongdoer's negligent or wrongful act or omission. Stated otherwise, the injured party is entitled to a sum which will restore him as nearly as possible to his former position; therefore he may recover the actual loss sustained. The remuneration must, however, be commensurate with the plaintiff's interest in the property. He may not make a profit out of his injury, and his recovery is limited to compensation for the damages naturally and necessarily resulting from the injury alleged, except where the circumstances authorize the recovery of exemplary damages. The RESTATEMENT OF TORTS 2D [927(1)(a)] states the general rule as being that when one is entitled to a judgment for the conversion of a chattel or the destruction or impairment of any legally protected interest in land or other thing, he may recover the value of the subject matter or of his interest in it at the time and place of the conversion, destruction or impairment.

[*Id.*, Footnotes omitted; emphasis added.]

The above rule, codified in the RESTATEMENT OF TORTS 2D, is that which has been adopted by this Court.

The measure of damages for a willful and intentional conversion, where the property is converted with knowledge of the owner's rights in the property, is the highest market value of the property with interest up to the time of trial, including any additional value due to additions or improvements made by the converter. *Industrial Welding Supplies, Inc. v. Atlas Vending Co.*, 276 S.C. 196, 277 S.E.2d 885 (1981); *Gregg v. Bank of Columbia*, 72 S.C. 458, 52 S.E. 195 (1905); RESTATEMENT (SECOND) OF TORTS Section 927 (1981); 1 AM.JUR.2D *Accession and Confusion* Section 29 (1962).

[*Green v. Waidner*, 284 S.C. 35, 324 S.E.2d 331 (Ct.App. 1984).]

An outstanding loan was acknowledged to exist on the car. If, in fact there was an absence of proof as to the amount of loan payoff due on the car at the time of its conversion, the

Court as the finder of fact has insufficient evidence to determine its "market value".

Thus, the commentators of AMERICAN JURISPRUDENCE 2D state, as a general rule:

[I]t has been held that one who has a special interest in personal property can only recover in a conversion action the value of his interest in the property. With respect to parties having a security interest or right in the property, damages are determined by taking the value of the property at the time of conversion, crediting the defendant with the balance of the purchase price due, and adding interest from the date of conversion.

[18 AM.JUR.2D *Conversion* § 112 (2002); footnotes omitted but citing to *Mercury Motor Express, Inc. v. Crockett*, 422 So.2d 358 (Fla.App. 1 Dist. 1982).]

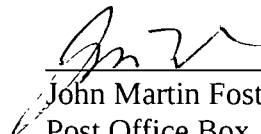
Though the example cited by the commentators above is slightly different from that of this case, the rule as stated is clear.

If, as shown by the evidence, proof of the loan payoff existed, the Trial Court was required to deduct that amount from what it accepted as evidence of the car's worth in order to determine the true value of the same.⁹

CONCLUSION

Appellant argues that the issue herein is defined and, within the existing law, clear. The Trial Court awarded actual damages without calculating the debt on the car it found to be converted. That finding does not, and cannot, represent the true market value of the personal property found to be converted.

Respectfully submitted,



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May 2, 2013

Rock Hill, South Carolina

9. If it is argued that the value awarded by the Trial Court represents damages other than that of the car itself, the same is precluded by the language of the Court's Order of June 13, 2011 and by the separate award of punitive damages, which is not challenged in this appeal.

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PROOF OF SERVICE

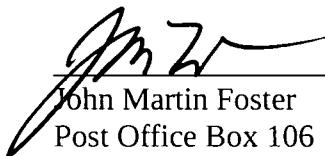
I certify that I have served the Initial Brief of Appellant (as revised and properly captioned), dated May 2, 2013, on the following counsel of record:

Ms. Lejla Tihic, Respondent, *Pro se*
13312 Lampmeade Lane
Charlotte, NC 28273

by depositing the same with the United States mail, with sufficient first class postage attached, properly addressed to the clerk of the Court, and with a copy also directed to the respective last known address(es) of those attorney(s) and/or persons set out below; or

by hand delivering copies of the same to the following persons, or by leaving the same at that person's office with that person's clerk or some other person in charge thereof, or by leaving it in a conspicuous place therein; of if the office was closed or the person to be served has no office, by leaving a copy at that person's dwelling place or usual place of abode with some person of suitable age and discretion then residing therein, all pursuant to Rule 233(b), S.C.A.C.R.

May 2, 2013



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May 2, 2013

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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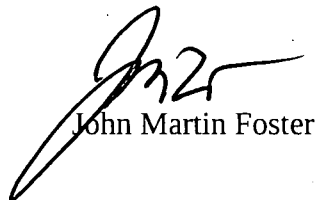
Dear Ms. Kitchings:

In accordance with Rule 208, S.C.A.C.R., enclosed herewith please find the original and one (1) copy each of the Appellants' Initial Brief (as revised and properly captioned), together with Certificate of Service for the same in the above referenced case.

By copy of this letter, I am serving the Respondent *pro se* with copies of the said Initial Brief and Designation of Matter, as evidenced by the Certificate of Service.

Please return the extra conformed copy to my office in the enclosed self-addressed, stamped envelope. As always, thank you, and your staff, for your assistance in these matters.

Sincerely yours,



John Martin Foster

jmf/
enclosures

cc: Ms. Lejla Tihic, *Pro se*
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