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**United States District Court
Central District of California**

KMS, LLC,

Plaintiff,

v.

MAJOR LEAGUE TRUCKING, INC.,

Defendant.

Case № 2:22-cv-06245-ODW (MAAx)

**ORDER DENYING PLAINTIFF’S
MOTION FOR PARTIAL
JUDGMENT ON THE PLEADINGS
[58]**

MAJOR LEAGUE TRUCKING, INC.,

Third-Party Plaintiff,

v.

FORSLA, LLC,

Third-Party Defendant.

I. INTRODUCTION

KMS, LLC brings this action for breach of contract, conversion, replevin, and pre-judgment attachment against Major League Trucking, Inc. (“MLT”). (Compl. ¶¶ 12–27, ECF No. 1.) KMS now moves for partial judgment on the pleadings pursuant to Federal Rule of Civil Procedure (“Rule”) 12(c). (Mot. Partial J. Pleadings

1 (“Motion” or “Mot.”), ECF No. 58.) For the following reasons, the Court **DENIES**
 2 the Motion.¹

3 II. BACKGROUND²

4 KMS imports air conditioning equipment from China. (Compl. ¶ 1.) MLT is a
 5 motor carrier. (*Id.* ¶ 2.) Forsla, LLC is a freight broker. (Answer ¶ 6, ECF No. 46.)
 6 KMS alleges it entered into a contract with MLT in which MLT agreed to transport
 7 cargo for KMS consisting of six ocean shipping containers (“Cargo”). (Compl. ¶ 6.)
 8 MLT denies it entered into an agreement with KMS, but admits that it agreed to
 9 transport certain cargo through Forsla. (Answer ¶ 6.) KMS alleges that it has
 10 repeatedly demanded the return of these containers, which MLT denies. (Compl.
 11 ¶ 11; Answer ¶ 11.)

12 On September 1, 2022, KMS filed a complaint against MLT asserting causes of
 13 action for breach of contract, conversion, replevin, and pre-judgment attachment.
 14 (Compl. ¶¶ 12–27.) On March 24, 2023, MLT answered the Complaint and brought a
 15 third-party complaint against Forsla seeking indemnity. (*See generally* Answer;
 16 Third-Party Compl., ECF No. 47.) KMS now moves for partial judgment on the
 17 pleadings on its replevin cause of action. (Mot.) The Motion is fully briefed. (Opp’n,
 18 ECF No. 61; Reply, ECF No. 64.)

19 III. LEGAL STANDARD

20 “After the pleadings are closed—but early enough not to delay trial—a party
 21 may move for judgment on the pleadings.” Fed. R. Civ. P. 12(c). Judgment on the
 22 pleadings is appropriate “when the moving party clearly establishes on the face of the
 23 pleadings that no material issue of fact remains to be resolved and that it is entitled to
 24 judgment as a matter of law.” *Hal Roach Studios, Inc. v. Richard Feiner & Co.*,

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 26 ¹ Having carefully considered the papers filed in connection with the Motion, the Court deemed the
 27 matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

28 ² KMS asks the Court to either judicially notice or incorporate by reference the contract between
 Forsla and MLT. (Mot. 7.) However, the Court does not rely on the contract in resolving the
 Motion and, accordingly, the Court **DENIES AS MOOT** KMS’s request.

1 896 F.2d 1542, 1550 (9th Cir. 1989). In general, courts may not consider matters
2 outside the pleadings on a Rule 12(c) motion without treating it as a motion for
3 summary judgment. Fed. R. Civ. P. 12(d); *Hal Roach*, 896 F.2d at 1550.

4 When ruling on a motion for judgment on the pleadings, “[a]ll allegations of
5 fact by the party opposing the motion are accepted as true” and construed in the light
6 most favorable to that party. *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 810
7 (9th Cir. 1988). “As a result, a plaintiff is not entitled to judgment on the pleadings
8 when the answer raises issues of fact that, if proved, would defeat recovery.” *Gen.*
9 *Conf. Corp. of Seventh-Day Adventists v. Seventh-Day Adventist Congregational*
10 *Church*, 887 F.2d 228, 230 (9th Cir. 1989). “Similarly, if the defendant raises an
11 affirmative defense in [their] answer it will usually bar judgment on the pleadings.”
12 *Id.*

13 IV. DISCUSSION

14 KMS moves for partial judgment on the pleadings on its replevin cause of
15 action on the basis that MLT raises no material issue of fact and, accordingly, KMS is
16 entitled to judgment as a matter of law. (*See generally* Mot.)

17 A. Propriety of Rule 12(c) Motion

18 As a threshold matter, MLT argues that KMS, as a plaintiff, cannot bring a
19 motion for judgment on the pleadings under Rule 12(c). (*See generally* Opp’n.)

20 To the contrary, a Rule 12(c) motion “may be brought by *any* party.” *Sprint*
21 *Tel. PCS, L.P. v. County of San Diego*, 311 F. Supp. 2d 898, 903 (S.D. Cal. 2004)
22 (emphasis in original); *see also Acceptance Cas. Ins. Co. v. MRVK Hospitality Grp.*,
23 No. 1:21-cv-01359-ADA-EPG, 2023 WL 3853798, at *1 (E.D. Cal. June 6, 2023)
24 (granting plaintiff’s motion for judgment on the pleadings). Thus, KMS may properly
25 bring its Motion under Rule 12(c).

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1 **B. Replevin Claim Taken As Conversion Claim**

2 The principal issue raised by this Motion is whether KMS meets its burden of
3 showing that it is entitled to judgment as a matter of law on its replevin cause of
4 action.

5 However, California law³ does not recognize a cause of action for replevin.
6 Instead, “[u]nder current California law, the common law form[] of action named
7 replevin . . . [is] addressed by the tort of conversion of tangible personal property.”
8 *Foster v. Sexton*, 61 Cal. App. 5th 998, 1020 (2021); *see also BMA LLC v. HDR Glob.*
9 *Trading Ltd.*, No. 20-cv-03345-WHO, 2021 WL 4061698, at *17 (N.D. Cal. Sep. 7,
10 2021) (“The . . . ‘writ of replevin’ claim collapses into the conversion claim.”), *appeal*
11 *filed*, No. 21-16577 (9th Cir. Sept. 27, 2021). Further, a prayer for relief in the form
12 of replevin is equivalent to requesting judgment for the possession or value of
13 personal property pursuant to California Code of Civil Procedure section 667. *See*
14 *Foster*, 61 Cal. App. 5th at 1020.

15 Although KMS labels its claim as replevin, the Court is “required to look past
16 the pleading’s label and examine its substance.” *Id.* (citing *Saunders v. Cariss*,
17 224 Cal. App. 3d 905, 908 (1990)). In its Complaint, KMS alleges that it has the sole
18 ownership or possessory interest in the Cargo that MLT wrongfully possesses and
19 refuses to return to KMS. (Compl. ¶¶ 11, 17, 21–22.) Moreover, KMS’s prayer for
20 relief includes “an award of replevin of the Cargo.” (*Id.*, Prayer for Relief ¶ 2.) Based
21 on these allegations and prayer for relief, the Court concludes KMS is pursuing an
22 action for the recovery of specific personal property—the Cargo—and its cause of
23 action is the tort of conversion. Thus, the Court evaluates whether KMS demonstrates
24 that it is entitled to judgment as a matter of law for a conversion cause of action. *See*

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27 ³ A federal court sitting in diversity applies the substantive law of the forum state. *Erie R. Co. v.*
28 *Tompkins*, 304 U.S. 64, 78 (1938). The Court has diversity jurisdiction over this matter. (Compl.
¶ 3; Answer ¶ 3; Resp. Order Show Cause re: Jurisdiction, ECF No. 71.) Thus, the substantive law
of California governs this action.

1 *Foster*, 61 Cal. App. 5th at 1020 (analyzing plaintiff’s claim labelled “petition for writ
2 of replevin” as a conversion claim on a motion for judgment on the pleadings).

3 Under California law, the tort of conversion is the “wrongful exercise of
4 dominion over personal property of another.” *Voris v. Lampert*, 7 Cal. 5th 1141, 1150
5 (2019) (quoting 5 Witkin, Summary of Cal. Law (11th ed. 2017) Torts, § 810,
6 p. 1115). The essential elements of conversion are “(a) plaintiff’s ownership or right
7 to possession of personal property, (b) defendant’s disposition of property in a manner
8 inconsistent with plaintiff’s property rights, and (c) resulting damages.” *Id.* In
9 addition, when a defendant lawfully acquires possession of the property with the
10 consent of the owner, demand for its return is a prerequisite to any action by the owner
11 for conversion. *Flennaugh v. Heinrich*, 89 Cal. App. 2d 214, 221 (1948).

12 Here, KMS fails to establish that it is entitled to judgment as a matter of law on
13 a claim of conversion. To begin with, MLT denies that it “took possession of the
14 Cargo at the Port of Los Angeles and transported it to its Pico Rivera facility.”
15 (Compl. ¶ 7; Answer ¶ 7.) MLT also denies KMS’s allegation that KMS made
16 repeated demands for MLT to deliver the Cargo or to allow KMS to take possession of
17 the Cargo. (Compl. ¶¶ 11, 17; Answer ¶¶ 11, 17.) Viewing these disputed allegations
18 in the light most favorable to MLT, KMS fails to carry its burden of demonstrating
19 that MLT “dispos[ed] of” the Cargo in a manner inconsistent with KMS’s property
20 rights. Because an element of conversion is in dispute, judgment on the pleadings is
21 not appropriate.

22 Further, MLT’s denial that KMS made repeated demands for MLT to deliver
23 the Cargo raises an affirmative defense, barring judgment on the pleadings. *See*
24 *Seventh-Day Adventist Congregational Church*, 887 F.2d at 230 (holding that answer
25 raising “an affirmative defense . . . will usually bar judgment on the pleadings”); *see*
26 *also Flennaugh*, 89 Cal. App. 2d at 221 (holding “when the defendant lawfully
27 acquires possession of property with consent of the owner, demand for its possession
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1 is necessary to create a liability for conversion or unlawful withholding of the
2 property”).

3 As a result, the Court finds that KMS is not entitled to judgment as a matter of
4 law on its conversion claim.

5 **V. CONCLUSION**

6 For the reasons discussed above, the Court **DENIES** KMS’s Motion for Partial
7 Judgment on the Pleadings. (ECF No. 58.)

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9 **IT IS SO ORDERED.**

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11 July 25, 2023

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14 **OTIS D. WRIGHT, II**
15 **UNITED STATES DISTRICT JUDGE**
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