

STATE OF MICHIGAN
COURT OF APPEALS

PATRICIA A. DONALDSON, Successor Personal
Representative for the Estate of MAX J. PINCUS,

UNPUBLISHED
October 3, 1997

Petitioner-Appellant,

v

ARNOLD L. GELLER,

No. 196557
Oakland Probate Court
LC No. 94-233728

Respondent-Appellee.

Before: Reilly, P.J., and Taylor and Hoekstra, JJ.

PER CURIAM.

Petitioner appeals as of right a probate court order that granted respondent's motion for summary disposition pursuant to MCR 2.116(C)(8), and denied petitioner's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

Helaine and Max Pincus were married in 1979. In 1987, Max Pincus died and Helaine Pincus was named personal representative of the estate. One of the assets in the estate was a statue known as the L'Arbe Candelabra. Along with the other works of art in the home, Max Pincus bequeathed the statue to Helaine. In 1988, Helaine personally borrowed \$100,000 from respondent's business partner (David Wolff), and used the statue as collateral for the loan. Respondent Arnold Geller (Helaine's brother) facilitated the loan because both he and his partner lived in New York. Helaine sold the statue for \$200,000 to a New York gallery when she was unable to repay the loan when it came due. Pursuant to Helaine's instructions, respondent received the sale proceeds, wired \$100,000 into the checking account of the estate of Max Pincus, and repaid the business partner the other \$100,000. Helaine was subsequently removed as personal representative of the estate. Petitioner, the successor personal representative, filed a lawsuit on behalf of the estate against Geller seeking to recover the \$100,000 paid to Wolff. Petitioner alleged Helaine Pincus had converted the property of the estate (the statue) by having it sold as her own property and that Geller was liable as Helaine's agent. The trial court entered an order summarily dismissing petitioner's complaint and denying petitioner's motion for summary disposition as indicated above. On appeal, petitioner argues that she did not fail to state a

claim of conversion and that there was no genuine issue of material fact concerning the estate's ownership of the statue.

A motion for summary disposition brought under MCR 2.116(C)(8) relies on the pleadings alone, and all well-pleaded factual allegations in a complaint are taken as true, as well as any reasonable inferences or conclusions that can be drawn from the allegations. *Jenks v Brown*, 219 Mich App 415, 417; 557 NW2d 114 (1996). A motion for summary disposition under MCR 2.116(C)(8) should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. *Id.* This Court reviews a grant of summary disposition de novo on appeal. *Id.*

Petitioner first argues that a claim for conversion was properly set forth in the first amended complaint. We disagree.

Conversion is defined as

any distinct act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with his rights therein. [*Citizens Ins Co of America v Delcamp Truck Center, Inc*, 178 Mich App 570, 575; 444 NW2d 210 (1989).]

Under common law, a party may waive the conversion claim, which sounds in tort, and sue in assumpsit if the tort arose out of a contract between the parties or "the tort consisted of a conversion of plaintiff's property into money or money's worth." *Nelson & Witt v Texas Co*, 256 Mich 65, 71; 239 NW 289 (1931). In Michigan, legal title to personal property of a decedent, testate or intestate, vests in the personal representative until the estate is fully settled and distributed, or the property is otherwise disposed of. *In re Forfeiture of \$234,200*, 217 Mich App 320, 324; 551 NW2d 444 (1996). Equitable title to the property vests in the decedent's heirs at the time of death, subject to the rights of creditors and the expenses of administration. *Id.* Pursuant to MCL 700.334; MSA 27.5334, a personal representative may acquire or dispose of an asset, and may sell personal property of the estate.¹ Pursuant to MCL 700.631; MSA 27.5631, the fiduciary of an estate may sell any or all of the personal property of the estate. Under MCL 700.349; MSA 27.5349, a person who assists a personal representative in good faith is protected as if the personal representative properly exercised power.²

Helaine Pincus had legal title to the statue on the basis of her appointment as personal representative of the estate. She had equitable title to the statue because it was bequeathed to her in Max Pincus' last will and testament. Thus, because Helaine had legal or equitable title to the statue, and respondent was acting at her direction, he could not have converted the statue. Petitioner has failed to state a claim against Geller for which relief may be granted.³ Therefore, the probate court properly granted respondent's motion for summary disposition for failure to state a claim upon which relief could be granted.

Because we find that the court properly granted summary disposition of petitioner's complaint we need not decide whether the court properly denied petitioner's motion for summary disposition pursuant to MCR 2.116(C)(10).

Affirmed.

/s/ Maureen Pulte Reilly

/s/ Clifford W. Taylor

/s/ Joel P. Hoekstra

¹ The letter of authority issued in this case specifically authorized Helaine Pincus full power and authority to dispose of all property of the estate. We further note that Max Pincus' estate was subject to independent, unsupervised probate.

² Max Pincus' last will and testament similarly provided: "No one dealing with my Personal Representative need inquire concerning the validity of anything that she or he purport to do nor need to see to the application of any money paid or any property transferred to or upon the order of my Personal Representative.

³ We do not address the question whether Helaine's instructions to repay the loan to Wolff was proper, we only decide that petitioner failed to state a valid claim against Geller.