

STATE OF MICHIGAN
COURT OF APPEALS

CIRRUS BUSINESS FORMS, INC.,

Plaintiff-Appellant,

v

COMERICA BANK and BICKERSON'S, INC.,

Defendants-Appellees.

UNPUBLISHED

February 23, 1999

No. 204762

Jackson Circuit Court

LC No. 96-076707 PD

Before: Murphy, P.J., and MacKenzie and Talbot, JJ.

PER CURIAM.

Plaintiff Cirrus Business Forms, Inc. appeals of right from the circuit court order granting defendant Comerica Bank's motion for summary disposition and dismissing its complaint. We affirm in part, reverse in part, and remand.

Cirrus filed a complaint alleging that it maintained a perfected security interest in the assets of Bickerson's, a restaurant, and that a consent judgment entered in previous litigation with Bickerson's had ordered the surrender of those assets. The complaint alleged that Cirrus had notified Webberman/Rule Properties, Inc. (WR), a receiver appointed in connection with previous litigation between Comerica and Bickerson's, of its judgment and requested that WR deliver Bickerson's assets, but that WR had refused to do so. The complaint asserted counts of claim and delivery (Count I), money damages (Count II), declaratory judgment (Count III), and conversion (Count IV).

Comerica moved for summary disposition of Counts I and IV pursuant to MCR 2.116(C)(8). Comerica alleged that Cirrus had failed to state claims on which relief could be granted because no leave had been granted to sue WR, and because neither it nor WR had wrongfully exercised dominion over any property belonging to Cirrus. The trial court granted the motion, finding that Comerica never possessed assets belonging to Bickerson's, and that WR had disposed of Bickerson's assets with court approval. Initially, the court signed an order dismissing the complaint in its entirety. That order was vacated; however, after the case was reassigned, the court entered a second order granting Comerica's motion for summary disposition and dismissing the complaint in its entirety.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Baker v Arbor Drugs, Inc*, 215 Mich App 198, 202; 544 NW2d 727 (1996).

We affirm the trial court's decision in part, reverse it in part, and remand for further proceedings. Comerica sought summary disposition of Counts I and IV of Cirrus' complaint. Count I asserted claim and delivery and sought return of Bickerson's assets from WR. Count I asserted no claim against Comerica; therefore, the trial court properly granted summary disposition in favor of Comerica. Moreover, Cirrus did not obtain leave of the trial court to sue WR. Leave is required before suit can be brought against a receiver. *Cohen v Bologna*, 52 Mich App 149, 152; 216 NW2d 586 (1974). Count IV, conversion, alleged that Comerica, via the actions of WR, converted assets of Bickerson's that rightfully belonged to Cirrus by virtue of Cirrus' superior security interest. A conversion is a distinct act of dominion wrongfully exerted over personal property belonging to another. *Pamar Enterprises, Inc v Huntington Banks of Michigan*, 228 Mich App 727, 734; 580 NW2d 11 (1998). Comerica exercised no dominion over Bickerson's assets. Dominion was exercised by WR, which acted pursuant to orders entered in the previous litigation between Comerica and Bickerson's.

While the trial court properly granted summary disposition as to Counts I and IV of Cirrus' complaint, it improperly granted summary disposition as to Counts II and III of the complaint. Comerica moved for summary disposition as to Counts I and IV only. The parties did not brief or argue a motion for summary disposition as to Counts II and III. The trial court improperly granted summary disposition as to those counts. See *Quinton v General Motors Corp*, 453 Mich 63, 74; 551 NW2d 677 (1996).

The trial court's decision granting summary disposition as to Counts I and IV of Cirrus' complaint is affirmed; the decision granting summary disposition as to Counts II and III is reversed; this matter is remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Barbara B. MacKenzie

/s/ William B. Murphy

/s/ Michael J. Talbot