

STATE OF MICHIGAN
COURT OF APPEALS

CAROL LEE REDMAN,

Plaintiff-Appellant,

v

WILLIAM ORCUTT,

Defendant-Appellee.

UNPUBLISHED

June 15, 1999

No. 207769

Calhoun Circuit Court

LC No. 96-001819 CK

Before: Markey, P.J., and McDonald and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals as of right the dismissal of her complaint. We affirm.

Plaintiff's dairy cattle allegedly suffered damage as a result of stray voltage. In response to complaints by plaintiff, defendant, an employee of Consumers Power Company, delivered a check to plaintiff in May 1993 in the amount of \$50,000 to compensate her for the loss of her cattle. Defendant allegedly told plaintiff to endorse the check and make it payable to defendant or William Yarosh¹ in order to obtain more cattle. Defendant cashed the check that was endorsed to himself or Yarosh and gave the money to Yarosh, who purchased twenty-two head of cattle for plaintiff.

Plaintiff thereafter filed suit, alleging that the value of the cattle received was approximately \$30,000 and that defendant owed her the remaining \$20,000.² Plaintiff alleged counts of conversion, fraudulent misrepresentation, silent fraud, breach of oral contract, and innocent misrepresentation. Following a bench trial, the trial court directed a verdict in favor of defendant on the ground that the elements of each count had not been established by sufficient evidence.

On appeal, plaintiff's arguments pertain only to the claim for conversion. Plaintiff contends that defendant is personally liable for conversion of the amount of funds not spent on the cattle. The tort of conversion is "any distinct act of wrongfully exerting dominion and control over another's personal property in denial of or inconsistent with the rights therein." *Foremost Ins Co v Allstate Ins Co*, 439 Mich 378, 391; 486 NW2d 600 (1992). To support an action for conversion of money, the defendant must have an obligation to return the specific money entrusted to his care. *Check Reporting Services, Inc v Michigan Nat'l Bank-Lansing*, 191 Mich App 614, 626; 478 NW2d 893 (1991). The

defendant must have obtained the money without the owner's consent to the creation of a debtor and creditor relationship. *Citizens Ins Co v Delcamp Truck Center, Inc*, 178 Mich App 570, 575; 444 NW2d 210 (1989). Thus, an action for conversion lies where an individual cashes a check and retains the full amount of the check when he is entitled to only a portion of that amount.

In this case, defendant cashed the check endorsed by plaintiff and provided Yarosh with the proceeds so that Yarosh could purchase twenty-two head of cattle for plaintiff as plaintiff requested. There is no indication in the record that defendant was entitled to only a portion of the full amount for the purchase of the cattle. Plaintiff's argument that she did not expect the costs incurred in purchasing the cattle, such as broker fees and transportation expenses, to be included in the cost of "the cattle" is naïve at best. Indeed, evidence was presented that the purchase of the cattle required the expenditure of funds for incidental expenses beyond the cost of the cattle, such as broker fees and transportation expenses. Under these circumstances, we conclude that defendant did not convert plaintiff's personal property.

Plaintiff also contends that in a suit for conversion, the party entrusted with the goods carries the burden of showing the proper disposition of the property. Plaintiff did not raise this issue before the trial court and, therefore, we need not address it. *People v Rollins*, 207 Mich App 465, 470-471; 525 NW2d 484 (1994). Further, the authority relied on by plaintiff³ in support of her argument is inapposite as it was a decision on the action of assumpsit, containing a count of money had and received, not conversion. Plaintiff has provided no other authority to sustain her argument. This Court will not search for authority to sustain or reject a party's position. *Magee v Magee*, 218 Mich App 158, 161; 553 NW2d 363 (1996).

Affirmed.

/s/ Jane E. Markey

/s/ Gary R. McDonald

/s/ E. Thomas Fitzgerald

¹ William Yarosh is a cattle broker.

² Plaintiff received an additional \$20,000 from Consumers Power before filing this suit. However, plaintiff claims that she is still entitled to an additional \$20,000 from defendant because the debt is his alone.

³ *People v Swineford*, 77 Mich 573; 43 NW 929 (1889).