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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-343**

Obiora C. Onyemelukwe,
Appellant,

vs.

Filister Enterprises, d/b/a Georgetown Court Apartments,
Respondent,

City of Fridley, et al.,
Respondents.

**Filed November 14, 2011
Affirmed
Larkin, Judge**

Anoka County District Court
File No. 02-CV-10-3393

Shanika S. Alston, Rosalind R. Sullivan, Law Office of Rosalind R. Sullivan, Eden Prairie, Minnesota (for appellant)

Louis J. Speltz, Jonathan P. Norrie, Bassford Remele, P.A., Minneapolis, Minnesota (for respondent Filister Enterprises, d/b/a Georgetown Court Apartments)

Rylee J. Retzer, League of Minnesota Cities, St. Paul, Minnesota (for respondents City of Fridley, et al.)

Considered and decided by Larkin, Presiding Judge; Johnson, Chief Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges the district court's award of summary judgment for respondents. Because there are no genuine issues of material fact and respondents are entitled to judgment as a matter of law, we affirm.

FACTS

Appellant Obiora C. Onyemelukwe was employed by Cummins, Inc. in 2008, when he noticed other employees placing alternators into a pile at Cummins.¹ He learned that the alternators were considered “scrap” because they were no longer useful to Cummins. Onyemelukwe, who is from Nigeria, believed that the parts might be useful in developing countries and offered to connect Cummins with an organization that could use mechanical parts. Later, shop-floor coordinator Larry Moy orally authorized Onyemelukwe to donate a variety of starters and alternators to a charity in Nigeria. In addition, engine-material planner Victoria Skoglund stated, in an e-mail, that the parts were “[o]k to scrap or donate.” Mark Lindquist, a master scheduler, also told Onyemelukwe that the parts were no longer useful to Cummins. Acting on these representations, Onyemelukwe removed the parts from Cummins's warehouse between September 25 and September 29.

¹ The facts are presented in the light most favorable to Onyemelukwe. *See Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993) (“On appeal, the reviewing court must view the evidence in the light most favorable to the party against whom judgment was granted.”).

Because he needed a place to store the Cummins parts, Onyemelukwe signed an addendum to his apartment lease with respondent Filister Enterprises to rent garage stall 118. But when Onyemelukwe attempted to access stall 118, he discovered that it was already in use. A Filister employee gave Onyemelukwe the keys to garage stall 78, where he ultimately stored the Cummins parts. But because Filister failed to update its records regarding garage stall 78, a Filister employee later offered to lease stall 78 to another tenant. At that time, Filister discovered that stall 78 contained numerous boxes marked "Cummins." Filister contacted Cummins regarding the boxes. Cummins's environmental coordinator, Anita Costello, drove to the apartment complex and spoke with Filister employees. Neither the Filister employees nor Costello could determine why the garage stall contained Cummins parts. The Fridley police therefore were called.

Fridley Police Officer Bridget Menne responded to the call. Officer Menne opened two or three of the Cummins boxes to see their contents. The boxes contained parts that looked new and appeared to be in original packaging. Officer Menne spoke with the owner of the apartment complex. He informed her that his records indicated that stall 78 had been vacant since June, and he was unable to tell her who owned the property in the garage stall. Officer Menne concluded that the property may have been stolen. She contacted her supervisor, Fridley Police Sergeant Michael Morrissey, for advice regarding how to handle the property.

Sergeant Morrissey arrived at the apartment complex and examined the parts. Sergeant Morrissey believed that the parts were new and possibly expensive and that they did not appear to be scrap parts. Like Officer Menne, Sergeant Morrissey concluded that

the parts may have been stolen. He therefore directed that the boxes be removed from the garage stall and secured pending further investigation. Because there was not enough room for the property at the Fridley Police Department storage facility, Sergeant Morrissey told Officer Menne to inform Cummins that it should collect the property and hold it at its facility pending further investigation or until a claimant presented proper documentation of ownership. Cummins subsequently removed the property and transported it back to its facility.

Onyemelukwe heard rumors that stolen Cummins parts had been discovered in a garage. Acting on a hunch, he drove to his apartment complex and discovered that garage stall 78 was empty. He spoke with a Filister employee and then went to the Fridley Police Department. Officer Menne interviewed Onyemelukwe, who stated that he did not know if “the people who donated the parts” had the authorization to do so. Officer Menne concluded that Onyemelukwe did not have proper authorization to remove the parts from Cummins’s warehouse.

Onyemelukwe contacted Costello regarding the parts, which led to a human-resources investigation of how and why Onyemelukwe had removed the parts from Cummins’s premises, including whether Onyemelukwe followed the appropriate process for removing property. Specifically, Cummins has a “Security Post Material Pass” (SPMP) policy that requires Cummins employees to obtain a form, signed by an appropriate management representative, before removing company property from the facility. Cummins employees are not permitted to remove company property without completing this form. Human resources found no evidence that Onyemelukwe obtained a

signed SPMP authorizing the removal of any mechanical parts. According to Cummins, because Onyemelukwe did not obtain an SPMP, he was not authorized to remove the parts from Cummins's facility. Therefore, Cummins did not return the parts to Onyemelukwe. Later in 2008, Onyemelukwe was laid off due to a reduction in work force, and Onyemelukwe released all legal claims against Cummins in connection with his severance package.

In December 2009, Onyemelukwe sued Filister for breach of contract, conversion, negligence, breach of the covenant of quiet enjoyment, and defamation. Onyemelukwe also sued the City of Fridley, Officer Menne, and Sergeant Morrissey for conversion and negligence. All of the claims stem from Onyemelukwe's loss of possession of the Cummins parts to Cummins. Filister, the city, and the officers moved for summary judgment, and their motions were granted by the district court. This appeal follows.

D E C I S I O N

“A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law.” *Fabio*, 504 N.W.2d at 761.

[T]here is no genuine issue of material fact for trial when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions.

DLH, Inc. v. Russ, 566 N.W.2d 60, 71 (Minn. 1997). “[T]he party resisting summary judgment must do more than rest on mere averments.” *Id.*

“[Appellate courts] review a district court’s summary judgment decision de novo.” *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). “[T]he reviewing court must view the evidence in the light most favorable to the party against whom judgment was granted.” *Fabio*, 504 N.W.2d at 761.

I.

Onyemelukwe argues that the district court erred in granting Filister’s motion for summary judgment on his breach-of-contract, conversion, negligence, and breach-of-the-covenant-of-quiet-enjoyment claims.² We address each claim in turn.

Breach of Contract

“A claim of breach of contract requires proof of three elements: (1) the formation of a contract, (2) the performance of conditions precedent by the plaintiff, and (3) the breach of the contract by the defendant.” *Zinter v. Univ. of Minn.*, 799 N.W.2d 243, 245 (Minn. App. 2011) (quotation omitted), *review denied* (Minn. Aug. 16, 2011). “A breach of contract claim fails as a matter of law if the plaintiff cannot establish that he or she has been damaged by the alleged breach.” *Jensen v. Duluth Area YMCA*, 688 N.W.2d 574, 578-79 (Minn. App. 2004), *aff’d*, 688 N.W.2d 574 (Minn. 2004). Onyemelukwe argues that Filister breached the parties’ lease agreement, and the related garage-stall addendum, “by entering in and allowing the contents of the garage space to be removed from the

² Onyemelukwe does not appeal the district court’s award of summary judgment on his defamation claim.

storage unit.” Filister counters that, because Onyemelukwe did not have a valid ownership interest in the property, he was not harmed by its removal.

It is undisputed that Cummins has a specific, documented procedure that must be followed before an employee may remove company property from Cummins’s facility: the employee must obtain an SPMP. It is also undisputed that Onyemelukwe failed to comply with this procedure. Even though Onyemelukwe did not obtain an SPMP, he argues that there are disputed material fact issues regarding his ownership of the parts because he obtained permission to remove the property from various Cummins employees. But none of the individuals in the e-mail chains that Onyemelukwe relies on explicitly authorized the donation. Moreover, none of the six employees deposed in this case—including Moy, Skoglund, and Lundquist—testified that they had final authority to authorize the donation and removal of the parts. Moy repeatedly told Onyemelukwe that he did not have authority to approve a donation. Although Skoglund acknowledged that she has authority to determine whether parts are scrapped or donated, she also testified that she was not authorized to determine the final disposition of the parts. Lundquist testified that he never authorized Onyemelukwe to remove the property and that the ultimate decision to dispose of parts likely involved the plant manager. Moreover, Onyemelukwe testified at deposition that he was aware that “some procedures and stuff” would be required in order to arrange for the donation and that Cummins’s policies and

procedures were available on its website. He nevertheless did not obtain an SPMP before removing the parts.³

Onyemelukwe insists that he “sought out all permissions, authorizations, and instructions on how to take possession of the donated parts by various Cummins employees.” He also insists that he “acted openly, honestly and in a forthright manner” in securing the donation. But these assertions do not change the undisputed fact that Onyemelukwe did not obtain the required SPMP. Although Onyemelukwe may have acted in good faith, his removal of the parts from Cummins’s facility did not comply with Cummins’s SPMP policy, and it therefore was unauthorized. Even if we assume that Onyemelukwe’s assertions regarding the oral and written promises of various Cummins employees are true, including Moy’s purported assertion that he had the “final say” regarding the parts, the outcome does not change: because Onyemelukwe removed the parts from Cummins’s facility without the required authorization, he did not obtain a valid ownership interest in the parts.

Onyemelukwe’s argument that the property was given to him as a gift does not change our conclusion that he did not obtain a valid ownership interest in the property, because he removed the parts from Cummins’s facility without proper authorization.

³ Onyemelukwe submitted an affidavit to the district court opposing summary judgment. This affidavit suggests that Onyemelukwe was unaware of Cummins’s policies and procedures and that the company website only contained “general information.” The affidavit further states: “My deposition testimony remains perfectly accurate except as it may be clarified in this Affidavit.” But “[a] self-serving affidavit that contradicts earlier damaging deposition testimony is not sufficient to create a genuine issue of material fact.” *Banbury v. Omnitrition Int’l, Inc.*, 533 N.W.2d 876, 881 (Minn. App. 1995).

Also unavailing is Onyemelukwe's argument that the SPMP policy does not apply to the parts at issue. Onyemelukwe asserts that the policy "only covers inventory parts that had inventory numbers and which were subject to retail sales at the Memphis retail distribution center." The plain language of the policy contradicts his assertion. It states that an SPMP "is required for all employees to remove company property from the facility," and it defines company property as "[a]ny item that originated through a purchase agreement between Cummins Power Generation and a supplier. This includes all items classified as production material, indirect material, office supplies, scrap, customer return goods, and dunnage."

In sum, the district court correctly determined that no genuine issue of material fact exists regarding Onyemelukwe's ownership interest in the Cummins parts. Because he had no valid ownership interest in the parts, he was not damaged when he lost possession of the parts. And absent damages, his breach-of-contract claim fails as a matter of law. *See Jensen*, 688 N.W.2d at 578-79. The district court therefore did not err in awarding summary judgment for Filister on Onyemelukwe's breach-of-contract claim.

Conversion

"Conversion is an act of willful interference with personal property, done without lawful justification by which any person entitled thereto is deprived of use and possession." *Thomas B. Olson & Assocs., P.A. v. Leffert, Jay & Polglaze, P.A.*, 756 N.W.2d 907, 920 (Minn. App. 2008) (quotation omitted), *review denied* (Minn. Jan. 20, 2009). "[A] plaintiff's lack of an enforceable interest in the subject property is a complete defense against conversion." *Id.* (quotation omitted). As discussed above, the

undisputed facts show that Onyemelukwe did not have a valid ownership interest in the Cummins parts. Because Onyemelukwe's lack of an enforceable interest in the Cummins parts is a complete defense to his conversion claim, *see id.*, the district court did not err in awarding summary judgment for Filister on this claim.

Negligence

There are four essential elements of a negligence claim: "(1) the existence of a duty of care, (2) a breach of that duty, (3) an injury, and (4) the breach of the duty being the proximate cause of the injury." *Gradjelick v. Hance*, 646 N.W.2d 225, 230 (Minn. 2002). A defendant in a negligence action is entitled to summary judgment if the plaintiff cannot establish damages. *See Gilbertson v. Leininger*, 599 N.W.2d 127, 130 (Minn. 1999) (noting that damage is an element in a negligence claim); *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995) (noting that summary judgment is appropriate when the record lacks proof of any element of a claim). Onyemelukwe cannot maintain a negligence claim based on his loss of the Cummins parts unless he was the general owner of the property or had some special property interest in it. *See N. Pac. R.R. Co. v. Lewis*, 162 U.S. 366, 378-79, 16 S. Ct. 831, 835 (1896) (holding that a negligence claim for destruction of property could not be maintained where the plaintiffs had no ownership interest in the property).

Once again, the undisputed facts show that Onyemelukwe did not have a valid ownership interest in the Cummins parts and that he did not have authorized possession of the parts. Accordingly, he incurred no damages when he lost possession of the parts to Cummins, and his negligence claim fails. *See Gilbertson*, 599 N.W.2d at 130. The

district court therefore did not err in awarding summary judgment for Filister on Onyemelukwe's negligence claim.

Breach of the Covenant of Quiet Enjoyment

A claim for breach of the covenant of quiet enjoyment arises “when an outstanding superior title is asserted in hostility to the title of the covenantee.” *Rasmussen v. Hous. & Redevelopment Auth.*, 712 N.W.2d 802, 805 (Minn. App. 2006) (quotation omitted), *review denied* (Minn. July 19, 2006). Onyemelukwe argues that “[t]he covenant of quiet enjoyment is breached where, as in the present case, [a] landlord interferes with and substantially deprives [a tenant] of his beneficial interest in the property stored inside” of leased property. But the covenant only applies to adverse title claims, not to “mere trespasses or actions of wrongdoing by third parties.” *Miles v. City of Oakdale*, 323 N.W.2d 51, 57 (Minn. 1982). In *Miles*, the Minnesota Supreme Court held that flooding due to improper drainage on the plaintiff's property did not give rise to a claim for breach of the covenant of quiet enjoyment against the previous owner. *Id.* The court reasoned that, although the flooding might be a trespass, it was not an adverse claim to title because it did not interfere with the plaintiff's legal estate or otherwise place a cloud on title to the property. *Id.* Similar to the plaintiff in *Miles*, Onyemelukwe has, at most, suffered a trespass; Filister did not assert an adverse claim to his leasehold interest. The district court therefore did not err in awarding summary judgment for Filister on Onyemelukwe's breach-of-the-covenant-of-quiet-enjoyment claim.

II.

Onyemelukwe argues that the district court erred in concluding that the City of Fridley, Officer Menne, and Sergeant Morrissey are immune from suit under the doctrines of official and vicarious official immunity and in awarding summary judgment for these respondents on this ground. But as discussed in the relevant portions of section I of this opinion, because Onyemelukwe's lack of an enforceable interest in the Cummins parts is a complete defense to his conversion claim and because Onyemelukwe did not suffer any damages when he lost possession of the parts to Cummins, his conversion and negligence claims against the city and the officers fail on the merits. *See Thomas B. Olson & Assocs., P.A.*, 756 N.W.2d at 920; *Gilbertson*, 599 N.W.2d at 130. We therefore affirm the district court's award of summary judgment for the city and the officers without determining whether the district court erred in determining that they are immune from suit. *See Winkler v. Magnuson*, 539 N.W.2d 821, 828 (Minn. App. 1995) (stating that summary judgment should be affirmed "if it can be sustained on any ground"), *review denied* (Minn. Feb. 13, 1996).

Affirmed.

Dated:

Judge Michelle A. Larkin