

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2019 CA 0731

2019 CW 0514

CAMSOFT DATA SYSTEMS, INC.

VERSUS

**SOUTHERN ELECTRONICS SUPPLY, INC.
AND ACTIVE SOLUTIONS, LLC**

Judgment Rendered: JUL 02 2019

**Appealed from the Nineteenth Judicial District Court
Parish of East Baton Rouge
State of Louisiana**

Case No. 582,741

The Honorable Janice Clark, Judge Presiding

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BEFORE: CRAIN, THERIOT, and HOLDRIDGE, JJ.

THERIOT, J.

In this appeal, MMR Constructors, Inc., MMR Group, Inc., and MMR Offshore Services, Inc. (sometimes referred to collectively as “MMR”) seek review of the trial court’s judgment denying their Motion for Partial Summary Judgment on CamSoft’s Tort Claims. For the following reasons, we reverse the trial court’s judgment and deny the companion writ application, referred to this panel, as moot.

FACTS AND PROCEDURAL HISTORY

The facts and procedural history are laid out in more detail in this court’s opinion in **CamSoft Data Systems, Inc. v. Southern Electronics Supply, Inc.**, 2019-0730 (La. App. 1st Cir. 7/2/19) (unpublished), also issued this date.

Relevant hereto, CamSoft Data Systems, Inc. (“CamSoft”) filed a Master Petition for Declaratory Judgment, Supplemental Relief, Damages, and Attorney’s Fees, alleging that MMR Group and MMR Constructors are liable for the ongoing use of CamSoft’s confidential technical and business information under the doctrine of *respondeat superior*. CamSoft alleged that former NetMethods, LLC (“NetMethods”) employees, Mark St. Pierre, Dwaine Hodges, and Michael Charbonnet, had actual knowledge regarding the fraudulent conversion of CamSoft’s confidential business information due to their supervision of the Crime Camera Contract, and they continued to utilize that information as employees of MMR Constructors and for MMR Constructors’ independent financial gain. In response, MMR filed a motion for partial summary judgment to dismiss CamSoft’s tort claims. After a hearing, the trial court signed a judgment on April 2, 2019, denying MMR’s motion for partial summary judgment on CamSoft’s tort claims. From this judgment, MMR appeals pursuant to La. R.S. 51:135.¹

¹ As set forth in La. R.S. 51:135, all interlocutory judgments in cases involving antitrust claims shall be appealable within five days and shall be heard and determined within twenty days after the appeal is lodged.

SUMMARY JUDGMENT AND THE STANDARD OF REVIEW

A motion for summary judgment is a procedural device used to avoid a full scale trial when there is no genuine issue of material fact. **M/V Resources LLC v. Louisiana Hardwood Products LLC**, 2016-0758, p. 8 (La. App. 1st Cir. 7/26/17), 225 So.3d 1104, 1109, writ denied, 2017-1748 (La. 12/5/17), 231 So.3d 624. A motion for summary judgment is properly granted if, after an opportunity for adequate discovery, the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. La. Code Civ. P. art. 966(A)(3). The burden of proof rests with the mover. Nevertheless, if the mover will not bear the burden of proof at trial on the issue that is before the court on the motion for summary judgment, the mover's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. The burden is on the adverse party to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law. La. Code Civ. P. art. 966(D)(1). In determining whether summary judgment is appropriate, appellate courts review evidence *de novo* under the same criteria that govern the trial court's determination of whether summary judgment is appropriate. **M/V Resources LLC**, 2016-0758 at p. 9, 225 So.3d at 1109.

A fact is material if it potentially ensures or precludes recovery, affects a litigant's ultimate success, or determines the outcome of the legal dispute. A genuine issue of material fact is one to which reasonable persons could disagree. If reasonable persons could reach only one conclusion, there is no need for trial on that issue and summary judgment is appropriate. **Doyle v. Lonesome Development, Limited Liability Company**, 2017-0787, p. 6 (La. App. 1st Cir. 7/18/18), 254 So.3d

714, 718-19, writ denied, 2018-1369 (La. 11/14/18), 256 So.3d 291, quoting Jackson v. City of New Orleans, 2012-2742, pp. 5-6 (La. 1/28/14), 144 So.3d 876, 882, cert. denied, — U.S. —, 135 S.Ct. 197, 190 L.Ed.2d 130 (2014). Because it is the applicable substantive law that determines materiality, whether a particular fact in dispute is material can be seen only in light of the substantive law applicable to the case. **Succession of Hickman v. State Through Board of Supervisors of Louisiana State University Agricultural and Mechanical College**, 2016-1069, p. 5 (La. App. 1st Cir. 4/12/17), 217 So.3d 1240, 1244.

Although summary judgments are now favored, factual inferences reasonably drawn from the evidence must be construed in favor of the party opposing the motion, and all doubt must be resolved in the opponent's favor. **Quality Environmental Processes, Inc. v. Energy Development Corporation**, 2016-0171, p. 14 (La. App. 1st Cir. 4/12/17), 218 So.3d 1045, 1059.

DISCUSSION

As stated above, CamSoft contends that MMR Group and MMR Constructors are liable to CamSoft for their ongoing use of CamSoft's confidential technical and business information, which was allegedly fraudulently obtained by former NetMethods employees who were subsequently employed by MMR Constructors d/b/a MMR Communications. MMR's arguments supporting summary judgment are threefold: (1) there can be no conversion claim because a party cannot convert intangible business information; (2) there can be no conversion claim because CamSoft was not deprived of its "business information"; and (3) Louisiana's Unfair Trade Secrets Act, La. R.S. 51:1431, *et seq.*, preempts any conversion claim that CamSoft may have.²

² MMR's motion for partial summary judgment on CamSoft's tort claims is a "me too" motion in which it adopts and incorporates "the evidence, authorities and arguments set forth in the *MEMORANDUM IN SUPPORT OF DELL INC. AND DELL MARKETING, L.P.'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON CAMSOFT'S TORT CLAIMS*." (emphasis in original). Since the court must consider any documents to which no objection is made, La. Code Civ. P. art. 966(D)(2), we will consider those arguments made by Dell.

A conversion is an act in derogation of the plaintiff's possessory rights and any wrongful exercise or assumption of authority over another's goods, depriving him of the possession, permanently or for an indefinite time. **Bihm v. Deca Systems, Inc.**, 2016-0356, p. 13 (La. App. 1st Cir. 8/8/17), 226 So.3d 466, 478. The Civil Code itself does not identify causes of action for conversion. However, causes of action for conversion have been inferred from Civil Code articles providing that the right of ownership, possession, and enjoyment of movables are protected by actions for the recovery of the movables themselves, actions for restitution of their value, and actions for damages. Consequently, the dispossessed owner of a corporeal movable may be accorded one of three actions to enforce his rights of ownership, one of which is based in tort law. **Dual Drilling Co. v. Mills Equipment Investments, Inc.**, 98-0343, p. 4 (La. 12/1/98), 721 So.2d 853, 856. The delictual action is grounded on the unlawful interference with the ownership or possession of a movable. **Id.** In order to establish the tort of conversion, a plaintiff must show unlawful interference with movable property committed by the: (1) acquisition of possession in an unauthorized manner; (2) removal of a chattel from one place to another with the intent to exercise control over it; (3) unauthorized transfer of possession of a chattel; (4) withholding possession from the owner; (5) alteration or destruction of the chattel; (6) improper use of the chattel; or (7) assertion of ownership over the chattel. **Quality Environmental Processes, Inc. v. IP Petroleum Co., Inc.**, 2016-0230, p. 15 (La. App. 1st Cir. 4/12/17), 219 So.3d 349, 369, writ denied, 2017-00915 (La. 10/9/17), 227 So.3d 833.

CamSoft alleges that the confidential business information that was allegedly converted includes “device compilations, software code, know-how, networking designs, installation process, business methods, marketing plans, pricing information, and strategic wireless network integrator business plans.” While CamSoft argues in opposition that “[i]n today’s world, little if anything is more

valuable to competitive businesses than information, whether in written or electronic form,” we decline to extend the tort of conversion to immovable, intangible information.³

Moreover, as stated above, a conversion requires a deprivation of possession. **Bihm**, 2016-0356 at p. 13, 226 So.3d at 478. MMR offered evidence that CamSoft continued to actively market its video surveillance system technology *after* the alleged conversion in 2004, thus demonstrating that CamSoft was not deprived of its confidential business information. CamSoft does not dispute that it was not deprived of this information but instead argues that a deprivation is not required. We find no merit to this argument based on the extensive jurisprudence requiring a deprivation. For these reasons, we find the trial court erred in denying MMR’s motion for partial summary judgment on CamSoft’s tort claims.

CONCLUSION

For the above and foregoing reasons, the April 2, 2019 judgment denying MMR’s Motion for Partial Summary Judgment on CamSoft’s Tort Claims is reversed. The Motion for Partial Summary Judgment on CamSoft’s Tort Claims filed by MMR Constructors, Inc., MMR Group, Inc., and MMR Offshore Services, Inc. is granted, and the tort claims of CamSoft Data Systems, Inc. against MMR Constructors, Inc., MMR Group, Inc., and MMR Offshore Services, Inc. are dismissed in their entirety, with prejudice. We deny the companion writ application referred to this panel, as moot. Costs of this appeal are assessed against CamSoft Data Systems, Inc.

³ We acknowledge the Louisiana Supreme Court’s declaration in **South Central Bell Telephone Co. v. Barthelemy**, 94-0499, p. 12 (La. 10/17/94), 643 So.2d 1240, 1246, wherein the court found that software was “tangible personal property” subject to municipal sales and use tax. In that case, the court noted that “[t]he software at issue is not merely knowledge, but rather is knowledge recorded in a physical form which has physical existence, takes up space on the tape, disc, or hard drive, makes physical things happen, and can be perceived by the senses.” **Id.** Though CamSoft uses **Barthelemy** and hypotheticals to argue that its confidential business information, once put in in tangible form, e.g. a printed email, would be a movable and therefore subject to conversion, CamSoft failed to cite to any evidence on summary judgment that their business information was taken from them in physical form or that they no longer had the use of their confidential information.

REVERSED; WRIT DENIED AS MOOT.