

STATE OF MICHIGAN
COURT OF APPEALS

SOCIETY BANK, MICHIGAN, formerly known as
SOCIETY BANK, MONROE, formerly known as
FIRST OF AMERICA BANK, MONROE,

UNPUBLISHED
December 30, 1997

Plaintiff- Appellant,

v

No. 195078
Mackinac Circuit Court
LC No. 94-003604-CZ

ALLIE J. ROGERS, doing business as R & R
MARINE SUPPLY, and WALTER HANK,

Defendants-Appellees.

Before: Murphy, P.J., and Hood and Bandstra, JJ.

PER CURIAM.

Plaintiff Society Bank, Michigan appeals by right from the order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff first contends that the trial court erred when it found that the boat at issue was not the boat identified in the contract with Anderson Marine & Sportland, Inc. We disagree. According to the Anderson manufacturer's statement of origin (MSO), the boat identified in the contract was a 31 foot, 2 inch runabout. However, the boat ordered and obtained by R & R Marine Supply was a 31 foot, 9 inch cruiser. Even disregarding the significant differences in the engines, colors, and other optional equipment, the boat acquired by R & R is substantively different from the boat described in the Anderson MSO. The confusion on the MSO's regarding which hull identification number was on which boat does not change that fact.

Further, counsel for plaintiff admitted at the hearing that plaintiff would not be entitled to recover if Thompson Boat Company issued the MSO in error. We agree with the trial court that no other conclusion is possible, considering that the boat obtained by R & R met R & R's contract specifications and that Thompson issued a new corrected MSO and invoice for the R & R boat. Plaintiff has cited no authority for the proposition that an MSO issued in error cannot be corrected when the error is discovered. While Anderson obviously has a cause of action against Thompson for breach of contract,

the circuit court correctly found that plaintiff's claim of conversion against defendants is unsupportable. See *SSC Associates Limited Partnership v General Retirement System of Detroit*, 192 Mich App 360, 365; 480 NW2d 275 (1991).

Plaintiff further argues, in effect, that issuance of the MSO identified the goods to the contract and vested title to the boat in Anderson. However, this argument is meritless because, as we have concluded above, the boat at issue was not the one identified in the contract with Anderson. Further, title would not pass under the facts of this case until shipment was completed by Thompson, which plaintiff agrees never occurred. MCL 440.2401(2); MSA 19.2401(2).

Plaintiff next argues that the trial court erred when it found that plaintiff had no enforceable security interest in the boat, as part of Anderson's inventory. In light of our finding that the boat at issue was not the one identified in the contract with Anderson, we need not address this issue. Finally, we decline to address plaintiff's argument that R & R violated the automatic stay provisions of the United States Bankruptcy Code; the determination of whether a party violated 11 USC 362 is within the exclusive jurisdiction of the federal courts. See 28 USC 157, 158, and 1334; *Johnston Environmental Corp v Knight*, 991 F2d 613, 616-617 (CA 9, 1993).

We affirm. Defendants, being the prevailing parties, may tax costs pursuant to MCR 7.219.

/s/ William B. Murphy

/s/ Harold Hood

/s/ Richard A. Bandstra