

STATE OF MICHIGAN
COURT OF APPEALS

NICK HUFF and DOROTHY HUFF,

Plaintiffs-Appellants,

v

JACK STUTTING and TRIDENT
PYROTECHNICS,

Defendants-Appellants.

UNPUBLISHED

December 10, 1999

No. 212574

Montcalm Circuit Court

LC No. 97-000418

Before: Whitbeck, P.J., and Gribbs and White, JJ.

MEMORANDUM.

Plaintiffs appeal as of right from the trial court's order granting summary disposition for defendants in this action alleging unjust enrichment, conversion and breach of contract. We affirm.

Plaintiffs' fireworks merchandise was confiscated by the Bureau of Alcohol, Tobacco and Firearms (BATF) and stored at defendant Stutting's facility. Pursuant to an agreement between plaintiff and the BATF, the merchandise was tendered to plaintiffs' supplier, James Lambert. Lambert relinquished any interest in the goods and released them to Stutting. Plaintiffs allege that Lambert "signed over" the merchandise to Stutting based on Stutting's agreement to compensate plaintiffs, and that Lambert was acting as plaintiffs' agent at the time.

In support of their motion for summary disposition, defendants filed an affidavit from Lambert denying that he ever acted as plaintiffs' agent. Plaintiffs contend that a genuine issue of fact existed as to whether Lambert was acting as their agent, citing a March 9, 1995 letter from Lambert that mentions an agreement by Stutting to compensate plaintiffs. However, while Lambert's March 9, 1995 letter may indicate that plaintiffs were the intended beneficiaries of an understanding between Lambert and Stutting, nothing in the letter suggests that Lambert had any real or apparent agency relationship with plaintiffs. Moreover, in his affidavit, Lambert denied the veracity of additional statements in his March 9 letter relied on by plaintiffs. The court properly dismissed plaintiffs' breach of contract claim.

Additionally, plaintiffs' unjust enrichment claim was properly dismissed where the claim that defendant was enriched was based on the assertions in the letter. Summary disposition was also

appropriate as to plaintiffs' claim of conversion where plaintiffs had relinquished any rights to the property, except to the extent Lambert accepted the property back for credit, which Lambert declined to do.

Affirmed.

/s/ William C. Whitbeck

/s/ Roman S. Gibbs

/s/ Helene N. White