

STATE OF MICHIGAN
COURT OF APPEALS

JOHN M. SYTSEMA and SUSAN SYTSEMA,

Plaintiffs-Appellees,

v

TRIPLE J PARTNERS, LLC,

Defendant,

and

MICHAEL J. BOWEN,

Defendant-Appellant.

UNPUBLISHED

January 10, 2006

No. 264081

Muskegon Circuit Court

LC No. 04-043451-CZ

Before: O’Connell, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Defendant Michael J. Bowen appeals as of right from the trial court’s order granting summary disposition to plaintiffs, holding that defendant was jointly and severally liable in his individual capacity for funds wrongfully received by Triple J Partners, LLC. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant¹ is the managing member of Triple J and met plaintiffs at a meeting in 2002 to discuss potential investment opportunities. While defendant and plaintiffs only met once, Triple J’s attorney, Mark Vandebosch, had more contact with plaintiffs. In July 2002, Vandebosch received a check for \$100,000 from plaintiffs as an investment in Triple J. In return, Vandebosch gave plaintiffs forged ownership documents in various businesses owned by Triple J. Plaintiffs actually received nothing in return for their \$100,000 because defendant was unaware of the investment, false information was used to induce plaintiffs to invest, and they receive forged documents of ownership.

Vandebosch deposited the \$100,000 from plaintiffs into Triple J’s bank account along with over \$400,000 of other funds that rightfully belonged to Triple J. Almost immediately after

¹ Triple J has not appealed the trial court’s decision. Therefore, the term “defendant” as used throughout this opinion shall refer only to Michael J. Bowen in his individual capacity.

that deposit, \$50,000 was wire transferred out of Triple J's account allegedly to a creditor of Vandebosch. Defendant's only evidence before the trial court that the wire transfer came out of the \$100,000 provided by plaintiffs and not from the other \$400,000 of Triple J's funds that were part of the same deposit was defendant's deposition statement.²

Defendant first learned of the improperly acquired funds through a letter from Vandebosch in March or April 2003. None of the funds, however, were returned to plaintiffs. Plaintiffs brought this case in an effort to recover their \$100,000. The trial court granted plaintiffs' motion for summary disposition, holding defendant personally liable for the \$100,000, jointly and severally, with Triple J.

On appeal, defendant argues that he should not be personally liable for the misdeeds of a limited liability company's employee. Alternatively defendant argues that he should not be liable for more than \$50,000, if any amount at all, given the nearly immediate wire transfer out of Triple J's account.

A trial court's decision to grant summary disposition under MCR 2.116(C)(10) is reviewed de novo. *Dep't of Natural Resources v Carmody-Lahti Real Estate, Inc*, 472 Mich 359, 368; 699 NW2d 272 (2005). Summary disposition is properly granted under MCR 2.116(C)(10) when there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10).

"When conversion is committed by a corporation, the agents and officers of the corporation may also be found personally liable for their active participation in the tort, even though they do not personally benefit thereby." *Citizens Ins Co v Delcamp Truck Center, Inc*, 178 Mich App 570, 576; 444 NW2d 210 (1989). Conversion is defined as any distinct act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with his rights therein. *Id.* at 575 (citations omitted). An action for conversion requires the defendant to have obtained money without the owner's consent and includes an obligation to return the money entrusted to the defendant's care. *Id.* "Conversion may be committed by the refusal to surrender a chattel on demand." *Id.*

In the present case, there is no dispute that Triple J improperly received \$100,000 from plaintiffs. There is also no dispute that defendant had the ability to authorize payment from Triple J to plaintiffs for return of those funds, but he did not do so. In so doing defendant refused to surrender property that rightfully belonged to plaintiffs. Defendant thereby committed a distinct act of dominion over another's property that was inconsistent with plaintiffs' rights to the property. Accordingly, defendant's act constituted a conversion. *Id.*

² On appeal, defendant also provided a supplemental police report with a statement from Vandebosch stating that his intent was to have \$40,000-\$50,000 of transferred funds come out of plaintiffs' \$100,000. However, this Court's review is limited to the record made before the trial court. *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 56; 649 NW2d 783 (2002). Accordingly, we shall not consider the supplemental police report provided by defendant for the first time on appeal

Additionally, the \$100,000 from plaintiffs was deposited into Triple J's account at the same time as over \$400,000 of other funds were also deposited into the same account. All funds were therefore commingled in Triple J's account at the time the wire transfer of \$50,000 was made out of that account. Regardless of Vandebosch's intent, due to the commingling of funds at the time of deposit, it cannot be shown that the \$50,000 wire transfer came strictly from the \$100,000 of plaintiffs' funds rather than from the funds that rightfully belonged to Triple J.

Affirmed.

/s/ Peter D. O'Connell

/s/ Michael R. Smolenski

/s/ Michael J. Talbot