STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2155

William Miller,
Appellant,

vs.

Public Storage, a foreign Real Estate Investment Trust,
Respondent.

Filed June 24, 2019
Reversed and remanded
Smith, John, Judge[*]

Anoka County District Court
File No. 02-CV-18-3689

Edward F. Rooney, Minneapolis, Minnesota (for appellant)

Jesse H. Kibort, Abraham S. Kaplan, Parker Daniels Kibort LLC, Minneapolis, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Reilly, Judge; and Smith, John, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

SMITH, JOHN, Judge

We reverse the district court's dismissal of appellant's complaint because the complaint under rule 12.02 (e) states a claim for which relief may be granted for conversion and civil theft. We remand for further proceedings consistent with this opinion.

FACTS

Appellant William Miller sued respondent Public Storage in June 2018 for conversion and civil theft. Miller alleged in his complaint that his mother, Penelope Isleman ("Isleman"), rented a storage locker, unit D3, from respondent beginning in 2009 and running through June 2015. Respondent was aware of, and consented to, the fact that Isleman was using unit D3 to store not only her own personal property, but also items of personal property from her mother's house. Some of those items belonged to Miller. On May 27, 2015, respondent sold the contents of unit D3 at a public auction without giving notice to Isleman, her mother, or Miller. Miller alleges this sale was unlawful, and it constituted conversion and civil theft on the part of respondent.

The record also indicates that in March 2017, Isleman and her mother sued respondent because of the public auction in a case labeled 02-CV-17-1095 ("file 1095"). They allege that at some point Isleman told respondent's employees that her mother would take over making the monthly payments for the storage locker. That complaint also alleges that Isleman's mother continued to make payments on the storage unit through June of 2015, but that from March of 2015 through May 27, 2015, respondent locked them out of the storage unit and then sold the property within it.

In the present case, respondent moved for dismissal of Miller's complaint for failure to state a claim upon which relief can be granted under Minn. R. Civ. P. 12.02(e) on both of his claims. The district court granted the motion, dismissed the complaint, and entered judgment against Miller.

D E C I S I O N

Miller challenges the dismissal of his case for failure to state a claim upon which relief can be granted pursuant to Minn. R. Civ. P. 12.02(e). We review such a dismissal de novo. *Greer v. Prof'l Fiduciary, Inc.*, 792 N.W.2d 120, 126 (Minn. App. 2011). "A claim is sufficient against a motion to dismiss for failure to state a claim if it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded." *Forslund v. State*, 924 N.W.2d 25, 33 (Minn. App. 2019) (quotation omitted).

But as an initial matter, it is important for us to clarify what information we consider when conducting this review. Typically, we "consider only the facts alleged in the complaint, accept those facts as true, and construe all reasonable inferences in favor of the non-moving party." *Greer*, 792 N.W.2d at 126. But we may also "consider [an] entire written contract when the complaint refers to the contract and the contract is central to the claims alleged." *In re Hennepin Cty. 1986 Recycling Bond Litig.*, 540 N.W.2d 494, 497 (Minn. 1995). Accordingly, in this case, we consider not only Miller's complaint, but also the lease agreement, which is a contract embraced by the complaint and which is central to the claims alleged.

I. Errors by the District Court

Before conducting our de novo review of Miller's complaint, we address his arguments about specific errors made by the district court in analyzing his complaint. The first two arguments deal with factual assumptions that the district court made, and the other two arguments deal with legal conclusions based on those facts.

Miller first argues that the following statement in the district court's order is inconsistent with the complaint, which must be taken as true: "[Respondent] was not informed in writing of the personal property of [Isleman's mother] or [Miller]. [Respondent] did not consent, in writing, to Ms. Isleman's using Unit D3 to house personal property of persons not on the Rental Agreement." In his complaint, Miller alleged that respondent "was aware that unit D3 was being used to store . . . items of personal property from the former home of plaintiff's grandmother . . . and [respondent] consented to such use of unit D3" and that "[a]mong the items from the home . . . that were being stored, with defendant's knowledge and consent, in . . . unit D3 were items of personal property belonging to [Miller]." Keeping in mind that the district court was required to accept as true the facts in Miller's complaint "and construe all reasonable inferences in favor of" Miller, we agree that the district court erred in stating that respondent was not informed about Miller's personal property and that respondent did not consent to house that property. *See Greer*, 792 N.W.2d at 126.

Miller argues that the following statement in the district court's order was also inconsistent with his allegations: "Ms. Isleman failed to pay the rent and defaulted under her Rental Agreement." Miller's complaint alleges that his mother rented unit D3

"[b]eginning in 2009 and continuously through June 2015." Accepting this allegation as true and construing all reasonable inferences in Miller's favor, the district court should have assumed at this procedural stage that Ms. Isleman did not default on the lease.

Miller next contests the district court's legal conclusion regarding his conversion claim, which reads as follows:

> In this case [Miller] states in his complaint that Unit D3 stored items of personal property belonging to [him], which means one of two things. *Either [Miller] did or did not give all interest in the property and all possession to his mother, Ms. Isleman*. If [Miller] did give all interest in the property and all possession to Ms. Isleman, then . . . [Miller] no longer had a property interest in the items stored in Unit D3. If [Miller] did not give all interest and possession of the property to Ms. Isleman, then . . . Ms. Isleman, not [respondent], deprived [Miller] of his interest by placing his personal property in Unit D3 and representing in a signed Rental Agreement to be the owner of such property. Either way, [Miller] cannot satisfy both elements of conversion and this claim is defeated.

(Emphasis added). This conclusion was erroneous. It rests on the disputed assumption that Isleman and Miller never informed respondent that Miller wanted to store personal property in unit D3 and that respondent did not consent to the storage of Miller's property. As explained above, the district court should have accepted as true, for the purposes of its Rule 12.02(e) analysis, that respondent knew about and consented to Miller storing his personal property in unit D3.[1]

[1] Moreover, the arrangement between Miller and his mother may have constituted a bailment. *See Duxbury v. Spex Feeds, Inc.*, 681 N.W.2d 380, 386 (Minn. App. 2004) ("A bailment occurs when goods are delivered, without transferal of ownership, under an express or implied agreement that the goods will be returned."), *review denied* (Minn. Aug. 25, 2004).

Finally, Miller disputes the district court's conclusions on his civil-theft claim. The district court concluded that Miller's civil-theft claim failed because he would be unable to show that respondent had no right to take his property. The district court reasoned that Minn. Stat. § 514.972, subd. 1 (2018), gave respondent a lien on all the property in unit D3 (regardless of whether it was owned by Isleman, her mother, or Miller) and that the lien attached once Isleman defaulted on the rent. This conclusion is based on the disputed premise that Isleman defaulted. As we explained above, the district court should have assumed, consistent with the complaint, Isleman did not default on the lease. If there was no default, then respondent would have no right to sell the contents of unit D3, so the district court's legal conclusion was erroneous.

II. De Novo Review of the Complaint

Having addressed Miller's concerns with the district court's analysis of his complaint, we now turn to our own independent review of its sufficiency. We begin by looking at Miller's conversion claim. The tort of conversion has two elements: "(1) plaintiff holds a property interest; and (2) defendant deprives plaintiff of that interest." *Williamson v. Prasciunas*, 661 N.W.2d 645, 649 (Minn. App. 2003). Miller alleges in his complaint that he owned personal property stored in unit D3. And he alleges that respondent sold his personal property in a public auction without giving him notice. He asserts that this is sufficient to plead conversion, and we agree.

Respondent argues that the elements of conversion cannot be met on these pleadings. With respect to the first element—whether Miller had a property interest in the personal property—respondent argues that Miller either (1) gave the personal property to

Isleman and thus no longer had any property interest in it; or (2) retained his property interest in the personal property but only has a claim against Isleman because she was the one who harmed his property interest by defaulting on the rent payments. As discussed above in our analysis of the district court's legal conclusions on conversion, this line of reasoning assumes that Miller was not rightfully storing the property in unit D3 on his own and that Isleman defaulted on the lease agreement. To the contrary, however, it can be reasonably inferred from the pleadings that respondent was aware that Miller wished to store his personal property in unit D3 and consented to it. The pleadings similarly indicate that Isleman and her mother did not default on the lease agreement. We conclude that respondent's argument fails and that Miller sufficiently pleaded the first element of conversion.

Respondent also argues that Miller's pleadings are insufficient with respect to the second element of conversion because he failed to demonstrate that respondent's conduct was wrongful. Some definitions of conversion specify that the plaintiff must demonstrate that the interference with his personal property was "without justification." *Dairy Farm Leasing Co. v. Haas Livestock Selling Agency, Inc.*, 458 N.W.2d 417, 419 (Minn. App. 1990). And respondent argues that its conduct was not wrongful because it complied with the Minnesota Liens on Personal Property in Self-Service Storage Act, found in Minn. Stat. §§ 514.970-.979 (2018), and the lease agreement. The lien act in question provides, in relevant part, that an owner of a self-service storage facility "has a lien against the occupant on the personal property stored under a rental agreement in a storage space at the self-service storage facility," Minn. Stat. § 514.972, subd. 1, and that this lien "attaches as of

the date the occupant is in default," *id.*, subd. 2. To enforce the lien, the owner must, inter alia, "notify the occupant and any person who has delivered to the owner a written notice of a claim of an interest in the contents in the storage space when rent and other charges are in default," and the owner must deliver the notice either in person or by properly addressed verified mail. Minn. Stat. § 514.973, subd. 2 (a), (b).

But when making the appropriate reasonable inferences, Miller's complaint can be read to allege: (1) that there was no default because payments were made through June 2015; (2) that even if there was a default, respondent failed to notify Miller of the sale despite knowing about and consenting to his storage of his personal property in unit D3; and (3) that respondent failed to properly notify Isleman. From this it can be concluded that respondent did not comply with the statutes governing these kinds of liens. Accordingly, we do not agree that Miller failed to allege that respondent's conduct was wrongful. And we conclude that Miller sufficiently pleaded the second element of conversion.

We now turn to Miller's civil-theft claim. "A person who steals personal property from another is civilly liable to the owner of the property for its value when stolen plus punitive damages of either $50 or up to 100 percent of its value when stolen, whichever is greater." Minn. Stat. § 604.14, subd. 1 (2018). And "steal" has been interpreted to mean "that a person wrongfully and surreptitiously takes another person's property for the purpose of keeping it or using it." *Staffing Specifix, Inc. v. TempWorks Mgmt Servs., Inc.*, 896 N.W.2d 115, 126 (Minn. App. 2017) (quotation omitted), *aff'd*, 913 N.W.2d 687 (Minn. 2018). This means that "there must be some initial wrongful act in taking

possession of the property." *Id.* Miller alleges that respondent knew he was storing his personal property in unit D3 and consented to its storage, sold the personal property, did so without his consent, and did so without first notifying him or his mother. Miller argues that his pleadings were sufficient as to civil theft, and we agree.

Respondent asserts that Miller's pleadings do not sufficiently allege that respondent stole Miller's property because the complaint does not allege that respondent acted "surreptitiously." But Miller alleged that respondent consented to him storing his personal property in unit D3 and then failed to give him notice of the sale. He also alleges that Isleman never defaulted on the lease. We conclude that Miller has sufficiently pleaded facts that could prove that respondent "surreptitiously" took his property.

Respondent also argues that Miller has no standing under the lien act to claim that respondent's conduct was wrongful. This argument assumes: (1) that Miller did not have respondent's consent to store his personal property; (2) that there was a default on the lease; and (3) that proper notice was given. But Miller's complaint sufficiently pleaded to the contrary on all three points. And if Miller had respondent's consent to store his personal property, then he was entitled to notice of a sale. And if there was no default or notice, then the sale was improper. We conclude that respondent's standing argument fails. And we conclude that Miller sufficiently pleaded his civil-theft claim.

Because Miller sufficiently pleaded both of his claims, the district court erred in concluding that Miller failed to state a claim upon which relief can be granted.

Reversed and remanded.