IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

MIKE REED,	)	**No. 29069-7-III**
Appellant,	)	
	)	**Division Three**
v.	)	
	)	
LES SCHWAB TIRE CENTERS, INC., an Oregon Corporation, and JACOB SCHREIBER and JANE DOE SCHREIBER, individually and as a marital community,	)	**UNPUBLISHED OPINION**
Respondents.	)	

Brown J. — Mike Reed appeals the trial court's summary dismissal of his conversion and consumer protection suit against Les Schwab Tire Centers, Inc. of Oregon and one of its managers, Jacob Schreiber and Jane Doe Schreiber (collectively Les Schwab). This suit stems from Les Schwab's repossession of tires sold to Mr. Reed. Mr. Reed contends the trial court erred in concluding he failed to prove damages and in not allowing him to amend the complaint to add additional parties. We disagree with Mr. Reed and affirm.

FACTS

On December 5, 2001, Mr. Reed entered into a security agreement with Les Schwab for the purchase of merchandise on credit. The credit agreement states if Mr. Reed fails to make payments, "Seller may declare everything I owe immediately due and payable without further notice. If notice is required, notice shall be deemed reasonable if it is mailed at least 10 days in advance." Clerk's Papers (CP) at 137. And, "Seller may take back any goods under this Agreement. Seller may enter my driveway, garage or similar property without further permission from me." CP at 137. Mr. Reed agreed, "to pay all . . . costs . . . of . . . repossessing the goods." CP at 137. Les Schwab provided a continuous line of credit through a revolving account.

On July 13, 2007, Les Schwab sold Mr. Reed four tires for $509.82 on credit. Between January 2008 and May 2008, Mr. Reed failed to make any payments. Les Schwab had numerous contacts with Mr. Reed regarding his delinquent account.

On May 23, 2008, Les Schwab wrote a letter stating that Mr. Reed's account was delinquent in the amount of $1,041.09. Mr. Reed claims he did not receive the letter until May 29. On May 27, Mr. Schreiber went to Mr. Reed's residence. His vehicle was parked in the driveway while Mr. Reed was at work. Mr. Schreiber, after consultation with two other members of the management team, removed the tires and wheels from the vehicle. They removed the tires from the wheels at the store and then returned the wheels to Mr. Reed's vehicle the next day. The purpose of removing the tires at the store was to prevent damage to the wheels by using the store's machine.

Mr. Reed sued Les Schwab of Oregon for conversion and violation of Washington's Consumer Protection Act (CPA), chapter 19.86 RCW. Mr. Reed later moved to amend his complaint to add the two other members of the management team and their spouses and Les Schwab of Washington as defendants.[1] Les Schwab successfully requested summary judgment. Finding the amendment issue moot, the court denied Mr. Reed's motion to amend the complaint.

Following the denial of his request for reconsideration, Mr. Reed appealed.

ANALYSIS

A. Summary Judgment

The issue is whether the trial court erred in summarily dismissing Mr. Reed's claims against Les Schwab. Mr. Reed contends genuine issues of material fact exist regarding his conversion and CPA violation claims.

We review summary judgment dismissals de novo, performing the same inquiry as the trial court. *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300, 45 P.3d 1068 (2002). We consider the facts and all reasonable inferences from them "in the light most favorable to the nonmoving party." *Hertog v. City of Seattle*, 138 Wn.2d 265, 275, 979 P.2d 400 (1999).

Summary judgment is appropriate where "the pleadings, affidavits, and depositions establish that there is no genuine issue of material fact and that the moving

[1] Mr. Reed also requested to add the additional claims of fraud, negligent infliction of emotional distress, and violation of the Uniform Commercial Code, Title 62A RCW, that are not subjects of this appeal.

party is entitled to judgment as a matter of law." *Jones*, 146 Wn.2d at 300-01; CR 56(c). "A material fact is one upon which the outcome of the litigation depends." *Balise v. Underwood*, 62 Wn.2d 195, 199, 381 P.2d 966 (1963). The moving party's burden is to show no remaining material fact issues. *Id.* "The nonmoving party must set forth specific facts showing a genuine issue [of material fact] and cannot rest on mere allegations." *Baldwin v. Sisters of Providence in Wash., Inc.*, 112 Wn.2d 127, 132, 769 P.2d 298 (1989); CR 56(e).

Mr. Reed contends Les Schwab's actions amount to conversion because it unlawfully retained Mr. Reed's property by removing the wheels at the store instead of in Mr. Reed's driveway. "'Conversion is the unjustified, willful interference with a chattel which deprives a person entitled to the property of possession.'" *Potter v. Wash. State Patrol*, 165 Wn.2d 67, 78-79, 196 P.3d 691 (2008) (quoting *In re Marriage of Langham & Kolde*, 153 Wn.2d 553, 564, 106 P.3d 212 (2005)). The key element, here, is whether the temporary taking of the wheels was "justified." *Id.*

Les Schwab had a security interest in the tires which were mounted on the wheels. Repossession under these circumstances required removing the tires from the wheels. Granting a right of repossession necessarily contemplated handling the wheels for some period of time during repossession. And, tires mounted on wheels are typically removed together as a unit from the vehicle. It was reasonable of Les Schwab to use its machinery to dismount the tires from the wheels at its store to prevent

damage to the wheels. Les Schwab promptly returned the wheels. At no time did Les Schwab intend to keep the wheels and Mr. Reed does not show how he was damaged by the short period of time his vehicle was without wheels. While he claims he could not go to work, it is illegal in this state to drive a vehicle with only wheels. *See* RCW 46.37.420(1) ("It is unlawful to operate a vehicle upon the public highways of this state unless it is completely equipped with pneumatic rubber tires."). And, on the day of the repossession, he was at work submitting bids without his vehicle. The record shows he was out the next day similarly bidding work before the wheels were returned.

Based on the above, no genuine issues of material fact remain over whether Les Schwab's actions were justified. They were. And, Mr. Reed suffered no damages. Thus, the trial court properly dismissed Mr. Reed's conversion claim.

Mr. Reed next contends Les Schwab's actions violated the CPA. To survive summary judgment on his CPA claim, Mr. Reed must make a prima facie showing of five elements: (1) an unfair or deceptive act or practice; (2) in trade or commerce; (3) which affects the public interest; (4) an injury to plaintiff in his business or property; and (5) a causal link between the unfair or deceptive act and the injury suffered. *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 784-85, 719 P.2d 531 (1986). "Failure to meet any one of these elements under the CPA is fatal to the claim." *Shields v. Enterprise Leasing Co.*, 139 Wn. App. 664, 675, 161 P.3d 1068 (2007) (citing *Sorrel v. Eagle Healthcare*, 110 Wn. App. 290, 298, 38 P.3d 1024

(2002)).

Mr. Reed cannot show injury to his property. The wheels were properly taken by Les Schwab for separation from the tires to prevent damage. No evidence in the record shows injury to the wheels. Moreover, Les Schwab's actions were not deceptive or unfair since Mr. Reed agreed to repossession in the parties' credit agreement. Repossession necessarily contemplated handling the wheels on which the tires were mounted. Les Schwab contacted Mr. Reed on numerous occasions about his delinquent account for months prior to the repossession. While Les Schwab's May 23 letter arrived after the repossession, Mr. Reed still had notice, as contemplated by the parties' agreement. Mr. Reed agreed to assume all costs associated with the repossession. The time taken to necessarily remove the wheels from the tires can be characterized as a cost associated with the repossession.

Because Mr. Reed cannot establish at least two of the elements of a CPA violation, he fails to meet his prima facie burden. Thus, the trial court properly dismissed his claim in summary judgment.

B. Motion to Amend

The issue is whether the trial court erred in denying Mr. Reed's motion to amend his complaint to include additional parties. He contends justice and judicial economy require the court to allow him to amend.

We review a trial court's denial of a motion to amend pleadings for abuse of

discretion. *Del Guzzi Constr. Co. v. Global Nw. Ltd.*, 105 Wn.2d 878, 888, 719 P.2d 120 (1986). A trial court abuses its discretion when it bases its decision on unreasonable or untenable grounds. *T.S. v. Boy Scouts of Am.*, 157 Wn.2d 416, 423, 138 P.3d 1053 (2006). The trial court denied Mr. Reed's motion as moot. Mootness is a question of law, which we review de novo. *Hilltop Terrace Homeowner's Ass'n v. Island County*, 126 Wn.2d 22, 29, 891 P.2d 29 (1995).

"A case is moot if a court can no longer provide effective relief." *Orwick v. City of Seattle*, 103 Wn.2d 249, 253, 692 P.2d 793 (1984). Mr. Reed fails to establish a prima facie case of conversion or a CPA violation. Adding additional defendants would not revive his claims. Thus, no relief could be granted by amending the complaint. Therefore, Mr. Reed's request to amend is moot. In sum, the trial court did not abuse its discretion in denying Mr. Reed's motion to amend his complaint.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Brown, J.

WE CONCUR:

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Kulik, C.J.

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Sweeney, J.