

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 28, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 99-0186

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**MACKENS PONTIAC, INC. D/B/A MACKENS
PONTIAC-MAZDA, A WISCONSIN CORPORATION,**

PLAINTIFF-APPELLANT,

v.

**M.J. McBRIDE MOTORSPORTS, A PARTNERSHIP,
LARON D. LASKA, M.J. McBRIDE AND TRANSPORTATION
INSURANCE COMPANY,**

DEFENDANTS-RESPONDENTS,

JOHN DOE, JANE ROE AND OTHERS,

DEFENDANTS.

APPEAL from a judgment of the circuit court for Brown County:
RICHARD J. DIETZ, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Mackens Pontiac, Inc., appeals a summary judgment that dismissed its lawsuit against Laron Laska, M.J. McBride, M.J. McBride Motorsports (an alleged partnership), and Transportation Insurance Company. Mackens claimed that Lydell Laska, Laron's brother, stole car parts from Mackens, that Laron used the stolen parts to build race cars in his garage, and that McBride drove the cars in races. Mackens pleaded theories of conversion, agency, conspiracy, partnership, and joint enterprise. The trial court dismissed the action because Mackens could not specifically identify any stolen car parts that went into one of the McBride race cars. On appeal, Mackens makes two basic arguments: (1) the record contains disputes of material fact on the conversion, agency, conspiracy, partnership, and joint enterprise issues; and (2) the trial court wrongly refused to consider certain depositions and exhibits. We reject Mackens' arguments and affirm the summary judgment.

¶2 The trial court correctly granted summary judgment if there was no genuine dispute of material fact. See *Powalka v. State Life Mut. Assur. Co.*, 53 Wis.2d 513, 518, 192 N.W.2d 852, 854 (1972). Mackens needed to specifically identify the stolen car parts that went into McBride race cars in order for its conversion claim to survive summary judgment. See *Brown v. Pratt*, 4 Wis. 513, 519 (1855) (specific identification essential to conversion). Mackens admits that it cannot do this. Rather, it seeks to make the case indirectly, by citing the fact that the police seized seventy-six boxes from Laron's garage holding thousands of items of Mackens' property. Nevertheless, Mackens is unable to link any of those items with McBride race cars.

¶3 Mackens' agency, conspiracy, partnership, and joint enterprise claims fail for the same reason. Those claims derive from Mackens' conversion

theory and thereby also need to specifically identify what stolen parts the car-racing joint effort used in its race cars.

¶4 Last, while the trial court ignored certain depositions and exhibits, Mackens has cited nothing in them which would specifically identify stolen parts used in McBride race cars.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

