

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
CIVIL DIVISION

CHRISTOPHER VERTA :  
Plaintiff :  
 :  
vs. : No. 12-2563  
 :  
PANTHER VALLEY SCHOOL DISTRICT, :  
Defendant :

Gary D. Marchalk, Esquire Counsel for Plaintiff  
Robert T. Yurchak, Esquire Counsel for Defendant

MEMORANDUM OPINION

Matika, J. - October \_\_\_\_\_, 2014

Before this Court is a Motion for Summary Judgment whereby the Defendant claims that it is entitled to have summary judgment entered in its favor and that all claims against Defendant must be dismissed. For the reasons stated within this opinion, this Court **grants** the relief requested.

FACTUAL AND PROCEDURAL BACKGROUND

On June 19, 2010, a certain Clark Forklift (hereinafter "Forklift") was transported to a property located at 401 West Bertsch Street, Lansford, Pennsylvania.<sup>1</sup> Two days later, Defendant Panther Valley School District (hereinafter "Defendant") acquired the real estate at 401 West Bertsch Street by deed from the Carbon County Tax Claim Bureau. Upon taking possession of the real

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<sup>1</sup> In the complaint, Plaintiff Christopher Verta (hereinafter "Plaintiff") alleges that *he* owned this forklift and authorized David A. Kutz Automotive and Million Dollar Towing to move it to this address.

estate, Defendant, in its own words, "secured its property from trespassers", which denied any access to the forklift.

On June 13, 2012, Plaintiff filed a Civil Complaint against Defendant, alleging two counts: 1) Conversion; and 2) Replevin. The basis of this complaint is that Defendant improperly and unlawfully retains possession of his, Christopher Verta's, forklift. The complaint was amended twice, the second time occurring on July 19, 2013. Subsequently, the parties engaged in discovery, the time period for which ended on December 13, 2013.

On June 25, 2014, Defendant filed a Motion for Summary Judgment. In that Motion, Defendant alleged that Plaintiff had failed to state a cause of action upon which relief could be granted, and that Plaintiff had failed to establish ownership of the Forklift and, therefore, he, Christopher Verta, lacked standing to bring the suit against Defendant. On July 31, 2014, Plaintiff filed his Answer to the Motion for Summary Judgment, arguing that Defendant had waived the standing issue as it had not been raised in its original Answer or in any Preliminary Objections. Defendant filed a Reply Brief to Plaintiff's Answer, claiming that the standing issue had only arisen after discovery had shown the Forklift was not owned by Plaintiff himself, but rather by his business, PA Wax Corporation. Defendant also argued that Plaintiff's response had failed to present any genuine issues of material fact, and therefore, the motion should be granted.

## DISCUSSION

In the Motion for Summary Judgment, Defendant raises several issues. First, with regards to both the Conversion and Replevin actions, Defendant states that Plaintiff, himself, failed to prove that he was in fact the owner of the Forklift, and therefore, Plaintiff cannot bring either claim to recover possession of something he does not own. According to the Pennsylvania Superior Court, "Pursuant to Pennsylvania case law, a conversion is widely understood as 'the deprivation of another's right of property in, or use or possession of, chattel, or other interference therewith, without the owner's consent and without lawful justification.'" *PTSI, Inc. v. Haley*, 71 A.3d 304, 314 (Pa. Super. Ct. 2013) (quoting *McKeeman v. Corestates Bank, N.A.*, 751 A.2d 655, 659 n.3 (Pa. Super. Ct. 2000)) (emphasis added).

The Pennsylvania Supreme Court defined Replevin in a different case, explaining:

Replevin is an action undertaken to regain possession of goods and chattels and to recover damages for their caption and detention, by the illegal act of the defendant. In order to maintain replevin, the plaintiff must have a general or special property right in the thing taken or detained. . . . In order to sustain replevin, it is *incumbent on the plaintiff to show not only that he has title, but that he has also the right to immediate possession.*

*Int'l. Elec. Co. v. N.S.T. Metal Prod. Co.*, 370 Pa. 213, 218-19 (Pa. 1952) (emphasis added).

Therefore, in order for Plaintiff to recover on either of these claims, he, Christopher Verta himself, must establish an immediate right of possession. Through the course of discovery, and as evidenced by the undisputed exhibits attached to Defendant's Motion for Summary Judgment, it was shown that the owner of the Forklift is not Plaintiff personally, but rather, Plaintiff's business, PA Wax Corporation. Plaintiff is not permitted to bring a personal action for conversion or replevin when the property belongs to the Corporation, and not to him personally, unless he meets one of the several exceptions to this general rule. The U.S. District Court for the Eastern District of Pennsylvania has said of such a scenario: "It is well-settled that a shareholder, director, officer or employee does not have standing as an individual to bring an action against third parties for damages that are derivative of harm to the corporation." *KBT Corp., Inc. v. Ceridan Corp.*, 966 F.Supp 369, 373 (E.D.Pa 1997). Plaintiff has failed to show any evidence that he has personally suffered any injury separate and distinct from the corporation that could provide him with an exception which would permit him to bring an individual suit.<sup>2</sup>

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<sup>2</sup> See *Temp-Way Corp. v. Cont'l Bank*, 139 B.R. 299, 316-17 (E.D.Pa 1992). (Providing list of exceptions to rule barring individuals from filing suit to recover from injury to corporation.) "There are several exceptions to the . . . rule, however. One such exception exists where there is a special duty, such as a contractual duty, between the wrongdoer and the stockholders. This special duty exception applies most often where there is a fiduciary relationship between the wrongdoer and the stockholder. *Cole v. Ford Motor Co.*, 566 F.Supp. 558, 568-69 (W.D.Pa.1983). Another exception exists where the stockholders

Pennsylvania Rule of Civil Procedure 1035.2 lays out the requirements for a Motion for Summary Judgment:

After the relevant pleadings are closed, but within such time as not to delay trial, any party may move for summary judgment in whole or in part as a matter of law

- (1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense, which could be established by additional discovery or expert report, or
- (2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

Pa. R. Civ. P. 1035.2.

In order to defeat a Motion for Summary Judgment, the non-moving party must show that there is a genuine issue of material fact on a necessary element of their claim or defense. This is typically done through their response to the motion, where the non-moving party shows evidence to dispute the claims made by the moving party. In answering the motion, the non-moving party must do more than just rely on the complaint to defeat such a motion. Rule 1035.3 of the Pennsylvania Rules of Civil Procedure explains:

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suffer an injury separate and distinct from that suffered by the corporation as a result of the wrongdoer's actions. *Id.* Stockholders, similarly, have standing to seek damages in their own right for misrepresentations made to them before they were shareholders for the purpose of inducing their investment. See generally *Davis v. U.S. Gypsum*, 451 F.2d 659, 662 (3d Cir.1971); *White v. First National Bank*, 252 Pa. 205, 97 A. 403 (1916)." *Id.*

- (a) Except as provided . . . the adverse party may not rest upon the mere allegations or denials of the pleadings but must file a response within thirty days after service of the motion identifying
- 1) One or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion or from a challenge to the credibility of one or more witnesses testifying in support of the motion, or
  - 2) Evidence in the record establishing the facts essential to the cause of action or defense which the motion cites as not having been produced.

Pa. R. Civ. P. 1035.3(a).

In his response to Defendant's Motion for Summary Judgment, Plaintiff answered nearly every single averment regarding Summary Judgment with the following: "This is a legal conclusion to which no response is required. To the extent a response is deemed to be required, this averment is Denied. Strict proof thereof is demanded at trial."<sup>3</sup> *Plaintiff's Answer to MSJ, Averments 26-32, 34-38.* This Court does not agree that all of these averments can be characterized as conclusions of law, as some are in fact factual in nature. According to the Explanatory Note following Rule 1035.2, "To defeat this motion, the adverse party must come forth with evidence showing the existence of the facts essential to the cause of action or defense." Pa. R. Civ. P. 1035.2. Here,

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<sup>3</sup> Plaintiff also stated that his Complaint was "a document that speaks for itself." (Averments 25, 39). This, like the above response, fails to identify one or more issues of fact from evidence in the record, and, further, simply rests on the language of the pleadings, which is insufficient under Rule 1035.3(a).

Plaintiff fails to offer any evidence that shows essential facts exist that refute the ownership argument made by Defendant.

The Explanatory Comment of Rule 1035.2, states "It is clear that if a defendant is the moving party, he may make the showing necessary to support the entrance of summary judgment by pointing to materials which indicated that the plaintiff is unable to satisfy an element of his cause of action." *Id.* As stated above, ownership or a superior right to possession is a necessary element of both a Conversion claim and a Replevin claim. Plaintiff, himself, has failed to demonstrate through his response to the Motion for Summary Judgment that he personally owns the Forklift or that he has a superior right to possess the Forklift. Without such proof of either, and in accordance with the language of Pennsylvania Civil Procedure Rule 1035.2, there is no genuine issue of material fact to a *necessary* element of the cause of action or defense.<sup>4</sup>

Accordingly, the Court enters the following Order:

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<sup>4</sup> Plaintiff also raised an issue of standing with regards to ownership of the Forklift, which Defendant claimed was waived as it was not raised in a timely manner. As this Court has found that no genuine issue of material fact with regard to a necessary element of the claim exists for other reasons, we do not address those matters in granting this motion.

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ORDER OF COURT

And now, this \_\_\_\_ day of October, 2014, upon consideration of the Motion for Summary Judgment filed by Panther Valley School District, and in accordance with the Memorandum Opinion, it is hereby

**ORDERED AND DECREED** that the Motion for Summary Judgment is **GRANTED**<sup>5</sup>, and the complaint filed by Plaintiff, Christopher Verta against the Defendant, Panther Valley School District is dismissed with prejudice.

**BY THE COURT:**

Joseph J. Matika, Judge

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<sup>5</sup> While this Court grants this Motion as between these parties, this Court does not make nor intend that this ruling finds the Defendant as the party entitled to ownership, possession, or retention of the Forklift.