STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: September 18, 2014)

CHRISTOPHER GUILLMETTE	:	
	:	
VS.	:	**C.A. No. PC 09-5007**
	:	
ROBERT PINGATORE	:	

CHRISTOPHER GUILLMETTE	:	
	:	
VS.	:	**C.A. No. PC 09-6089**
	:	
ALISHA ASSELIN	:	

DECISION

> *"Oh what a tangled web we weave, when we practice to deceive."*[1]

VAN COUYGHEN, J. This matter is before the Court for decision on two consolidated cases following a non-jury trial. Post-trial memoranda were submitted and reviewed. Jurisdiction is pursuant to G.L.1956 § 8-2-14.

I

Facts and Travel

These cases provide insight into the business considerations associated with illegally selling drugs. Mr. Guillmette is the Plaintiff in both cases. Mr. Guillmette admitted that, at all times pertinent herein, he sold illegal drugs for a living.

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[1] Walter Scott, Marmion: A Tale of Flodden Field (Edinburgh: Printed by J. Ballantyne and Co. for Archibald Constable and Company, Edinburgh; and William Miller, and John Murray, London, 1808)

In May 2007, Mr. Guillmette entered into a written lease agreement with Defendant, Robert Pingatore (Mr. Pingatore), that spanned from May 1, 2007 through May 1, 2008. The rental property was located at 119B Morgan Avenue, Johnston, Rhode Island. The monthly rent was $1300 and a $1300 damage deposit was paid at the inception of the lease.

During the course of the year, Mr. Guillmette became romantically involved with Defendant Alisha Asselin (Ms. Asselin). Ms. Asselin eventually moved into the Morgan Avenue property and the two cohabitated for some time. Mr. Guillmette testified that he originally met Ms. Asselin by selling her drugs.

On April 4, 2008, the Johnston Police raided the apartment at 119B Morgan Avenue. The front door was broken in, causing damage. The house was thoroughly searched. Parts of the heating system were dismantled by the police in search of money and drugs. The police also seized a Banshee all-terrain vehicle, a street motorcycle, a Dodge Caravan, and a Honda Accord that were at the property. The Honda Accord was in Ms. Asselin's name, and the other vehicles belonged to Mr. Guillmette. A 1971 Datsun belonging to Mr. Guillmette was also at the property but not seized by the police.

Mr. Guillmette testified that prior to the raid he received a tip from a friend that the raid may be imminent, so he absconded before the police arrived. Mr. Guillmette testified that he drove a 2006 Dodge Charger, which is embroiled in this controversy, to a friend's and left the car in the friend's garage. He then traveled to New York and then to Arizona. The specific details of his travels were not revealed at trial.

Two months after the raid, Mr. Guillmette was apprehended in Arizona and extradited to Rhode Island. On January 23, 2009, he pled guilty to drug and weapons charges and received a

ten-year jail sentence with four years to serve and six years suspended.[2] See Def.'s Ex. C. Mr. Guillmette also agreed to forfeit the vehicles seized by the police as part of his plea agreement.[3]

Mr. Guillmette testified that he paid cash for the above-referenced Dodge Charger but put it in Ms. Asselin's name to shield it from forfeiture by law enforcement in the event he was ever caught selling drugs.[4] He also testified that he installed a stereo system in the Dodge Charger prior to the raid. Mr. Guillmette testified that he allowed Ms. Asselin to drive the car while he was incarcerated because she had no means of transportation. Ms. Asselin remains in possession of the Dodge Charger.

Mr. Guillmette's testimony also revealed that Ms. Asselin is in possession of a Honda all-terrain vehicle (ATV) which he alleged belonged to him. The vehicle was not at the property at the time of the raid and was not registered, so there was no public record of his ownership.

Mr. Guillmette apparently did not share the "tip" he received regarding the raid with Ms. Asselin because she was at the property when the raid occurred. She spent the following thirty days in prison. The charges against her were eventually dismissed based upon Mr. Guillmette's plea. She also agreed to the forfeiture of her Honda Accord. She testified that Mr. Guillmette paid most of her legal fees associated with the criminal charges but that she also paid a portion. However, she did not recall the amount.

Ms. Asselin denied that the Dodge Charger was Mr. Guillmette's. She testified that she paid for the Dodge Charger and that it was her car. She testified that she paid for the automobile in cash that she had saved; although her age and work history make her testimony improbable.

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[2] This was Mr. Guillmette's second conviction for the sale of drugs. In No. K2-2000-0194B, Mr. Guillmette received a fifteen-year prison sentence with thirty months to serve, the remainder suspended. See Def.'s Ex. C.

[3] This included the Honda Accord which was in Ms. Asselin's name.

[4] The purchase price, including taxes, was $19,474.00.

On cross-examination, she admitted to writing letters to Mr. Guillmette while he was in prison, asking for permission to use "the big black thing," as she had "no car." Both Mr. Guillmette and Ms. Asselin testified that the Dodge Charger was "the big black thing" and that they used that particular terminology so that law enforcement would not be alerted to the existence of the Dodge Charger, thus protecting it from forfeiture.

She also testified that the ATV was a gift from Mr. Guillmette. Mr. Pingatore corroborated her testimony. He testified that Mr. Guillmette said to him that he had given the ATV to "his honey," referring to Ms. Asselin.

Mr. Pingatore testified that the day after the raid, a friend of Mr. Guillmette's, Mr. Rothemich, came to the house and retrieved some of Mr. Guillmette's property. Mr. Pingatore testified that he asked Mr. Rothemich multiple times to have Mr. Guillmette call him, and Mr. Rothemich told him that he would "take care of everything." Mr. Rothemich even told Mr. Pingatore that he would make repairs to the property, but he never followed through with the repairs or removed any of the personal items left by Mr. Guillmette.

Mr. Pingatore testified that he wanted to re-rent the vacant property. Having no other way to contact Mr. Guillmette, he sent two eviction letters to the apartment. Between late May and early June of 2008, Mr. Pingatore cleaned out the house and disposed of the many items left at the property, including clothes, furniture, motorcycle parts, and the abandoned 1971 Datsun. He testified that he was unable to rent the property for May and June, which represented a loss of $1300 for each month. Additionally, he was forced to expend $700 for materials to complete the necessary repairs to the property, which he did himself. Lastly, he testified that a portion of his loss was satisfied because he retained Mr. Guillmette's $1300 damage deposit.

Mr. Pingatore testified that, based upon Mr. Guillmette's disappearance and failure to pay rent, the 1971 Datsun was removed from the property and given to a junk dealer. Mr. Guillmette and Mr. Pingatore presented conflicting testimony regarding the condition of the 1971 Datsun. Mr. Guillmette testified that it was operable and in good shape; however, Mr. Pingatore testified it was rusted, had flat tires, and that he believed it to be inoperable. Mr. Guillmette testified, based upon the Hagerty Car Price Guide, that the value of the 1971 Datsun was $12,733. However, there was no testimony comparing the condition of the car in question to the one valued in the Hagerty Car Price Guide. On cross-examination, Mr. Guillmette testified that he purchased the car for $100, as reflected in the bill of sale. See Def.'s Ex. D. Mr. Guillmette also testified that he bought the car from an individual who owed him $1500 from a drug transaction which was factored into the purchase price of $100. The purchase price of $1600 is, in fact, reflected on the title for the vehicle. See Def.'s Ex. F.

In the instant matters, Mr. Guillmette, now out of jail, sued Ms. Asselin for conversion, seeking return of the Dodge Charger, the ATV, and the aftermarket stereo equipment that he put in the Dodge Charger. Ms. Asselin filed a counterclaim seeking reimbursement for legal fees expended in defense of the drug charges and payment for Mr. Guillmette's share of the rent. Mr. Guillmette sued Mr. Pingatore for the value of his 1971 Datsun based upon negligence, specifically, driving his payloader into the vehicle, thus destroying it. Mr. Pingatore filed a counterclaim seeking rent in the amount of $2600 representing May and June 2008 at $1300 per month, plus the cost of repairs to the apartment in the amount of $700.

Additional facts will be addressed throughout this Decision as needed.

II

Analysis

A

Guillmette v. Asselin

1

Dodge Charger

This Court will address the claims and counterclaims of Mr. Guillmette and Ms. Asselin first. As it relates to the Dodge Charger, Mr. Guillmette seeks to invoke the equitable powers of this Court to put the car in a resulting trust and force Ms. Asselin to transfer the Dodge Charger to him. See Pl.'s Post-trial Mem. In support of this claim, he testified that he paid for the car and put it in Ms. Asselin's name to protect it from forfeiture in the event he was ever caught selling drugs. Ms. Asselin denies his allegations. She testified that she paid $20,000 cash for the car from her own money, which she had saved and kept in a safe at her mother's house. This Court finds it implausible, based upon her age and work history, that Ms. Asselin was able to accumulate $20,000 and, therefore, finds that her testimony as to the purchase of the vehicle lacks credibility. Conversely, this Court finds Mr. Guillmette's testimony—that he purchased the car with cash and put it in Ms. Asselin's name to protect it from forfeiture due to his illegal drug activity—far more credible. The letters written by Ms. Asselin to Mr. Guillmette while in prison further support his version. One letter clearly states that she had "no car" at the time. Both Mr. Guillmette and Ms. Asselin testified that they referred to the Dodge Charger as "the big black thing" so as to not alert law enforcement of the car, and thus, protect it from forfeiture. This testimony highlights that both Ms. Asselin and Mr. Guillmette had an intricate, well-

thought-out plan to conceal the true owner of the automobile in order to shield the Dodge Charger from forfeiture by law enforcement.

It is a fundamental principle of equity that one who attempts to invoke equity must come to the court with clean hands. Ocean Road Partners v. State of Rhode Island, 612 A.2d 1107, 1111 (R.I. 1992); Rodriques v. Santos, 466 A.2d 306, 311, (R.I. 1983). If the conduct of a plaintiff is the source of his equitable claim, then he forfeits such a right because of that conduct. Rodriques, 466 A.2d at 311.

Here, Mr. Guillmette has anything but clean hands. The car was registered and titled to Ms. Asselin solely for the purpose of attempting to shield the automobile from forfeiture in the event Mr. Guillmette was arrested because of his illegal drug business. This Court is not going to invoke its equitable powers to undo what Mr. Guillmette did to deceptively protect his assets from forfeiture. In fact, this Court is troubled by the fact that Mr. Guillmette would come to this Court and seek relief under the facts and circumstances of this case. Accordingly, this Court hereby refers this matter to the Attorney General to determine if civil forfeiture proceedings against the Dodge Charger are appropriate.

As it relates to the return of the stereo equipment, the unrefuted testimony is that it was stolen from the vehicle in 2009. The police report, marked as Defendant's Exhibit B, provides further evidence of the theft. Even if this Court were to find that the stereo equipment belonged to Mr. Guillmette, Ms. Asselin did not convert it because, at the time it was stolen, she had the authority to control the vehicle.

2

ATV

Also involved in the dispute between Mr. Guillmette and Ms. Asselin is the above-mentioned ATV. Mr. Guillmette alleges it belongs to him, and Ms. Asselin contends it was a gift from Mr. Guillmette. Mr. Guillmette alleges that Ms. Asselin obtained the ATV through conversion. Further, he contends that he did not give it to her as a gift and that she has not met the elements of a gift to prove such.

"To maintain an action for conversion, [a] plaintiff must establish that [it] was in possession of the personalty, or entitled to possession of the personalty, at the time of conversion." Montecalvo v. Mandarelli, 682 A.2d 918, 928 (R.I. 1996). Then, "the gravamen of an action for conversion lies in the defendant's taking the plaintiff's personalty without consent and exercising dominion over it inconsistent with the plaintiff's right to possession." Fuscellaro v. Indus. Nat'l Corp., 117 R.I. 558, 560, 368 A.2d 1227, 1230 (1977); Narragansett Elec. Co. v. Carbone, 898 A.2d 87, 97 (R.I. 2006). The elements of the tort of conversion must be proven by a preponderance of the evidence. Dunning v. Kerzner, 910 F.2d 1009, 1013 (1st Cir. 1990). If the plaintiff proves ownership and right to possession, then the burden of proof shifts to the defendant to rebut the prima facie case. Kebabian v. Adams Express Co., 27 R.I. 564, 65 A. 271 (1906). When the defendant successfully rebuts the prima facie case, the burden of persuasion rests with the plaintiff.

This Court finds that Mr. Guillmette failed to prove by a preponderance of the evidence that Ms. Asselin converted the ATV. Moreover, Mr. Guillmette's reliance on the necessity of Ms. Asselin to prove the elements of a gift is misplaced, as the burden is not upon Ms. Asselin to prove the elements of a valid inter vivos gift in this case. Ms. Asselin's allegation that she is the

owner of the ATV because it was given to her as a gift was not set forth as an affirmative defense or part of her counterclaim but merely testimony rebutting Mr. Guillmette's claim of ownership. Thus, this Court makes no decision as to whether or not a valid inter vivos gift did occur, only that the evidence is insufficient to establish that Ms. Asselin was guilty of conversion and that Mr. Guillmette is entitled to the ATV. Nelen v. Cowell, 45 R.I. 465, 123 A. 897, 898 (1924) (denying claim for conversion of a truck based on insufficient testimony by a plaintiff). Therefore, Mr. Guillmette is not entitled to recover for conversion of the ATV.

B

Ms. Asselin's Counterclaim

1

Attorney's Fees and Rent

Ms. Asselin's counterclaim seeks payment for attorney's fees and rent. With respect to rent, there is no testimony that she paid rent in May or June, and Mr. Pingatore testified that rent for those months is outstanding. Additionally, this claim is contradictory to her testimony that Mr. Guillmette always paid the rent on the apartment. Accordingly, judgment shall enter for Mr. Guillmette in that regard.

Attorney's fees are not compensable unless provided by contract or by statute. R.A. Beaufort & Sons, Inc. vs. Trivisonno, 121 R.I. 835, 843, 403 A.2d 664, 668 (1979). Here, there is neither a contract nor a statute related to the recovery of legal fees spent to defend against criminal charges as a result of the actions of another. Even if there were, Ms. Asselin failed to prove that she paid the attorney's fees with the requisite specificity for this Court to grant relief. She was specifically asked on cross-examination how much money she spent, and her response

was that she did not remember. Accordingly this Court renders judgment for Mr. Guillmette on Ms. Asselin's counterclaim regarding attorney's fees and rent.

C

Guillmette v. Pingatore

1

1971 Datsun

With respect to Mr. Guillmette's damage claim against Mr. Pingatore regarding the 1971 Datsun, this Court finds that, pursuant to the facts in this case, Mr. Guillmette abandoned the 1971 Datsun. Mr. Guillmette left on April 4, 2008 to avoid arrest without notifying Mr. Pingatore. Mr. Guillmette sent a friend to regain some of his possessions, but the friend did not remove the 1971 Datsun.

Mr. Guillmette was on the run for at least two months before he was extradited to Rhode Island. Upon returning, he remained in prison for an extended period. It's clear that the car was abandoned under G.L. 1956 § 31-42-1(b) which defines an abandoned vehicle as "a motor vehicle that has remained on private property without the consent of the owner or person in control of the property for more than three (3) days." Further, § 31-42-7(e) provides that "any person . . . upon whose property . . . is found any abandoned motor vehicle . . . may dispose of the motor vehicle to a demolisher without a registration and without notification procedure of § 31-42-3, if the motor vehicle is over eight (8) years old . . . Any demolisher who purchases or acquires any motor vehicle for the purpose of demolition and removal may demolish it on the premises where they are located." Thus, under Rhode Island law, Mr. Pingatore had the right to remove the abandoned vehicle, which was over thirty years old and send it to be demolished.

Even if this Court were to find that Mr. Pingatore wrongfully removed or damaged the car, Mr. Guillmette did not prove damages with the requisite specificity to warrant relief. See Morabit v. Hoag, 80 A.3d 1, 15-16 (R.I. 2013) ("A complaining party need not prove damages with "mathematical exactitude . . . . [A]ll that is required is that they are based on reasonable and probable estimates.") (citations omitted). The only evidence to support Mr. Guillmette's allegation of value was his reference to the Hagerty Car Price Guide. There was absolutely no testimony comparing the car valued in the price guide to the subject vehicle. Thus, Mr. Guillmette failed to satisfy his burden of proof in this regard.

In addition, there was conflicting testimony regarding the condition of the car prior to its removal. This Court finds Mr. Pingatore's testimony that the car was inoperable, had flat tires, and was covered with rust to be credible. Moreover, this Court's finding that the car was in poor condition is further supported by the fact that the police seized all of the vehicles on the property during the raid, except for the 1971 Datsun. Finally, it is non sequitur to find that Mr. Pingatore would cause an asset of considerable value to be demolished considering that Mr. Guillmette owed him money for rent and damage to the property. Accordingly, judgment shall enter for Mr. Pingatore regarding the 1971 Datsun.

D

Mr. Pingatore's Counterclaim

1

Rent and Property Damage

As it relates to Mr. Pingatore's counterclaim against Mr. Guillmette for rent and damages to his property, Mr. Guillmette argues that he does not owe rent because his lease had expired at the end of April. The evidence shows that Mr. Pingatore complied with G.L. 1956 § 34-18-40

by sending letters to Mr. Guillmette indicating that he would attempt to re-rent the house unless Mr. Guillmette responded. The letters remained unanswered, and Mr. Pingatore took steps to re-rent the property. The testimony is undisputed that Mr. Guillmette's belongings remained on the premises until the beginning of June, and that Mr. Pingatore could not rent the property until Mr. Guillmette's possessions were removed. Additionally, Mr. Guillmette's contention that he is not liable for the damage to the apartment, because he did not cause it himself, is not based in fact. It is undisputed that the raid was a direct and proximate result of Mr. Guillmette's illicit drug sales during the term of his lease with Mr. Pingatore.

Therefore, this Court finds that Mr. Guillmette is liable to Mr. Pingatore for two months' rent, May and June of 2008, totaling $2600. Additionally, this Court also finds that Mr. Guillmette is liable for the $700 Mr. Pingatore spent on materials to repair the damage to the property caused by the raid.

However, at the beginning of the lease, Mr. Guillmette gave Mr. Pingatore a damage deposit in the amount of $1300, which Mr. Pingatore had a right to keep. Specifically, in Rhode Island, a landlord has a right to keep a security deposit to cover unpaid rent and physical damages other than ordinary wear and tear. See § 34-18-19. Therefore, this Court deducts the retained deposit from the amount owed to Mr. Pingatore for rent. Accordingly, judgment shall enter in the amount of $2000 for Mr. Pingatore against Mr. Guillmette.

III

Conclusion

After considering the evidence before it, reviewing the briefs, and making the above findings of fact and conclusions of law, this Court decides the following: The claims made by Mr. Guillmette in each case are denied, and judgment shall enter for the Defendants.

Additionally, the counterclaims of Ms. Asselin are also denied. Lastly, Mr. Pingatore's counterclaim for back rent and property damage is granted, and judgment shall enter on his behalf in the amount of $2000.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Guillmette v. Pingatore** **and** **Guillmette v. Asselin**
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DATE DECISION FILED:	**September 18, 2014**
JUSTICE/MAGISTRATE:	**Van Couyghen, J.**
ATTORNEYS:	
For Plaintiff:	**Robert Testa, Esq.**
For Defendant:	**Michael DiChiro, Jr., Esq.**