STATE OF MICHIGAN

IN THE 20th CIRCUIT COURT FOR THE COUNTY OF OTTAWA
SPECIALIZED BUSINESS DOCKET
414 Washington Street
Grand Haven, MI 49417
616-846-8315
* * * * *

UTICA LEASECO, LLC, a Florida limited liability company,

Plaintiff,

v

DENNIS BOERSEN, an individual, **BOERSEN FARMS & AFFILIATES, LLC,** a Michigan limited liability company, and **HILLTOP EQUIPMENT, LLC,** a Michigan limited liability company,

and

NEW HEIGHTS FARM I, LLC, a Michigan limited liability company, **NEW HEIGHTS FARM II, LLC,** a Michigan limited liability company, **STACY BOERSEN**, an individual, **NICHOLAS BOERSEN,** an individual, **BOERSEN AG PARTNERS, LLC,** a Michigan limited liability company, **GREAT LAKES GRAIN, LLC,** a Michigan limited liability company, and **LISA ROBINSON,** an individual,

Defendants.
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OPINION AND ORDER PARTIALLY GRANTING AND PARTIALLY DENYING SUMMARY DISPOSITION
File No. 2023-007563-CB

Hon. Jon A. Van Allsburg

Plaintiff Utica Leaseco, LLC, alleges that defendants leased farm equipment to defendant Boersen Farms & Affiliates, LLC ("BF&A"), and defendants then conspired to unlawfully sell the equipment while hiding the proceeds. Defendants Stacy Boersen; Nicholas Boersen; New Heights Farm I, LLC; and New Heights Farm II, LLC have filed a motion under MCR 2.116(C)(10) for partial summary disposition of the following counts against them: Count I, statutory conversion; Count II, common-law conversion; Count V, breach of contract; Count VII, civil conspiracy; Count VIII, unjust enrichment; Count X, voidable transfer; Count XI, constructive trust; and Count

XII, equitable lien. In a separate (C)(10) motion, defendant Lisa Robinson also asks for summary disposition of Counts X, XI, and XII as against her.[1]

Standard of Review

Summary disposition under MCR 2.116(C)(10) is appropriate where, except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. "Summary disposition may be granted if the evidence demonstrates that there is no genuine issue with respect to any material fact, and the moving party is entitled to judgment as a matter of law."[2] "[T]he disputed factual issue must be material to a dispositive legal claim."[3]

MCR 2.116(G)(5) requires that in reviewing a (C)(10) motion, the court must consider the pleadings, affidavits, depositions, admissions, and any other admissible evidence in favor of the nonmoving party. Granting the adverse party the benefit of any reasonable doubt regarding the material facts, the court must determine whether there is a genuine and material factual dispute sufficient to warrant a trial.[4] A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ.[5] "In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence."[6] "The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists."[7] "Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law."[8]

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[1] Defendants are all family members or corporate entities owned by family members. Relevantly here, Dennis and Stacy Boersen are married and the parents of Nick Boersen. Stacy is the sole owner of NHF I. Nick is the sole owner of NHF II. Robinson is Stacy's sister. Dennis is the sole owner of BF&A.

[2] *Haliw v City of Sterling Heights*, 464 Mich 297, 302; 627 NW2d 581 (2001).

[3] *Kostello v Rockwell Intern Corp*, 189 Mich App 241, 243; 472 NW2d 71 (1991).

[4] *Bertrand v Alan Ford, Inc,* 449 Mich 606, 617-618; 537 NW2d 185 (1995).

[5] *West v General Motors Corp,* 469 Mich 177, 183; 665 NW2d 468 (2003).

[6] *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

[7] *Id.*

[8] *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

"The trial court is not permitted to assess credibility, to weigh the evidence, or to determine the facts, and if material evidence conflicts, it is not appropriate to grant a motion for summary disposition under MCR 2.116(C)(10)."[9] The court must view the facts in the light most favorable to the nonmoving party.[10] In ruling on a motion for summary disposition under MCR 2.116(C)(10), "a court considers the evidence then available to it."[11] "A litigant's mere pledge to establish an issue of fact at trial cannot survive summary disposition under MCR 2.116(C)(10). The court rule plainly requires the adverse party to set forth specific facts at the time of the motion showing a genuine issue for trial."[12]

Analysis

Counts I and II: Statutory and Common-law Conversion

Counts I alleges statutory conversion against the moving defendants Stacy, Nick, NHF I, and NHF II; as well as against Dennis, Boersen Ag Partners, and Hilltop Equipment. Count II alleges common-law conversion against the same defendants. "Under the common law, conversion is any distinct act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with his rights therein."[13] MCL 600.2919a creates a cause of action for statutory conversion.

> (1) A person damaged as a result of either or both of the following may recover 3 times the amount of actual damages sustained, plus costs and reasonable attorney fees:
>
> (a) Another person's stealing or embezzling property or converting property to the other person's own use.
>
> (b) Another person's buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property when the person buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property knew that the property was stolen, embezzled, or converted.

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[9] *Henry Ford Health Systems v Esurance Ins Co*, 288 Mich App 593, 597-98; 808 NW2d 1 (2010).

[10] *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993).

[11] *Quinto*, 451 Mich at 366 n 5.

[12] *Maiden*, 461 Mich at 120.

[13] *Aroma Wines & Equip, Inc v Columbian Distribution Servs., Inc*, 497 Mich 337, 346; 871 NW2d 136 (2015) (citations omitted).

> (2) The remedy provided by this section is in addition to any other right or remedy the person may have at law or otherwise.

Plaintiff offers two theories of conversion. Under plaintiff's first theory, Stacy, Nick, NHF I, and NHF II are strictly liable for conversion by knowingly using the equipment under subleases from BF&A, when the Master Lease Agreement between BF&A and Utica specifically prohibited BF&A from entering into any sublease. Those defendants do not dispute that they used the equipment, but argue that, despite the terms of the Master Lease Agreement, Utica executives were aware as early as 2019 that BF&A was subleasing the equipment to NHF I and NHF II. By not declaring a default, defendants say that plaintiff ratified their use of the equipment. The defendants point to Utica CEO David Levy's November 2024 deposition testimony showing that he knew about the subleases as early as May 2019. Levy testified that he continued to do business with BF&A despite knowing that BF&A made its money by subleasing the leased equipment to NHF I and NHF II. Plaintiff claims that defendants have mischaracterized Levy's testimony, but plaintiff also offers no alternative explanation as to how the testimony should be characterized.

"It is a well settled rule that if the owner expressly or impliedly assents to, or ratifies, the taking, use, or disposition of his property, he cannot recover for a conversion thereof."[14] Under the doctrine of imputed knowledge, "the knowledge possessed by a corporation about a particular thing is the sum total of all the knowledge which its officers and agents, who are authorized and charged with the doing of the particular thing[,] [acquire] while acting under and within the scope of their authority."[15] Plaintiff has offered no evidence to dispute its CEO's testimony and therefore cannot establish a genuine issue of material fact on this theory of conversion. Here, Utica impliedly consented to BF&A's subleases by continuing to accept the proceeds from those subleases and doing additional business with BF&A rather than declaring a default. "It is elementary that one, otherwise entitled to bring an action of trover, may afford the wrongdoer a complete defense to the action by waiving the right to treat the act as wrongful."[16] Summary disposition is granted in favor of Stacy, Nick, NHF I, and NHF II on plaintiff's use theory of conversion.

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[14] *Hopkins v Grand Rapids Trust Co*, 262 Mich 261, 266; 247 NW 175 (1933) (citation omitted).

[15] *New Properties, Inc v George D Newpower, Jr, Inc*, 282 Mich App 120, 134; 762 NW2d 178 (2009) (citation omitted).

[16] *Eadus v Hunter*, 268 Mich 233, 237; 256 NW 323 (1934) (citation omitted).

Under plaintiff's second theory of conversion, Stacy, Nick, NHF I, and NHF II allegedly converted plaintiff's equipment by aiding and abetting Dennis in the unauthorized disposition of the equipment. Defendants produced evidence suggesting that they had some implied consent from Utica to *use* the equipment. However, defendants have not produced any evidence to suggest that they also had implied consent to sell or otherwise dispose of the equipment. Both sides have produced affidavits, emails, and other documentary evidence bearing on whether or not Stacy, Nick, NHF I, or NHF II were involved in sales of plaintiff's equipment. Accordingly, in the light most favorable to the nonmoving party, a question of material fact exists and summary disposition is not appropriate on plaintiff's second theory of conversion.

Count V: Breach of Contract

Count V alleges that Stacy, Nick, NHF I, and NHF II are liable for breach of contract for violation of the terms of the Master Lease Agreement. The moving defendants argue that the Master Lease Agreement was a contract between only BF&A and plaintiff, so they could not be liable for any breach of that contract. Plaintiff offers two contractual theories of liability. First, plaintiff argues that, to the extent that any rights to the equipment were transferred from BF&A to NHF I or NHF II, NHF I and NHF II took the equipment "subject to the existing lease" pursuant to MCL 440.2905(1). Plaintiff interprets "subject to the existing lease" as meaning that NHF I and NHF II were obligated to make BF&A's payments to plaintiff for the equipment subleased, while defendants argue that the language only ensures that sublessees' rights are subordinate to the rights of the original lessors.

The general rule is that "neither the assignment of a contract nor acceptance by the assignee of such an assignment automatically casts upon the assignee the duty to perform the unperformed obligations owing thereunder by the assignor."[17]

> Subject to [MCL 440.2903], a buyer or sublessee from the lessee of goods under an existing lease contract obtains, to the extent of the interest transferred, the leasehold interest in the goods that the lessee had or had power to transfer, and except as

[17] *Keyes v Scharer*, 14 Mich App 68, 72; 165 NW2d 498 (1968). *Keyes* continues: "The assignee may, of course, agree to assume such obligations. If an assignee does not expressly assume his assignor's obligations it becomes a question of interpretation whether he has impliedly agreed to assume such obligations." *Id.* (citation omitted). In the present case, no evidence has been offered to support a finding of such implied agreement.

> provided in subsection (2) and [MCL 440.2961], takes subject to the existing lease contract.[18]

Plaintiff has cited no authority to support its interpretation of the statute contrary to the general rule. Furthermore, MCL 440.2903(5) states that a transfer of "the lease" or "all my rights under the lease" or similar general terms is a transfer of rights and, unless the language or circumstances indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. No evidence or argument has been presented that the subleases at issue here were general transfers of the entire Master Lease Agreement or any particular Schedule under the Master Lease Agreement. Plaintiff's first theory of breach of contract fails as a matter of law.

Plaintiff's second theory of breach of contract argues that the Master Lease Agreement should be reformed to add Stacy, Nick, NHF I, and NHF II as parties to the Master Lease Agreement. "[C]ourts are required to proceed with the utmost caution in exercising jurisdiction to reform written instruments."[19] "Courts will reform an instrument to reflect the parties' actual intent where there is clear evidence that both parties reached an agreement, but as the result of mutual mistake, or mistake on one side and fraud on the other, the instrument does not express the true intent of the parties."[20] "This mistake must relate to a fact in existence at the time the contract is executed."[21]

Plaintiff has offered no authority under which a party to a contract successfully petitioned a court to reform a contract to change or expand the parties bound by the contract. Plaintiff has also offered no evidence that, at the time the Master Lease Agreement was signed in March 2018, either Stacy or Nick intended to take on BF&A's rights and obligations under the Master Lease Agreement. Evidence was proffered to show that BF&A was not the true party to the Master Lease Agreement, but even in the light most favorable to the nonmoving party, that evidence does not show that the true parties were Stacy or Nick. NHF I and NHF II were established a year after the Master Lease Agreement was signed, so they could not have been the true parties to the Master

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[18] MCL 440.2905(1).

[19] *Olsen v Porter*, 213 Mich App 25, 28; 539 NW2d 523 (1995) (citation omitted).

[20] *Id.* at 29 (citation omitted).

[21] *Garb-Ko, Inc v Lansing-Lewis Servs., Inc*, 167 Mich App 779, 783; 423 NW2d 355 (1988) (citation omitted).

Lease Agreement at the time it was written. Plaintiff's theory of breach of contract by reformation fails as a matter of law.

Plaintiff also seeks to impose liability on Stacy, Nick, NHF I, and NHF II by piercing the corporate veil.

> For the corporate veil to be pierced, the corporate entity must be a mere instrumentality of another individual or entity. Further, the corporate entity must have been used to commit a wrong or fraud. Additionally, and finally, there must have been an unjust injury or loss to the plaintiff. There is no single rule delineating when a corporate entity should be disregarded, and the facts are to be assessed in light of a corporation's economic justification to determine if the corporate form has been abused.[22]

Here, plaintiff has produced evidence showing disputed issues of fact on whether piercing the corporate veil is appropriate here, including testimony and documentation supporting Dennis's alleged control over NHF I and NHF II, commingling of assets and operations between the various Boersen entities, and the alleged participation of Stacy, Nick, NHF I, and NHF II in the sales of plaintiff's equipment. Summary disposition is therefore inappropriate as to breach of contract theories based on piercing the corporate veil.

Count VII: Civil Conspiracy

Count VII alleges that Dennis and Stacy participated in a civil conspiracy to defraud plaintiff and to convert plaintiff's equipment. Defendants argue that there can be no conspiracy where there is no evidence of joint action for tortious purposes amongst the defendants. Plaintiff responds by pointing to evidence that allegedly shows just that. "A conspiracy is a combination of two or more persons, by some concerted action, to accomplish a criminal or unlawful purpose, or to accomplish a purpose not unlawful by criminal or unlawful means."[23] The alleged underlying tortious actions supporting a conspiracy claim were the fraud and the conversion also alleged in the complaint. Plaintiff has offered some evidence allegedly showing that Stacy was a part of a conspiracy, including Stacy's deposition testimony and her communications during and after her time working for Dennis. The court may not weigh evidence at this stage. As Plaintiff has offered

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[22] *RDM Holdings, LTD v Continental Plastics Co*, 281 Mich App 678, 715; 762 NW2d 529 (2008) (citation omitted).

[23] *Fenestra Inc v Gulf Am Land Corp*, 377 Mich 565, 593; 141 NW2d 36 (1966) (citation omitted).

some evidence of conspiracy, the court must recognize that a question of material fact exists as to this count. Accordingly, summary disposition on Count VII must be denied.

Count VIII: Unjust Enrichment

Count VIII alleges that Stacy, Nick, NHF I, and NHF II are liable for unjust enrichment by wrongfully receiving economic benefits from the use of the equipment without bearing liability under the Master Lease Agreement for the payments due on the equipment. "Generally, an implied contract may not be found if there is an express contract *between the same parties* on the same subject matter."[24] First, defendants attempt to use *Landstar Express Am, Inc v Nexteer Auto Corp*, to expand that general rule to bar implied contracts even where the defendant was not a party to the express contracts at issue.[25] However, the decision in *Landstar* was highly dependent on facts not present here. There, the plaintiff and the defendants each separately had contracts with a manufacturer not a party to the case.[26] The contracts all specified that the manufacturer would pay the plaintiff for transporting the manufacturer's goods to the defendants.[27] The Court of Appeals found that these contracts, in which each contracted with the ultimately responsible party, precluded the Court from imposing an implied contract between the plaintiff and the defendants.[28] Unlike that case, the sublease contracts produced here between BF&A and NHF I or NHF II do not specify which party would make payments dues to BF&A, or even whether those payments would be made at all. These facts do not prohibit the court from finding an implied contract.

Defendants argue that NHF I and NHF II made payments to BF&A for the use of the equipment under their respective sublease contracts with BF&A, and therefore NHF I and NHF II were not unjustly enriched by the use of the equipment. Plaintiffs respond that the defendants wrongfully benefitted by being able to use the equipment without any express liability to plaintiff, therefore the payments made to BF&A did not account for the full value of the use of the equipment. However, plaintiff has not offered any evidence showing what this full value of the

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[24] *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 194; 729 NW2d 898 (2006) (emphasis in original, citation omitted).

[25] *Landstar Express Am, Inc v Nexteer Auto Corp*, 319 Mich App 192, 203; 900 NW2d 650 (2017).

[26] *Id.* at 196.

[27] *Id.* at 203.

[28] *Id.*

equipment would be, other than the amounts billed on the invoices between BF&A and defendants or between plaintiff and BF&A. Summary disposition is appropriate in favor of defendants on Count VIII for unjust enrichment by unauthorized use of the equipment.

Plaintiff also alleges that defendants unjustly benefitted by receiving proceeds from the unauthorized sale of plaintiff's equipment. Conflicting affidavit and deposition testimony establish genuine issues of material fact, so summary disposition is not appropriate as to this theory.

Counts X, XI, and XII: Avoidable Transfers, Constructive Trust, and Equitable Liens

Count X alleges that all defendants made transfers of money and property that were voidable under MCL 566.34. Defendants Stacy, Nick, NHF I, and NHF II first argue that no transfers were made to them, so summary disposition must be granted to them on this count. However, "transfer" is explicitly defined for purposes of this statute to include "payment of money, release, lease, license, and creation of a lien or other encumbrance."[29] The admitted subleases to NHF I and NHF II were transfers, so defendants' first argument for summary disposition on this count fails. Defendants' second argument is that plaintiff has failed to produce evidence that the transfers were voidable.

> Except as otherwise provided in subsection (4), a transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation in either of the following circumstances:
>
> (a) With actual intent to hinder, delay, or defraud any creditor of the debtor.
>
> (b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor did either of the following:
>
> (*i*) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction.
>
> (*ii*) Intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.[30]

[29] MCL 566.31(s).

[30] MCL 566.34(1).

Defendants allege that plaintiff has shown no evidence that the $5 million paid by defendants to BF&A under the sublease contracts was not an equivalent value for the use of plaintiff's equipment. While that would preclude avoidance of the transfers under MCL 566.34(1)(b), there is still the question of whether the transfers should be avoided under MCL 566.34(1)(a). "In cases involving questions of intent, credibility, or state of mind, summary judgment is hardly ever appropriate."[31] Accordingly, summary disposition is denied on Count X against Stacy, Nick, NHF I, and NHF II.

Defendant Robinson also moves separately for summary disposition of Counts X, XI, and XII as against her, on the grounds that the cash withdrawals attributed to her in the BF&A and Hilltop bank account records and plaintiff's expert's affidavit are adequately explained in a response affidavit from Ms. Robinson. In its order dated March 5, 2025, this court previously determined that plaintiff's expert's affidavit was adequate to demonstrate that a genuine issue of material fact existed. Defendant Robinson's explanation for those entries does not negate the expert affidavit. The standard for summary disposition requires the court to review the evidence in the light most favorable to the nonmoving party. In that light, plaintiff's expert's affidavit does show a genuine issue of material fact, making summary disposition of Count X against defendant Robinson inappropriate.

Defendants correctly note that a constructive trust and an equitable lien are remedies, rather than independent causes of action. However, the remaining causes of action may still support the application of those remedies. Where there is conflicting evidence regarding those causes of action, summary disposition of potential equitable remedies is not appropriate.

Conclusion

Counts I and II are dismissed in part against Stacy, Nick, NHF I, and NHF II for alleged statutory and common-law conversion by unauthorized use of plaintiff's equipment. Summary disposition is not appropriate on plaintiff's claims of conversion by participating in the unauthorized disposition of plaintiff's equipment. Count V is dismissed in part against Stacy, Nick, NHF I, and NHF II for breach of contract under theories of assignment or reformation. Summary

[31] *Tumbarella v Kroger Co*, 85 Mich App 482, 492; 271 NW2d 284 (1978) (citations omitted).

disposition is not appropriate on breach of contract theories involving piercing the corporate veil. Summary disposition is not appropriate on Count VII for civil conspiracy. Count VIII is dismissed in part against Stacy, Nick, NHF I, and NHF II for unjust enrichment by use of plaintiff's equipment. Summary disposition is not appropriate in regard to unjust enrichment by the receipt of any proceeds from the unauthorized sale of plaintiff's equipment. Summary disposition is not appropriate on Count X for voidable transfers. Summary disposition of the potential equitable remedies described in Counts XI and XII is not appropriate.

IT IS SO ORDERED. This is not a final order and does not close the case.

Dated: September 17, 2025

Hon. Jon A. Van Allsburg, Circuit Judge