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STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1149

Patrick Takuanyi, et al.,
Appellants,

vs.

Center National Bank, N.A.,
Respondent,

Advanced Recovery Solutions, LLC,
Respondent,

Dynasty Motors, LLC, et al.,
Defendants.

Filed March 26, 2018
Affirmed
Bjorkman, Judge

Dakota County District Court
File No. 19HA-CV-16-1705

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Considered and decided by Rodenberg, Presiding Judge; Bjorkman, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellants challenge summary judgment dismissing their replevin and conversion claims pursuant to the Minnesota Vehicle Titles Act (MVTA), Minn. Stat. §§ 168A.01-.31 (2016), and the record. We affirm.

FACTS

On December 5, 2015, appellants Patrick Takuanyi and Kerenge Ako-Ebot (Takuanyi) purchased a 2012 Mercedes from defendant Michael Plaster. Plaster had purchased the car on March 3, 2015, with the proceeds of a loan he obtained from respondent Center National Bank, N.A. (bank). Plaster was listed on the title as the owner, and he assigned a security interest in the car to the bank, which perfected its lien by filing with the Minnesota Department of Public Safety. Plaster defaulted on the loan.

When Takuanyi approached Plaster about buying the car, Plaster told him that it belonged to his company, defendant Dynasty Motors, LLC. Takuanyi paid Dynasty over $19,000 for the car and traded in another car worth $6,000 to cover the purchase price. Takuanyi never received the title from Dynasty or Plaster, despite inquiring two or three times.[1]

In April 2016, the bank sent a demand letter to Plaster, who was still listed as the registered owner of the car, but received no response. After receiving an anonymous phone call from someone claiming to have purchased the car from Plaster, the bank hired

[1] Takuanyi was a registered used car dealer in 2013-14, and was familiar with registration requirements.

respondent Advanced Recovery Solutions, LLC (ARS), to repossess the car. ARS traced the call to Takuanyi's home, and repossessed the car from Takuanyi's driveway on April 24, 2016.

Takuanyi brought an action for replevin and conversion against respondents. Respondents moved for summary judgment, which the district court granted. Takuanyi appeals.

D E C I S I O N

We review a district court's grant of summary judgment de novo, considering whether there are genuine material fact issues and whether the district court erred in applying the law. *Larson v. Nw. Mut. Life Ins. Co.*, 855 N.W.2d 293, 299 (Minn. 2014). In doing so, we view the evidence in the light most favorable to the non-moving party. *Id.* But if the nonmoving party fails to establish an essential element of a claim for which that party has the burden of proof, summary judgment is required. *Bebo v. Delander*, 632 N.W.2d 732, 737 (Minn. App. 2001), *review denied* (Minn. Oct. 16, 2001). To establish an essential element of a claim, a party may not rely on "mere averments in the pleadings or unsupported allegations," but must provide specific facts supporting the element. *Id.*

I. Takuanyi's replevin and conversion claims fail as a matter of law because the bank perfected its security interest before Takuanyi obtained the car from Plaster.

"Replevin" is an action to recover possession of personal property by determining the right of possession or title. *Storms v. Schneider*, 802 N.W.2d 824, 827 (Minn. App. 2011), *review denied* (Minn. Oct. 26, 2011). A replevin action is based on a party's claim of right to property. *Id.* at 831. "Conversion occurs where one willfully interferes with the personal property of another without lawful justification, depriving the lawful possessor of use and possession." *Williamson v. Prasciunas*, 661 N.W.2d 645, 649 (Minn. App. 2003) (quotations omitted). In replevin, an aggrieved party seeks to recover personal property, *Storms*, 802 N.W.2d at 827; in conversion, an aggrieved party seeks damages, *see McKinley v. Flaherty*, 390 N.W.2d 30, 33 (Minn. App. 1986).

Takuanyi argues that his superior ownership right arises from his status as both a good-faith purchaser for value and a buyer in the ordinary course of business, concepts recognized by the Uniform Commercial Code (UCC). Minn. Stat. §§ 336.2-403, .9-320(a) (2016). We disagree. While the UCC establishes the means by which security interests are created or perfected, and the effect of a security interest, Minn. Stat. §§ 336.9-101 to .9-809 (2016), it expressly provides that certain security interests can only be created under other statutes, including the MVTA. Minn. Stat. § 336.9-311(a)(1)-(3) (stating that filing of a security interest under the UCC is "not . . . effective to perfect a security interest in property subject to" the MVTA). Because Takuanyi's claimed possessory interest in the car is governed by the MVTA, we turn to the provisions of that act.

Under the MVTA, "[a] certificate of title issued by the department [of public safety] is prima facie evidence of the facts appearing on it." Minn. Stat. § 168A.05, subd. 6. A certificate of title identifies the owner and any secured party. *Id.*, subd. 3. The owner of a motor vehicle must transfer the title through the department by executing a notice of transfer within ten days; the new owner must apply for a new certificate of title within ten days after the assignment. Minn. Stat. § 168A.10, subds. 1, 2. A security interest in a vehicle is perfected by filing with the department. Minn. Stat. § 168A.17, subd. 2. As this court stated:

> The function of chapter 168A is to outline a single filing procedure for the notation of ownership and security interests in vehicles on the certificate of title. . . . Unless perfected under the procedures prescribed in sections 168A.01 to .31, or excepted under section 168A.16, a security interest in a vehicle for which a certificate of title is required is not valid.

First Nat'l Bank of the N. v. Auto. Fin. Corp., 661 N.W.2d 668, 670-71 (Minn. App. 2003), *review denied* (Minn. Aug. 5, 2003). In short, the MVTA provides the sole method for establishing ownership of and perfecting a security interest in a motor vehicle. Minn. Stat. § 168A.22.

It is undisputed that Plaster obtained title to the car in March 2015 and assigned a security interest to the bank. And the record demonstrates that the bank perfected its interest by timely filing it with the department of public safety. In contrast, Takuanyi never received title to the car, and did not apply for a new certificate of title. Accordingly, the bank has the only valid ownership interest in the car.

Takuanyi's replevin and conversion claims against ARS likewise fail. Generally, a secured party has the right to take possession of collateral following a default. Minn. Stat. § 336.9-609(a). In order to do so, the secured party may either seek judicial process or act without judicial process "if it proceeds without breach of the peace." Minn. Stat. § 336.9-609(b). A secured party may hire an agent, such as ARS, to take possession of the collateral. *See Thompson v. First State Bank of Fertile*, 709 N.W.2d 307, 311 (Minn. App. 2006), *review denied* (Minn. Apr. 18, 2006). The agent may enter another's property to retrieve the collateral if it does so without committing a breach of the peace or trespass. *Id.* at 312. That is what happened here; Takuanyi was unaware that ARS had removed the car from his driveway until several hours later. Because the bank has a superior possessory interest in the car, and ARS acted as its agent to recover the car, Takuanyi has no cause of action in replevin or conversion against ARS.

II. Takuanyi failed to provide competent evidence supporting his conversion claim as to personal property located in the car.

Takuanyi's amended complaint generally avers that the car contained "personal items and the personal items of their children" at the time it was repossessed. After receiving the car from ARS, the bank inventoried its contents, noting several items of unspecified value.[2] In answers to interrogatories, Takuanyi stated that the missing property includes Coach eyeglasses, expensive jewelry, two electronic tablets, two charging cords, an iPod shuffle, DVDs, miscellaneous toys and other items, and house keys. Some of these items correspond to property listed in the bank's inventory. Takuanyi's deposition testimony added little, save an explanation that the jewelry was in the car because Ako-Ebot intended to bring it to a jeweler for cleaning. And in his affidavit opposing summary judgment, Takuanyi states that he has not "been able to retrieve [his] personal property from the vehicle and [he] believe[s] some of it was stolen." But he produced no evidence regarding the value of the missing items to support conversion damages.

[2] The summary-judgment order directs the bank to allow Takuanyi to collect their personal belongings. The bank does not challenge this directive.

A party opposing summary judgment must rely on more than "mere averments." *Bebo*, 632 N.W.2d at 737. Rather, the nonmoving party "must come forward with specific facts to satisfy its burden of production." *Id.* Because Takuanyi produced no competent evidence to support his contentions concerning the items of personal property the bank allegedly converted or their value, the bank was entitled to summary judgment.

Affirmed.