STATE OF MINNESOTA
IN COURT OF APPEALS
A13-2161

Patricia L. Peterson, et al.,
Appellants,

vs.

Northern Gaul Properties, Inc., et al.,
Respondents.

Filed June 30, 2014
Affirmed
Rodenberg, Judge

Anoka County District Court
File No. 02-CV-10-7940

James T. Smith and Craig D. Greenberg, Huffman, Usem, Saboe, Crawford & Greenberg, P.A., Minneapolis, Minnesota (for appellants)

John G. Westrick, Westrick & McDowall-Nix, PLLP, St. Paul, Minnesota (for respondents)

Considered and decided by Johnson, Presiding Judge; Rodenberg, Judge; and Chutich, Judge.

U N P U B L I S H E D O P I N I O N

RODENBERG, Judge

Appellants Patricia Peterson, Mark Pehlke, Holiday Recreational Industries, Inc., and RV Princess, LLC challenge the district court's summary dismissal of their claims,

and Pehlke appeals the district court's dismissal of his separate conversion claim after a bench trial. We affirm.

FACTS

Elizabeth Peterson is the mother of appellant Patricia Peterson and respondent Greg Aberle (formerly Greg Peterson, and hereinafter "Aberle"). In 1991, Elizabeth and her then husband formed a corporation, appellant Holiday Recreational Industries, Inc. (HRI), to sell recreational vehicles (RVs). Elizabeth's mother-in-law was the sole shareholder of HRI and the title owner of the real property at which HRI did business. In 2001, ownership of HRI and the title to the real property were transferred to appellant Patricia Peterson. Although Elizabeth and her then husband operated the dealership, they did not own any of its assets, apparently as a mechanism to prevent judgment creditors from reaching the business assets. The parties to these transactions discussed setting up a trust for the HRI assets and dealership property naming Elizabeth and her husband as beneficial owners, but no trust was ever created.

Earlier litigation

In 2002, Elizabeth and her husband divorced. Family discord followed. Aberle sided with Elizabeth against Patricia, and in 2004, Elizabeth sued Patricia and HRI in Hennepin County District Court regarding ownership of HRI and the real property. On January 13, 2006, the district court ordered Patricia to convey all HRI assets and title to the dealership real property to Elizabeth. That same day, Patricia conveyed the real property by deed to appellant RV Princess, LLC, a new entity that she formed. On January 24, 2006, the district court found Patricia in contempt of court for failing to

comply with the prior order, and the district court ordered transfer of ownership of HRI, its assets, and dealership real property to Elizabeth.[1] Appellants allege that, at the time of the 2006 orders, HRI had 19 RVs in its inventory. Patricia appealed the judgment entered after the 2006 orders, but did not stay enforcement of the judgment during the appeal because she did not post a supersedeas bond.

Elizabeth had possession of the dealership property during Patricia's appeal, but Patricia had surrendered HRI's dealer's license, making it impossible for Elizabeth to continue doing business in HRI's name.[2] Elizabeth created a new corporation, respondent Escape RV Center, Inc., and she obtained a dealer's license for that entity. She controlled the business for approximately ten months while Patricia's appeal pended. Aberle helped Elizabeth operate the business, as Elizabeth fell ill (and later died in May 2007). On January 2, 2007, we reversed the judgment resulting from the 2006 orders of the Hennepin County District Court. Escape RV Center, Inc. ceased doing business, and Patricia alleges that no assets of HRI remained when she regained control of the business after her successful appeal.

Until 2007, the dealership real property was encumbered by two mortgages in favor of American National Bank of Elk River. American National began foreclosure proceedings on its mortgage in first priority position in March 2006, but the foreclosure

[1] Collectively, the January 13 and January 24, 2006 orders are referred to herein as the "2006 orders." The real property does not appear to have ever been transferred pursuant to the 2006 orders as a matter of public record, and title remained in the name of RV Princess until there was a foreclosure and subsequent redemption, as discussed below.

[2] Without a dealer's license, an individual can only lawfully sell a maximum of five motor vehicles per year. Minn. Stat. § 168.27, subd. 8 (2012).

was successfully challenged by Elizabeth because of a publication error concerning the notice. Foreclosure proceedings were recommenced in 2007 (and after we reversed the judgment resulting from the 2006 orders) and the dealership real property was sold at a sheriff's sale on June 20, 2007, subject to a six-month redemption period. Appellants allege that respondents or their agents tortiously interfered with their attempts to sell the dealership real property around the time of the sheriff's sale.[3]

At the time of the foreclosure, RV Princess held legal title to the real property, and there were several liens on the property in the following order of priority: (1) American National held two mortgages, in first and second priority positions, (2) Pehlke held a mortgage junior to American National's mortgages, and (3) Attorney Robert Gust held an attorney's lien for unpaid legal fees relating to his work representing Patricia and HRI against Elizabeth's lawsuit, junior to all three mortgages. Gust assigned his attorney's lien to respondent Northern Gaul Properties, Inc. before the foreclosure. Northern Gaul was created by Aberle (and other investors, including his uncle Rick Aberle) for the purpose of redeeming after the foreclosure.

The owner's redemption period expired on December 20, 2007. RV Princess did not redeem. American National then redeemed its junior lien to ensure payment on its total indebtedness on its two mortgages. Pehlke did not redeem his junior mortgage, and on January 4, 2008, Northern Gaul redeemed pursuant to the rights it acquired by assignment of Gust's attorney's lien, paying $735,946.37. Upon redemption, Northern

[3] Pehlke joined in this claim, alleging that he suffered damages due to his loss of a seller's real estate commission.

Gaul was issued a certificate of redemption by the sheriff. Aberle began operating the RV business after redemption. He discovered an RV belonging to Pehlke on the premises, and his actions relating to that RV form the basis of Pehlke's separate conversion claim as explained below.

Northern Gaul began a Torrens proceeding subsequent for a new certificate of title. *See* Minn. Stat. § 508.58, subd. 1 (2012). RV Princess contested the proceeding subsequent, arguing that Northern Gaul's redemption was improper. The district court rejected its claims and ordered the registrar of titles to issue Northern Gaul a new certificate of title for the dealership real property. The registrar did so.

The present lawsuit

Appellants sued, alleging fraud, conversion, unjust enrichment, accounting, intentional infliction of emotional distress, tortious interference with a prospective business advantage, and defamation. Appellants did not oppose the dismissal of their claims of fraud, accounting, intentional infliction of emotional distress, or defamation, and these claims are not part of this appeal. Concerning the other claims, Patricia and RV Princess allege that respondents converted certain HRI assets (namely 19 RVs), tortiously interfered with appellants' efforts to sell the dealership real property, and have been unjustly enriched by their wrongful actions relating to the HRI assets and the dealership real property while the appeal from the 2006 orders pended.

As a basis for their tortious-interference claim, appellants allege that in 2007 Aberle, or Rick Aberle as his agent, made false statements about the title and future ownership of the dealership real property while Patricia was attempting to sell it.

Specifically, Rick Aberle is alleged to have told Todd Olson, a prospective purchaser, that (1) there were "title problems" with the real property, and (2) any prospective purchaser should not buy from Patricia but rather should wait to purchase the property because Northern Gaul would own it in the future. Appellants allege that these statements interfered with their ability to market and sell the property both before the sheriff's sale and during the redemption period.

Concerning the conversion and unjust-enrichment claims, Patricia and RV Princess allege that Elizabeth sold or otherwise transferred title to 19 RVs that had been in HRI's inventory when the district court issued the 2006 orders. Appellants allege that the RVs were sold or transferred for Aberle's benefit during the pending of the appeal of the 2006 orders. The basis of this contention is that HRI had no assets when Patricia regained control of it. Appellants allege that Aberle was acting as an agent of Escape RV Center, Inc. and committed the actions complained of in that capacity.

Pehlke sued for conversion of an RV that he purchased from HRI in 2005. When he purchased the RV, he entered into a security agreement with Wells Fargo Bank, N.A. reading, in pertinent part:

> Unless otherwise agreed in writing, the [RV] will be located at your address listed . . . [in] this contract. You will not attempt to sell the [RV] . . . or otherwise transfer any right in the [RV] to anyone else, without our prior written consent. . . .
>
> . . .
>
> [In the event of default] we may require you to make the [RV] available to us at a place we designate[.] We may immediately take possession of the [RV] by legal process or self-help.

Pehlke's ownership of the vehicle was not initially registered with the State of Minnesota. In 2006, and while Elizabeth was legally operating the dealership, Elizabeth and Aberle repossessed the RV while it was parked on the side of a road with a "for sale" sign. Upon investigating the title and seeing that Pehlke was not listed as an owner by the state, they concluded that it was part of HRI's inventory. A few weeks later, Pehlke showed Elizabeth and Aberle his proof of purchase and Elizabeth and Aberle allowed him to have the RV. Pehlke then registered title to the RV in his name.

On August 18, 2007, Pehlke defaulted on his obligation to Wells Fargo. Wells Fargo then demanded possession of the RV before December 2007. Pehlke declined to surrender it. Instead, in late 2007 (and during the redemption period of the American National foreclosure), Pehlke stored the RV in a warehouse on the dealership property. There was cardboard covering the dealership building's windows so that the RV could not be seen from outside. Pehlke never informed Wells Fargo that he had moved the RV (despite such notice being required under the security agreement). Pehlke was attempting to sell the RV because he was concerned that Wells Fargo would sell it at auction for a reduced price, resulting in his exposure to a higher deficiency judgment.[4] Pehlke testified that he was not hiding the RV from Wells Fargo, but the district court later concluded that Pehlke's "sole purpose" in moving the RV to the warehouse was to "conceal it from Wells Fargo and prevent repossession."

[4] The terms of the security agreement required that Pehlke obtain Wells Fargo's consent to sell the RV. At trial, Pehlke testified that he received an offer to purchase the RV for approximately $96,000, but Wells Fargo refused to permit the sale.

After failing to obtain Pehlke's voluntary surrender of the RV, on December 26, 2007, Wells Fargo filed a replevin action in Hennepin County District Court. It attempted to serve Pehlke with the complaint at several different addresses, but Pehlke avoided service. Wells Fargo eventually obtained ex parte relief from the district court. In early January 2008 (and after Northern Gaul redeemed from the American National foreclosure) Aberle obtained possession of the building wherein Pehlke was concealing the RV. Upon discovering the RV on the premises, Aberle investigated the title and found that Pehlke was the owner, that Wells Fargo was the secured creditor, and that Wells Fargo had commenced the replevin action. Aberle contacted Wells Fargo's attorney to inform her of the location of the RV.

Aberle (apparently acting as or on behalf of Escape RV Center, an assumed name that is separate from Escape RV Center, Inc.) told Wells Fargo's attorney that he had a mechanic's lien and storage lien on the RV and requested payment of a lien asserted by Escape RV Center, Inc. in exchange for giving Wells Fargo possession. On February 6, 2008, Wells Fargo agreed to pay Aberle $2,333.53 in exchange for possession of the RV. The stipulation was filed with the district court at a hearing on February 15, 2008, and the district court ordered that possession of the RV be surrendered to Wells Fargo. Pehlke had notice of this hearing and did not appear. He attempts to contest the validity of the mechanic's lien in this lawsuit.

Summary judgment motions

Respondents moved for summary judgment on all claims.[5] Concerning the statements allegedly made by Rick Aberle, the district court concluded that appellants "provided some evidence of a purchase agreement between [Patricia] and Todd Olson." Concerning the statements claimed to have been made by Rick Aberle to Todd Olson and to the effect that there were "title problems" with the dealership property, and the contention that Rick Aberle told Olson that he should wait until the end of the year to purchase the property from Northern Gaul, the district court stated that "[p]resumably, [appellants] are alleging that Rick Aberle was acting as an agent of Northern Gaul, although they have presented no specific facts which would support that allegation, nor have they brought these claims against Rick Aberle personally." The district court also concluded that all of Rick Aberle's alleged statements were true and therefore could not support a tortious-interference claim.

The district court further concluded that the conversion and unjust-enrichment claims arose when Elizabeth had "rightful possession of HRI and its assets" after the 2006 orders and during the pendency of Patricia's appeal. Because Patricia did not obtain a stay of enforcement of the 2006 orders pending appeal, there was no "wrongful" act by Elizabeth. The district court also noted that appellants' claimed damages were vague.

Concerning ownership of the real property, the district court held that the Torrens proceeding subsequent operated as res judicata. But the district court held there was a

[5] As noted above, appellants agreed to dismissal of a number of claims.

genuine issue of material fact regarding Pehlke's separate conversion claim. That claim was tried to the district court.

Trial of Pehlke's conversion claim

After trial, the district court dismissed Pehlke's conversion claim as not having been proven, reasoning: "Pehlke may have held title to the [RV], but title is not enough. In order to prevail, [appellant] Pehlke must show that he was the lawful *possessor* of the motor home at the time of the alleged conversion, and that [respondents'] actions deprived him of that lawful use and possession." Because both the security agreement and statute allowed repossession by Wells Fargo through self-help, Pehlke was not the lawful possessor of the vehicle at the time Aberle discovered it and surrendered it to Wells Fargo after becoming aware of Wells Fargo's security interest and replevin action. The district court also concluded that Pehlke was collaterally estopped from disputing the $2,333.53 mechanic's lien payment to Aberle, because Pehlke failed to litigate that issue in an action to which he was a party.

This appeal followed.

D E C I S I O N

I.

Appellants Peterson, Pehlke, RV Princess, and HRI challenge the district court's summary dismissal of their claims of tortious interference with a prospective business advantage and unjust enrichment. Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that

either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. On appeal from summary judgment, we review de novo whether any genuine issues of material fact exist and whether the district court erred in applying the law. *McKee v. Laurion*, 825 N.W.2d 725, 729 (Minn. 2013). We view the evidence "in the light most favorable to the party against whom summary judgment was granted." *Id.* "[W]e may affirm a grant of summary judgment if it can be sustained on any grounds." *Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150, 163 (Minn. 2012).

Tortious interference with a prospective economic advantage

To prevail on a tortious-interference claim, a plaintiff must prove:

> (1) The existence of a reasonable expectation of economic advantage;
> (2) [d]efendant's knowledge of that expectation of economic advantage;
> (3) [t]hat defendant intentionally interfered with plaintiff's reasonable expectation of economic advantage, and the intentional interference is either independently tortious or in violation of a state or federal statute or regulation;
> (4) [t]hat in the absence of the wrongful act of defendant, it is reasonably probable that plaintiff would have realized his economic advantage or benefit; and
> (5) [t]hat plaintiff sustained damages.

Gieseke ex rel. Diversified Water Diversion, Inc. v. IDCA, Inc., 844 N.W.2d 210, 219 (Minn. 2014). Appellants challenge two of the district court's conclusions regarding this claim: (1) that appellants "presented no specific facts which would support the allegation [that Rick Aberle was acting as an agent of Northern Gaul]," and (2) "[a]ll of the statements allegedly made by Rick Aberle on behalf of Northern Gaul were true[.]"

The third element of a tortious-interference claim requires action by a defendant that is "independently tortious." *Id.* "To ensure that fair competition is not chilled, a claim for tortious interference with prospective economic advantage must be limited to those circumstances in which the interference is intentional and independently tortious or unlawful, rather than merely unfair." *Id.* at 218. We therefore review the district court's determination that Rick Aberle's statements, if made, were not independently tortious.

Appellants' briefing does not clearly indicate the legal theory upon which they claim that Rick Aberle's alleged statements were independently tortious. At times, appellants claim that the statements were defamatory, but all of the statements claimed to be tortious referred to the dealership real property and not to any individual appellant. As such, the statements cannot be "defamatory." *See Black's Law Dictionary* 480 (9th ed. 2009) (defining a defamatory statement as one "tending to harm a *person's* reputation" (emphasis added)). At oral argument, appellants seemed to contend that the statements amounted to a slander of title. We note that true statements cannot be the basis for either slander of title or defamation. *See Paidar v. Hughes*, 615 N.W.2d 276, 279-80 (Minn. 2000) (slander of title); *Stuempges v. Parke, Davis & Co.*, 297 N.W.2d 252, 255 (Minn. 1980) (defamation). Additionally, Rick Aberle's second statement was that Northern Gaul would own the property in the future. An actionable statement must be of past or present fact. *See Vandeputte v. Soderholm*, 298 Minn. 505, 508, 216 N.W.2d 144, 146 (1974) (setting forth the elements for a misrepresentation theory, including that it must involve a "past or present fact").

Appellants argue that neither of Rick Aberle's alleged statements were true because (1) the existence of liens does not amount to "title problems," and (2) the existence of approximately "$700,000 of equity in the [p]roperty above the lien totals . . . assured that all recorded liens would not cause title problems." On appeal, appellants present no specific argument regarding the second statement, namely, that Northern Gaul would own the property in the future. We analyze whether either alleged statement was independently tortious.

The "title problems" which Rick Aberle allegedly represented to Todd Olson were both the existence of liens and an ongoing mortgage foreclosure that had once been successfully challenged, but was recommenced in 2007. In context, the claim of "title problems" was not false. Although appellants claim the existence of equity in the property above the lien totals, they neither allege nor offer any evidence of statements by any respondent that the property had no equity. Rick Aberle's alleged statement that there were "title problems" is true.

Rick Aberle's other statement, that Northern Gaul would own the property in the future, was also not independently tortious. First, it was a statement of present intention, rather than one of fact. *See Vandeputte*, 298 Minn. at 508, 216 N.W.2d at 146 (requiring a misrepresentation to involve a "past or present fact"). Second, Northern Gaul later redeemed the property from the foreclosure and obtained a new certificate of title for the real property. *See* Minn. Stat. § 508.36 (2012) (noting that a certificate of title is "conclusive evidence of all matters and things contained in it"). For both reasons, this alleged statement was not tortious. Because neither of Rick Aberle's alleged statements

were independently tortious, appellants' tortious-interference claim fails as a matter of law. *See Gieseke*, 844 N.W.2d at 219.

Even if we were to hold that Rick Aberle's alleged statements were independently tortious, appellants would still have to carry their burden on the fourth element, namely, "in the absence of the wrongful act of defendant, it is reasonably probable that plaintiff would have realized his economic advantage or benefit." *Id.* There is no record evidence that Todd Olson or anyone else would have purchased the property after an independent examination of title revealed the ongoing foreclosure proceedings, regardless of whether Rick Aberle had disclosed those title issues. The only record testimony of Todd Olson is his affidavit stating: "I did speak with Mr. Rick Aberle at some time in 2007 but nothing derogatory about Patricia Peterson was ever discussed." And the purchase agreement in the record contains a standard title-examination contingency, which allows the purchaser to rescind the purchase agreement and secure return of the earnest money if the seller cannot provide reasonable assurances of marketable title. Appellants have presented no evidence that Rick Aberle's alleged statements were the "but-for" cause of Olson's decision not to purchase the dealership real property from RV Princess. For this reason, as well, the tortious-interference claim fails as a matter of law.

Unjust enrichment

To establish a claim for unjust enrichment, a claimant

> must show that the [other party] has knowingly received or obtained something of value for which [that party] in equity and good conscience should pay. Unjust enrichment claims do not lie simply because one party benefits from the efforts or obligations of others, but instead it must be shown that a

> party was unjustly enriched in the sense that the term "unjustly" could mean illegally or unlawfully.

ServiceMaster of St. Cloud v. GAB Bus. Servs., Inc., 544 N.W.2d 302, 306 (Minn. 1996) (quotations and citation omitted). There are three elements of unjust enrichment: "(1) a benefit [was] conferred by the plaintiff on the defendant; (2) the defendant accept[ed] the benefit; [and] (3) the defendant retain[ed] the benefit although retaining it without payment is inequitable." *Zinter v. Univ. of Minn.*, 799 N.W.2d 243, 247 (Minn. App. 2011), *review denied* (Minn. Aug. 16, 2011). "An action for unjust enrichment may be based on failure of consideration, fraud, mistake, and situations where it would be morally wrong for one party to enrich himself at the expense of another." *Anderson v. DeLisle*, 352 N.W.2d 794, 796 (Minn. App. 1984), *review denied* (Minn. Nov. 8, 1984).

Appellants argue that respondents were unjustly enriched by the transfer of both the dealership real property and the 19 RVs in the possession of HRI during the appeal of the 2006 orders. We first address the dealership real property, and then the RVs.

The district court held that Northern Gaul owned the real property because it was issued a sheriff's certificate of redemption. Claims regarding any improper redemption were fully litigated in the Torrens proceeding subsequent. "Res judicata is a finality doctrine that mandates that there be an end to litigation." *Hauschildt v. Beckingham*, 686 N.W.2d 829, 840 (Minn. 2004). Under the doctrine, a party is precluded from raising a claim that was, or could have been, raised in an earlier action. *Drewitz v. Motorwerks, Inc.*, 728 N.W.2d 231, 239 (Minn. 2007). The doctrine applies when "(1) the earlier claim involved the same set of factual circumstances; (2) the earlier claim involved the

same parties or their privities; (3) there was a final judgment on the merits; [and] (4) the estopped party had a full and fair opportunity to litigate the matter." *Brown-Wilbert, Inc. v. Copeland Buhl & Co., P.L.L.P.*, 732 N.W.2d 209, 220 (Minn. 2007). All four elements must be met for res judicata to bar an action. *Hauschildt*, 686 N.W.2d at 840.

A certificate of title is "conclusive evidence of all matters and things contained in it." Minn. Stat. § 508.36 (2012). After foreclosure by advertisement, the holder of a certificate of redemption must commence a proceeding subsequent to obtaining a new certificate of title. Minn. Stat. § 508.58, subd. 1 (2012). A decree in a proceeding subsequent is final as to all matters raised therein. Minn. Stat. § 508.22 (2012); *In re Brainerd Nat'l Bank*, 383 N.W.2d 284, 287 (Minn. 1986). A direct appeal may be had from the proceeding subsequent pursuant to Minn. Stat. § 508.29 (2012).

RV Princess did not directly appeal from the judgment in the Torrens proceeding subsequent. That judgment therefore became final. Because Northern Gaul was issued a certificate of title after a contested proceeding subsequent, all of appellants' claims regarding title ownership of the dealership real property are barred. *See* Minn. Stat. § 508.36 (conclusiveness of certificate of title); *Hauschildt*, 686 N.W.2d at 840 (res judicata of previously litigated claims). The district court did not err in summarily dismissing the unjust-enrichment claim with respect to the dealership real property.

Appellants also claim that respondents were unjustly enriched when they wrongfully dissipated HRI's assets while the appeal of the 2006 orders pended. Specifically, they claim that Escape RV Center, Inc. and Aberle transferred title to HRI's 19 RVs for their own benefit. Appellants argue that Aberle was acting as an agent of

Escape RV Center, Inc. during the time period while the 2006 appeal pended, and that his wrongful actions can be imputed to the corporation. Respondents argue that this claim fails because appellants did not provide evidence of their damages. *See Georgopolis v. George*, 237 Minn. 176, 185, 54 N.W.2d 137, 142 (1952) (noting that damages for unjust enrichment are "based on what the person allegedly enriched has received, not on what the opposing party has lost").

We conclude that the unjust-enrichment claim concerning the 19 RVs was properly dismissed with prejudice by summary judgment because of appellants' failure to provide adequate factual support for *any* element of this claim.

In reviewing a district court's grant of summary judgment, "[we] must view the evidence in the light most favorable to the party against whom judgment was granted." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). However, "the party resisting summary judgment must do more than rest on mere averments." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997).

> [T]here is no genuine issue of material fact for trial when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions.

Id. at 71.

In their memorandum opposing respondents' summary judgment motion, appellants set forth the following in support of this unjust-enrichment claim:

> [T]here are facts within the record that demonstrate that [Greg] Aberle developed a pattern of behavior based on misrepresentations in official capacities along with

> mismanagement and failure to follow formal procedures while in formal capacities. Essentially, [appellants] contend that these misrepresentations are factual support that [Greg] Aberle implemented a scheme of deception, manipulation and threats over the course of several years that effectively divested [appellants] of significant personal and business assets and value. Therefore, there are questions of material [fact,] and the claim of unjust enrichment must survive.

On appeal, appellants maintain that there is evidence of an agency relationship between Aberle and Escape RV Center, Inc. for the time period relevant to this claim. But, appellants offer nothing concerning how Escape RV Center, Inc. transferred or disposed of the 19 RVs, or how the proceeds or value from these transfers unjustly enriched Aberle or Escape RV Center, Inc. at the expense of HRI. And we note that Escape RV Center, Inc. was legally operating the dealership pursuant to the 2006 orders during the time-period in which these alleged actions occurred. Appellants point to no evidence in the record suggesting that the 19 RVs were not sold in a commercially reasonable manner. Because they did not present sufficient evidence on any element of this claim, summary dismissal was proper. *See id.* (noting that a party cannot "rest on mere averments" at summary judgment).

II.

Pehlke appeals from the district court's dismissal of his separate conversion claim. On appeal after a bench trial, we will not set aside the district court's factual findings unless they are clearly erroneous, and "due regard shall be given to the opportunity of the [district] court to judge the credibility of witnesses." Minn. R. Civ. P. 52.01. We review

the district court's legal determinations de novo. *Modrow v. JP Foodservice, Inc.*, 656 N.W.2d 389, 393 (Minn. 2003).

The district court held that there was no conversion because Pehlke was not the lawful possessor of the RV at the time Aberle took possession of the premises where the RV had been hidden by Pehlke. Because Wells Fargo had made a demand for possession after default and had commenced a replevin action, the district court reasoned that Pehlke no longer had a right to possess the RV. Pehlke argues that the district court did not make any factual findings regarding whether Aberle refused Pehlke access to the RV for a period of time before Wells Fargo repossessed the RV, and that Minnesota law did not operate to strip Pehlke of ownership upon a demand for possession by the secured creditor, but "[r]ather, the statute creates the means by which a secured [party] may *become* a lawful possessor." *See* Minn. Stat. § 336.9-609 (2012) (allowing a secured creditor to repossess collateral upon default through self-help).

"Conversion is the exercise of dominion and control over goods inconsistent with, and in repudiation of, the owner's rights in those goods. An action which destroys the character of goods or deprives the owner of possession for an extended period of time is conversion." *Rudnitski v. Seely*, 452 N.W.2d 664, 668 (Minn. 1990) (citation omitted). "Any distinct act of dominion wrongfully exerted over one's property, in denial of his right, or inconsistent with it, is a conversion." *McDonald v. Bayha*, 93 Minn. 139, 141, 100 N.W. 679, 680 (1904). Conversion has two elements: (1) the plaintiff holds a property interest, and (2) the defendant deprives plaintiff of that interest. *Williamson v. Prasciunas*, 661 N.W.2d 645, 649 (Minn. App. 2003). "Wrongfully refusing to deliver

property on demand by the owner constitutes conversion." *Molenaar v. United Cattle Co.*, 553 N.W.2d 424, 430-31 (Minn. App. 1996), *review denied* (Minn. Oct. 15, 1996).

We see no error in the district court's reasoning that, because Pehlke was not the lawful possessor of the RV at the time Aberle discovered it, there was no conversion. The first element of conversion was not satisfied: Pehlke had no right of possession with which Aberle could have interfered. *See Prasciunas*, 661 N.W.2d at 649. We find additional support for our conclusion in the unusual facts of this case considered in light of case precedent.

In *Hildegarde, Inc. v. Wright*, our supreme court recognized that in most cases a bailee's refusal to deliver upon the owner's demand is conversion. 244 Minn. 410, 413, 70 N.W.2d 257, 260 (1955). However, when the refusal to deliver the property is qualified and the qualification has a reasonable purpose, the bailee is not liable for conversion because the bailee has not asserted dominion over the goods in a manner inconsistent with the owner's rights. *Id.* Among the conditions upon which a bailee may reasonably qualify his refusal to deliver property is that the owner first prove his title or right to possession. *Id.* This rule protects the bailee from being placed in the difficult position of risking a lawsuit by the rightful owner for converting the property when the bailee gives the property to the person who claims to be the owner. *Id.* at 414, 70 N.W.2d at 260.

Although Aberle was not a "bailee" when he came into possession of the dealership real property and discovered Pehlke's RV, we are informed by the analysis of our supreme court in the *Wright* case. The district court found that Pehlke had stored the

RV at the warehouse to prevent Wells Fargo from repossessing it. Aberle took possession of the premises in January 2008, after Wells Fargo had started a replevin action on December 26, 2007. Aberle testified that, once he investigated the ownership of the RV and learned of the replevin action, he began working with Wells Fargo's attorney to surrender possession of the vehicle. Aberle was justified in working with Wells Fargo rather than Pehlke under the circumstances. Had Aberle surrendered possession to Pehlke with actual knowledge of the ongoing replevin action, Wells Fargo may have had a viable claim against Aberle. The district court did not err in dismissing Pehlke's conversion claim.[6]

In sum, we affirm the district court's summary dismissal of all claims except the Pehlke conversion claim. And we affirm the district court's judgment after trial of that claim.

Affirmed.

[6] Appellants' brief does not separately argue that the district court erred in concluding that Pehlke was collaterally estopped from disputing the $2,333.53 that Aberle collected from Wells Fargo before turning over possession of the RV. The issue is therefore waived. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982).