NO. 50722-6-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

97418-7

BALWINDER DEOL, et al

Plaintiffs/Respondents,

vs.

JAGJIT PREHAR, et ux et al,

Defendants/Appellants,

APPEAL FROM THE SUPERIOR COURT

HONORABLE DANIEL STAHNKE

PETITION FOR REVIEW

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IDENTITY OF PETITIONER

This Petition for Review is made on behalf of Vancouver Sikh Society (VSS), the entity in whose favor the trial court granted judgment.

COURT OF APPEALS DECISION

VSS seeks review of the decision of the Court of Appeals filed June 11, 2019, reversing the trial court's judgment.

ISSUES PRESENTED FOR REVIEW

The following issues are presented for review:

1. Should a fiduciary of a nonprofit corporation be allowed to appropriate corporate funds for the purchase of property titled in his name without accounting for those funds or recognizing the corporation's interest in the property?

2. Was Mr. Prehar guilty of conversion?

3. Is VSS entitled to relief under the doctrine of money had and received?

4. Did the trial court correctly determine prejudgment interest?

STATEMENT OF THE CASE[1]

VSS is a nonprofit corporation. It was formed in 2012 to receive donations for the purchase of a building to conduct religious activities. Its articles of incorporation listed Jagjit Prehar and Harpreet Minhas as its directors. (Ex. 16) Many in Vancouver's Sikh community have considered themselves members of VSS. (RP 80) Sixteen of them executed a resolution in January of 2016 when this litigation began. (Ex. 84)

VSS received donations during 2011-12 when it negotiated to purchase a building at 4700 N.E. St. James Road in Vancouver. (Ex. 48) These donations were placed in bank account that VSS opened at a Wells Fargo Branch in downtown Vancouver. The purchase attempt ultimately failed because financing could not be arranged. Some of the people who had made donations asked for and received their money back. By the spring of 2013, the account had a balance of $91,994.00. (CP 218)

By 2013, VSS's filing with the Secretary of State listed Mr. Prehar as president; Mr. Minhas as secretary and Parmjit Nagra as treasurer. (Ex. 16, 51; CP 218) Mr. Prehar and Mr. Nagra were listed as signers on the Wells Fargo Bank Account. (Ex. 52)

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[1] The trial court prepared its own findings of fact but did not number them. References to the record will include citations to the Clerk's Papers where these findings are located.

The parties made another attempt to purchase the same building in 2013. In a document entitled Commercial and Investment Real Estate Purchase and Sale Agreement (the PSA) dated April 5, 2013, Mr. Prehar, his spouse Ashwinder Prehar, Mr. Nagra, and Maninderjits Kullar as purchasers contracted to purchase the land and building for $460,000.00. The sum of $300,000.00 was due all in cash at closing. The PSA called for the buyers to deposit $5,000.00 of earnest money. The earnest money was deposited. It came from the VSS account at Wells Fargo. In a subsequently executed addendum executed on April 25, 2013, the seller agreed to take a promissory note from the purchasers for the balance of $160,000.00. The note was to be secured by a deed of trust on the property. (Ex. 65-66; RP 433; RP 520; Ex. 1; Ex. 37—answer to Interrogatory No. 11; Ex. 67)

On May 3, 2013, another addendum was signed that removed Mr. Nagra and Mr. Kullar as purchasers. (Ex. 68) Mr. Prehar represented that this change was necessary to facilitate obtaining a loan for $295,000.00 of the down payment. (RP 82, 717) It was understood, however, that the Prehars were not going to be the only title holders after the sale closed, and that VSS was to be placed in title. (RP 78, 258, 276, 717) Other members of the Sikh community had the same understanding. (RP 253, 259, 280, 288-89)

The transaction was subsequently closed on or about June 28, 2013, with the Prehars taking title. The Prehars executed the promissory note that had been called for in the April 25, 2018, addendum. They also deposited the cash necessary to pay the remainder of the purchase price. The settlement statement shows that this included the sum of the $85,000.00. That money came from the funds that had been deposited in the VSS account at Wells Fargo as donations. (Ex. 69-70) Mr. Prehar had withdrawn the $85,000.00 from the Wells Fargo account on May 2, 2013. (Ex. 32; Ex. 37—answer to Interrogatory No. 11; Ex. 67; RP 486; RP 496-97; CP 219) For his part, Mr. Nagra never told Mr. Prehar that he could use money donated to VSS to purchase the property in his own name. Rather, VSS money was to be used to purchase property in the name of VSS. (RP 86) Tajinder Pal Singh, also known as Gurmel Singh, had donated money to VSS and not sought a refund. He also believed that the property was going to be titled in VSS' name. (RP 62-70; RP 274-76; Ex. 45-46)

Meanwhile, Mr. Prehar had allowed VSS to be administratively dissolved by the Secretary of State as of May 2013.[2] (CP 218) He then formed Gurudwara Sahib Vancouver, WA, Inc. (GSV) as a nonprofit corporation on July 14, 2013. (CP 218; Ex. 71)

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[2] When this issue came to light, steps were taken to reinstate the corporation on January 20, 2016. (CP 218)

Mr. Prehar was then pressed to title the property in the name of VSS. In August of 2014, the Prehars offered to sell the property. Two options were given. One involved the Prehars selling the property for $490,000.00. Mr. Nagra, on behalf of the community, requested two weeks to consider the matter. In the interim, the offer was revoked. Mr. Prehar then stated that he wanted $800,000.00 for the property. (Ex. 73; RP 112; CP 219)

This unresolved issue led to rising tensions among VSS's membership. Mr. Prehar ultimately issued notices to certain members indicating that they were not permitted on the property and would be subject to criminal charges for trespass if they did not comply with the notice. (Ex. 77; CP 219)

This suit was filed on January 14, 2016, on behalf of VSS. (CP 1) An amended complaint was filed on behalf of members of VSS on January 26, 2016. (CP 79-86) The Prehars then answered.

The matter was tried to the Court on July 17-19, 2017. The Plaintiffs sought relief on a number of theories. These included conversion and imposition of a constructive trust. (CP 181-99)

On August 1, 2017, the trial entered judgment in favor of VSS. It determined that a demand for the return of the money occurred when the issue came to a head in August of 2014, and that the Prehars failure to return the money then amounted to a conversion. It granted judgment against the

Prehars for $85,000.00 together with prejudgment interest at the rate of 12% per annum. It also allowed post judgment interest at the same rate. (CP 217-23) Neither side moved for reconsideration.

The Prehars then appealed. A cross appeal was filed on behalf of VSS. The Prehars' opening brief did not assign error to any of the trial court's findings of fact. It also took issue with the calculation of prejudgment interest and the rates imposed. The brief filed on behalf of VSS set out the cross appeal. Among other things, the cross appeal argued that the judgment should have included an additional $5,000.00 that came from the VSS account to pay earnest money. It also argued that prejudgment interest should have run from the date of closing the transaction—June 28, 2013—at the latest. In their response, the Prehars conceded that if the judgment was affirmed it should be increased by $5,000.00.

The Court of Appeals reversed and remanded for vacation of the judgment by opinion filed June 11, 2019.

ARGUMENT

I. Introduction.

The Supreme Court should take review of this matter because the decision of the Court of Appeals conflicts with decisions of the Supreme Court and other decisions of the Court of Appeals. RAP 13.1(b)(1), (2) First of all, the Court of Appeals ignored well-established rules that preclude a

corporate fiduciary from appropriating property to his or her own benefit and that recognize the interest of a party who contributes to the purchase price of real property. Secondly, it refused to acknowledge the Court's holding in *Seekamp v. Small,* 39 Wn.2d 578, 237 P.2d 589 (1951), in which the Court allowed relief to the aggrieved party even when strict requirements of the tort of conversion were not met.

In this case, a fiduciary of a nonprofit corporation involved in religious activity appropriated money to purchase property titled in his name and in the name of his spouse. He has refused to account to the corporation for this money or to recognize any interest that the corporation may have in the property. Community standards dictate that this simply should not happen. Therefore, the Supreme Court should take review because the case involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.1(b)(4)

II. Mr. Prehar Was Guilty of Conversion.

The trial court ruled that Mr. Prehar had converted $85,000.00 of money belonging to VSS. Conversion is the willful interference with a chattel without lawful justification whereby a person entitled to possession of the chattel is deprived of its possession. Wrongful intent is not an element of conversion, and good faith is not a defense. *Public Utilities District of Lewis County v. WPSSS,* 104 Wn.2d 353, 378, 705 P.2d 1195 (1985) Money

can be the subject of an action for conversion if it is capable of being identified, as when delivered at one time, by one act and in one mass. *Seekamp v. Small,* 39 Wn.2d 578, 583-84, 237 P.2d 589 (1951) Furthermore, the party charged with conversion must either have wrongfully received the money or have an obligation to return it. *Brown v. Brown,* 157 Wn.App. 803, 817-18, 239 P.3d 602 (2010)

The Court of Appeals concluded that the funds were not wrongfully received and that there was no demand for their return. Slip Opinion, p. 10 Its conclusion ignores clear concepts set out in a number opinions of the Supreme Court and the Court of Appeals.

First of all, the money was wrongfully received because it was appropriated from a nonprofit corporation by a corporate fiduciary. As a director, Mr. Prehar occupied a fiduciary relationship toward VSS. *Diaz v. Washington State Migrant Counsel,* 165 Wn.App. 59, 77, 265 P.3d 956 (2011); *Waltz v. Tanager Estates Homeowners Association,* 183 Wn.App. 85, 91, 332 P.3d 1133 (2016) A director of a nonprofit corporation—just as a director of a for profit corporation—is obliged to act in good faith and in a manner believed to be in the best interests of the corporation. See RCW 24.03.127; RCW 23B.08.300(1) Directors are therefore precluded from profiting at the expense of the corporations they serve. *Leppaluoto v. Eggleston,* 57 Wn.2d 393, 402, 357 P.2d 725 (1960); *Interlake Porsche +*

Audi, Inc. v. Blackburn, 45 Wn.App. 502, 509, 728 P.2d 597 (1986) Appropriation of corporate property by a director or officer will support a claim of conversion. It is also viewed as a breach of the director's fiduciary duty. *Lang v. Hougan,* 136 Wn.App. 708, 718, 150 P.3d 622 (2007)

A director's appropriation of corporate assets can, of course, be ratified. But there was no proof of ratification here. When corporate assets are appropriated by a corporate fiduciary, all shareholders must consent. *Fletcher Cyclopedia of Corporations,* § 1104, cited with favor in *Nursing Home Building Corp. v. DeHart,* 13 Wn.App. 489, 496-97, 535 P.2d 137 (1975) Members of a nonprofit corporation are analogous to the shareholders of a for profit corporation. VSS must be deemed to have members since its articles of incorporation do not state that there will be no members as required by RCW 24.03.065(1). Therefore, the Prehars would have to prove that all the members of VSS—not merely those in management—gave consent to VSS funds being used to allow the Prehars to obtain title to the property in their own name. They would also have to show that the members gave this consent after being apprised of all material facts, including their legal effect.[3] As the Court stated in *Kane v. Klos,* 50 Wn.2d

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[3] The Court *In re Kitsap Dairyman's Association,* 6 Wn.App. 926, 940, 497 P.2d 604 (1972), cited *Kane v. Klos, supra,* on the issue of ratification in a case involving a nonprofit corporation. That means that there should be no difference between the ratification rules governing for-profit and nonprofit corporations.

778, 785, 314 P.2d 672 (1947):

> For a cestui que trust to "ratify" or confirm a breach of trust, he must be apprised of all the material facts and as well of their legal effect. No half-hearted disclosure or partial discovery is sufficient in either respect. The trustee's duty of disclosure is not discharged by leaving the cestui to draw doubtful inferences, conclusions and suspicions.

In our case, the necessary disclosure would include all of the terms of the purchase of the building along with the source of all monies used for the purchase. All the members would have to be advised that VSS was contributing a total of $90,000.00 to the sale price—the $5,000.00 for earnest money as well as the $85,000.00. Secondly, all legal effects would have had to be clearly explained. Specifically, the disclosure would have to note that the Prehars would be taking sole title to the property and that VSS would have no interest in the property; that the Prehars would have no obligation to reimburse VSS for the funds taken from its account to pay the purchase price; that the Prehars would not have to convey any interest in the property to VSS—not even a proportional share based on the $90,000.00 of the $460,000.00 purchase price that came from VSS funds; that the Prehars did not have to sell or convey the property to VSS or any combination of its members; that any agreement to sell or convey the property would have to be in writing to satisfy the statute of frauds and, if the agreement provided for

payment to the Prehars over time, the rigorous specifications for such an agreement contained in *Hubbell v. Ward,* 40 Wn.2d 779, 246 P.2d 468 (1952), would have to be met; and, perhaps most importantly, the Prehars could exclude anyone from the property that they desired.

Ratification is an affirmative defense. *Giambattista v. National Bank of Commerce,* 21 Wn.App. 723, 756, 586 P.2d 1180 (1978) The Prehars therefore bear the burden of proof. *Washington Federal Savings and Loan Association v. McNaughton,* 182 Wn.2d 281, 297, 325 P.3d 383 (2014) They must also show their good faith since the property was transferred into their names. *Interlake Porsche + Audi v. Blackburn, supra*, 45 Wn.App. at 512. The trial court made no findings as to what was disclosed. (CP 220) This absence of findings must be viewed as a finding against the Prehars. *Golberg v. Sanglier,* 96 Wn.2d 874, 880, 639 P.2d 1347 (1982) In any event, it is clear that full disclosure was not made. For his part, Mr. Nagra never told Mr. Prehar that he could use money donated to VSS to purchase the property in his own name. Rather, VSS money was to be used to purchase property in the name of VSS. (RP 86) Tajinder Pal Singh, also known as Gurmel Singh, had donated money to VSS and not sought a refund. He also believed that the property was going to be titled in VSS' name. (RP 62-70; RP 274-76; Ex. 45-46)

The trial court did make the following finding at CP 220:

> At the time the funds were applied to the real estate purchase the managing members of VSS approved of the use and anticipated the use of the funds for the purchase of the real property in Defendant's name.

This finding would not be sufficient to support ratification because approval of all members was necessary as pointed out above.

Nonetheless, VSS assigned error to this finding. The Court of Appeals stated that VSS's position was based on the absence of board meetings or decisions and then rejected it. Slip Opinion, p. 12. The opinion misstates VSS's argument. VSS pointed out that decisions of a nonprofit corporation must be made by its directors as required by RCW 24.03.095; that the corporation's only two directors were Mr. Minhas and Mr. Prehar; that consent from someone other than Mr. Prehar would be required; that any assent from Mr. Prehar and Mr. Kullar was not relevant since neither was a director; that Mr. Prehar believed the property would be titled in the name of VSS; and that the record contained no evidence as to Mr. Minhas' position whether orally, at some meeting, or in the form of some document.

The briefing submitted on behalf of VSS pointed out that Mr. Prehar violated his fiduciary responsibility to VSS by appropriating the funds and that there was insufficient evidence of any ratification. It brought these cases cited above to the attention of the Court of Appeals.

Nonetheless, the Court of Appeals chose not to address these points although the facts were clear and were found to exist by the trial court.

Secondly, the Prehars were guilty of conversion because they were obliged to return the funds based on the doctrine of unjust enrichment. Unjust enrichment is present when a defendant knowingly receives a benefit at the plaintiff's expense and the circumstances make it unjust for the defendant to retain the benefit without payment. The plaintiff is then entitled to restitution. *Young v. Young,* 164 Wn.2d 477, 484-85, 490, 191 P.3d 1258 (2008) The facts would have supported the imposition of a constructive trust on the property proportional to the percentage of the purchase price that came from VSS's funds. That remedy is applied when title is placed in one person under circumstances as to make it inequitable for him or her to enjoy that interest. It is designed to avoid unjust enrichment. *Scymanski v. Default*, 80 Wn.2d 77, 89, 491 P.2d 1050 (1971) It should be authorized in favor of a party who has advanced a portion of the purchase price but has not entered into an agreement setting out the terms of the relationship with the party who took title. See *Mehelich v. Mehelich,* 7 Wn.App. 545, 500 P.2d 779 (1972); *Yates v. Taylor,* 58 Wn.App. 187, 791 P.2d 924 (1990) There can be no doubt that the Prehars were unjustly enriched by using VSS funds to pay part of the purchase price of a building titled only in their name. The trial court

obviously thought so. Otherwise, it would not have awarded a judgment to VSS. The Court of Appeals stated that the record was insufficient for it to determine whether the Prehars were unjustly enriched. Slip Opinion, p. 10-11 By making this statement, the Court of Appeals impermissibly substituted its judgment for that of the trial court. See, e.g. *Holland v. Boeing Co.,* 90 Wn.2d 384, 393, 583 P.2d 621 (1978)

In short, Mr. Prehar was guilty of conversion. The findings of fact that the trial court made support that conclusion. The Court of Appeals decision to the contrary conflicts with well-established rules set out in decisions of the Supreme Court and other decisions of the Court of Appeals. The Supreme Court should therefore take review.

III. The Doctrine of Money Had and Received Precludes Reversal.

When the exacting elements of conversion are not met, the plaintiff is still entitled to recovery under the doctrine of money had and received no matter what legal theory the plaintiff utilized before the trial court. The Supreme Court came to that conclusion in *Seekamp v. Small, supra.* VSS advised the Court of Appeals of the Supreme Court's decision in that case. The Court of Appeals ignored that decision. The case is not cited anywhere in its opinion. On that basis, the decision of the Court of Appeals clearly conflicts with a decision of the Supreme Court. Therefore, the Supreme Court should take review.

A party may be liable for money obtained under the doctrine of money had and received. This is a common law action devised by judges to give relief to meritorious claims where the elements of conversion may not have been satisfied. It is based on notions of restitution and is founded on the principle that no one ought unjustly to enrich himself at the expense of another. The gist of the action is that the defendant has received money which in equity and good conscience should have been paid to the plaintiff, and under such circumstances that he ought, by the ties of natural justice, to pay it over. *Seekamp v. Small, supra.*

In *Seekamp v. Small, supra,* the plaintiff gave the defendant $1,500.00 to invest in onion futures. The defendant used the money to purchase onions and then sold them at a profit. He refused, however, to pay the profits over to the plaintiff. The plaintiff clearly asserted that he was making a tort claim and refused to amend his pleadings to allege a contract claim. The jury rendered a verdict in favor of the plaintiff. The trial court granted a new trial on the basis that the tort of conversion had not been proven. Specifically, there was no proof that the defendant was required to deliver specific money to the plaintiff. The Court agreed that the tort of conversion had not been proven. It ruled, however, that the plaintiff was entitled to relief under the doctrine of money had and received, apparently

without either party invoking that doctrine. It placed no importance on how the plaintiff characterized his claim, stating:

> This is not a case where a party has alleged facts constituting one cause of action and proved facts entitling him to recover under a totally different cause of action. In this case, appellant both alleged and proved facts entitling him to recover for money had and received.

39 Wn.2d at 585 It modified the trial court's order to allow a new trial unless the plaintiff accepted judgment in a reduced amount justified by the evidence.

The teaching of *Seekamp v. Small, supra,* is clear. When conversion of money is alleged, the doctrine of money had and received should be used to uphold a verdict or judgment based on taking of money even when the requirements of the tort of conversion are not met.

The Court of Appeals determined that the elements of conversion had not been proven. VSS urged the Court of Appeals to affirm the judgment based on *Seekamp v. Small, supra.* The Court of Appeals refused to even address this argument in its decision even though the trial court's findings of fact clearly support a judgment on the basis of money had and received. The Prehars took $85,000.00 from a bank account of VSS and applied it to property purchased in their name alone. They also used another $5,000.00 to pay the earnest money as the Prehars conceded. These funds made up approximately 19.5% of the purchase price. But the Prehars have

never deeded an 19.5% ownership share in the building to VSS and have refused to recognize this source of funds when pressed by other community members. The trial court clearly believed that considerations of equity and good conscience required the Prehars to pay the money over to VSS. It would not have awarded judgment in favor of VSS if it did not think so.

The Court of Appeals' decision therefore conflicts with *Seekamp v. Small, supra.* Therefore, the Supreme Court should take review.

IV. Issues Concerning Interest.

The Court of Appeals did not decide the issues concerning interest that the parties raised. The Supreme Court will have to consider these if review is taken.

The parties agree that the claims are liquidated and that prejudgment interest is appropriate if a judgment is awarded in favor of VSS. The Prehars claim that the trial court erred by assessing interest at the rate of 12% per annum, and that the appropriate rate is the rate for post judgment interest set out in RCW 4.56.110(3)(b). The Prehars also fault the trial court's math in setting the amount of prejudgment interest. Finally, the Prehars also contend that the post judgment rate should be set based on RCW 4.56.110(3)(b).

VSS has argued that the trial court has not been given the opportunity to address its calculation since no motion for reconsideration was made and no motion under CR 60(a) was made. It has also contended

that the statute governing prejudgment interest is RCW 19.52.010(1)[4] which allows for interest at 12% per annum. VSS also believes that the post judgment rate of interest should be 12% per annum.

CONCLUSION

The decision of the Court of Appeals conflicts with decisions of the Supreme Court and other decisions of the Court of Appeals. It also presents issue of substantial public interest since it involves conduct of the affairs of a nonprofit corporation. The Supreme Court should therefore take review. Upon doing so, the Court should modify the trial court's judgment to raise the principal to $90,000.00 and rule that prejudgment interest at 12% per annum should begin on the date of the closing of the transaction.

DATED this 10th day of July, 2019.

Cassie N. Crawford

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[4] RCW 19.52.010(1) was amended by Laws of Washington 2019, Chapter 227 § 5, to be effective July 28, 2019. The amendment is not thought to affect the result here since it relates to prejudgment interest on debt for medical expenses.

APPENDIX I—STATUTES

RCW 4.56.110(3)(b)

Interest on judgments shall accrue as follows. . .

(3) (b) Except as provided in (a) of this subsection, judgments founded on the tortious conduct of individuals or other entities, whether acting in their personal or representative capacities, shall bear interest from the date of entry at two percentage points above the prime rate, as published by the board of governors of the federal reserve system on the first business day of the calendar month immediately preceding the date of entry. In any case where a court is directed on review to enter judgment on a verdict or in any case where a judgment entered on a verdict is wholly or partly affirmed on review, interest on the judgment or on that portion of the judgment affirmed shall date back to and shall accrue from the date the verdict was rendered.

RCW 19.52.010(1), as it exists now and prior to the 2019 amendment

(1) Every loan or forbearance of money, goods, or thing in action shall bear interest at the rate of twelve percent per annum where no different rate is agreed to in writing between the parties: PROVIDED, That with regard to any transaction heretofore or hereafter entered into subject to this section, if an agreement in writing between the parties evidencing such transaction provides for the payment of money at the end of an agreed period of time or in installments over an agreed period of time, then such agreement shall constitute a writing for purposes of this section and satisfy the requirements thereof. The discounting of commercial paper, where the borrower makes himself or herself liable as maker, guarantor, or indorser, shall be considered as a loan for the purposes of this chapter.

RCW 23B.08.300(1)

(1) A director shall discharge the duties of a director, including duties as member of a committee:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner the director reasonably believes to be in the best interests of the corporation.

RCW 24.03.065(1)

(1) A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of the class or classes, the manner of election or appointment and the qualifications and rights of the members of each class must be set forth in the articles of incorporation or the bylaws. Unless otherwise specified in the articles of incorporation or the bylaws, an individual, domestic or foreign profit or nonprofit corporation, a general or limited partnership, an association or other entity may be a member of a corporation. If the corporation has no members, that fact must be set forth in the articles of incorporation or the bylaws. A corporation may issue certificates evidencing membership therein.

RCW 24.03.127

A director shall perform the duties of a director, including the duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner such director believes to be in the best interests of the corporation, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. . .

Filed
Washington State
Court of Appeals
Division Two

June 11, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

BALWINDER DEOL; RACHPAL JOHAL; JASBIR SANDHU; PARMJIT NAGRA; GURMEL SINGH; SUKHMANDER SANDHU, TEJINDER RAWDAWA & BALJIT DESANJH as members of VANCOUVER SIKH SOCIETY, a Washington corporation dba GURUDWARA SAHIB VANCOUVER, a Washington corporation, Respondents/Cross Appellants, v. JAGIT PREHAR & ASHWINDER K. PREHAR, husband and wife; KARANDEEP SINGH; DOES 1 through 20, inclusive, Appellants/Cross Respondents.	No. 50722-6-II UNPUBLISHED OPINION

WORSWICK, J. — This case arises out of the purchase of real property used as a place for religious worship. Vancouver Sikh Society (VSS)[1] brought claims against Jagjit and Ashwinder Prehar, the owners of the real property, for conversion of corporate funds and quiet title. After a bench trial, the trial court found that the Prehars had converted funds, and it entered judgment in favor of VSS. The Prehars appeal the trial court's judgment, arguing, among other things, that

[1] VSS was a nonprofit corporation.

the trial court erred by concluding that conversion occurred because that conclusion is not supported by the trial court's findings of fact. VSS makes several arguments in a cross appeal.

We hold that the trial court's conclusion that conversion occurred is not supported by the trial court's findings of fact, and we reverse the judgment on this basis and remand for the trial court to vacate the judgment. We do not consider the remaining arguments. We also reject VSS's cross appeal.

FACTS

In November 2011, several individuals, including the Prehars and Parmjit Nagra, began discussing the formation of a new Sikh society known as a Gurudwara,[2] in Vancouver, Washington. These individuals located a property (St. Johns property) for a place of worship, and made an offer to purchase, contingent on financing. In January 2012, Jagjit and Harpreet Minhas formed VSS, and a corporate bank account was established at Wells Fargo Bank in downtown Vancouver (VSS bank account). To facilitate the purchase of the St. Johns property, they deposited "donations to VSS" into the VSS bank account. Clerk's Papers (CP) at 218. As of July 2, 2012, the account balance was $137,322.04.

Ultimately, these individuals were unable to obtain financing, and in September 2012, they rescinded the purchase agreement. Following the rescission, various individuals who had contributed to the VSS bank account requested a refund of their donation. All requests for refund were honored, leaving $91,994.00 in the VSS bank account.

[2] Gurudwara is also spelled "Gurdwara" in the record on appeal.

On April 5, 2013, the Prehars, Nagra, and Maninderjits Kullar entered into a second purchase agreement for the St. Johns property. On April 29, VSS deposited a $5,000 check into escrow for earnest money. On May 1, VSS was dissolved.[3] On May 2, the Prehars withdrew $85,000 from the VSS bank account and deposited it into escrow for the purchase of the St. Johns property.

On May 3, the parties to the second purchase agreement signed an addendum, stating in part that the "[s]ole purchasers are to be: [Jagjit] S. Prehar and Ashwinder K. Prehar." CP at 219. As sole purchasers, the Prehars purchased the property by signing a promissory note for $160,000, and tendering $216,022.11 of their personal cash[4] and $85,000 funds transferred from the VSS bank account. The sale of the property closed on June 28, 2013, for a total purchase price of $461,022.11.

In July, Jagjit, Manjit Chahil, and Nagra formed Gurudwara Sahib Vancouver WA Inc. (GSV) as a nonprofit corporation. In December, "[i]nconsistent with the actual donations to VSS in 2012, GSV issued donation receipts . . . to Jagjit Singh[5] (Prehar) and BDS Freight (Ashwinder Prehar)" and to "Nagra, Harev Atwal, Hardev Singh, JK Petroleum, and Daljit Singh/Majit Singh." CP at 218-19. Presumptively, the donors used these receipts to receive tax benefits.

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[3] It appears VSS was administratively dissolved by the State of Washington for failure to file an annual report.

[4] The cash was comprised of $161,022.11 the Prehars received by obtaining a private loan on their home, $50,000 from Ashwinder Prehar, and $5,000 from Jagjit Prehar.

[5] There are multiple people who use the last name "Singh" in the record. VSS's counsel explained that "[t]he Sikh people use the name Singh as a last name as a way of showing equality and avoiding family names." 1 Report of Proceedings (July 17, 2017) at 19.

Together, multiple members of the Sikh community worked to renovate the St. Johns property, and they attended religious services and other activities at the property for over a year.

Nagra and Manjit Singh testified that they never asked the Prehars to return their contributions because the funds were a donation to be used for VSS. They both testified that VSS brought the lawsuit for VSS to obtain sole title to the St. Johns property and for the community to have a place to worship.

Nagra testified that the Prehars were listed as the sole purchasers of the property because Jagjit allegedly said it would be easier to obtain funding. Nagra also testified that Jagjit told him that Jagjit was going to use his own money and take a loan on his own house in order to buy the St. Johns property. Various witnesses at trial appear to have believed that the Prehars would be solely responsible for the loan but that title to the property would be in "everyone's name." 1 Report of Proceedings (July 17, 2017) at 82.

After considerable disagreement regarding title to the property, Nagra and Manjit Singh requested that the Prehars transfer title of the St. Johns property to VSS. On August 12, 2014, the Prehars offered to transfer title to the St. Johns property for payment of $490,000. Nagra and Manjit Singh requested two weeks to consider the offer. After two weeks, they had not obtained financing, and the Prehars revoked the offer. As a result of heightened tensions, the Prehars issued trespass warnings to several individuals, excluding them from the property.

On January 14, 2016, VSS filed a complaint against the Prehars. On January 20, VSS was reinstated.[6] On January 26, VSS filed an amended complaint against the Prehars. VSS alleged causes of action for misrepresentation, conversion of corporate funds, corporate accounting and receivership, partition, quiet title, and injunction.

The case proceeded to a bench trial. At trial, it appears that VSS's main objective was to obtain title to the St. Johns property.[7] After trial, the court entered findings of fact and conclusions of law.

The trial court found that VSS and GSV are "currently valid Washington nonprofit corporations."[8] CP at 218. The trial court also found that "[t]he negotiating parties further agreed that [the Prehars] would buy the property 'sole[l]y' in their name and further understood and agreed that VSS finances would be used by [the Prehars] to purchase the property." CP at 219. The trial court further found that

> [t]hroughout the history of the parties[']' business dealings, there was [an] open agreement that [the Prehars] would purchase the property in [their] name and the parties would negotiate an ultimate transfer of the property to the association. However, there is no evidence that the parties had reached any agreement as to the transfer terms or conditions.

CP at 220. The trial court found that the Prehars used $85,000 of VSS's funds with VSS's permission.

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[6] The Prehars have filed a separate action in Clark County (Clark County Superior Court case number 16-2-01538-1) regarding the validity of VSS's reinstatement, which is still pending. The individuals who reinstated VSS differ from the individuals who initially formed the corporation.

[7] Witnesses testified that the purpose of the lawsuit was to obtain title to the St. Johns property.

[8] The Prehars do not assign error to the trial court's finding that VSS is currently a valid Washington nonprofit corporation.

The trial court also found that "[the Prehars] by seceding from VSS, and forming GSV have forfeited any rights to the [$30,000 in] donations they completed to VSS." CP at 220. The trial court found that "[p]laintiff's evidence does not show that [the Prehars] misrepresented, misappropriated or breached their fiduciary duties to VSS. At the time the funds were applied to the real estate purchase the managing members of VSS approved of the use and anticipated the use of the funds for the purchase of the real property in [the Prehars'] name." CP at 220.

The trial court concluded that the case "has multiple agreements and relationships resulting in fault created by both parties." CP at 221. The trial court also concluded that on August 28, 2014, "[w]ithin two weeks of August 12, 2014, when demand to return VSS property was made, [the Prehars] intentionally interfered with the $85,000 belonging to VSS by unlawfully retaining it." CP at 219.

The trial court denied VSS's claims of corporate accounting and receivership and quiet title. The trial court also denied the Prehars' affirmative defenses.

The trial court imposed prejudgment and postjudgment interest accruing at a rate of 12 percent. The Prehars appeal, and VSS cross appeals.

ANALYSIS

A. *Standard of Review*

We review the trial court's decision following a bench trial to determine whether the findings are supported by substantial evidence and whether those findings support the conclusions of law. *Herring v. Pelayo*, 198 Wn. App. 828, 832, 397 P.3d 125 (2017). Substantial evidence is evidence sufficient to persuade a rational fair-minded person that the premise is true. *Scott's Excavating Vancouver, LLC v. Winlock Prop., LLC*, 176 Wn. App. 335,

341-42, 308 P.3d 791 (2013). The party challenging the trial court's findings of fact has the burden to prove they are not supported by substantial evidence. *Scott's Excavating*, 176 Wn. App. at 342. Unchallenged findings of fact are verities on appeal. *Herring*, 198 Wn. App. at 833. And an unchallenged conclusion of law becomes the law of the case. *Nguyen v. City of Seattle*, 179 Wn. App. 155, 163, 317 P.3d 518 (2014).

Findings of fact are determinations of whether the evidence shows that something existed or occurred. *Casterline v. Roberts*, 168 Wn. App. 376, 382, 284 P.3d 743 (2012). Conclusions of law are determinations made through legal reasoning or interpretation of the legal significance of facts. *Casterline*, 168 Wn. App. at 382-83. We defer to the trial court on issues of conflicting evidence, witness credibility, and persuasiveness of the evidence. *Scott's Excavating*, 176 Wn. App. at 342. Generally, we do not consider issues raised for the first time on appeal. RAP 2.5; *Kitsap County Consol. Hous. Auth. v. Henry-Levingston*, 196 Wn. App. 688, 707, 385 P.3d 188 (2016).

B. *Conversion*

The Prehars argue that the trial court's conclusion that they converted funds is unsupported by its findings. Specifically, the Prehars argue that the trial court's finding that VSS demanded return of the funds is unsupported by substantial evidence, and consequently, the remaining findings of fact do not support the conclusion of law. We agree.

1. *Legal Principles*

Conversion is the unjustified, willful interference, without legal justification, which deprives a person of possession of property that they are entitled to. *Potter v. Wash. State Patrol*, 165 Wn.2d 67, 78, 196 P.3d 691 (2008). "'One in the possession of a chattel as bailee or

otherwise, who on demand, refuses to surrender its possession to another entitled to the immediate possession thereof, is liable for its conversion.'" *Judkins v. Sadler-MacNeil*, 61 Wn.2d 1, 5, 376 P.2d 837 (1962) (quoting Restatement (First) of Torts §237 (1934)).

To establish a claim for conversion, the plaintiff must have legal title to or possessory interest in the converted property. *See Repin v. State*, 198 Wn. App. 243, 271, 392 P.3d 1174 *review denied*, 188 Wn.2d 1023, 398 P.3d 1137 (2017); *Davenport v. Wash. Educ. Ass'n*, 147 Wn. App. 704, 721-22, 197 P.3d 686 (2008). Further, the plaintiff must demonstrate that the defendant exercised dominion or ownership over plaintiff's property, depriving the plaintiff of possession or use of their property. *Alhadeff v. Meridian on Bainbridge Island, LLC*, 167 Wn2d 601, 619, 220 P.3d 1214 (2009); *Potter*, 165 Wn.2d at 78.

"Money, under certain circumstances, may become the subject of conversion. However, there can be no conversion of money unless it was wrongfully received by the party charged with conversion, or unless such party was under obligation to return the specific money to the party claiming it." *Pub. Util. Dist. No. 1 of Lewis County v. Wash. Pub. Power Supply Sys.*, 104 Wn.2d 353, 378, 705 P.2d 1195 (1985). If the defendant did not wrongfully receive the funds, the plaintiff must demonstrate that the defendant was under an obligation to return the funds. *Pub. Utility Dist.*, 104 Wn.2d at 378-79; *see also Davenport*, 147 Wn. App. at 723. In some circumstances, plaintiff's demand for the return of property can create an obligation to return the property. *See Judkins*, 61 Wn.2d at 4-5; *see also* Restatement (Second) of Torts § 237 (1965).

2. *No Demand for Return of Specific Funds*

The Prehars assign error to the trial court's conclusion that conversion occurred "when demand to return VSS property was made." CP at 219. The Prehars argue that the trial court's

finding that a demand to return VSS's money was made is unsupported by substantial evidence, and therefore, its conclusion is unsupported.

We consider whether the trial court's finding that "demand to return VSS property was made" is supported by substantial evidence. *Herring*, 198 Wn. App. at 832.

Here, the trial court found that the parties agreed that the Prehars would use VSS's funds to purchase the property in their own names. The trial court then concluded that based on the parties' agreement, conversion did not occur until the Prehars unlawfully interfered with VSS's possession of its property in August 2014, over a year after the Prehars used the funds to purchase the St. Johns property.

Notably, Nagra and Manjit Singh testified that they never asked the Prehars to return their contributions to VSS. They clarified that the purpose of the lawsuit was for VSS to *obtain title to the property*, and for the community to own the building for a place to worship. There is no evidence in the record that VSS demanded the Prehars return the $85,000. And although Nagra and Manjit Singh testified that they asked the Prehars to transfer title of the St. Johns property to VSS, conversion requires that the party is legally entitled to the property, and VSS was not legally entitled to the St. Johns property. *Davenport*, 147 Wn. App. at 721-22.

In addition, we note that Nagra testified that the request for transfer of the real property was a request for the Prehars to title the property *solely* in VSS's name. Had this transfer occurred, the Prehars would have been responsible for all the debt they incurred in order to purchase the property, but without any ownership interest in the property.

We hold that the demand to transfer title to the St. Johns property was insufficient to establish the tort of conversion for $85,000. VSS cannot establish conversion based only on the

Prehars' use of funds, which were not wrongfully received, and were used in the manner the parties to the transaction agreed upon. *See Judkins*, 61 Wn.2d at 4; *Davenport*, 147 Wn. App. at 722.

We also hold that the trial court's finding that "[w]ithin two weeks of August 12, 2014, when demand to return VSS property was made, [the Prehars] intentionally interfered with the $85,000 belonging to VSS by unlawfully retaining it" is unsupported by the evidence. Without a finding of fact that the Prehars interfered with the $85,000 belonging to VSS, the trial court's conclusion that conversion occurred in August 2014 is unsupported by its findings.[9]

C. *Other Claims*

VSS makes additional claims for the first time on appeal. Specifically, VSS argues that the Prehars are responsible for conversion based on a theory of unjust enrichment and constructive trust, the Prehars are liable for breach of Jagjit's fiduciary duty,[10] and the Prehars are liable under the doctrine of money had and received. VSS urges us to review its additional claims based on the principle that we can affirm on any ground. It is true that we may address an issue raised for the first time on appeal if we so choose, but we are not bound to do so and usually decline. *Smith v. Shannon*, 100 Wn.2d 26, 38, 666 P.2d 351 (1983); *Karlberg v. Otten*,

[9] The Prehars also argue on appeal that the trial court erred by rejecting their affirmative defense of equitable estoppel, by determining that they forfeited funds to VSS, and by miscalculating interest. Because we reverse on other grounds, we do not consider these arguments.

[10] Other than claiming a cause of action for corporate accounting and receivership which mentioned fiduciary duty, VSS's complaint did not allege a cause of action for breach of fiduciary duty.

167 Wn. App. 522, 531-32, 280 P.3d 1123 (2012). We do not consider VSS's newly asserted claims.

Even if we were inclined to consider VSS's equitable claims, the record is insufficient for us to decide these claims as a matter of law. The record contains conflicting evidence regarding whether the Prehars unfairly benefited from the transaction. The trial court found that in order to purchase the property, the Prehars assumed personal obligations in the amount of $376,022.11. And Jagjit testified that he allowed VSS to use the temple rent free for several months. But the record lacks sufficient information regarding property values and regarding the amounts that the respective parties invested into the property for the betterment of the temple and VSS. An appellate court does not evaluate evidence, make factual findings, or evaluate such issues.

To consider VSS's equitable claims for the first time on appeal would be particularly unfair to the Prehars, who did not have an opportunity to develop defenses or litigate the claims.[11] Accordingly, we decline to consider VSS's equitable claims for the first time on appeal. *See, e.g.*, *Shannon*, 100 Wn.2d at 38 (choosing not to address issue raised for the first time on appeal where equities weigh against appellant); *Karlberg*, 167 Wn. App. at 531-32.

D. *Vancouver Sikh Society's Cross Appeal*

On cross appeal, VSS argues that (1) the trial court erred by finding that "the managing members of VSS approved of the use and anticipated the use of the funds for the purchase of the

[11] Washington is a notice pleading state. CR 8; *Gunn v. Riely*, 185 Wn. App. 517, 528, 344 P.3d 1225 (2015). Parties are required to give the opposing party fair notice of the nature of the claims and the legal grounds of those claims. *Reagan v. St. Elmo Newton*, 7 Wn. App.2d 781, 436 P.3d 411, 422 (2019)). VSS's assertion of new causes of action for the first time on appeal circumvents the notice pleading rules and, if allowed, would deprive the Prehars the opportunity to conduct discovery, present evidence, or otherwise respond in a meaningful way.

real property in Defendant's name;" (2) the trial court erred by awarding judgment in $85,000 instead of $90,000; and (3) the trial court erred by assessing prejudgment interest beginning on August 28, 2014. Br. of Resp't at 34 (quoting CP at 220). VSS's arguments on cross appeal fail.

VSS assigns error to the trial court's finding that "the managing members of VSS approved of the use and anticipated the use of the funds for the purchase of the real property in Defendant's name." Br. of Resp't at 34 (quoting CP at 220).

VSS argues that the trial court's finding is not supported by substantial evidence. VSS appears to argue that the finding lacks substantial evidence because the record does not contain evidence of a board of directors, or board meetings or decisions. But at trial, evidence established that Jagjit was one of the individuals who formed VSS, and that the Prehars, Nagra, and Maninderjits Kullar authorized the property to be purchased solely in the Prehar's name. VSS fails to provide authority for the position that the record must contain evidence of board meetings or decisions to support the trial court's findings that the managing members approved of and anticipated the use of VSS funds for the purchase of the property. The trial court did not find that an official corporate action had occurred. Thus, VSS's claim fails.

VSS also argues that the trial court erred by not including an additional $5,000 for earnest money in the judgment and by setting the commencement date of prejudgment interest at August 28, 2014. Because we reverse the trial court's judgment, we do not address these claims.

CONCLUSION

Because the trial court's findings do not support its conclusion that conversion occurred, we reverse and remand for the trial court to vacate the judgment. We also reject VSS's cross appeal.

No. 50722-6-II

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Worswick, J.

We concur:

Maxa, C.J.

Lee, J.

COMES NOW Roselyn Moore and declares as follows under penalty of perjury under the laws of the State of Washington:

1. My name is Roselyn Moore. I am a citizen of the United States, over the age of eighteen (18) years, a resident of the State of Washington, and am not a party to this action.

2. On July 11, 2019, I deposited in the mails of the United States of America, first class mail with postage prepaid, a copy of this Petition for Review addressed to Steven Turner, 1409 Franklin, Suite 216, Vancouver, WA 98660.

DATED at Vancouver, Washington, this 11 day of July, 2019.

R. Moore

ROSELYN MOORE

CARON, COLVEN, ROBISON & SHAFTON PS

July 11, 2019 - 11:26 AM

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