

No. 48507-9-II

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

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CHARLES R. WOODS,

Plaintiff/Respondent  
and Cross-Appellant,

TOM and KAREN HALL, husband and  
wife, in their individual and marital capacities;  
HALLMARK GROUP, LLC, a Washington  
limited liability company; HARWOODS, LLC,  
a Washington limited liability company, and  
RTM ENTERPRISES, LLC, a Washington  
corporation

Defendants/Appellants  
and Cross-Respondents

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**BRIEF OF APPELLANTS**

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### **A. ASSIGNMENTS OF ERROR**

1) The trial court erred in granting Woods' claim for conversion against the Halls.

2) The trial court erred in finding that Woods was entitled to ownership and possession of a restaurant stove hood and bar, both of which were affixed to leased premises.

3) The trial court erred in awarding damages for conversion based upon the purchase price and installation costs of the assets rather than the fair market value of the assets at the time of the conversion.

4) The trial court erred in finding that the Halls sold the removable assets for \$10,000.00.

### **B. ISSUES RELATED TO ASSIGNMENTS OF ERROR**

1) Did the Halls assert any right hostile to Woods' right to the movable assets by refusing to put the business assets outside on the sidewalk? (Assignment of Error No. 1)

2) Did Woods have the opportunity to remove the movable assets from the leased premises? (Assignment of Error No. 1)

3) Did Woods have the right to the possession of the attached bar and stove hood when the lease provides that upon termination of the Lease that "Tenant was not to remove any permanent partitions, attached electrical or plumbing items or other alterations or additions added by Tenant"? (Assignment of Error 2)

4) Was the purchase price of assets in 2009 too far removed in time from the date of conversion on September 8, 2012 to establish the fair market value of the assets at the time of conversion? (Assignment of Error 3)

5) Should installation costs be excluded in establishing the fair market value the bar? (Assignment of Error 3)

6) Is there any evidence supporting the trial court's finding that the Halls individually sold the restaurant assets? (Assignment of Error 4)

### C. STATEMENT OF THE CASE

This case involves a dispute between the parties involving the repossession of business assets. CP 21. In 2009 Harwoods, LLC (owned by Woods) leased premises from Hallmark Group, LLC (owned by the Halls) in order to operate a restaurant. CP 21, Ex. 53, RP 10/12/15 pp. 4-7. Harwoods, LLC, as Tenant, renovated the leased premises prior to the opening of the restaurant in January 2010. CP 21. The Lease provided that upon the termination of the lease:

**"...*Tenant shall not remove* any original improvements installed by Landlord or permanent partitions, attached electrical or plumbing items or other *alterations or additions added by Tenant; unless requested by Landlord*...Unless removed as specified in this paragraph, all such alterations, additions fixtures, trade fixtures and personal property left on the demised premises shall at the expiration or earlier termination of this Lease become the property of Landlord and remain upon the demised premises." Ex. 53, p.5, ¶10.4.**

Woods and the Halls were not individually parties to the Lease. Ex. 53.

In June 2011 Woods sold his membership interest in Harwoods, LLC to the Halls. Ex. 1. The Purchase and Sale Agreement ("PSA") provided that the Halls would pay monthly installments on the purchase price (Ex. 1, page 2, Section 2.2, paragraph 1). Although the PSA

involved the purchase of the LLC membership interest and not a sale of assets, Woods was given a security interest in the "business assets" to secure the monthly payments. (Ex.1, page 2, Section 2.2, 2<sup>nd</sup> paragraph). The "business assets" were not specifically identified in the PSA. Ex. 1. In the case of Halls' default, Woods' sole remedy was repossession of "...the LLC, the Business, the business assets and the business lease..." (Ex. 1, page 3, Section 2.6).

In June 2012 the Halls informed Woods that they no longer wished to continue to run the business and invited him (repeatedly) to come in and either take over and continue the business or collect the business assets pursuant to Section 2.6 of the PSA. RP 10/12/15, p 13. There was no dispute that Woods was entitled to repossess the movable personal property used in the restaurant, such as furniture, appliances, glassware, plates, cutlery and inventory. CP21, RP 10/21/15, p. 14. The parties disagreed whether Woods could remove assets that were affixed to the premises, specifically an attached bar and attached stove hood. CP21, RP 10/21/15, p. 14. The Halls maintained that the "business assets" did not

include any asset which the Landlord retained an ownership interest under the Lease. CP 21.

Tensions between the parties escalated when on July 15, 2012

Woods sent an e-mail to the Halls in which he indicated that he intended to remove the bar and the stove hood:

“Understand that at the point in time if and when it becomes necessary for me to exercise my rights under section 2.6 of the Purchase and Sale Agreement between us; I will send in a moving crew and truck and remove all ‘...the business assets..., including the rights to any deposit and last month’s rent payment previously made at the original signing of the lease’. ***Please note these business assets include the removal of the kitchen hood and the dismantling of the bar.*** A second crew will be brought in to place drywall to cover any holes created by the removal of these assets. Additionally, items no longer in service that have ‘disappeared’ from the premises will be valued and billed back to you in accordance with the agreement. Inventory items must be at a minimum of 6/15/2010 levels, and shortages will be invoiced back to you. ***Naturally, any new tenant will have much more expense and work to return the space to an operational status, which will likely make it more difficult for you to find a new tenant.***” (emphasis supplied). CP 21.

By e-mail dated July 19, 2012, Defendant Hallmark, through its legal counsel, objected to the removal of fixtures, citing provisions in the Lease. CP 21. The Halls also responded, through their attorney, that if Woods attempted to remove the fixed assets, that law enforcement would be called. RP 5/14/15, pp. 9-10.

On or about August 24, 2012 Woods, through his legal counsel, in writing indicated his intent to repossess the business assets and requested that restaurant be immediately shuttered. RP 10/12/15 (Woods), p. 16. Soon thereafter the restaurant was closed. CP 21.

On September 8, 2012, The Halls opened the premises so that Woods could remove the movable assets. CP 21, RP 10/12/15 (Woods), pp. 17-18; RP 10/12/15 (Hall), pp. 6-8. Although Woods had brought a truck and a crew, he refused to enter the premises and insisted that The Halls place all of the movable assets, including several huge refrigerators, stoves, tables, chairs, food, wine, alcohol, plates, glasses, etc. on the sidewalk in downtown Camas. CP 21, RP 10/12/15 (Woods), pp. 17-18, RP 10/14/15, pp 11-18. The Halls did not want to place the restaurant assets on the sidewalk for several reasons, including the safety of the public, disruption of neighboring businesses and security. RP 10/12/15 (Hall), pp. 7-8. Because the Halls refused to put the movable assets on the sidewalk, Woods left without taking any business assets at all. RP 5/14/15, p. 13-14, CP 21.

In December 2012 Woods filed this lawsuit against the Halls asserting replevin, conversion, unjust enrichment, and judicial foreclosure of a security agreement. CP 14.

After a bench trial, the trial court granted Woods' request for declaratory judgment determining that Woods had ownership rights in not only the movable assets, but the bar and stove hood as well. CP 137. The trial court denied Woods' unjust enrichment and replevin causes of action but granted Woods' conversion claim against the Halls. CP 137. The trial court further found that because Woods had a security interest in the business assets, he had the right to require the Halls to place the business assets on the sidewalk pursuant to RCW 62A9A-609. CP137. The trial court concluded that the Halls' refusal to place the business assets on the sidewalk deprived Woods of the business assets and constituted conversion. CP 137. The trial court further determined that the date of conversion was September 8, 2012 and awarded damages in the amount of \$40,123.04 based on the purchase price of the assets in 2009 and, in the case of the stove hood, the testimony of two (2) experts. CP 137.

Finally, there has been no testimony nor have is there any written evidence that the Halls, individually, sold the removable assets for \$10,000.00. CP 137.

## **D. ARGUMENT**

### ***1. Standard of Review***

A threshold legal argument in this case is whether there is conversion if Woods had access to the movable assets but chose not to set foot on the premises to retrieve them. Appellant is challenging the trial court's conclusion of law that the Halls' refusal to place the assets on the sidewalk deprived Woods of possession thus constituting conversion. At that time Woods had free access to the assets just inside the door of the premises. The standard of review of a trial court's conclusions of law are de novo. *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2003).

The Halls are also challenging the following findings of facts:

- 1) The trial court's determination that the attached bar and exhaust hood were available for repossession by Woods as a secured party under the purchase and sale agreement.

2) The sufficiency of the trial court's determination of damages using the purchase price of the assets several years prior to the date of conversion .

"When findings of fact and conclusions of law are entered following a bench trial, appellate review is limited to determining whether the findings are supported by substantial evidence, and if so, whether the findings support the trial court's conclusions of law and judgment." *Sunnyside Valley Irrigation Dist. v. Dickie*, 111 Wn.App. 209, 214, 43 P.3d 1277 (2002). "Substantial evidence is evidence that would persuade a fair-minded person of the truth of the statement asserted." *Cingular Wireless, LLC v Thurston County*, 131 Wn.App. 756, 768, 129 P.3d 300 (2006).

***2. The Halls did not deny or repudiate Woods' right to the movable assets, a required element for conversion.***

***i) The Halls acknowledged Woods' right to repossess the movable assets and requested that Woods retrieve the assets.***

The trial court correctly acknowledged that "there was never a debate that other than the exhaust hood and bar, other business assets rightfully belonged to Woods." CP 137. Beginning in June 2012 the Halls requested that Woods either take over the restaurant or retrieve the

removable business assets. Over the ensuing months they repeated this request. Although ownership of the fixed assets was at issue, there is no evidence that the Halls asserted a superior right to the movable assets or tried to withhold the movable assets from Woods.

**ii) Woods had the opportunity to take the removable assets from the premises.**

On September 8, 2012 the parties agreed that Woods would pick up the movable assets. Accordingly, the Halls readied the assets for pick-up, however, Woods insisted the Halls place all of the assets out on the sidewalk. Placing the restaurant assets on the sidewalk would have violated the local municipal code which provided:

**Camas Municipal Code**

**8.06.040 - Public nuisances—Public health, safety and welfare nuisances.**

I. Obstructions—Public Rights-of-Way. Obstructing, blocking, barricading or placing any item on the sidewalk, parking strip or street in such a manner as to restrict the free and full use of the public rights-of-way without first obtaining an encroachment permit from the city is declared to be a public nuisance.

It was clear that Woods had the opportunity to retrieve the movable items but refused to do so. Despite this, the trial court opined that the Halls'

refusal to place the assets on the sidewalk was intentional interference "...with chattel belonging to Woods, either by taking or unlawfully retaining it, thereby depriving the rightful owner of possession..." and therefore constituted conversion. The trial court's ruling is directly contrary to caselaw and the Restatement (Second) of Torts.

To constitute conversion, there must be some assertion of right that is hostile to the true owner. *Clark v Groger*, 172 P. 1164, 102 Wash 188 (1918). Washington courts look to the Restatement of Torts when analyzing conversion claims. *Aventa Learning, Inc. v K12, Inc.*, 830 F. Supp 2d 1083 (2011). The official comment g to §237 of the Restatement (Second) of Torts provides:

**"The defendant ordinarily is not required to do more than permit the Plaintiff to come and get the chattel. Even where the terms of the agreement under which the defendant is in possession require him to transport and deliver it back to the Plaintiff, his refusal to do so may be a breach of the contract, but is not in itself a conversion, unless the circumstances indicate that he is refusing to surrender the chattel at all."**

The fact that the Halls refused to place the restaurant assets on the sidewalk at Woods' request is not an act of dominion over the assets inconsistent with Woods' right of possession. As the Restatement

(Second) of Torts emphasizes, the Halls are not required to do any more than to permit Woods to have access to the restaurant assets. The official comment *g* to §237 of the Restatement (Second) of Torts also provides even if a defendant is required to deliver assets to the plaintiff, that his refusal to do so might be a breach of contract, but would not constitute conversion. The refusal of the Halls to place the business assets on the sidewalk, without more, cannot be used to establish conversion absent evidence of a denial or repudiation of the owner's right or title.

In *Clark v Grover*, the defendants, who were taking possession of a brewery, requested that the plaintiff remove his property from the premises. Although he was temporarily locked out, he eventually was able to access the building but did not attempt to remove his property. In holding that there was no conversion, the Court of Appeals said:

"But it cannot be held arbitrarily that the mere taking of goods is sufficient to sustain an action for conversion. A willful, or even an unlawful taking will not always amount to conversion. There must be some assertion of right or title that is hostile to the true owner. In the instant case the trustees by resolution disclaimed any intention of claiming as owners. They not only admitted the title of the plaintiff, but made a demand that he remove his property. His answer to this demand was not made with a moving van, but by filing an action in damages for conversion." *Id* at 194.

See also *Shaffer v Walther*, 38 Wn.2d 786, 232, P.2d 94 (1951). Likewise, in this case the Halls not only acknowledged Woods' right to the movable assets, but requested numerous times that he retrieve the assets. There is no evidence that the Halls asserted a claim of right or title over the movable assets inconsistent with Woods' rights. The trial court erred as a matter of law for finding conversion on the basis of the Halls' refusal to place the assets on the sidewalk because Woods had the opportunity to access the assets in the premises.

***3. Woods was not entitled to repossess the bar and stove hood which were affixed to the leased premises.***

Originally, Harwoods, LLC, as tenant, made improvements to the premises it leased from the landlord, Hallmark Group, LLC. The ownership of the improvements were addressed in the Lease.

***i) Pursuant to the Lease, additions to the premises added by the tenant became the property of the landlord, Hallmark Group, LLC***

The Lease provided that upon termination of the Lease, Tenant was *not* to remove any permanent partitions, attached electrical or plumbing items or other alterations or additions added by Tenant, *unless*

*requested by the Hallmark Group (Landlord).* The Tenant, on the other hand, was only entitled to remove personal property and trade appliances unless the Landlord requested otherwise. The Lease further provided that, unless removed as specified in the Lease (meaning at the request of the Landlord), all alterations, additions, fixtures, trade fixtures and personal property left on the premises after the termination of the Lease becomes the property of the landlord, Hallmark Group, LLC. (See Ex. 53, paragraph 10.4, page 5). Therefore, Harwoods, LLC, as Tenant, only had ownership rights in **personal property and trade appliances and in those items that the Landlord specifically requested be removed.**

**ii) The landlord's ownership of the bar and stove hood was not terminated by the purchase and sale agreement between Woods and the Halls.**

When Woods sold his ownership interest in Harwoods, LLC and reserved a security interest in the Harwoods, LLC's "business assets," this included only those assets that Harwoods LLC actually owned; it did not include assets owned by Landlord Hallmark Group, LLC. The Lease, in existence for two (2) years prior to the PSA, determined that ownership interests of the leasehold improvements. The PSA did nothing to change

the ownership interests of Harwoods, LLC or Hallmark Group, LLC.

Moreover, neither entity was a signatory to the PSA.

**iii) The trial court's determination Woods had a possessory interest in the bar and stove hood is not based on substantial evidence and is contrary to the terms of the Lease establishing ownership rights to leasehold improvements.**

The trial court, in determining what business assets were subject to Woods' security interest, completely ignored the Lease and opined that both the stove hood and the bar were Harwood's business assets based upon the testimony of experts who testified they had removed hoods and bars:

"Prior to establishing the fair market value of the secured property, an analysis of what property was secured and available to Woods at default. Woods argues that the exhaust fan hood and the bar must be included in that list. Testimony from Sean Herron supports this belief when he stated that it was common to remove the hood and bar. Defendant expert Bill Hayden further testified that he was involved in the development of Harwoods restaurant and he has removed three (3) hoods within the last 30 days. Based upon this evidence, the court finds that the exhaust hood was equipment available to the secured party, minus any repair costs to premises damage. Likewise, the bar was available as equipment to secured party, minus any repair costs to premises damage."

The Lease clearly establishes the ownership of the leasehold improvements. The testimony of these experts is extrinsic evidence. "Parol or extrinsic evidence is not admissible to add to, subtract from, vary, or contradict written instruments which are contractual in nature and which are valid, complete, unambiguous, and not affected by accident, fraud, or mistake." *Emrich v Connell*, 715 P.2d 863, 105 Wn.2d 551, 555-556 (Wash. 1986). This rule is not a rule of evidence but one of substantive law and is rendered incompetent and immaterial by operation of the rule, even if admitted without objection. *Id at 556*.

Woods only had the right to remove assets that Harwoods, LLC, as tenant, had the right to remove. Under the clear language of the Lease, Hallmark Group, LLC, as Landlord, owned the alterations and additions added by the tenant. Harwoods, LLC, as tenant, could only remove personal property and trade appliances and other items requested by the landlord. The finding that Woods has a possessory right to the bar and stove hood is not supported by substantial evidence and is directly contrary to the terms of the written Lease.

**4. The trial court's use of the purchase price of the assets some three years prior to the conversion is insufficient to support a judgment fixing value at the time of the conversion.**

It is well established that damages when a conversion has occurred is measured by its fair market value at the time of conversion. *Dennis v. Southworth*, 2 Wash. App. 115, 467 P.2d 330 (1970). The trial court acknowledged this measure of damages: "Conversion damages are the fair market value of the property at the time it was converted." Cp 137. Noting that there was "...scant evidence from either party regarding the fair market value of assets on September 8, 2012..." the trial court used Ex. 45 "The Business Assets-ER 1006 Summary" as the basis for his award of damages for conversion. Woods testified repeatedly that the figures on Ex. 45 reflected the purchase price of assets. The corresponding receipts contained in Ex. 2 are mostly dated 2009. The date of the conversion was determined to be September 8, 2012, several years after the purchase of the assets. The purchase price of personalty, *if not too far removed in point of time*, may be shown in an action for conversion as tending to prove the value at the time of conversion, *but such evidence, standing alone, is insufficient to support a judgment*

*fixing value at the time and place of conversion. Anstine v. McWilliams*, 163 P 2d 816, 24 Wash 2d 230, 239 (1945). In this case, the purchase price of the assets is three years prior to the conversion, not close in time at all to time of the conversion.

Woods offered no testimony regarding the amount of damages he was requesting. He testified with respect to ER 1006 that he was simply providing information as to the cost of items at the time of purchase and that he was not using the word "damages" and that he hadn't put a number to damages. RP 10/12/15 (Woods) p. 26. Woods has the burden of proof on the amount of damages and must come forward with sufficient evidence to support a damages award. *O'Brien v Larson*, 11 Wn. App. 52, 54, 521 P.2d 228 (1974). Although there was testimony as to the value of the hood, there was no other testimony supporting the value of the assets at the time of the alleged conversion. Moreover, the ER 1006 values included items such as installation, taxes and freight charges in addition to the purchase price. Finally, the judge indicated that the value of the hood and the bar should be offset by any cost to repair the premises after removal, however, he did not factor in any offset in his damage award.

Ex. 137. We believe that the evidence does not support the judge's damage award.

#### **E. CONCLUSION**

There is no evidence that the Halls denied or repudiated Woods' right to repossess the movable assets. Woods had an opportunity to take the removable assets but failed to do so. The evidence does not support a finding of conversion with respect to the movable assets.

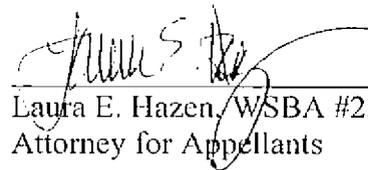
The stove hood and the attached bar were never owned by the tenant, Harwoods, LLC, and therefore Woods cannot claim a right to possess the stove hood or attached bar through Harwoods. The testimony of two expert witnesses is extrinsic evidence and irrelevant to the determination of the ownership of these assets, especially when a written Lease controls. Therefore, the trial court's determination that the Halls converted the stove hood and the bar is not supported by the evidence.

Finally, even if there is substantial evidence to support a conversion claim against the Halls, there is insufficient evidence of the value of the converted assets at the time of the conversion. Moreover,

installation costs, freight costs, taxes and repair costs should be deducted from any award.

Dated: May 31, 2016

Respectfully submitted,



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Laura E. Hazen, WSBA #25811  
Attorney for Appellants

# Appendix

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**FILED**

NOV 20 2015

11:45  
Scott G. Weber, Clerk, Clark Co.

**Superior Court of Washington  
County of Clark**

CHARLES R. WOODS, an unmarried man,

Plaintiff,

Vs

TOM and KAREN HALL, husband and wife,  
In their individual and marital capacities;  
HALLMARK GROUP, LLC, a Washington  
Limited liability company; HARWOODS,  
LLC, a Washington Limited Liability  
Company; and RTM ENTERPRISES, LLC, a  
Washington Limited Liability Company,

Defendants.

No. 12-2-04821-9

**Judgment and Order following trial  
findings of fact and decision on  
civil claims**

15-9-04347-1

**I. Judgment/Order Summaries**

**1.1 Restraining Order Summary:**

Does not apply.  Restraining Order Summary is set forth below:

Name of person(s) restrained: \_\_\_\_\_ Name of person(s)  
protected: \_\_\_\_\_ **See Paragraph 3.8.**

**Violation of a Restraining Order in paragraph 3.8 below with actual knowledge of its  
terms is a criminal offense under Chapter 26.50 RCW and will subject the violator to  
arrest. RCW 26.26.590.**

**1.2 Money Judgment Summary:**

Does not apply.  Judgment Summary is set forth below:

A. Judgment creditor	Charles R. Woods
B. Judgment debtor	Tom and Karen Hall, husband and wife
C. Total judgment amount	\$40,123.04
E. Interest to date of judgment	\$ 0
F. Attorney fees	\$ 0

Findings of Fact and Judgment

- |  |             |
|--|-------------|
| G. Costs   | \$ 0        |
| H. Other recovery amount   | \$ 0        |
| I. Principal judgment shall bear interest at 12% per annum                               |             |
| J. Attorney fees, costs and other recovery amounts shall bear interest at n/a% per annum |             |
| K. Attorney for judgment creditor  | Lawson Fite |
| L. Attorney for judgment debtor  | Laura Hazen |

## II. Basis

This matter has come before this court for bench trial on March 30, 2015, May 14, 2015, July 13, 2015, July 14, 2015 and October 12, 2015. The bench trial was conducted consistent with Judge John F. Nichols prior ruling dated January 6, 2015 wherein he ruled "In view of the convergence of the equitable and legal claims and the waiver issue in the lease together with the overlay of the UCC; this matter will be extremely confusing to a jury. One must also consider judicial economy and the difficulties in separating equitable from legal issues. In the exercise of judicial discretion the demand for a jury is not in the best interest of the court or jury and is denied." Therefore, the court has considered the witness testimony and now enters its findings of fact and conclusions of law.

## III. FINDINGS OF FACT

June 2009 through December 2009 Plaintiff, Charles R. Woods (hereinafter Woods) and a partner contracted with and began development of a restaurant in the Camas Hotel. The restaurant named Harwoods opened for business in January 2010. Woods testimony provided that the restaurant was losing money from the very beginning and was ultimately transferred to Defendant Tom and Karen Hall (hereinafter Hall) without a written agreement in July 2010. On June 10, 2011 Woods and Hall reached a written agreement where Woods sold his membership (100%) of Harwoods, LLC to Hall for \$75,000. Hall's (Harwood, LLC) operated the restaurant and renamed it Olivers until June 25, 2012 when they defaulted on the written contract. Following Hall's default, there were multiple attempts to resolve the dispute consistent with the June 10, 2011 purchase and sale agreement and the security agreement the parties reached on chattel. This agreement provided for remedies to Woods limited to repossessing the LLC, the Business, the business assets and the business lease. Upon default, Woods (as seller) demanded a return of the business assets and declined to repossess Harwoods LLC.

On November 1, 2012 Hall's sold the restaurant assets to RTM enterprises for \$10,000 and Hallmark entered a new lease agreement with RTM. In addition, Hall's took a \$73,000 loss on their personal income tax return for the Harwood's LLC losses. Testimony presented that the tax partner (Tom Hall) for Harwood's declared \$84,000 Harwood's business value in 2011 and \$0 business value in 2012.

After failed negotiations to retrieve the restaurant assets, Woods filed a complaint on December 21, 2012, an amended complaint on May 3, 2013 and a 2<sup>nd</sup> amended complaint on September 16, 2013 pleading for Declaratory Judgment, Replevin, Conversion, unjust enrichment and Judicial Foreclosure of Security Agreement. Defendant Hall; Hallmark Group, LLC (hereinafter Hallmark) responded by answer to each of the complaints denying Wood's claims and alleging multiple affirmative defenses including CR 12(b)(6); laches; abandonment of chattels; standing; unclean hands; privity of contract with Hallmark; estoppel; unjust enrichment; subordinate claims.

Testimony was heard from Woods, Hall, David Gregerson, Bill Hayden, Sean Herron, and Jeff Meiners.

Findings of Fact and Judgment

Hall's affirmative defenses lacked any credible evidence and are denied. The Wood's claim for unjust enrichment against Hallmark requires that no contractual relationship with Hallmark existed eliminating Hall's 10.6 affirmative defense. Further, Wood's attempts at resolution during the four to five month period in dispute would not support the doctrine of abandonment, laches and/or estoppel.

In addition, Hall's counterclaim for frivolous action is denied. When considering the record as a whole, the claim is frivolous, i. e., whether it presents no debatable issues and is so devoid of merit that there is no reasonable possibility of success.

Wood's claim for conversion from RTM Enterprises is denied.

Wood's claim for Declaratory Judgment is granted and based upon the written agreement with Hall's for the repossession of restaurant assets created an entitlement to ownership and possession of the assets or its value.

Wood's claim for replevin is denied. The diminution in value of the "used" restaurant equipment would make a return of the specific property inequitable. This property has no specific qualities; therefore a money judgement for its value is a just result. Woods, under the power of the written security agreement and purchase and sale agreement had instructed the Hall's to cease using the equipment. Hall's ignored this request and ultimately sold the equipment to RTM Enterprises in November 2012 and that entity has continued to use the equipment.

Wood's claim for Unjust Enrichment against Hallmark is denied. As stated above, Wood's Unjust Enrichment claim may be brought against Hallmark because there was no contractual relationship between Wood's, as an individual, and Hallmark. However, to prevail on this claim, Woods must prove three elements: 1) that Hallmark received a benefit; 2) that Hallmark received a benefit at Wood's expense; 3) circumstances make it unjust for Hallmark to retain the benefit without paying Woods. Woods claims that Hallmark "increased hotel profits" unjustly and received "restaurant build-out" unjustly. The evidence does not support either of these claims because they were not at Wood's expense. The hotel profits were not increased because Harwoods LLC had not been relieved of their five year lease obligations. Likewise, the restaurant build-out claim was negotiated away by Woods in the purchase and sale agreement.

Wood's claim for Conversion against Hall is granted. In order to prevail on a conversion claim the foundation for the action rests neither in the knowledge nor the intent of the Halls. It rests upon the Hall's unwarranted interference with the dominion over Wood's property from which injury to the latter results. Therefore neither good nor bad faith, neither care nor negligence, neither knowledge nor ignorance, are of the gist of the action. Wood's right of redress no longer depends upon his showing, in any way, that the Halls did the act in question from wrongful motives, or, generally speaking, even intentionally; and hence the want of such motives, or of intention, is no defense. Nor, indeed, is negligence any necessary part of the case. As discussed above, the Hall's claim for abandonment is denied therefore they were under a contractual duty to return the property or its value to Woods. As contemplated in the June 10, 2011 Purchase and Sale Agreement when Hall granted a security interest in equipment to Woods, RCW 62A.9A-609 (Washington Law) applies and after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by secured party which is reasonably convenient to both parties. The evidence provided that throughout the negotiations for repossession the parties debated the characterization of the equipment whether fixed or personal. However, there was never a debate that other than the exhaust

Findings of Fact and Judgment

hood and bar, other business assets rightfully belonged to Woods. Woods demanded that the property be placed on the sidewalk and Hall refused. Woods testified that because of the law enforcement involvement threat he was uncomfortable coming onto Harwood LLC and/or Hallmark's property. On the other hand, Hall's reliance on a Camas Municipal Code for reasons not to place the property at the secured party's designated location is not persuasive. Because Hall intentionally interfered with chattel belonging to Woods, either by taking or unlawfully retaining it, thereby depriving the rightful owner of possession a conversion has occurred.

The measure of damages in conversion is the value of the article converted at the time of the taking. Prior to establishing the fair market value of the secured property, an analysis of what property was secured and available to Woods at default. Woods argues that the exhaust fan hood and the bar must be included in that list. Testimony from Sean Herron supports this belief when he stated that it was common to remove the hood and bar. Defendant expert Bill Hayden further testified that he was involved in the development of Harwoods restaurant and he has removed three (3) hoods within the last 30 days. Based upon this evidence, the court finds that the exhaust hood was equipment available to the secured party, minus any repair costs to premises damage. Likewise, the bar was available as equipment to secured party, minus any repair costs to premises damage.

Conversion damages are the fair market value of the property at the time it was converted. That date is established at September 8, 2012. Herron testified that the value of the hood \$6,000 and Hayden set the value at \$2,000. The court finds that the value of the hood is \$4,000. Woods provided evidence submitting exhibit #45 "The Business Assets - ER 1006 Summary". After hearing testimony, and scant evidence from either party regarding the fair market value of assets on September 8, 2012, sets the value of all secured equipment (assets) at \$40,123.04. This valuation was established by reducing the value of the hood, removing the POS terminal, signage, inventory, last month's rent, security deposits, and attached sinks with faucets.

#### IV. Order

***It is ordered:***

Plaintiff Charles R. Woods shall have Judgment for \$40,123.04 with 12 % interest accruing from October 19, 2015.

There shall be no prejudgment interest on this non liquidated sum.

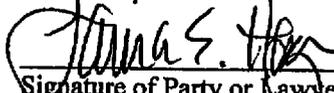
Each party shall pay their own attorney fees.

Dated: 11/20/15

  
\_\_\_\_\_  
Judge Daniel L. Stahnke

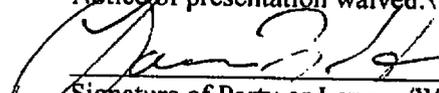
Approved for entry:

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 25811  
\_\_\_\_\_  
Signature of Party or Lawyer/WSBA No.  
Laura E. Hazer 11/20/15  
\_\_\_\_\_  
Print or Type Name Date

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Findings of Fact and Judgment

CERTIFICATE OF SERVICE

On the 31st day of June, 2016, I caused a true and correct copy of the following document: Brief of Appellants in Court of Appeals Cause No. 48507-9-II to be hand-delivered to the following:

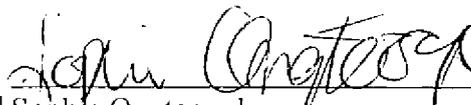
Phillip J. Haberthur, Landerholm  
805 Broadway Street, Suite 100  
PO Box 1086  
Vancouver, WA 98666

Original filed with:  
Court of Appeals  
Division II  
950 Broadway  
Ste. 300, MS TB-06  
Tacoma, WA 984024454

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

Dated: May 31, 2016

At: Camas, WA 98607

  
\_\_\_\_\_  
Sophie Ongtooguk

**HAZEN HESS & OTT PLLC**

**May 31, 2016 - 4:17 PM**

**Transmittal Letter**

Document Uploaded: 6-485079-Appellants' Brief.pdf

Case Name: Woods v. Hall

Court of Appeals Case Number: 48507-9

**Is this a Personal Restraint Petition?** Yes  No

**The document being Filed is:**

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Answer/Reply to Motion: \_\_\_\_\_

Brief: Appellants'

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

**Comments:**

No Comments were entered.

Sender Name: Laura E Hazen - Email: [sophie@camaslaw.com](mailto:sophie@camaslaw.com)

A copy of this document has been emailed to the following addresses:

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