

Court of Appeals No. 48507-9-II

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

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CHARLES R. WOODS,

Respondent and Cross-Appellant,

v.

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,

Appellants and Cross-Respondents.

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**RESPONDENT AND CROSS-APPELLANT'S REPLY BRIEF**

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## I. INTRODUCTION

If an individual has their property taken from them, the law provides that they are entitled to interest from that taking until the judgment is paid if the amount is liquidated. The law presumes the suffering party would have put their property to use and received income or otherwise benefited from it. Here, the Halls took the restaurant equipment securing their obligations to Woods and used it to run their own restaurant and then they sold the equipment to a new restaurant tenant.

The Halls thwarted the ability of their lender, Charles Woods, from recovering the assets securing their purchase of Harwoods, LLC, from Woods. Woods presented evidence of the value of the equipment taken by the Halls. This evidence included a summary of the equipment's value, and expert testimony on the values.

After a bench trial, the trial court granted Woods' conversion and declaratory judgment claims and entered judgment for Woods and against the Halls for \$40,123.04. Further, the trial court dismissed all of the Halls' and Harwoods' affirmative defenses after finding they lacked any credible evidence. The trial court did not award pre-judgment interest or attorneys' fees and costs to Woods.

Woods' conversion claim was for a liquidated amount as he provided evidence of the value of each individual piece of restaurant equipment.

The Halls argue that the amount was unliquidated because the trial court removed several items from the overall equipment list. But this argument misses the mark—each piece of equipment was individually valued and the trial court did not rely upon its discretion in valuing those items deemed converted by the Halls. That the trial court removed a few pieces from the overall list of equipment does not render the entire damage award unliquidated.

Woods was also entitled to his attorneys' fees and costs as the prevailing party before the trial court, and he is entitled to his fees and costs on appeal.

## **II. ARGUMENTS**

### **A. Woods' conversion claim was for a liquidated amount and was readily determinable.**

Prejudgment interest on the equipment should have been included by the trial court because the equipment values were liquidated and readily determinable. Awarding prejudgment interest to Woods recognizes that he had funds tied up in the equipment he could have applied elsewhere.<sup>1</sup> The trial court relied upon the fair market value and the expert testimony of Sean Herron to determine the value of the equipment. Herron's testimony

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<sup>1</sup> See *Arzola v. Name Intelligence, Inc.*, 188 Wn. App. 588, 595, 355 P.3d 286 (2015).

supported the values provided through Exhibit 45 and confirmed that the hood and bar could be removed from the premises.

The Halls make several arguments against an award of prejudgment interest. First, they argue the trial court exercised discretion in determining the equipment values. Second, they argue that prejudgment interest is not available in cases involving chattel. Both these arguments fail as a matter of law.

The Halls begin by erroneously asserting that the difference in equipment values ranged from “\$40,123.04 to \$78,454.01[,] thus supporting the conclusion that the damages were not liquidated or readily determinable.” The Halls misstate the evidence. The evidence showed the equipment, security deposit, rent, and other items totaled \$78,454.01.<sup>2</sup>

The trial court simply removed the POS terminal, sinks, inventory, rent, and security deposit from the damages award—none of the actual equipment values were modified from the evidence presented by Woods. That the trial court removed these items from its award of damages has no bearing on whether the remaining values were liquidated. Each item was valued separately. The trial court may determine which items to include, and which to exclude. In awarding damages, the trial court relied upon Ex. 45 to determine the fair market value of the equipment.

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<sup>2</sup> Ex. 45.

The trial court's approach, including relying upon testimony and determining what items to include in damages is well supported by Washington law. In *Grays Harbor County*, the court noted numerous decisions where prejudgment interest was allowed when the value of a claim was based on opinion evidence of the fair market value.<sup>3</sup> In *McSorley v. Bullock*, the item was the stock of goods of a bankrupt corporation.<sup>4</sup> The market value of the stock of goods was established by opinion evidence, and interest was allowed from the conversion. The measure of damages in *John Smith Co. v. Hardin* was the market value of wheat at the time and place of the taking.<sup>5</sup> In *Watkins v. Siler Logging Co.*, the court determined by opinion evidence the market value of the logs in question.<sup>6</sup> In all of these instances, interest was allowed.<sup>7</sup>

The Halls next argue that the prejudgment interest cases cited by Woods do not include the term "chattel," and prejudgment interest should not be available where the fair market value of chattel is at issue. The Halls cite to zero authority for their novel position. This argument is not only illogical, but it is at odds with Washington case law on conversion.

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<sup>3</sup> 47 Wash.

<sup>4</sup> 62 Wash. 140, 113 P. 279 (1911).

<sup>5</sup> 133 Wash. 194, 233 P. 628 (1925).

<sup>6</sup> 9 Wash. 2d 703, 116 P.2d 315 (1941).

<sup>7</sup> *Grays Harbor County*, 47 Wash. 2d at 890-91.

Washington law defines conversion as “when a person intentionally interferes with chattel belonging to another, either by taking or unlawfully retaining it, thereby depriving the rightful owner of possession.”<sup>8</sup>

Prejudgment interest is allowed in conversion cases to compensate the injured party for loss of the property taken, whether it is money, equipment, or some other form of chattel.<sup>9</sup> The nature of the item taken is irrelevant; the inquiry is whether the damages are liquidated.

Woods is entitled to prejudgment interest on the judgment amount (\$40,123.04) from the conversion (September 9, 2012) through entry of the judgment.

**B. Woods is entitled to his attorneys fees before the trial court and on appeal.**

Woods is entitled to his attorneys’ fees and costs both as a third-party beneficiary under the Lease and under RCW 62A.9A.607(d) because he was a secured creditor that attempted to repossess assets from a third-party.

Woods is entitled to his attorneys’ fees and costs under the Lease as he was a third-party beneficiary of the Lease, and the parties to the

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<sup>8</sup> *Alhadeff v. Meridian on Bainbridge Island, LLC*, 167 Wn.2d 601, 619, 220 P.3d 1214, 1223 (2009).

<sup>9</sup> See *Grays Harbor County v. Bay City Lumber Co.*, 47 Wn.2d 879, 891, 289 P.2d 975 (1955).

lease contemplated that Woods, as a secured party, would be entitled to receive a benefit from the Lease. In response, the Halls argue that Woods is not entitled to his attorneys' fees and costs under the Lease because he was not a party to the Lease. The Halls relied extensively on the Lease for arguing ownership of some of the equipment.

Their Reply spends six pages arguing the applicability of the Lease to Woods' conversion claim. The Halls argue that certain items of equipment could not be repossessed because under the Lease, those items would become fixtures. The trial court rejected this argument, but Woods had to argue the Lease and its applicability. Woods prevailed on his claims, and was a prevailing party regarding the terms and applicability of the Lease.

Further, the parties' Purchase and Sale Agreement incorporated the Lease being assumed by the Halls.<sup>10</sup> Woods could repossess the Lease upon the Halls' default if he chose that remedy.<sup>11</sup>

Woods may recover attorneys' fees under the Lease where the parties to the Lease intended to benefit third-parties. The creation of third-party beneficiary status depends on whether the parties to a contract intend to create a benefit for a non-party.<sup>12</sup> It is unnecessary that the benefitted

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<sup>10</sup> Ex. 1, ¶ 2.5.

<sup>11</sup> *Id.* at ¶ 2.6.

<sup>12</sup> *Lonsdale v. Chesterfield*, 99 Wn.2d 353, 360, 662 P.2d 385 (1983).

party be identified by the parties to the contract.<sup>13</sup> Here, the Lease addresses when the equipment would become a fixture, and when the equipment could be removed by the tenant or a secured party. The parties even included an attorney fee provision that applied if the Landlord was subject to third-party litigation.<sup>14</sup>

The Lease and its terms show the parties intended to benefit a third-party, the tenant's creditor, because it stated which items could be removed, the Lease has assignment and transfer provisions to third-parties, a provision dealing with successors-in-interest, the Landlord's right to cure the Tenant's default to its lender or other parties, and the Lease had an attorney fee provision for when a third-party lawsuit against the Landlord was initiated.<sup>15</sup> Woods is entitled to his attorneys' fees and costs under the Lease.

Woods may also recover attorneys' fees and costs under RCW 62A.9A.607(d). The Halls mistakenly argue this provision only applies to non-judicial foreclosures, and Woods sued for judicial foreclosure under RCW 62A.9A.609, and .609 does not contain an attorneys' fee provision. The Halls misconstrue the statutes.

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<sup>13</sup> *Boise Cascade Corp. v. Pence*, 64 Wn.2d 798, 802-803, 394 P.2d 359 (1964).

<sup>14</sup> Ex. 53, Art. 25.1.

<sup>15</sup> Ex. 53.

RCW 62A.9A.609 addresses the rights of secured parties to collect attorneys' fees when the secured party is collecting assets in the hands of a third party. Official comment 10 states "[t]he phrase 'reasonable attorney's fees and legal expenses,' which appears in subsection (d), includes only those fees and expenses incurred in proceeding against account debtors or other third parties." It has nothing to do with a nonjudicial or judicial foreclosure.

Here, the Halls signed the Purchase and Sale Agreement with Woods.<sup>16</sup> Harwoods owned the business assets as the Halls only purchased the membership interest in the LLC.<sup>17</sup> Woods attempted to repossess the business assets from a third party (Harwoods), because of a debt owed by the Halls. RCW 62A.9A.607(d) applies and Woods is entitled to his attorneys' fees and costs.

### **III. CONCLUSION**

Woods is entitled to prejudgment interest on the equipment because the amount owed was liquidated and based upon evidence submitted at trial. The trial court did not have to exercise any discretion in determining the fair market value. Any discretion exercised by the trial court involved *what* items to include in the judgment. This does not preclude an award of prejudgment interest. Woods is also entitled to his

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<sup>16</sup> Ex. 1.

<sup>17</sup> Ex. 1, ¶ 2.2.

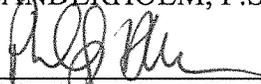
attorneys' fees and costs at trial and on appeal because he was a third-party beneficiary under the Lease and he was the prevailing party. Alternatively, Woods is entitled to his attorneys' fees and costs under RCW 62A.9A.607(d) as he attempted to collect assets in the possession of a third party after the Halls' default.

Woods request this Court affirm the judgment in his favor, but reverse and remand to the trial with instructions to modify the Judgment to include prejudgment interest and attorneys' fees and costs.

DATED this 4th day of November, 2016.

Respectfully Submitted,

LANDERHOLM, P.S.



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## LANDERHOLM PS

**November 04, 2016 - 12:05 PM**

### Transmittal Letter

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Case Name: Woods vs. Hall, et al.

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### Comments:

Respondent and Cross-Appellant's Reply Brief

Sender Name: Bradley W Andersen - Email: [heather.dumont@landerholm.com](mailto:heather.dumont@landerholm.com)