

Affirmed and Opinion filed November 15, 2001.



In The

Fourteenth Court of Appeals

NO. 14-00-00679-CV

ARCADIA FINANCIAL LTD., Appellant

V.

**ELVA ESPARZA AND LUIS GERARDO PEREIRA, INDIVIDUALLY AND
D/B/A BEAUTIFUL BODY WORKS, Appellees**

**On Appeal from the County Civil Court at Law No. 4
Harris County, Texas
Trial Court Cause No. 695,195**

OPINION

In this dispute between two automobile lienholders, Arcadia Financial Limited claims that the second lien holder, Luis Gerardo Pereira, individually and doing business as Beautiful Body Works, committed conversion when he sold the automobile. The trial court granted summary judgment in the repair shop's favor on the conversion claim and, after a bench trial on whether there was a surplus from the sale, signed a take nothing judgment in favor of the repair shop. Arcadia appeals contending the trial court erred (1) in granting partial summary judgment that Beautiful Body Works did not convert Arcadia's security

interest in the car; (2) in admitting testimony about the sales price received by Beautiful Body Works as evidence of the car's value; and (3) in admitting opinion testimony from the purchaser as evidence of the car's value. We affirm.

BACKGROUND

Arcadia is the assignee of a retail installment contract for the purchase of a car by Elva Esparza. In 1997, Esparza took the car to Beautiful Body Works for repairs. Beautiful Body Works made substantial repairs to the car and released it to Esparza after she made a partial payment and tendered post-dated checks for the remainder of the bill. Six weeks later, Beautiful Body Works tried to deposit her checks and learned she had placed stop payment orders on them. On November 27, 1997, it repossessed the car. On December 4, 1997, Beautiful Body Works sent notice to Arcadia of the unpaid repair and repossession charges totaling \$4,325.11. Arcadia received the notice on December 5, 1997.

On January 8, 1998, at Arcadia's request, Beautiful Body Works agreed to delay selling the car until after January 12, 1998 in exchange for a certified check from Arcadia payable by a Houston bank. The check Arcadia sent was not certified, not drawn on a Houston bank, nor drawn by Arcadia. Instead, it was a personal check signed by Texas Hobby Auto Auction, drawn on a bank from another state. Beautiful Body Works sold the car for \$3,100 on January 13, 1998.

Arcadia filed suit against Esparza and Beautiful Body Works. It sought a declaratory judgment that its security interest was superior to Beautiful Body Works' mechanics lien, money damages for conversion of its security interest, and damages from Esparza for breach of contract. The trial court granted Arcadia summary judgment against *Esparza*; however, it granted summary judgment *against Arcadia* on its conversion claim. At the ensuing bench trial on remaining issues, the trial court found that Arcadia's security interest had priority over Beautiful Body Works' mechanics lien. Additionally, the court found there was no surplus from sale of the car.

CONVERSION

In its first issue, Arcadia contends the trial court erred in granting Beautiful Body Works summary judgment on Arcadia's conversion claim. Beautiful Body Works responds with an assertion that no conversion can occur with consensual possession and the parties had an agreement which made its possession consensual.

A defendant moving for summary judgment has the burden of establishing that no genuine issue of material fact exists as to one or more essential elements of the plaintiff's cause of action. *Nixon v. Mr. Property Management Co.*, 690 S.W.2d 546, 548-49 (Tex. 1985). If the defendant meets this burden, plaintiff must raise a genuine issue of material fact on the targeted element or elements of his cause of action. *Gonzalez v. City of Harlingen*, 814 S.W.2d 109, 112 (Tex. App.—Corpus Christi 1991, writ denied). In reviewing a summary judgment, an appellate court accepts as true all evidence supporting the non-movant. *Nixon*, 690 S.W.2d at 549. All inferences are indulged in favor of the non-movant, and all doubts are resolved in its favor. *Id.* When the trial court does not state the grounds for granting the motion, and several grounds are provided, the reviewing court must determine if any of the grounds would support the judgment. *Rogers v. Ricane Enterprises, Inc.*, 772 S.W.2d 76, 79 (Tex. 1989). Finally, because the propriety of summary judgment is a question of law, we review the trial court's decision de novo. *Natividad v. Alexis, Inc.*, 875 S.W.2d 695, 699 (Tex. 1994).

Beautiful Body Works claims its agreement with Arcadia precludes Arcadia's conversion claim. In its summary judgment evidence, Beautiful Body Works established that at Arcadia's request, it agreed to delay sale of the car until January 12 so Arcadia could tender a certified check drawn on a local bank for the outstanding repair bill. When Arcadia failed to comply with this agreement, Beautiful Body Works sold the car. Conversion is the wrongful exercise of dominion and control over another's property in denial of or inconsistent with his or her rights. *Waisath v. Lack's Stores, Inc.*, 474 S.W.2d 444, 446 (Tex. 1971). The elements of conversion are as follows:

(1) the plaintiff owned, had legal possession of, or was entitled to possession of the property; (2) the defendant assumed and exercised dominion and control over the property in an unlawful and unauthorized manner, to the exclusion of and inconsistent with the plaintiff's rights; and (3) the defendant refused the plaintiff's demand for the return of the property.

Huffmeyer v. Mann, 49 S.W.3d 554, 558 (Tex. App.—Corpus Christi 2001, no pet.). Because of the agreement with Arcadia, Beautiful Body Works contends its possession was *not* unauthorized. An agreement allowing a party to retain possession negates conversion. *See Waisath*, 474 S.W.2d at 447 (in lawsuit for conversion of furniture, owner was entitled to possession of furniture, “there being no agreement to the contrary”). Accordingly, Beautiful Body Works established that no material fact issue existed about whether its possession of the car was unauthorized.

Because Beautiful Body Works met its burden, Arcadia was then required to raise a genuine issue of material fact on the targeted element. *Gonzalez*, 814 S.W.2d at 112. In its summary judgment evidence, Arcadia confirmed the existence of the agreement and failed to raise a fact issue regarding whether the agreement negated conversion. Accordingly, the trial court did not err in granting summary judgment to Beautiful Body Works on the conversion claim. We overrule issue one.

VALUATION

In its second and third issues, Arcadia complains that the trial court erroneously admitted testimony about the value of the car when it was sold. Arcadia brings these issues to support its argument about the proper measure of damages for conversion. Because of our determination that the trial court properly granted summary judgment on Arcadia's conversion claim, these issues are moot.

Accordingly, we affirm the judgment of the trial court.

/s/ Charles W. Seymore
Justice

Judgment rendered and Opinion filed November 15, 2001.

Panel consists of Chief Justice Brister and Justices Fowler and Seymore.

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