

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

GREGORY D. WIER,

Plaintiff,

vs.

Case No. 2013-2167-CK

FITNESS 24 MMA, INC., BODY LAB, INC.,
and DANIELLE MCLAIN,

Defendants.

OPINION AND ORDER

Defendants have filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and (10). Plaintiff has filed a response and requests that Defendants' motion be denied and that the Court grant summary disposition in his favor.

Facts and Procedural History

The matter involves a dispute over the ownership of certain fitness equipment (the "Equipment"). On May 31, 2013, Plaintiff filed his complaint in this matter asserting claims for breach of contract (Count I) and conversion (Count II). In his complaint, Plaintiff alleges that he purchased the Equipment and that the Equipment was used in connection with the operation of Fitness 24, Inc. After Fitness 24, Inc. ceased operations the Equipment was allegedly given to Defendants. Defendants have since ceased operations. In this matter Plaintiff seeks to recover possession of the Equipment.

On September 19, 2014, Defendants filed their instant motion for summary disposition. On October 8, 2014, Plaintiff filed his response and request for summary disposition pursuant to

MCR 2.116(I)(2). The Court has since held a hearing in connection with the motion and taken the matter under advisement.

Standard of Review

Summary disposition may be granted pursuant to MCR 2.116(C)(8) on the ground that the opposing party has failed to state a claim upon which relief may be granted. *Radtke v Everett*, 442 Mich 368, 373-374; 501 NW2d 155 (1993). A motion under MCR 2.116(C)(10), on the other hand, tests the factual support of a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing such a motion, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* The Court must only consider the substantively admissible evidence actually proffered in opposition to the motion, and may not rely on the mere possibility that the claim might be supported by evidence produced at trial. *Id.*, at 121.

Arguments and Analysis

(1) Breach of Contract

In this case, it appears undisputed that no written contract exists between the parties. While Plaintiff contends that an oral contract was formed, he has failed to provide any evidence as to the terms of the contract. Indeed, at oral argument Plaintiff's counsel stated "this case is not about a contract." Consequently, the Court is convinced that Plaintiff has failed to properly support his breach of contract claim. Accordingly, Defendants' motion for summary disposition of Plaintiff's breach of contract claim must be granted.

(2) Conversion

The common law tort of conversion is defined as “any distinct act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with the rights therein.” *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 111; 593 NW2d 595 (1999), quoting *Foremost Ins Co v Allstate Ins Co*, 439 Mich 378, 391; 486 NW2d 600 (1992). “The gist of conversion is the interference with control of the property.” *Sarver v Detroit Edison Co*, 225 Mich App 580, 585; 571 NW2d 759 (1997) (internal citation omitted). In addition, statutory conversion, pursuant to the current version of MCL 600.2919a(1)(a), provides for damages three times the amount of actual damages to a person damaged as a result of another person’s stealing or embezzling property or converting property to the other person’s own use.

In this case, Plaintiff has failed to provide the Court with any evidence that he owns the Equipment. Plaintiff’s Exhibit A is a purchase agreement pursuant to which Plaintiff’s son purchased the Equipment from a third party in 2009. Plaintiff’s Exhibit B is a financing statement covering the Equipment. However, Plaintiff has failed to provide the Court with any authority which would allow him to hold a security interest in the Equipment, much less the power to perfect such an interest by filing a financing statement. Finally, Plaintiff’s Exhibits C and D involve Defendant Danielle McClain’s statements to the Utica police department in which she stated that the Equipment was not hers and that it was owned by Plaintiff. However, Defendant’s subjective belief as to who was the owner of the Equipment does not provide any clarity to the issue of who owned the Equipment. While Plaintiff may have told Defendant that he owned the Equipment, Plaintiff has failed to provide any evidence whatsoever that his statement, and Defendant’s belief, was true. For these reasons, Plaintiff has failed to properly support his position that he owns the Equipment. As a result, the Court must grant Defendants’ motion for summary disposition of Plaintiff’s conversion claim.

Conclusion

For the reasons discussed above, Defendants' motion for summary disposition is GRANTED. Plaintiff's request for summary disposition pursuant to MCR 2116(I)(2) is DENIED. In compliance with MCR 2.602(A)(3), the Court states this *Opinion and Order* resolves the last claim and CLOSES the case.

IT IS SO ORDERED.

/s/ John C. Foster
JOHN C. FOSTER, Circuit Judge

Dated: January 13, 2015

JCF/sr

Cc: *via e-mail only*
Jonathan F. Rosenthal, Attorney at Law, JONROSENTHALLAW@GMAIL.COM
Daniel P. Marsh, Attorney at Law, dan@danielpmarsh.com