

M.C. MULTI-FAMILY DEVELOPMENT, L.L.C., A NEVADA LIMITED LIABILITY COMPANY; WALTER HOMES, LTD., A NEVADA LIMITED LIABILITY COMPANY; AND JOHN H. MIDBY, INDIVIDUALLY AND AS MANAGING MEMBER OF M.C. MULTI-FAMILY DEVELOPMENT, L.L.C., AND WALTER HOMES, LTD., Appellants/Cross-Respondents,

vs.

CRESTDALE ASSOCIATES, LTD., A NEVADA LIMITED LIABILITY COMPANY; DAVID ALLSOP, INDIVIDUALLY AND AS MANAGING MEMBER OF CRESTDALE ASSOCIATES, LTD.; AND KAREN ALLSOP, INDIVIDUALLY AND AS MANAGING MEMBER OF CRESTDALE ASSOCIATES, LTD., Respondents/Cross-Appellants.

No. 48347

FILED

OCT 02 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

Appeal and cross-appeal from a district court order entered on a jury verdict in a contract and tort action. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

Affirmed in part, reversed in part, and remanded with instructions.

CT ~~Patricia Glaser, Los Angeles~~ Christensen, Glaser, Fink, Jacobs, Weil & Shapiro, LLC, and Corey M. Eschweiler and Richard C. Gordon, Las Vegas, *L Patricia Glaser, Los Angeles, California, and* for Appellants/Cross-Respondents.

Santoro, Driggs, Walch, Kearney, Holley & Thompson and Anthony Zmaila and Charles L. Titus, Las Vegas, for Respondents/Cross-Appellants.

BEFORE MAUPIN, CHERRY and SAITTA, JJ.

OPINION

By the Court, MAUPIN, J.:

In this case, we primarily consider whether intangible property, in particular a contractor's license, can be the subject of a claim in tort for conversion. In doing so, we adopt the California definition of "property rights" and the Restatement (Second) of Torts rule defining conversion of "intangible personal property," and expressly reject the notion that personal property must be tangible in order to give rise to a conversion claim. We therefore conclude in this case that the mere fact that one's use of a contractor's license does not physically prevent others from using the same license does not preclude a plaintiff in a conversion action concerning alleged unauthorized use of the license from presenting the claim for determination by a trial jury. Instead, we hold that the exercise of a right that belongs to another may constitute an act inconsistent with the titleholder's rights and may therefore satisfy the "wrongful dominion" element of conversion. Accordingly, we conclude that the use of a corporate contractor's license by an individual for independent projects, without the permission of the entity named in the license, may constitute a conversion when the license is the exclusive property of the individual or entity to which it is issued.

FACTS

In 1995, Lance Walter, Allen Stern, Toni Stern, Paul Kenner, and David Allsop formed Walter Homes, Ltd., a limited liability company, to engage in the business of residential real estate development. Allsop owned 12.5 percent of the company, and the remaining owners collectively

held 87.5 percent of the issued corporate shares. During the year 1998, Allsop engaged in two separate interactions with John H. Midby and M.C. Multi-Family Development, L.L.C., Midby's real property development company. One interaction involved Multi-Family Development's acquisition of all Walter Homes' corporate stock except for the 12.5 percent held by Allsop. A second interaction involved a consulting arrangement under which Allsop agreed to assist in the development of a Multi-Family Development project known as Sienna Villas located in the Las Vegas area. As described below, these interactions became the subject of the dispute litigated in this matter.

The licensing dispute

In November 1998, Allsop approached Midby, the managing partner of Multi-Family Development, about buying the 87.5 percent interests in Walter Homes held by Walter, Kenner, and the Sterns. A year later, in November 1999, the parties entered into an express agreement whereby Multi-Family Development acquired the 87.5 percent interest in Walter Homes as well as management rights in the company. Allsop retained his 12.5 percent ownership interest in Walter Homes.

In October 1999, Allsop formed Crestdale Associates, Ltd., for the purpose of developing residential real estate. Although Crestdale Associates became a competitor with Walter Homes, such business activity was not prohibited under the basic Walter Homes Operating Agreement. However, rather than obtain a separate contractor's license for Crestdale Associates, Allsop instead used the Walter Homes license to develop Crestdale Associates properties.

In September 2000, Allsop approached Midby with a proposal to purchase, for himself, Multi-Family Development's interest in Walter Homes. Midby expressed interest and Allsop's attorney, Douglas Gerrard,

drew up a proposed written purchase agreement. The draft included a provision that released Allsop from liability for his prior use of the Walter Homes contractor's license, which according to Midby, revealed for the first time Allsop's use of the license in connection with other ventures. Having learned that Allsop had used the Walter Homes license for independent projects, Midby refused to continue negotiations.

The rights of the members of Walter Homes were set forth in paragraph 6.3 of the Walter Homes Operating Agreement:

Nonrestriction of Business Pursuits of Members and Administrative Committee Members. This Operating Agreement shall not preclude or limit in any respect the right of any Member or Administrative Committee Member to engage in or invest in any business activity of any nature or description, including those which may be the same or similar to the Company's business and in direct competition therewith. Any such activity may be engaged in independently or with other Members or Administrative Committee Members. No Member shall have the right, by virtue of the Articles of Organization, this Operating Agreement or the relationship created hereby, to any interest in such other ventures or activities, or to the income or proceeds derived therefrom. The pursuit of such ventures, even if competitive with the business of the Company, shall not be deemed wrongful or improper and any Member or Administrative Committee Member shall have the right to participate in or to recommend to others any investment opportunity. (Emphasis added.)

Article 20 of the Agreement further stated that

The Articles of Organization and this Operating Agreement contain the entire understanding between and among the Members and supersede any prior understandings and agreements between and among them respecting

the subjects of the Articles of Organization and this Operating Agreement. . . .

Notwithstanding Allsop's right to develop other projects under paragraph 6.3 of the Operating Agreement, Midby, Multi-Family Development, and Walter Homes filed a complaint in the district court against Allsop and Crestdale Associates seeking damages and various forms of relief, based on their claim that, among other things, Allsop and Crestdale Associates converted the Walter Homes contractor's license for their own personal benefits.

The consulting dispute

In early 1998, before Multi-Family Development purchased the bulk of the Walter Homes' corporate shares, Midby and Allsop had discussed the prospect of Allsop consulting with Midby on projects other than those connected with Walter Homes. Although they developed a draft consulting agreement, neither party could agree on terms. Nonetheless, they eventually came to an oral understanding that Midby would pay Allsop \$10,000 per month plus a percentage of the profits from the Sienna Villas project for his consulting services. Allsop began consulting for Midby in June 1998, but Midby paid Allsop only for the months of January, February, and March 2000. In July 2000, Allsop terminated the consulting arrangement.

PROCEDURAL HISTORY

Appellants/cross-respondents M.C. Multi-Family Development, LLC, Walter Homes, Ltd., and John H. Midby (collectively "Multi-Family Development") filed a complaint against respondents/cross-appellants Crestdale Associates, David Allsop, and Karen Allsop (collectively "Crestdale Associates"). Multi-Family Development later amended the complaint to assert claims for (1) fraud in the inducement to purchase Walter Homes stock, (2) breach of the covenant of good faith and

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