

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

OUTBREAK CUSTOMZ, LLC;
and TODD FUHR,

Plaintiffs,

Case No. 15-04840-CKB

vs.

HON. CHRISTOPHER P. YATES

ALEXANDER JAMES WRAY,

Defendant.

_____ /

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND VERDICT

On May 5, 2016, the Court conducted a one-day bench trial concerning the plaintiffs' explosive allegations of conversion, business defamation, and breach of restrictive covenants.¹ Despite the lively exchanges that punctuated the trial, the Court has found very little in the trial record that advances any of those claims. Consequently, the Court shall render a verdict largely in favor of Defendant Alexander James "A.J." Wray, but the Court shall direct that Wray either tender a contested motorcycle to Plaintiff Todd Fuhr or pay \$4,443.75 to the plaintiffs for two of the main components of that motorcycle.

I. Findings of Fact

Pursuant to MCR 2.517(A)(1), in an action tried without a jury, "the court shall find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment." The Court must render "[b]rief, definite, and pertinent findings and conclusions on the contested matters" that may take the form of "a written opinion." See MCR 2.517(A)(2) & (3). Accordingly, the Court shall begin with findings of fact, followed by conclusions of law, and ultimately the verdict.

¹ The defendant has dropped hints and references about his grievances against the plaintiffs, but he never filed a counterclaim, so the Court shall restrict its analysis to the plaintiffs' claims.

In October of 2014, Plaintiff Todd Fuhr and his wife began setting up a motorcycle business in Rockford called Outbreak Customz, LLC (“Outbreak Customz”). See Trial Tr at 18-19. In the course of setting up the business, Fuhr made contact with Defendant Wray, who had worked on one of Fuhr’s motorcycles in the summer of 2014. Id. at 19-20. On November 24, 2014, Wray and Fuhr signed an independent-contractor agreement providing that Wray would work for Outbreak Customz as a mechanic. See Trial Exhibit 13. With Wray in the fold, Fuhr opened Outbreak Customz to the public in early January of 2015. See Trial Tr at 19-20, 71-72.

At first, Plaintiff Outbreak Customz conducted well-attended free seminars, see Trial Tr at 20, and began building custom motorcycles. Id. at 21. As business increased, Plaintiff Fuhr added a second motorcycle technician, Mickey Mann, id. at 21-22, and assigned Defendant Wray to serve as the supervising technician for the shop. Id. at 22. The business of Outbreak Customz continued on an upward trajectory through the spring of 2015 as the enterprise added a third technician to keep up with the demands of customers.² Id. at 22-23. But there was trouble brewing in the company, at least according to Fuhr’s wife, Tracy, see id. at 23, who served as the office manager and reported business losses that seemed inexplicable. Id. at 23-24. An informal audit revealed missing supplies and materials, id. at 24, which the Fuhrs blamed on Wray. Id. at 24-25.

On May 27, 2015, Plaintiff Fuhr terminated Defendant Wray. See Trial Exhibit 9; Trial Tr at 26. Almost immediately, the business of Plaintiff Outbreak Customz dwindled to nothing. See Trial Exhibit 14. Remarkably, Outbreak Customz generated \$73,932 in revenue through May 2015, but then made no revenue whatsoever after Wray’s termination.³ See Trial Exhibit 14. As Fuhr put

² Defendant Wray recruited both of the other motorcycle technicians. See Trial Tr at 72.

³ Plaintiff Fuhr officially closed Outbreak Customz in the fall of 2015. See Trial Tr at 57.

it, as soon as he terminated Wray: “It was like you turned the water faucet off, done.” See Trial Tr at 57. On the date of Wray’s termination, Fuhr asked the Walker Police Department for assistance in retrieving some contested items of property. See Trial Exhibit 10. Wray willingly “loaded a drill press, compressor, saw and another piece of machinery onto [Fuhr]’s trailer[,]” id., and Fuhr “refused to give [Wray] his final paycheck because of the motorcycle that [Wray] refused to turn over.” Id. One day later, on May 28, 2015, Fuhr and Outbreak Customz filed a three-count complaint against Wray alleging conversion, business defamation in violation of MCL 600.2911, and breach of several restrictive covenants in Wray’s independent-contractor agreement. The Court shall address each of those three claims in its conclusions of law.

II. Conclusions of Law

The plaintiffs have accused Defendant Wray of converting a custom-built motorcycle as well as parts and tools, undertaking a campaign aimed at ruining Plaintiff Outbreak Customz’s business, and urging Outbreak Customz’s customers to transfer their business to a competitor named Platinum Powersports, where Mickey Mann wound up working after he left Outbreak Customz. Each of these three claims advanced by the plaintiffs requires careful analysis.

A. Conversion.

In Count One of the complaint, the plaintiffs allege that Defendant Wray converted a custom-built motorcycle as well as various motorcycle parts. During her opening statement, counsel for the plaintiffs made clear that the claim accuses Wray of statutory conversion under MCL 600.2919a, as opposed to common-law conversion. Under Michigan law, a claim for statutory conversion can rest upon “stealing or embezzling property or converting property to the other person’s own use.” See

MCL 600.2919a(1)(a). Conversion involves “any distinct act of dominion wrongfully exerted over another’s personal property in denial of or inconsistent with his rights therein.” See Aroma Wines & Equipment, Inc v Columbian Distribution Services, Inc, 497 Mich 337, 351-352 (2015). Statutory conversion is “a subset of common-law conversion[] in which the common-law conversion was to the other person’s ‘own use.’” Id. at 355. Although a motorcycle itself and its constituent parts can be converted, the Court finds no evidence in the record to support a conversion claim.

With respect to the custom-built motorcycle itself, the Court concludes that Defendant Wray assembled the bike with his own labor – sometimes during working hours and sometimes after hours – and a combination of parts that Wray and Defendant Outbreak Customz purchased,⁴ see Trial Tr at 38, so neither the plaintiffs nor Wray had an exclusive right to ownership of the bike. To be sure, Wray repainted the motorcycle to remove the Outbreak Customz logo, compare Trial Exhibit 4 with Trial Exhibit 6, and Outbreak Customz apparently paid for the transmission and the engine, see Trial Tr at 56; Trial Exhibit 11, so Outbreak Customz plainly made a substantial investment in that bike. But the Court cannot conclude, by a preponderance of the evidence, that the motorcycle in its entirety constitutes the “personal property” of Outbreak Customz. Therefore, although Wray must reimburse Outbreak Customz for its investment in the bike if Wray wants to keep the motorcycle for himself, the Court rejects the plaintiffs’ contention that Wray improperly converted the bike to his own use.

With regard to the motorcycle parts that the plaintiffs claim Defendant Wray converted, the record is clear as mud. The Court admitted Trial Exhibit 2, which the plaintiffs describe as receipts for items “for the shop that were not located in the shop after [Wray’s] termination[.]” see Trial Tr

⁴ Defendant Outbreak Customz paid Plaintiff Wray \$800 per week for his services, see Trial Tr at 109-110, but Wray was an independent contractor, rather than a traditional employee, so Wray plainly had time of his own to devote to building the motorcycle.

at 72-73, but the record contains no evidence that Wray actually took those items from the inventory of Outbreak Customz. Plaintiff Fuhr testified about vague, inadmissible hearsay statements that he heard to the effect that Wray was selling motorcycle parts to his friends for cash, see Trial Tr at 103, but none of those statements can substantiate the plaintiffs' conversion claim concerning motorcycle parts from Outbreak Customz's inventory. Although the Court cannot begrudge Fuhr his suspicion, a verdict cannot rest upon suspicion alone. Consequently, the Court must render a verdict in favor of Wray and against the plaintiffs on the statutory conversion claim in Count One.

B. Business Defamation.

The plaintiffs' business-defamation claim in Count Two is much more flimsy than the claim for statutory conversion in Count One. Our Legislature has created a cause of action for defamation in the form of libel or slander, see MCL 600.2911, and our Court of Appeals recently reaffirmed the elements of defamation in Thomas M Cooley Law School v Doe 1, 300 Mich App 245, 262 (2013). To prevail on such a theory, the plaintiffs must establish that Defendant Wray made some false and defamatory statement concerning Plaintiffs Fuhr and Outbreak Customz. Id. The Court has perused the trial transcript for admissible evidence of defamation, but the Court has found nothing to support that claim. Thus, although a "corporation may successfully assert a cause of action for defamation if it operates for profit 'and the matter tends to prejudice it in the conduct of its business or to deter others from dealing with it,'" Northland Wheels Roller Skating Center, Inc v Detroit Free Press, Inc, 213 Mich App 317, 328 (1995), the plaintiffs' failure to adduce evidence of libel or slander by Wray against either plaintiff forecloses their claim. Indeed, during their closing argument, the plaintiffs wisely chose to waive their defamation claim. See Trial Tr at 146.

C. Breach of Restrictive Covenants.

Count Three focuses upon the restrictive covenants in the independent-contractor agreement that Defendant Wray signed. See Trial Exhibit 13. Specifically, the plaintiffs insist that Wray acted in contravention of sections 12 and 13 of that agreement by soliciting customers and mechanics alike to leave Plaintiff Outbreak Customz. To be sure, section 12 flatly prohibited Wray from attempting to solicit or take away any customers of Outbreak Customz for a full year after his termination, see Trial Exhibit 13 (Independent Contractor Agreement, § 12), and section 13 barred Wray from trying to recruit any employees of Outbreak Customz for one year after his departure. See id. (Independent Contractor Agreement, § 13). Wray does not dispute that both of those restrictions must be regarded as reasonable, so both restrictions are enforceable under Michigan law. See MCL 445.774a(1). But Wray argues that he did not violate either of those two restrictions.

The plaintiffs' case against Defendant Wray on Count Three is largely circumstantial. That is, Plaintiff Outbreak Customz terminated Wray on May 27, 2015, see Trial Exhibit 9, and shortly thereafter, both of the other mechanics and nearly all of the customers left Outbreak Customz. Also, telephone records establish that Wray spoke regularly with mechanic Mickey Mann after Wray was terminated, see Trial Exhibit 21, and Mann left Outbreak Customz in June of 2015 to take a position with Outbreak Customz's competitor, Platinum Powersports. See Trial Tr at 58-59. But Wray and Mann had long been close friends, Wray often spoke with Mann about matters having nothing to do with Outbreak Customz, see id. at 132-133, and Wray had no connection to Platinum Powersports.⁵

⁵ The only evidence in the record linking Defendant Wray to Platinum Powersports came in the form of Plaintiff Fuhr's testimony that Wray applied for a position at Platinum Powersports, but Fuhr blocked that move by sending the Court's injunctive order to Platinum Powersports. See Trial Tr at 88. Both sides agreed that Wray never had any affiliation with Platinum Powersports. In fact, Fuhr even conceded that Wray did not force anyone to go to that business. See id.

Similarly, although telephone records reveal that Wray talked with several customers of Outbreak Customz after his termination, see Trial Exhibit 22, those customers were also old friends of Wray. See Trial Tr at 134-137.

To render a verdict in favor of the plaintiffs on Count Three, the Court would not only have to reject the testimony of Defendant Wray about the nature of the telephone calls, but also presume that Wray set out to destroy Plaintiff Outbreak Customz purely out of spite, because he did not obtain any financial benefit from the demise of Outbreak Customz. The more plausible explanation of the situation is that Wray's departure from Outbreak Customz cost the business its most highly regarded motorcycle mechanic with deep roots in the industry, so the mechanics and customers who flocked to Outbreak Customz when the company hired Wray departed just as quickly when Wray left. It may well be that Wray was more trouble to Outbreak Customz than he was worth, but the decision to fire Wray came at the high price of Outbreak Customz's business. That, however, is not a cost that the Court can legally impose upon Wray. Instead, the Court must render a verdict in favor of Wray and against the plaintiffs on Count Three.

D. The Contested Motorcycle.

Discussion of the custom-built motorcycle dominated the conversation throughout the trial. Although the Court has decided that the plaintiffs cannot prevail on their statutory conversion claim regarding that bike, the Court has not yet resolved the dispute about ownership of that motorcycle. To be sure, neither side has presented a formal claim that enables the Court to resolve ownership, but the parties plainly and consistently have asked the Court to settle that dispute, so the Court shall deal with that matter on an unjust-enrichment theory. "Our Supreme Court 'has long recognized the

equitable right of restitution when a person has been unjustly enriched at the expense of another.”” Morris Pumps v Centerline Piping, Inc, 273 Mich App 187, 193 (2006). A right to relief for unjust enrichment arises when there exists “(1) the receipt of a benefit by the defendant from the plaintiff and (2) an inequity resulting to the plaintiff because of the retention of the benefit by the defendant.” Id. at 195. Here, the Court finds that the plaintiffs paid for at least two of the major components of the motorcycle at issue, *i.e.*, the transmission and the engine, and the Court rejects Defendant Wray’s claim that the plaintiffs furnished those components to him as a gift, see Trial Tr at 119-120, so the Court concludes that actionable unjust enrichment will result if Wray is permitted to keep the bike without compensating the plaintiffs for the components they bought.

To determine the damages that Defendant Wray must pay to account for unjust enrichment, the Court shall focus upon Trial Exhibits 3 and 8, which consist of receipts for motorcycle parts that the plaintiffs purchased and the build sheet for the motorcycle at issue. See Trial Tr at 32-34, 45-47. First, the Court finds that the plaintiffs paid \$3,899 for the engine, see id. at 34-35; Trial Exhibit 3 (Midwest Motorcycle Supply invoice of 12/04/14), and second, the Court finds that the plaintiffs put out \$544.75 for the six-speed transmission. See Trial Exhibit 3 (Midwest Motorcycle Supply invoice of 02/02/15). Thus, Wray must pay the aggregate amount of those two expenditures, which add up to \$4,443.75,⁶ in order to obtain full ownership of the motorcycle. Alternatively, Wray can simply give the motorcycle to the plaintiffs and avoid having to pay for the unjust enrichment. Therefore, the Court shall structure the verdict to afford Wray the option of returning the motorcycle within 30 days before a judgment for \$4,443.75 shall enter.

⁶The build sheet identifies slightly higher prices for the engine (\$4,000) and the transmission (\$579.95), see Trial Exhibit 8, but the Court concludes that the receipts constitute the best evidence of the actual costs incurred by the plaintiffs, so the Court shall use the prices on the receipts.

III. Verdict

For the reasons stated in the Court's findings of fact and conclusions of law, the Court hereby renders its verdict in favor of Defendant Wray and against the plaintiffs on each of the three counts in the plaintiffs' complaint. Beyond that, the Court finds that an unjust enrichment will occur if, but only if, Wray keeps the custom motorcycle at issue instead of giving the bike to the plaintiffs. Thus, IT IS ORDERED that if Wray does not return the custom motorcycle to the plaintiffs within 30 days of entry of this verdict, the plaintiffs may submit a proposed judgment in the amount of \$4,443.75 against Wray. That proposed judgment should be presented under the so-called 7-day rule, see MCR 2.602(B)(3), and it may include a bill of costs and prejudgment interest.

IT IS SO ORDERED.

Dated: August 2, 2016



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge