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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

SNIZHANA WILLIS,

Plaintiff and Appellant,

v.

LONDON COIN GALLERIES, INC.,

Defendant and Respondent.

G045707

(Super. Ct. No. 30-2009-00320523)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Derek W. Hunt, Judge. Affirmed.

Raymond N. Haynes, Jr., for Plaintiff and Appellant.

Hart, King & Coldren, Robert S. Coldren, C. William Dahlin, and Rhonda H. Mehlman, for Defendant and Respondent.

Snizhana Willis sued London Coin Galleries, Inc. (LCG) for breach of contract and conversion – claims stemming from a series of six separate transactions gone awry. The transactions with LCG were entered into by Willis’s husband, but Willis claimed, and the trial court found, he was acting as Willis’s agent and thus she was the proper plaintiff. In each transaction, Willis gave LCG valuable gold or silver coins, and received a sum of money in return. Each of the transactions was documented as a “pawn” transaction, and acknowledged as such by Willis.¹

However, after Willis proved unable to repay the amounts she had received from LCG in a timely manner, she took the position the actual terms of the parties’ agreements were entirely different than those reflected in the written pawn agreements. She ultimately alleged LCG had both breached the terms of those alternative contracts, and committed conversion, when it elected to retain the coins without paying her the additional funds to which she claimed entitlement.

At trial, Willis amended her complaint to allege that if the agreements were viewed as pawn transactions, then LCG had violated the law applicable to such transactions by failing to give her proper notice of the expiration of the loan terms and of her right to redeem the coins, and that LCG was consequently liable for conversion of the coins on that alternative basis. The court nonetheless entered judgment for LCG.

On appeal, Willis challenges only the court’s failure to find in her favor on her alternative, improper notice theory of conversion. She argues LCG was liable for conversion because it had no right to “exercise[] dominion and control” over her coins until it had complied strictly with the notice requirement set forth in Financial Code section 21201. We find the contention unpersuasive and affirm the judgment.

¹ A pawn transaction is one in which a party “receiv[es] goods, including motor vehicles, in pledge as security for a loan.” (Fin. Code, § 21000.)

As a pawnbroker, LCG had every right to exercise dominion and control over the coins, which Willis had voluntarily allowed it to possess as security for the loans it made to her. Until such time as Willis tendered full repayment of her indebtedness on each loan advanced to her under the terms of LCG's pawn agreements, she had no legal right to claim, possess, or (theoretically) sell the coins that secured that loan. And Willis never did tender any of those loan repayments – consistent with her primary theory that LCG actually owed her money instead. Consequently, the trial court properly concluded Willis failed to demonstrate she had suffered any damage as a result of LCG's alleged conversion of the coins.

FACTS

Between November 2008 and February 2009, Willis's husband, Brian Willis (hereafter for convenience referred to by his first name), entered into separate pawn transactions with LCG. In each transaction, he gave LCG valuable gold or silver coins to hold as security for a loan, and signed a document entitled "Loan Contract." The aggregate amount of the six loans was \$124,000. Each of the loan contracts specified the term of the loan was four months, and stated the borrower could redeem the property until the close of business on a specified date four months hence, by paying the amount of the loan plus "applicable charges."

In connection with the expiration of each of these six loan terms, LCG sent Brian a written notice that the loan term had expired, and giving him the option of either redeeming the property or paying the loan interest in full within 10 days from the date of the notice. Brian was informed that if he did neither, the property would be sold. On four of the six loans, that notice was sent between one and four days prior to the expiration of the four-month loan term. On the other two loans, the notices were sent approximately six months after expiration of the loan term.

Around the time the first loans became due, Brian attempted to negotiate a sale of the coins to LCG, in lieu of repaying the loans. LCG refused. Brian then made

repeated promises to redeem the coins, but had a series of excuses why that could not happen immediately – illness, a pending real estate transaction, etc. LCG was cooperative, and made no effort to sell the coins in light of Brian’s promises.

By June 2009, Brian was claiming to have secured a \$250,000 loan against a pending lawsuit, and explained it would take a “few days” to complete the paperwork on that loan. Brian inquired whether LCG “still [has] all of [his] coins” and explained he wanted to redeem them with the loan funds “within the week.” LCG responded that it still had the coins and would prefer to see the coins returned to him, while at the same time warned him it would need to recoup its capital soon and thus could not hold the coins forever.

In early September 2009, Brian told LCG he had a “major deposit” coming through and would be able to redeem the coins. LCG gave him a total for the amount required to redeem, and explained that if full payment was not received by the end of September, it would have to proceed with liquidating the coins. Brian responded several days later with the news there had been problems in securing settlement funds from a lawsuit – a third party had filed a “ridicules” [*sic*] lien against the funds, delaying receipt of them by a month. Brian then asked LCG to either purchase the coins from him for an additional payment of \$124,000, or lend him an additional \$62,000 against them. LCG declined to do either.

On September 14, Brian informed LCG he was expecting a “standby letter of credit” for \$50 million, and upon its receipt would be able to “pick all of the coins up and resolve this situation.” Thereafter, Brian informed LCG he had an “investor” who would be meeting him at the LCG premises the next day, with a cashier’s check for \$158,800 to redeem the coins. That did not happen.

Finally, in October 2009, LCG informed Brian the business between them was “closed,” and the coins would be liquidated. Brian responded “I do not give you permission though to liquidate the coins,” and claimed both a “right of refusal” on any

sale of the coins and the right to receive “a minimum return of another \$124,000 . . . from said purchase of my coins leaving the remaining balance paid by the buyer to be paid to London Coin.”

Brian also informed LCG that “Senator Raymond Haynes,” would be acting as his attorney in resolving the dispute, and provided LCG with a copy of a business card identifying Haynes as “Senate Republican Whip.” Brian also reminded LCG that he was a Colonel in the “International Police Commission,” a position allegedly “confirmed with the United Nations Security Council [*sic*] and Homeland Security,” and that his “formal duties involve international bank fraud.” Brian identified “the Senator” as his partner and corporate counsel of the International Police Commission.² The pursuit of “criminal action” against LCG was mentioned.

On November 10, 2009, LCG informed Brian that in light of his failure to redeem the coins, “all right, title and interest in the pledged coins is vested in London Coin Galleries.” However, in one final attempt to resolve the matter, LCG gave Brian until the next day to complete a wire transfer of the full amount owed – \$184,812 – into its account, in exchange for the coins. Brian did not tender any funds.

Instead, on November 16, 2009, Willis filed suit against LCG for breach of contract and conversion. Willis alleged she was the true owner of the coins, her husband acting as her agent had entered into an oral agreement with LCG for “sale” of the coins on her behalf, and that the terms of that agreement were: (1) she would deliver possession of her coins to LCG and it would hold them for sale on her behalf; (2) LCG would advance to her a sum of money as a loan pending sale of the coins; and (3) at her discretion the coins would be sold and the advanced money, plus interest, deducted from the sale price or, in the alternative, she could repay the advanced money, plus interest,

² According to the documents provided by Brian to LCG, the “General Supreme Headquarters” of the International Police Commission is a P.O. Box in Sacramento, California.

and LCG would return the coins to her. Willis alleged the “series of writings purporting to be pawn tickets” were “just a formality,” and did not reflect the true terms of the parties’ agreement. For its part, LCG at all times maintained the transactions at issue were pawn transactions.

The matter came to trial in May 2011, and during trial, Willis amended her conversion cause of action to include the allegation LCG had violated the law applicable to pawn transactions by failing to notify her of her right to redeem the coins “within the statutory time for such notifications.”

The court found in favor of LCG. In its statement of decision, the court found Brian acted as his wife’s agent and entered into pawn transactions with LCG on her behalf. In accordance with the terms of their pawn agreements, LCG was entitled to retain the coins. The court specifically concluded Willis’s new allegation pertaining to LCG’s failure to comply with the notice requirements applicable to pawn transactions “are of no significance” because she had not identified “any attendant damages.”

Willis objected to the court’s statement of decision, claiming it failed to address the issue of LCG’s failure to give the statutorily required notice for each of the pawn transactions, and arguing that such failure transformed LCG’s claim of property ownership into an act of conversion. The court declined to alter the statement of decision and entered judgment in LCG’s favor.

DISCUSSION

Willis’s sole contention on appeal is that because the court concluded her transactions with LCG qualified as pawn transactions, LCG’s failure to strictly comply with all requirements of Financial Code sections 21000 et seq. – the statutes that regulate pawnbrokers – deprived LCG of the right to claim ownership of her coins. She asks us to conclude that as a consequence, LCG’s assertion of ownership, and its refusal to return the coins to her, qualified as a conversion of those coins.

In making her argument, Willis relies specifically on LCG’s violation of Financial Code section 21201 (hereafter section 21201), which requires a pawnbroker to give written notice to the borrower of the right to redeem the security after expiration of the loan period: “If any pledged article is not redeemed during the four-month loan period as provided herein . . . the pawnbroker shall notify the borrower within one month after expiration of the loan period. If the pawnbroker fails to notify the borrower within one month after the expiration of the loan period, the pawnbroker shall not charge interest from the day after the expiration of the one-month period. The pawnbroker shall notify the borrower at his or her last known address of the termination of the loan period . . . and extending the right of redemption, during posted business hours, for a period of 10 days from date of mailing of that notice.” (§ 21201.)

As Willis points out, four of the six notices required by section 21201 in this case were given by LCG just *prior to* the expiration of the four-month loan periods to which they applied, rather than after expiration. Thus, those notices did not fall within the time-frame set forth in the statute.³ And while these notice violations were merely technical – it is undisputed that Willis received the notices and was at all times aware the loan terms had expired, and also that LCG did not actually assert any right to permanently retain the coins until months after the loan terms expired – Willis nonetheless claims the notice provisions were required to be strictly adhered to, and the consequence of LCG’s failure to do so was “liability for conversion of the security.” We cannot agree.

The fatal flaw in Willis’s conversion claim is her failure to have tendered payment to LCG of the money required to redeem her coins under the terms of any of her

³ Willis also complains about the timing of the notices given in connection with the other two loans, both of which came nearly six months after the loan term expired. However, section 21201 makes clear the only consequence of delaying the notice of the loan’s expiration until after the initial 30-day period is a prohibition on the accrual of additional interest after that 30-day period.

six pawn transactions. Absent such a tender, Willis had no right to claim possession or control over the coins she had given to LCG as security in those transactions, and thus she had no basis to claim she had been damaged by LCG's alleged conversion of those coins.

“Conversion is generally described as the wrongful exercise of dominion over the personal property of another. (*Gruber v. Pacific States Sav. & Loan Co.* (1939) 13 Cal.2d 144, 148.) The basic elements of the tort are (1) the plaintiff's ownership or right to possession of personal property; (2) the defendant's disposition of the property in a manner that is *inconsistent with the plaintiff's property rights*; and (3) resulting *damages.*” (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 119, italics added.)

Here, Willis's ability to exercise any property rights in connection with the coins was conditioned on her redemption of those coins from LCG in accordance with the terms of the pawn transactions. Until Willis did that – or at least attempted to do so – she had no right to exercise dominion or control over the coins. Thus, absent a redemption effort, nothing LCG did with the coins could be viewed as being inconsistent with Willis' property rights therein, or as having caused her “damages.”

The fact that no cause of action for conversion can be stated in these circumstances is illustrated by the choice of remedies afforded to a victim of conversion. When plaintiff's property has been converted, she has the choice of either *an order compelling defendant to return the property to her*, or damages to compensate for the lost property. (*Minsky v. City of Los Angeles* (1974) 11 Cal.3d 113, 121 [“Where a wrongdoer has converted . . . personal property, the injured owner must elect between his right of ownership and possession (with the remedy of specific recovery) and his right to compensation”].) Clearly, a plaintiff such as Willis would not be entitled to “specific recovery” of goods given as security in a pawn transaction, absent satisfaction of the loan obligation secured thereby.

Willis relies on two cases in support of her conversion claim, *Cerra v. Blackstone* (1985) 172 Cal.App.3d 604 (*Cerra*), and *Wade v. Markwell & Co.* (1953) 118 Cal.App.2d 410 (*Wade*). Neither is helpful to her.

In *Cerra, supra*, 172 Cal.App.3d 604, the defendant's liability for conversion was based upon (1) his act of *seizing possession* of an automobile that secured an auto loan, without complying with the statutory procedures required to perfect his security interest in that automobile; and (2) his improper refusal to allow the plaintiff to redeem the automobile by tendering the amount owed, as required by statute.⁴ By doing each of those things, the defendant in *Cerra* interfered with the plaintiff's right to maintain possession and use of his automobile. Here, neither of those things occurred. LCG did not seize possession of anything because it was at all times permitted to retain possession of Willis's coins pending repayment of her loans; and Willis never made any attempt to redeem the coins by tendering payment of the loan amounts. Thus, unlike the plaintiff in *Cerra*, Willis failed to demonstrate her right to possession and control of her property had been interfered with.

Wade, supra, 118 Cal.App.2d 410, is also inapposite because in that case the plaintiff's cause of action for conversion arising out of a pawn transaction included the specific allegation she *had tendered the amount required to redeem her property* from the pawnbroker. As the court explained it: "Having thus alleged *a demand accompanied*

⁴ Willis appears to be under the impression that the plaintiff in *Cerra* did not actually tender the amount required to redeem the automobile. If so, that is incorrect. The court assumed the truth of the plaintiff's (*Cerra's*) evidence that he had not only tendered the delinquent amount, but had offered payment of the entire outstanding loan balance. The court then acknowledged that while *Cerra* may not have specifically tendered "the required repossession costs," set forth in the redemption statute, he could not be faulted for such a failure, since he had not been given the required notice specifying those costs. (*Cerra, supra*, 172 Cal.App.3d at p. 609.) The court then pointed out that, in any event, *Cerra's* "offer to discharge the entire contract undoubtedly involved more money than *Blackstone* could legitimately have claimed in a proper . . . notice." (*Ibid.*)

by *sufficient tender*, defendant’s refusal to restore her coat, and certain other facts tending to show defendant’s fraudulent dominion over the coat inconsistent with her right to immediate possession, the complaint contains all the requisites of a cause of action for conversion.” (*Id.* at p. 418, italics added.) In marked contrast to the plaintiff in *Wade*, Willis did not make a “sufficient tender” to redeem her property from LCG, and thus had no basis to demand “immediate possession” of that property. Thus, Willis fell short of establishing what the *Wade* court characterized as “all the requisites of a cause of action for conversion.” (*Ibid.*)

Absent proof she had attempted to redeem her coins in accordance with her pawn contracts, and thus that she had regained her right to claim possession of them, Willis could not establish she had been damaged by either LCG’s claim of ownership over the coins, or its refusal to return the coins to her. As a consequence, Willis was not entitled to recover anything on her cause of action for conversion.

DISPOSITION

The judgment is affirmed. The Respondent is to recover its costs on appeal.

O’LEARY, P. J.

WE CONCUR:

ARONSON, J.

FYBEL, J.