

SUPREME COURT OF ARKANSAS

C.A.R. Transportation Brokerage Co. v. Seay

255 S.W.3d 445, 369 Ark. 354 (2007) · No. No. 06-1122 · Decided April 12, 2007

SUMMARY

The Supreme Court of Arkansas addressed direct and cross-appeals arising from a judicial foreclosure sale and alleged conversion of equipment. The court affirmed the finding that Michael Seay converted C.A.R. Transportation's property, affirmed the finding that Cheryl Seay did not commit conversion, and affirmed the equitable lien while modifying its attachment date to the date of judgment.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Donald L. Corbin, Justice
JURISDICTION	Arkansas
DECIDED	April 12, 2007
DOCKET	No. 06-1122
DISPOSITION	affirmed
PROCEDURAL POSTURE	C.A.R. Transportation appealed the Benton County Circuit Court's judgment concerning conversion and an equitable lien; Michael and Cheryl Seay cross-appealed. The case was before the Arkansas Supreme Court on a second or subsequent appeal.
STANDARD OF REVIEW	Findings of fact by a trial court sitting as a jury are not reversed unless clearly against the preponderance of the evidence. The court defers to the trial court's superior position to assess witness credibility and weigh testimony.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; precedential
PARTIES	C.A.R. Transportation Brokerage Co., Inc. v. Michael W. Seay, Cheryl Seay

TOPICS

- conversion
- equitable lien
- remedies
- foreclosure
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Cheryl Seay converted equipment belonging to C.A.R. Transportation.
2. Whether C.A.R. Transportation was entitled to an equitable lien on the foreclosure-sale proceeds and, if so, when the lien attached.
3. Whether Michael Seay converted property belonging to C.A.R. Transportation.

HOLDINGS

1. Cheryl did not commit conversion because the evidence did not show that she exercised a distinct act of dominion over the equipment found to have been converted.
2. C.A.R. Transportation was entitled to an equitable lien on the specified foreclosure-sale proceeds, but the lien attached on February 15, 2005, when the judgment was entered, rather than on the date of trial or the date the counterclaim was filed.
3. Michael converted C.A.R. Transportation's equipment by removing it from the property after the judicial sale, and the circuit court properly entered judgment for C.A.R. Transportation.

KEY QUOTATIONS

“An equitable lien is a right to have a demand satisfied from a particular fund or specific property.” (451)

“The property was clearly C.A.R. Transportation's property, and Michael clearly exercised dominion over it when he removed it from the property after the sale; thus, his actions constituted conversion.” (452)

FACTUAL BACKGROUND

Regions Bank foreclosed on real property and equipment at 507 Paige Boulevard in Lowell, Arkansas. The commissioner sold the real estate and equipment to C.A.R. Transportation, and the circuit court confirmed the sale. After the sale, Michael Seay removed or dismantled equipment and fixtures, while the evidence did not establish that Cheryl exercised dominion over the equipment found to have been converted. C.A.R. Transportation obtained a judgment against Michael for conversion and an equitable lien on specified property and proceeds.

PROCEDURAL HISTORY

Regions Bank obtained a foreclosure judgment against the Seays, and C.A.R. Transportation purchased the real property and equipment at the judicial sale. The circuit court later granted C.A.R. Transportation summary judgment concerning the untimeliness of the Seays' challenge to the foreclosure sale, found Michael liable for conversion, awarded damages and an equitable lien, and found no conversion by Cheryl. In *Seay I*, the Arkansas Supreme Court dismissed the untimely appeal from the summary-judgment order and dismissed the remaining appeal and cross-appeal without prejudice because Cheryl's conversion claim remained unresolved. After the circuit court resolved Cheryl's claim and reaffirmed Michael's liability and the equitable lien, the parties brought this appeal and cross-appeal.

DISPOSITION

affirmed

CASES CITED

- Seay v. C.A.R. Transportation Brokerage Co., Inc., 366 Ark. 527, 237 S.W.3d 48 (2006)
- Graham Construction Co. v. Earl, 362 Ark. 220, 208 S.W.3d 106 (2005)
- Mack v. Sutter, 366 Ark. 1, 233 S.W.3d 140 (2006)
- Hatchell v. Wren, 363 Ark. 107, 211 S.W.3d 516 (2005)
- Stewart v. Combs, 368 Ark. 121, 243 S.W.3d 294 (2006)
- First National Bank of DeWitt v. Cruthis, 360 Ark. 528, 203 S.W.3d 88 (2005)
- Mitchell v. Mitchell, 28 Ark. App. 295, 773 S.W.2d 853 (1989)
- Thorn v. Ingram, 25 Ark. 52 (1867)
- Gray v. Bank of Hartford, 137 Ark. 232, 208 S.W. 302 (1918)
- Harrison v. Trader, 29 Ark. 85 (1874)