UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

IN RE:	)	
	)	
Magna Corporation,	)	Case No. 01-80763C-7D
	)	
Debtor.	)	
	)	
William L. Yaeger, Trustee,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adversary No. 03-9032
	)	
Magna Corp., Steven E. Edwards, Marian C. Edwards, Carolina Green, Inc., and Capital Financial Group, Inc., d/b/a Capital Marketing, Inc., The Nations Group, Inc., 2VC Holdings, Ltd.,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

This case comes before the court on a motion for partial summary judgment filed by William L. Yaeger, the Chapter 7 Trustee ("Trustee") of Magna Corporation ("Debtor"), against Steven E. Edwards ("Edwards") seeking to recover $4,558,472.70 of the Debtor's funds that Edwards allegedly converted to his personal use pursuant to Count VI of the Trustee's Amended Complaint.

The court held a hearing on this matter on February 10, 2005, in Durham, North Carolina, at which time the court took the matter under advisement. After considering the arguments of the parties, the evidence introduced in support of the parties' positions, and

the relevant law, the court will grant the Trustee partial relief under Fed. R. Civ. P. 56(d) and find that no genuine issue of material fact exists as to the Trustee's claim that Edwards converted $7,797.57 of the Debtor's money. Regarding the remaining $4,550,675.35 sought by the Trustee, the court finds that a genuine issue of material fact exists over whether the Debtor owned the funds allegedly converted by Edwards.

I. STANDARD OF REVIEW

Summary judgment is appropriate when the matters presented to the court "show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); Fed. R. Bankr. P. 7056; Celotex v. Catrett, 477 U.S. 317, 322 (1986). The party moving for summary judgment has the initial burden of proving that there is no genuine issue as to any material fact. Adickes v. S. H. Kress & Co., 398 U.S. 144, 161 (1970). Once the moving party has met this initial burden of proof, the non-moving party must set forth specific facts sufficient to raise a genuine issue for trial, and may not rest on its pleadings or mere assertions of disputed facts to defeat the motion. Matsushita Electric Industrial Co., Ltd., v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986) (stating that the party opposing the motion "must do more than simply show that there is some metaphysical doubt as to the material facts"). The mere existence of a scintilla of evidence in support of the opposing party's

position will not be sufficient to forestall summary judgment, but "the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 252 (1986). In ruling on a motion for summary judgment, "the evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor." Id. at 255.

II. BACKGROUND

The Debtor, a Kansas corporation, provided various payroll, tax, and insurance services to businesses as a professional employer organization. Edwards was a corporate officer of the Debtor and in charge of its workers' compensation coverage services. For each workers' compensation policy that he serviced, Edwards received a commission. According to The Trustee's forensic accountant, Adrian Barnett, Edwards had after tax income - including both his salary and earned commissions - of $13,134.63 in 1995; $59,073.01 in 1996; $150,725.63 in 1997; $15,542.72 in 1998; $218,742.00 in 1999; and $45,387.00 in 2000.

In connection with his employment with the Debtor, Edwards formed another entity, Capital Marketing, Inc. ("Capital Marketing"), which was eventually merged with the Debtor. Edwards served as the secretary/treasurer of Capital Marketing and had

broad banking authority.[1] A portion of the funds that the Debtor's clients sent to it flowed through Capital Marketing's bank accounts. One of these accounts was at South Bank, account number 39378, which was in the name of "Capital Marketing, Inc. Subsidiary of Magna Corp." Edwards maintained the power to withdraw funds from that account.

From March 19, 2000 to February 1, 2001, $8,269,427.21 was deposited in account number 39378 at South Bank. Of that amount, $3,987,888.63[2] was directly attributable to the Debtor's business

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[1] The minutes of the Debtor's Stockholders Meeting of June 3, 1996 provide:

> Be it resolved that MAGNA Corporation shall merge with Capital Marketing Inc, with the resulting Corporation to be known as MAGNA Corporation ....
>
> Be it further resolved that a new division of MAGNA Corporation shall be created, to be known as "Magna/Capital Marketing, Inc."
>
> Be it further resolved that Steven E. Edwards shall serve as Secretary/Treasurer of Magna/Capital Marketing, Inc., and that in his capacity as Secretary/Treasurer, he shall be and hereby is authorized to perform the following activities on his signature alone: open any deposit or checking account(s) in the name of Magna/Capital Marketing, Inc., and indorse checks and orders for the payment of money and withdraw [illegible] on deposit in said account(s) ....

(Ex. 1 to Pl. Ex 1).

[2] In Adrian Barnett's affidavit, he stated that $4,300,000.00 in the bank account was attributable to business receipts of the Debtor - not the $3,987,888.63 as stated in his report, which is supported by copies of business records. Counsel for the Trustee stated at the hearing that the $4,300,000.00 dollar figure was the correct amount but did not offer additional evidence in support of that number. Construing all reasonable inferences in favor of Edwards as the non-moving party for purposes of this motion for

receipts. The exact source for the remaining $4,281,538.58 that went into the account is in dispute. The Trustee claims that all the money in the account belonged to the Debtor. Edwards asserts that some of the money belonged to him as earned income and that other amounts in the account were transferred in by other clients of Edwards that were not associated with the Debtor.

It is undisputed that Edwards made substantial personal purchases and transfers using funds from account number 39378. During 1999, Edwards withdrew $97,500.00 and deposited that money in one of his personal accounts. From March to December 2000, he paid various motorcycle dealers $262,936.00, and from July 1999 to October 2000 Edwards withdrew $2,166,573.13 to pay for the construction of his new home. In total, the Trustee details $3,710,675.35 in transfers from South Bank account number 39378 for Edwards's personal purposes.[3] In addition to the transfers from

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partial summary judgment, the court will use $3,987,888.63 as the total deposits to the account attributable to the Debtor inasmuch as that is the amount reflected on Exhibit 5 to Adrian Barnett's August 1, 2003 interim report.

[3] More specifically, Adrian Barnett detailed the following transactions:

(i) $97,500.00 was transferred to the personal account of Steven E. Edwards, account number 40418 from January to August 1999;

(ii) $69,163.73 was transferred to the personal account of Steven E. Edwards, account number 40418 on March 6, 2001.

(iii) $262,936.00 was paid to various motorcycle dealers from March to December 2000;

(iv) $1,016,000.00 was wired to Bear Sterns for an investment account for the benefit of Steven E. Edwards from March to July 2000;

account number 39378, Edwards withdrew $840,000.00 from an account held by The Nations Group, Inc. ("Nations Group") at Columbian Bank and transferred that money offshore to the Turks and Caicos Islands for his personal use. Nations Group was a separate entity, incorporated in Kansas. The exact relationship between Nations Group and the Debtor was left unclear by the Trustee's submissions.

III. DISCUSSION

Count VI of the Trustee's amended complaint states a cause of action for conversion against Edwards. The Trustee claims that all of the funds in account number 39378 at South Bank belonged to the Debtor and that Edwards's personal use of $3,710,675.35 from that account constitutes a conversion of the Debtor's money. Furthermore, the Trustee claims that Edwards converted $840,000.00 of the Debtor's money from the Nations Group account at Columbian Bank and converted a check payable to the Debtor in the amount of $7,797.57. Edwards argues that genuine issues of fact are present which are sufficient to forestall summary judgment on the basis that the Trustee failed to show that the funds he withdrew from South Bank or Columbian Bank belonged to the Debtor. Edwards also

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(v) $2,166,573.13 was paid to Cyn-Mar Designs for the construction of a personal residence for Steven E. Edwards from July 1999 to September 2000; and

(vi) $98,502.49 was paid to David O'Neal Chrysler Jeep from June to September 2000.

$3,710,675.35 - Total of alleged personal withdraws from account number 39373 at South Bank.

contends that the Trustee failed to show that his uses for the funds in the various Bank accounts were unauthorized by the Debtor.

Under North Carolina law, "conversion is defined as: (1) the unauthorized assumption and exercise of the right of ownership; (2) over the goods or personal property; (3) of another; (4) to the exclusion of the rights of the true owner." Di Frega v. Pugliese, 596 S.E.2d 456, 509 (N.C. Ct. App. 2004). The essence of a conversion is not the acquisition of property, but the wrongful deprivation of that property from its true owner. Lake Mary Ltd. Pshp. v. Johnston, 551 S.E.2d 546, 552 (N.C. Ct. App.), rev. denied, 557 S.E.2d 538-39 (N.C. 2001). One who is lawfully in possession of property may nevertheless be liable for a conversion for exceeding the scope of authority for that lawful possession when the use seriously violates the true owner's right of control. Binkley v. Loughran, 714 F. Supp. 776, 779 (M.D.N.C. 1989) ("[W]hat constitutes an 'unauthorized' interference with another's ownership of goods or chattels depends upon the circumstances under which such interference arose."), aff'd 940 F.2d 651 (4th Cir. 1991). See also 18 Am. Jur. 2d CONVERSION § 1 (2004) (stating that the exercise of ownership rights by the trespasser must so interfere with the property rights of the owner as to be tantamount to an appropriation of property). At common law, even unwitting acts by the trespasser are sufficient to sustain a cause of action for conversion. Morissette v. United States, 342 U.S. 246, 270 n.31

(1952) (explaining that the rationale for not requiring a conversion to be intentional is that "when one clearly assumes the rights of ownership over property of another no proof of intent to convert is necessary. . . . [O]ne may be held liable in conversion even though he reasonably supposed that he had a legal right to the property in question."); 18 Am. Jur. 2d CONVERSION § 3 (2004) ("The motive with which the defendant acts is usually immaterial in an action for conversion.").

A. South Bank Account No. 39378.

The record now before the court is insufficient to establish the conversion claim involving account number 39378 as a matter of law. In the context of the Trustee's summary judgment motion, the court is required to give Edwards the benefit of every justifiable inference that can be drawn from the evidence before the court. When the evidence is evaluated in such a manner, there exists a material issue of fact as to whether all of the money that was deposited into account number 39378 was money that belonged to the Debtor. This circumstance coupled with the fact that the evidence showed that the Debtor received disbursements from the account that exceeded the amount of deposits that were traced directly to the Debtor means that there is a material issue of fact as to whether the funds that were withdrawn by Edwards for his personal use belonged to the Debtor. Thus, while it is undisputed that a total of $8,269,427.21 was deposited in the account, deposits of

$4,281,538.58 were not traced directly to the Debtor. There was circumstantial evidence that funds in that magnitude would not have originated with Edwards; however, there was conflicting evidence from Edwards regarding his earnings and capacity to make large deposits from personal funds. In short, because conflicting inferences may be drawn regarding the source of the funds that were paid from account number 39378 to or for the benefit of Edwards, the Trustee is not entitled to summary judgment as to the claimed conversion of $3,710,675.35 from South Bank account number 39378.

B. Transfers from Columbian Bank to Turks and Caicos Islands.

The affidavit of Adrian Barnett states that Edwards withdrew $840,000.00 from an account at Columbian Bank and transferred that money to an account on the Turks and Caicos Islands for his personal benefit. Edwards never contested Adrian Barnett's statements regarding his withdrawal and transfer of money from the account at Columbian Bank. Moreover, although Edwards argues that the Debtor had granted him broad banking authority over any account opened by Capital Marketing, no evidence exists that Edwards had broad banking authority over the account at Columbian Bank. Furthermore, even if Edwards had such broad banking authority at Columbian Bank, that does not mean that he was authorized to transfer $840,000.00 to an offshore account for his own benefit. See, e.g., In re American Biomaterials Corp., 954 F.2d 919, 924-25 (3rd Cir. 1992) ("[I]n no jurisdiction . . . does an employee who

embezzles from the corporation act in the scope of employment in doing so.").

The Trustee's conversion argument, however, suffers from a serious flaw that prevents entry of summary judgment. The account at Columbian Bank was held by the Nations Group - not the Debtor. The Nations Group is not a joint debtor. While Adrian Barnett opined that there is "overwhelming evidence" that Edwards owned and directed the Nations Group and that there was "an indication" that Edwards could be "involved in an alter ego situation," that evidence is not before the court. The only facts presently before the court are that Edwards transferred $840,000.00 from the Nations Group account at Columbian Bank, that the exact relationship between Edwards, the Debtor and Nations Group is "unclear," and that there is some "confusion" over the relationship. Absent definitive evidence regarding the relationship between the Debtor and Nations Group or a showing that the Debtor owned the funds at Columbian Bank held by the Nations Group the court cannot conclude that the Debtor - and hence the Trustee - has any ownership interest in those funds or standing to seek redress of the alleged wrong against the Nations Group.

C. Check Payable to Magna.

Adrian Barnett's uncontradicted statement is that Edwards took a $7,797.57 check payable to Magna, indorsed it, and deposited it in his personal bank account. Edwards never explicitly stated that

he had any legal or equitable interest in the check. The Debtor did, however, grant Edwards the authority to "indorse checks and orders for the payment of money" in his capacity as secretary/treasurer of Magna/Capital Marketing and Edwards implied that he was able to make unilateral payments to himself out of the Debtor's money.

While Edwards might have had the authority to indorse checks on behalf of the Debtor, that does not necessarily mean that his indorsement of the $7,797.57 check was authorized. The Debtor's grant of banking authority to Edwards was not unlimited; he was required to act in his capacity as secretary/treasurer of Magna/Capital Marketing. Nothing in the Debtor's grant of authority to Edwards authorized Edwards to indorse a corporate check for deposit in his personal account. See, e.g., In re Burgess, 106 B.R. 612, 622 (Bankr. D. Neb. 1989) (concluding that a power of attorney over another's property did not give the holder of that power the right to appropriate funds for the holder's own use).

Edwards did not introduce a scintilla of evidence that he was authorized to unilaterally pay himself, that the Debtor explicitly authorized him to deposit the check for his personal benefit, or that any precedent existed for Edwards undertaking such action. Thus, no evidence exists to contradict the affidavit of Adrian Barnett that the $7,797.57 check was the property of the Debtor,

that Edwards assumed an unauthorized right of ownership over the check's proceeds after presentment, and that the exercise was to the exclusion of the Debtor's superior rights in the proceeds of the check.

IV. CONCLUSION

There is no genuine issue of material fact regarding the Trustee's claim that Edwards converted $7,797.57 of the Debtor's money by depositing a check payable to the Debtor in his personal bank account. The Trustee therefore is entitled to a partial summary judgment adjudging that he is entitled to recover the sum of $7,797.57 from Edwards as a matter of law. The Trustee's motion for partial summary judgment will be denied as to the remainder of the Trustee's conversion claim because a genuine issue of material fact exists as to whether the Debtor owned the funds in question.

A separate order shall be entered pursuant to Fed. R. Bankr. P. 9021.

This 14th day of March, 2005.

William L. Stocks

WILLIAM L. STOCKS
United States Bankruptcy Judge

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Defendants.	)	

ORDER

Pursuant to the Memorandum Opinion entered contemporaneously herewith, it is ORDERED that the Motion for Partial Summary Judgment (Document No. 90) filed by William L. Yaeger, the Chapter 7 Trustee for the Magna Corporation, be and hereby is GRANTED IN PART and DENIED IN PART as follows:

A) Steven E. Edwards converted $7,797.57 of Magna Corporation's property and the Plaintiff is entitled to recover that sum from Steven E. Edwards; and

B) In all other respects, the Motion for Partial Summary Judgment is DENIED.

This 14th day of March, 2005.

William L. Stocks

WILLIAM L. STOCKS
United States Bankruptcy Judge