

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

CREATIVE MINDS, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CASE NO. ST-11-CV-131
	)	
REEF BROADCASTING, INC.	)	
	)	
Defendant.	)	
REEF BROADCASTING, INC.,	)	
	)	
Counterclaim Plaintiff,	)	
	)	
vs.	)	
	)	
CREATIVE MINDS, LLC,	)	
	)	
Counterclaim Defendant.	)	

MEMORANDUM OPINION

Pending before the Court is Defendant's motion for summary judgment seeking to dismiss the claims in Plaintiff's Complaint of unjust enrichment, constructive eviction, and conversion.¹ For the following reasons, Defendant's motion will be denied.

STANDARD

Rule 56 of the Federal Rules of Civil Procedure, made applicable to the Virgin Islands Superior Court through Rule 7 of the Rules of the Superior Court, provides that summary judgment is appropriate only "if the pleadings, depositions, answers to

¹ Defendant filed a motion for summary judgment on June 14, 2012, Plaintiff filed an opposition on August 16, 2012, and Defendant filed a reply on August 31, 2012.

interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” In considering a motion for summary judgment, a court must “draw ... all reasonable inferences from the underlying facts in the light most favorable to the non-moving party.”² An issue is “genuine” if a reasonable jury could possibly hold in the nonmovant’s favor with regard to that issue.³

ANALYSIS

A) Conversion

Restatement (Second) of Torts § 222A (1965) defines conversion as an interference “with the right of another to control [a chattel].” Although Defendant contends that it never intentionally had possession of chattel belonging to Plaintiff, Sheldon Turnbull’s affidavit asserts that Defendant removed Plaintiff’s equipment and refused to return it.⁴ As a result, there is a genuine issue of material fact concerning Plaintiff’s conversion claim.

Notwithstanding, Defendant asserts that Plaintiff’s conversion claim is barred by the gist of the action doctrine. This doctrine bars tort claims:

(1) arising solely from a contract between the parties; (2) where the duties allegedly breached were created and grounded in the contract itself; (3) where liability stems from a contract; or (4) where the tort claim essentially duplicates a

² *Battaglia v. McKendry*, 233 F.3d 720, 722 (3d Cir. 2000).

³ *Andersen v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

⁴ Turnbull affidavit, at 2 and 3.

breach of contract claim or the success of which is wholly dependent on the terms of a contract.⁵

Considering that both parties acknowledge that the Agreement⁶ between the parties was silent on the issue of equipment storage,⁷ the Court finds that the conversion claim is not dependent on the terms of the Agreement and the claim does not duplicate Plaintiff's breach of contract claim. As a result, the gist of the action doctrine is inapplicable.

B) Constructive Eviction

Defendant asserts that it is entitled to judgment as a matter of law on Plaintiff's constructive eviction claim, but then does not cite any law in support of its argument. Accordingly, Defendant's motion regarding this claim will be denied.

C) Unjust Enrichment

Defendant contends that Plaintiff may not bring an unjust enrichment claim considering that the parties entered into a fully executed agreement. It is well settled that the existence of an express contract excludes a claim for contract implied-in-law concerning the identical subject matter.⁸ A "quasi[-]contract, also referred to as a contract implied-in-law [,] imposes a [contractual] duty" on a party that is unjustly enriched at the expense of another.⁹ Both parties acknowledge that the Agreement is silent on the storage of equipment. As a result, the existence of the Agreement does not exclude Plaintiff's unjust enrichment claim.

⁵ *Addie v. Kjaer*, Civil No. 2004-135, 2011 WL 1841131, at *2 (D.V.I. 2011).

⁶ The parties entered into a Time Brokerage Agreement on or about October 17, 2009.

⁷ Turnbull affidavit, at 1; Pemberton affidavit, at 2.

⁸ *Matter of Penn Cent. Transp. Co.*, 831 F.2d 1221, 1230 (3d Cir.1987).

⁹ *Hershey Foods v. Ralph Chapek, Inc.*, 828 F.2d 989, 999 (3d Cir.1987).

In addition, the gist of the action doctrine is often not applied to contracts that are implied-in-law.¹⁰ Consequently, Plaintiff may pursue claims for conversion and unjust enrichment as alternative bases for recovery.¹¹

Defendant also asserts that Plaintiff's claim for unjust enrichment should fail because Defendant has not taken anything from Plaintiff that would enrich Defendant. However, Turnbull asserts in his affidavit that Defendant has possession of Plaintiff's equipment, which is valued at over six thousand dollars. As a result, there is a genuine issue of material fact concerning Plaintiff's claim for unjust enrichment that precludes the Court from entering judgment in favor of Defendant as a matter of law on that claim. An Order consistent with this Opinion shall follow.

Dated: September 6, 2012

ATTEST: Venetia H. Velazquez, Esq.
Clerk of Court

by:

Lori B. Tyson
Court Clerk Supervisor


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

¹⁰ *AT & T Corp. v. CPB Int'l, Inc.*, No. 05-424, 2007 WL 1811213, at *18-21 (M.D. Pa. 2007); see also *Chetty Holdings, Inc. v. NorthMarq Capital, LLC*, Civil Action No. 11-4640, 2012 WL 1521857, at *8 (E.D. Pa. 2012).

¹¹ See *Pennsylvania Gear Corp. v. ACSA Steel Forgings, S.P.A.*, No. Civ.A. 02-4359, 2002 WL 32113734, at *2 (E.D. Pa. 2002).

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Defendant.

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Counterclaim Plaintiff,

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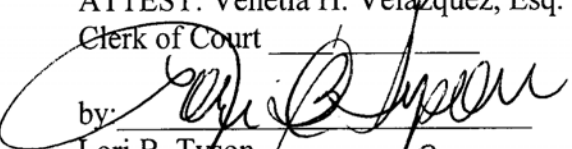
Counterclaim Defendant.

ORDER

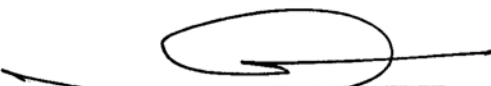
The Court having issued a Memorandum Opinion on this date, it is
ORDERED that Defendant's motion for summary judgment is DENIED; and it is
ORDERED that a copy of this Order and the accompanying Memorandum
Opinion shall be directed to counsel of record.

Dated: September 6, 2012

ATTEST: Venetia H. Velazquez, Esq.
Clerk of Court

by: 

Lori B. Tyson
Court Clerk Supervisor 9/7/12


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS