

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2016-010321

10/02/2017

HON. TERESA SANDERS

CLERK OF THE COURT  
T. Nosker  
Deputy

BANK OF THE WEST TRINITY FINANCE  
DIVISION

ANTHONY W AUSTIN

v.

QUICK MACHINERY SALES INC, et al.

MICHAEL J LAVELLE

DANIEL P VELOCCI

MINUTE ENTRY

The Court has read and considered Plaintiff, Trinity Finance Division (Bank of the West's) *Motion for Summary Judgment on the Issue of Damages* filed May 22, 2017, Defendant Quick Machinery Sales' response, and Plaintiff's reply. The Court has also considered Defendant's *Supplemental Response* filed August 24, 2017, and Plaintiff's *Supplemental Reply*. The Court has also considered the arguments of counsel made on September 19, 2017.

Pursuant to a minute entry dated April 10, 2017, Judge Lori Horn Bustamante granted Plaintiff's Motion for Judgment on the Pleadings with regard to its conversion and unjust enrichment claims. Plaintiff requests that this Court now determine, pursuant to a Motion for Summary Judgment, the amount of damages owed to it by Defendant.

Plaintiff asserts that the proper measure of damages is \$95,000.00, which represents the fair market value of the equipment at the time of the conversion. In support of its claim, Plaintiff cites an appraisal prepared by Kimberly A Khoury, a Certified Equipment Appraiser.

Defendant has not offered a counter-appraisal, but contends that the appropriate measure of damages is \$67,737.90. This amount represents the difference between the total sum Plaintiff

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was to be paid on the lease between it and Prospect Manufacturing, and the amount that was actually paid on the lease. In sum, Defendant contends that Plaintiff's damages should be limited to what it was owed on the lease.

In response to Defendant's position, Plaintiff points out that Defendant, who was not a party to the lease, seeks to limit its liability to the difference between the scheduled lease payments and the payments actually received, but argues that the lease doesn't control with regard to the provisions for penalties and interest.

As noted in Plaintiff's motion, damages for conversion are calculated by the fair market value of the equipment and any additional damages caused by the wrongful deprivation of the equipment at the time and place of the conversion. The measure of damages for an unjust enrichment claim is *quantum meruit*, the benefit received by the unjustly enriched party.

Here, Defendant does not dispute the fair market value calculation of \$95,000.00. Defendant actually paid Prospect \$110,000.00 for the equipment, and subsequently sold it for an unknown price.

Pursuant to Rule 56(a) of the Arizona Rules of Civil Procedure, "The Court shall grant summary judgment if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law."

Based upon the matters presented, the Court finds that there is no genuine dispute as to any material fact, and that Plaintiff's measure of damages is the fair market value at the time of the conversion, which is \$95,000.00.

Additionally, Plaintiff seeks additional damages in the amount of \$16,068.50 for attorney's fees incurred as a result of participating in Prospect's bankruptcy proceeding. The Court finds that it is not entitled to recover this amount as part of its conversion or unjust enrichment claims against this Defendant.

It is ordered granting Plaintiff's *Motion for Summary Judgment on the Issue of Damages*, as set forth above.