

STATE OF CONNECTICUT
APPELLATE COURT

Date: Hartford, December 7, 2021

To the Chief Clerk of the Appellate Court.

The Appellate Court has decided the following case:

GEORGE AGUIAR

v.

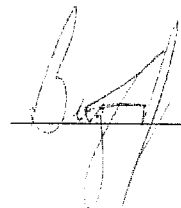
Opinion Per Curiam.

BETWEEN-THE-BRIDGES, LLC, ET AL.

Docket No. AC 43914

Trial Court Docket No. HHDCV176079250S

The judgment is affirmed.



Chief Judge

DOCKET NO.: HHD-CV17-6079250-S

: SUPERIOR COURT

GEORGE AGUIAR
212 Wickham Road
Glastonbury, Connecticut

: JUDICIAL DISTRICT OF
: HARTFORD

v.

: AT HARTFORD

BETWEEN-THE-BRIDGES, LLC
142 Ferry Road
Old Saybrook, Connecticut

and

PAUL BARRY
29 Cypress Road
Old Saybrook, Connecticut

January 23, 2020
~~JUNE 21, 2019~~

Present: The Honorable Matthew Budzik

JUDGMENT

This action came to this Court on June 7, 2017 and then later dates when the parties appeared and were at issue to the Court, as on file, and thence to the present time.

The defendants filed an answer on March 26, 2018 (Docket Entry No.: 112.00).

The Court, heard the parties at trial, on June 18, 2019.

The Court issued a Memorandum of Decision on January 23, 2020 (Docket Entry No.: 131.00) a copy of which is attached hereto.

Whereupon it was adjudged that judgment shall enter for the plaintiff George Aguiar.

BY THE COURT


Assistant Clerk
October 5, 2020

DOCKET NO.: CV-17-6079250-S

SUPERIOR COURT

GEORGE AGUIAR

JUDICIAL DISTRICT OF
HARTFORD

V.

AT HARTFORD

BETWEEN-THE-BRIDGES, LLC,
PAUL R. BARRY and
ANTHONY AUTORINO

JANUARY 23, 2020

MEMORANDUM OF DECISION

Plaintiff George Aguiar sues defendants Between-the-Bridges, LLC (BTB), Paul R. Barry, and Anthony Autorino essentially for improperly taking his \$112,000 boat. Mr. Aguiar alleges that although he was \$1,800 in arrears on his storage fees, the defendants nevertheless improperly exercised their rights under General Statutes § 15-140c, Connecticut's statute governing the seizure of abandoned boats. The relevant portion of § 15-140c states that a boat "shall be presumed to be abandoned" if the boat is left at a storage facility "more than one year since receipt of the last full payment by such facility." See General Statutes § 15-140c (a) (4). BTB and Mr. Barry assert that this statutory language means that a boat owner must bring his or her account to a zero balance, i.e., full payment, in order to avoid the presumption of abandonment once a boat owner falls behind on storage fees. Mr. Aguiar asserts that the periodic and partial payments he was making to BTB ought to have been applied to the oldest outstanding invoice Mr. Aguiar owed until that oldest invoice had been paid in full, i.e., a "full payment." Under the facts of this case, such a process would have resulted in the full payment of invoices from BTB to Mr. Aguiar that were more than a year old, and left only a small balance on an invoice that was less than a year old. Thus, under Mr. Aguiar's accounting method, the defendants could not properly exercise their rights under § 15-140c.

1/23/2020 - cc: Rbr. Jud Dec.

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The court declines to resolve the parties' conflicting interpretations of § 15-140c because the court finds it unnecessary to do so. Instead, as more fully set forth below, the court finds that § 15-140c merely establishes a statutory presumption of abandonment. Statutory presumptions may be overcome by the presentation of sufficient evidence demonstrating that the presumption is misplaced on the facts of the particular case. Here, the court finds that Mr. Aguiar presented sufficient evidence at trial to demonstrate that he did not intend to abandon his boat. Therefore, the court concludes that the seizure of Mr. Aguiar's boat was improper.

FACTS

This case was tried to the court on June 18, 2019. The court heard from four witnesses, including Mr. Barry and Mr. Aguiar,¹ and reviewed approximately twenty-five exhibits. As the trier of fact, the court must weigh the evidence and determine the credibility of witnesses. *Connecticut Light & Power Co. v. Proctor*, 324 Conn. 245, 259, 152 A.3d 470 (2016). It is the exclusive province of the trier of fact to weigh the conflicting evidence, determine the credibility of witnesses, and determine whether to accept some, all or none of a witness' testimony. *Palkimas v. Fernandez*, 159 Conn. App. 129, 133, 122 A.3d 704 (2015). With these principles in mind, the court makes the following factual findings.

For some years, George Aguiar owned a 1996 Carver 440 motor yacht. The fair market value of Mr. Aguiar's boat is \$112,000 based on an appraisal done by BTB. Mr. Aguiar is a small construction contractor installing floors, dry wall, and performing other

¹ Although no notice of suggestion of death had been filed, it is undisputed by the parties that Mr. Autorino died in a car accident on January 25, 2019.

construction tasks. Mr. Aguiar has gone through some financial difficulties in the past. Mr. Aguiar lives part of the year in Florida and part of the year in Connecticut.

BTB is a boat yard located in Old Saybrook. Peter Barry is the current president of BTB. Although Mr. Barry was president of BTB at the time of trial, during the time period relevant to this case, Anthony Autorino was effectively in charge of the day-to-day operations of BTB. Mr. Autorino used to be Mr. Barry's father-in-law. During the time period relevant to this case, Mr. Barry was responsible for reviewing the books and accounts of BTB.

Mr. Aguiar has stored his boat at BTB since 2003. During the life of Mr. Aguiar and BTB's business relationship, Mr. Aguiar frequently made partial and periodic payments to BTB for its services. Michael Pendleton, a longtime employee of BTB, testified that Mr. Aguiar, at times, was difficult to get in touch with and, in essence, that Mr. Aguiar was a slow payer. In the words of Mr. Pendleton, "[Mr. Aguiar] stretched it out for quite some time. Trying to get paid was difficult." In the past, when Mr. Aguiar fell behind on his storage fees, BTB contacted Mr. Aguiar by letter, email, or asked for payment in person when Mr. Aguiar was at the boat yard.

As of November 30, 2013, Mr. Aguiar was current on this payments to BTB; he had a zero balance due in his account. BTB generally billed Mr. Aguiar twice a year for storage fees on his boat; once in the winter and once in the spring. When BTB sent Mr. Aguiar a bill for the 2013-2014 winter storage of his boat, Mr. Aguiar made only a partial payment of \$1,000 on January 17, 2014. When BTB sent Mr. Aguiar a bill for the 2014 spring storage

of his boat, Mr. Aguiar did not make any payment. By October 22, 2014, Mr. Aguiar owed BTB approximately \$5,300.²

In 2014, the General Assembly passed P.A. 14-57, An Act Concerning Abandoned Vessels. Generally, P.A. 14-57 amended existing law to create new administrative procedures for the seizure and disposal of abandoned boats. P.A. 14-57 became effective January 1, 2015 and was eventually codified in General Statutes § 15-140c.

On April 17, 2015, BTB applied to the Department of Energy and Environmental Protection (DEEP) under § 15-140c to have Mr. Aguiar's boat declared abandoned. As part of the application, BTB represented to DEEP that Mr. Aguiar's boat had been left at BTB "more than one year after the last full payment was received." BTB's application regarding Mr. Aguiar's boat was part of eleven abandoned boat applications submitted by BTB to DEEP at or about the same time.

BTB's application was received by DEEP on April 23, 2015. On May 7, 2015, a sticker was placed on Mr. Aguiar's boat notifying him that his boat was considered abandoned and providing a telephone number to call should Mr. Aguiar have any questions. DEEP also sent notice of BTB's application to Mr. Aguiar on May 9, 2015, but that notice was returned to DEEP as undeliverable. At some point during the spring of 2015, a friend of Mr. Aguiar's texted Mr. Aguiar a picture of the DEEP sticker on Mr. Aguiar's boat. Mr. Aguiar called DEEP to inquire. Mr. Aguiar left a voicemail message at the telephone

² Although a statement of Mr. Aguiar's billing history was introduced at trial, see Ex. 7, the court cannot ascertain from that exhibit, or other exhibits introduced at trial, the exact balance due and owing on Mr. Aguiar's account at each moment in time. This problem is exacerbated by the fact that BTB had a "north yard" and a "south yard" during the relevant time period and each yard sent out separate bills and operated on separate billing systems. The court recites its findings a fact based on credible witness testimony as to the dates of specific amounts due and payments made.

number listed on the DEEP sticker indicating that his boat was not abandoned. Mr. Aguiar did not receive a return phone call from DEEP, but Mr. Aguiar nevertheless concluded that he had sufficiently notified DEEP that his boat was not abandoned. At about this same time, Mr. Aguiar ran into Mr. Pendleton at the BTB boat yard. Mr. Aguiar had dealt with Mr. Pendleton previously regarding billing on Mr. Aguiar's boat. Mr. Aguiar testified that he asked Mr. Pendleton about the status of Mr. Aguiar's account and that Mr. Pendleton said that so long as Mr. Aguiar continued to make payments, things would be okay. Mr. Pendleton testified that he did not recall this conversation, but the court nevertheless credits Mr. Aguiar's testimony.

On June 22, 2015, BTB received a payment of \$2,500 from Mr. Aguiar. On August 8, 2015, BTB received a \$1,500 payment from Mr. Aguiar. At no time did BTB tell DEEP that BTB was continuing to receive payments from Mr. Aguiar. On September 21, 2015, DEEP sent notice of BTB's application to Mr. Aguiar at his address at 212 Wickham Road in Glastonbury via certified mail. The notice was signed for by Mr. Aguiar's wife, Maria Aguiar, on September 23, 2015. Mr. Aguiar again called DEEP to indicate that his boat was not abandoned, but, again, Mr. Aguiar did not receive a response from DEEP. BTB assumed ownership of Mr. Aguiar's boat on December 11, 2015. When BTB assumed ownership of Mr. Aguiar's boat, Mr. Aguiar had an outstanding debt to BTB of \$1,800. In March of 2016, Mr. Aguiar attempted to make another payment on his storage fees and was told for the first time that his boat had been seized by BTB.

After assuming ownership of Mr. Aguiar's boat, BTB paid a federal tax lien on the boat of \$15,000. BTB subsequently sold Mr. Aguiar's boat to Anthony Autorino for \$80,000. Mr. Autorino in turn sold Mr. Aguiar's boat to a third party buyer for \$90,000.

LEGAL ANALYSIS

a. *General Statutes § 15-140c*

Section 15-140c states that a boat “shall be presumed to be abandoned” if the boat is left at a storage facility more than one year since the last full payment. Thus, by its plain terms, § 15-140c establishes a statutory presumption of the abandonment of one’s personal property (a boat) if the requirements of § 15-140c are otherwise met. “Abandonment in its general sense is the intentional relinquishment of a known right. It is ordinarily a question of fact. To constitute an abandonment there must be an intention to abandon or relinquish accompanied by some act or omission to act by which such intention is manifested. Most of the cases . . . concern the abandonment of property rights, but personal property may also be abandoned. This is so when its possession is voluntarily forsaken by the owner.” (Internal citations omitted.) *Sharkiewicz v. Lepone*, 139 Conn. 706, 707, 96 A.2d 796 (1953); see also *Sanchez v. Forty’s Texaco Service, Inc.*, 5 Conn.App. 438, 440, 499 A.2d 436 (1985) (stating “[a]bandonment of personal property. . . requires an intention to abandon or relinquish accompanied by some act or omission to act by which such an intention is manifested and is a question of fact.” (Internal quotation marks omitted.)); *Detroit Institute of Arts Founders Society v. Rose*, 127 F.Supp.2d 117, 134 n.37 (D. Conn. 2001) (Droney, J.) (“[a]bandonment of personal property. . . requires an intention to abandon or relinquish accompanied by some act or omission to act by which such an intention is manifested.”). Moreover, a statutory presumption is rebuttable by the presentation of sufficient evidence. “A rebuttable presumption is equivalent to prima facie proof of a fact and can be rebutted only by the opposing party’s production of sufficient and persuasive contradictory evidence that disproves the fact that is the subject of the presumption. . . A presumption requires that

a particular fact be deemed true until such time as the proponent of the invalidity of the fact has, by the particular quantum of proof required by the case, shown by sufficient contradictory evidence, that the presumption has been rebutted.” *Fish v. Fish*, 285 Conn. 24, 46 n. 21, 939 A.2d 1040 (2008). (Citation omitted; Internal quotation marks omitted).

In this case, in its role as fact finder, the court finds that Mr. Aguiar has presented sufficient factual evidence to rebut the presumption that he abandoned his boat. Specifically, after discovering his boat was subject to abandonment, Mr. Aguiar called DEEP twice to state that it was not abandoned. Mr. Aguiar also told Mr. Pendleton, BTB’s employee, the same thing and was reassured by Mr. Pendleton that things would be okay so long as Mr. Aguiar continued to make payments. Most tellingly, Mr. Aguiar also continued to make payments toward his boat’s storage fees. Mr. Aguiar made a \$2,500 payment on June 22, 2015 and a \$1,500 payment on August 8, 2015. BTB accepted these payments from Mr. Aguiar, but failed to inform DEEP that it was still in contact with Mr. Aguiar and that Mr. Aguiar was making payments on his debt. Mr. Aguiar even tried to make an additional payment to BTB in March of 2016, not knowing that BTB had already assumed ownership of his boat. These actions by Mr. Aguiar are inconsistent with the notion that Mr. Aguiar was intentionally or voluntarily relinquishing his rights to his personal property. Indeed, the only evidence presented at trial leads the court to the conclusion that Mr. Aguiar was doing everything within his financial power to keep ownership of his boat. Therefore, the court concludes that the evidence presented by Mr. Aguiar is more than sufficient to rebut and overcome the statutory presumption set forth in § 15-140c that Mr. Aguiar had abandoned his boat.

b. *Plaintiff's claims*

Mr. Aguiar's second amended complaint asserts five claims against each of the defendants: fraud, conversion/civil theft, unjust enrichment, breach of contract, and violation of the Connecticut Unfair Trade Practices Act (CUTPA). As set forth below, the court finds in favor of Mr. Aguiar as to his claims of conversion and unjust enrichment.

"The tort of conversion occurs when one, without authorization, assumes and exercises ownership over property belonging to another, to the exclusion of the owner's rights. Thus, conversion is some unauthorized act which deprives another of his property permanently or for an indefinite time; some unauthorized assumption and exercise of the powers of the owner to his harm. The essence of the wrong is that the property rights of the plaintiff have been dealt with in a manner adverse to him, inconsistent with his right of dominion and to his harm" (Citations omitted; Internal quotation marks omitted.) *Deming v. Nationwide Mutual Insurance Co.*, 279 Conn. 745, 770 (2006). "[S]tatutory theft requires a plaintiff to prove the additional element of intent over and above what he or she must demonstrate to prove conversion." *Id.*

"A right of recovery under the doctrine of unjust enrichment is essentially equitable, its basis being that in a given situation it is contrary to equity and good conscience for one to retain a benefit which has come to him at the expense of another With no other test than what, under a given set of circumstances, is just or unjust, equitable or inequitable, conscionable or unconscionable, it becomes necessary in any case where the benefit of the doctrine is claimed, to examine the circumstances and the conduct of the parties and apply this standard Unjust enrichment is, consistent with the principles of equity, a broad and flexible remedy Plaintiffs seeking recovery for unjust enrichment must prove: (1) that

the defendants were benefited, (2) that the defendants unjustly did not pay the plaintiffs for the benefits, and (3) that the failure of payment was to the plaintiffs' detriment." (Citations omitted; internal quotation marks omitted.) *Town of New Hartford v. Connecticut Resources Recovery Authority*, 291 Conn. 443, 451-52 (2009).

Here, the court finds that Mr. Aguiar has proven both conversion and unjust enrichment against BTB. BTB assumed ownership of Mr. Aguiar's boat and sold it to Mr. Autorino who, in turn, sold the boat to a third party. Such actions by BTB clearly exercise ownership over Mr. Aguiar's boat to the exclusion of Mr. Aguiar's own rights. Additionally, as set forth above, the court has concluded that BTB improperly exercised its rights under § 15-140c by assuming ownership of Mr. Aguiar's boat when he had not intentionally abandoned his rights in that boat, and, moreover, under circumstances in which BTB ought to have known that Mr. Aguiar was asserting his intent to maintain ownership of the boat. Persons do not typically continue to pay storage fees on boats that they intend to abandon. The undisputed facts are that Mr. Aguiar made at least two payments to BTB after it submitted an application to have Mr. Aguiar's boat declared abandoned. On the basis of these facts, the court finds that it is inequitable that BTB assumed ownership of Mr. Aguiar's boat and that BTB has been unjustly enriched at Mr. Aguiar's expense.

With respect to Mr. Aguiar's remaining claims, the court finds the following. The court finds that Mr. Aguiar failed to carry his burden with respect to his fraud claim because there is no direct evidence that BTB intended to defraud Mr. Aguiar and the court declines to infer such intent from BTB's actions. Section 15-140c is a new statute that has not been interpreted by the courts thus far. The court concludes that BTB simply failed to correctly understand its provisions. With regard to Mr. Aguiar's breach of contract claim, the court

finds that Mr. Aguiar failed to carry his burden on this claim as well. While the court can infer a course of dealing between the parties sufficient to establish a contract for the storage of Mr. Aguiar's boat and a corresponding obligation to pay for that service, Mr. Aguiar failed to prove any other contract terms. An exemplar contract for boat storage at BTB was introduced at trial, but that contract was unsigned and the court cannot conclude from other evidence that the parties agreed that BTB would limit itself to the remedies set forth in that (unsigned) exemplar. Finally, the court concludes that, on the facts of this case, BTB's attempt to exercise its rights under § 15-140c was incidental to its primary business of operating a boat yard. See *McCann Real Equities Series XXII, LLC v. David McDermott Chevrolet, Inc.*, 93 Conn. App. 486, 523, cert denied, 277 Conn. 928 (2006) ("CUTPA violation may not be alleged for activities that are incidental to an entity's primary trade or commerce"). Again, § 15-140c is a new statute. Absent some additional evidence, the court cannot conclude that assuming ownership of abandoned boats was part of BTB's primary trade or business. The court also declines to find liability as to Mr. Barry on any of the plaintiff's claims because there was no evidence introduced at trial that Mr. Barry had any direct involvement in any of the facts of this case.

c. *Damages*

As to damages, the court finds that Mr. Aguiar has been damaged by BTB's conduct in the amount of \$95,200, which is the fair market value (\$112,000) of Mr. Aguiar's boat at the time BTB assumed ownership, subtracting \$15,000 for the federal tax lien on the boat, as well as \$1,800 due to BTB for unpaid storage fees. Both the federal tax lien and the storage fees are financial obligations Mr. Aguiar was liable for regardless of BTB's conduct.

Because the court declined to rule in Mr. Aguiar's favor on his CUTPA claim, the court declines to award an accounting, attorney's fees, or punitive damages.

Budzik, J.
Budzik