

STATE OF MICHIGAN
COURT OF APPEALS

SALVATORE RUSSO, KAREN RUSSO, and
WINNER'S CIRCLE SPORTS BAR, INC.,

UNPUBLISHED
October 6, 2011

Plaintiffs-Appellants,
and

RUSSO'S PIZZA, INC.,

Plaintiff,

v

SHURBET PARTNERS, INC.,

Defendant-Appellee.

No. 298090
Kent Circuit Court
LC No. 08-005611-NZ

Before: O'CONNELL, P.J., and METER and BECKERING, JJ.

PER CURIAM.

Plaintiffs Winner's Circle Sports Bar, Inc., and Salvatore and Karen Russo appeal as of right from a judgment in favor of defendant. We affirm.

Winner's Circle is a corporation founded by members of the Russo family. In January 2006, Russo Real Estate Development, L.L.C., of which Winner's Circle is a subsidiary, entered into a land contract with defendant to purchase real property at 3075 28th Street SW in Grandville. Defendant and the buyer agreed on a price of \$605,000, with the first payment to be made six months after the beginning of the contract. After the first six months, the buyer was to make monthly payments of \$4,158. Defendant allowed the buyer to make no down payment, and the buyer agreed to furnish the premises with equipment necessary to run a sports bar.

In June 2008, Salvatore and Karen Russo, along with Russo's Pizza, Inc., filed a complaint against defendant alleging conversion of the personal property that was located in the bar after defendant foreclosed on the land due to the buyer's default. In July 2009, an amended complaint added Winner's Circle as a plaintiff, alleging a violation of the Michigan Uniform Commercial Code (UCC). The trial court ultimately ruled in favor of defendant.

Plaintiffs argue that the trial court erred in ruling that the personal property in the bar transferred to defendant based on the foreclosure.

We agree with defendant that plaintiffs have not raised any appealable issue in their brief. An issue not raised in an appellant's questions-presented section is considered waived on appeal. *English v Blue Cross Blue Shield of Mich*, 263 Mich App 449, 459; 688 NW2d 523 (2004). Plaintiffs have clearly waived Winner's Circle's UCC claim. Indeed, there is no substantive mention of Winner's Circle's UCC claim anywhere in plaintiffs' brief, rendering this issue abandoned on appeal.

In addition, plaintiffs' question presented for appeal refers to whether there had been a transfer of ownership of the personal property "from Winner's Circle to Defendant when the land contract was forfeited[.]" Thus, plaintiffs have taken the position that Winner's Circle owns the property at issue. The problem is that they did not make a conversion argument below in connection with Winner's Circle, rendering their current appeal untenable. In *Axford v Matthews*, 43 Mich 327, 330; 5 NW 377 (1880), the Michigan Supreme Court held that "it cannot be that two men can be entitled, at the same time, to maintain an action of trover for the same goods" (internal quotation marks omitted). In this transaction, either the Russos or Winner's Circle owned the disputed property before defendant foreclosed. Plaintiffs cannot claim on appeal that Winner's Circle was the original owner when they argued below that the Russos were the original owners.

Moreover, even assuming that plaintiffs' appeal was properly presented, their appellate argument, which is based on *Emmons v Easter*, 62 Mich App 226; 233 NW2d 239 (1975), must fail. The panel in that case essentially indicated that a debtor does not, by virtue of a foreclosure, forfeit personal property brought onto the realty after an agreement was signed unless the personal property was "considered improvements of, attachments to, or inseparable from the realty controlled by the land contract." *Id.* at 235. The disputed property was in fact inseparable from the premises in this case because it was a necessary part of the purchase agreement.¹ Indeed, nobody can guess whether defendant would have accepted the agreement had the clause in question—which provided that the seller would require no down payment in exchange for the buyer making certain "improvements" to the property—not been included. Under *Emmons*, the important consideration is whether the property at issue was "within the purview" of the land contract. *Id.* at 236. The property in *Emmons* was not considered by the parties when the agreements were drafted and simply brought onto the premises by the plaintiffs later, see *id.* at 235, whereas here the property at issue was brought onto the land as a result of the land contract. Thus, plaintiffs' reliance on *Emmons* would fail even if plaintiffs' claim were otherwise preserved and viable.

We decline to address defendant's argument concerning sanctions for plaintiffs' bringing of a frivolous appeal because defendant cites no supporting authority in support of its argument. *Moses, Inc v SEMCOG*, 270 Mich App 401, 417; 716 NW2d 278 (2006).

¹ Moreover, the land contract defined the disputed property as "improvements."

Affirmed.

/s/ Peter D. O'Connell
/s/ Patrick M. Meter
/s/ Jane M. Beckering