

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee/
Cross Appellant,

v

TWENTY-SEVEN THOUSAND FOUR
HUNDRED NINETY DOLLARS;
FORTY GOLD KRUGERRAND COINS;
and FIFTY GOLD CORONA COINS,

Defendants,

and

SQUARE LAKE HILLS CONDOMINIUM
ASSOCIATION,

Defendant-Appellant/
Cross Appellee,

and

EASTMAN FIRE PROTECTION COMPANY,

Defendant-Appellee/
Cross Appellee.

UNPUBLISHED

November 26, 1996

No. 173507

LC No. 93-451823-CF

Before: MacKenzie, P.J., and Jansen and T.R. Thomas,* JJ.

PER CURIAM.

* Circuit judge, sitting on the Court of Appeals by assignment.

In this forfeiture action, defendant Square Lake Hills Condominium Association appeals as of right, and plaintiff cross appeals, from the circuit court's order granting summary disposition and awarding found property to defendant Eastman Fire Protection Company. We affirm.

I.

Employees of defendant Eastman Fire Protection Company found valuable property hidden in a fire extinguisher when the company was hired to perform routine inspections and maintenance of extinguishers in the common areas of a condominium complex. The fire extinguisher company called the police, and a drug-sniffing dog "alerted" on the property in a manner consistent with the presence of illegal narcotics.

Further investigation revealed that a convicted drug dealer had once lived in the building. The fire extinguisher was first noticed in 1991 during routine inspection, although in viewing the facts in a light most favorable to the non-moving party, we are not assuming that the extinguisher was not present before that time. In any event, the convicted drug dealer last indicated living in the building in a 1985 arrest report.

Plaintiff filed this action for forfeiture pursuant to MCL 333.7521; MSA 14.15(7521). Defendant Eastman Fire Protection Company claimed an interest as finder of the property pursuant to MCL 434.21 *et seq.*; MSA 18.718(1) *et seq.* Defendant Square Lake Hills Condominium Association, as owner of the common areas, filed a claim under several theories, including as landowner under a concept known as *locus in quo*. The association also argued that it was the ultimate "finder" because the fire extinguisher company had been acting as an employee or agent of the association when the property was found.

Both defendants filed cross motions for summary disposition. The circuit court ruled that *locus in quo* had not been adopted in Michigan and that the fire extinguisher company's rights as finder were superior to the landowner. The court further held that plaintiff had not shown a substantial connection between the property and an illegal drug transaction. Accordingly, the court awarded the property to the fire extinguisher company.

II.

Defendant Square Lake Hills Condominium Association argues that the *locus in quo* doctrine should apply to award possession of found property to a landowner. The association also argues that various other common law and equitable remedies should apply to vest possession in it. We disagree.

A prior statute was interpreted by this Court in *Willsmore v Osceola Twp*, 106 Mich App 671, 688; 308 NW2d 796 (1981), to be a "finders statute." The prior statute was repealed in 1987 and replaced with the lost property act, MCL 434.21 *et seq.*; MSA 18.718(1) *et seq.* The statutory language and the bill analysis prepared while the legislation was pending clearly provide that, when the true owner cannot be located, the finder receives the property. Whether *locus in quo* was squarely

rejected in *Willsmore* is immaterial; it has been squarely rejected by the Legislature. The circuit court did not err in granting the finder a higher priority than the landowner.

Defendant Square Lake Hills Condominium Association also argues that the fire extinguisher company owed fiduciary duties as its agent. No authority was cited which would compel the imposition of a fiduciary or agency relationship.

III.

In the cross appeal, plaintiff argues that summary disposition was premature because there remained a genuine issue of material fact about whether the property was forfeitable. We disagree.

The dog's response standing alone did not provide the necessary connection to contraband. *In re Forfeiture of \$18,000*, 189 Mich App 1; 471 NW2d 628 (1991). The drug dealer's former residence at the condominium project is speculative; the fire extinguisher was first noticed five years after he had moved out (assuming he still lived there in 1985 when he reported that address to the police). The state must show a *substantial* connection between the goods and an unlawful drug transaction. *In re Forfeiture of \$5264*, 432 Mich 242, 262; 439 NW2d 246 (1989). A motion for summary disposition is an appropriate mechanism to test plaintiff's proofs to avoid a needless trial. *Morganroth v Whitall*, 161 Mich App 785, 788-789; 411 NW2d 859 (1987). Viewing the facts in a light most favorable to the plaintiff, the nexus is so tenuous that reasonable minds could not differ. A substantial connection could not be shown. The circuit court did not err by granting summary disposition against plaintiff.

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Kathleen Jansen

/s/ Terrence R. Thomas