

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

WALTER ROMANIK, d/b/a ROMANIK TREE  
FARMS, d/b/a SNO KIST TREE COMPANY,

UNPUBLISHED  
March 14, 1997

Plaintiff-Appellant,

v

No. 188625  
Wexford Circuit Court  
LC No. 94-011125

OLD KENT BANK OF CADILLAC,

Defendant-Appellee.

---

Before: Bandstra, P.J., and Hoekstra and S.F. Cox,\* JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition in favor of defendant. We affirm.

Plaintiff sold Christmas trees to Michigan Christmas Tree Corporation (MCT) for sale to others. When MCT failed to pay for the trees, plaintiff sued MCT and was awarded a judgment of \$111,572.19 against MCT. After MCT filed for bankruptcy and plaintiff was unable to collect any monies from the bankruptcy estate, plaintiff sued defendant for improperly collecting monies that were due to plaintiff.

Plaintiff first argues that he did not have to prove that he had a security interest in the trees or proceeds before he could make any claim against defendant for the cash proceeds from the sale of the trees. We agree. Plaintiff did not need a security interest in the trees in order to make a claim against defendant for conversion if plaintiff had a proprietary interest in the trees. See *Attorney General v Hermes*, 127 Mich App 777; 339 NW2d 545 (1983).

Plaintiff argues that he had a proprietary interest in the trees because he delivered the trees to MCT on consignment. We disagree. Plaintiff's contract with MCT set a fixed price for the sale without regard to MCT's sale price to third parties. The contract and terms of the agreement used the term

---

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

“sale.” Additionally, in his deposition, even plaintiff agreed that he sold the trees to MCT. Plaintiff presented no evidence that the contract with MCT was one of consignment. *In re DIA Sales Corp v Maguire*, 339 F2d 175, 178 (CA 6, 1964); *In re Taylor*, 46 F2d 326, 328 (ED Mich, 1931).

Plaintiff alternatively argues that he had a proprietary interest in the trees or proceeds because his contract with MCT was a sale or return contract under the Uniform Commercial Code. We disagree. Because plaintiff’s contract with MCT did not allow MCT to return the trees even if they conformed to the contract, the contract did not satisfy the applicable statutory requirement. MCL 440.2326(1)(b); MSA 19.2326(1)(b).

We affirm. Defendant may tax costs.

/s/ Richard A. Bandstra

/s/ Joel P. Hoekstra

/s/ Sean F. Cox