

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

MOORE EQUIPMENT COMPANY,

Appellant

v.

CALLEN CONSTRUCTION CO..

Respondent

DOCKET NUMBER WD70011

DATE: October 27, 2009

Appeal From:

Circuit Court of Jackson County, MO
The Honorable John R. O'Malley, Judge

Appellate Judges:

Division Three: Thomas H. Newton, C.J., James Edward Welsh, and Karen King Mitchell, JJ.

Attorneys:

Michael P. Healy, Kansas City, MO

Counsel for Appellant,

Attorneys:

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Counsel for Respondent
Co-Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**MOORE EQUIPMENT COMPANY, Appellant, v.
CALLEN CONSTRUCTION CO., Respondent**

WD70011

Jackson County

Before Division Three Judges: Newton, C.J., Welsh, and Mitchell, JJ.

Moore Equipment Company appeals the circuit court's grant of summary judgment in favor of Callen Construction Co., Inc., on Callen's claim for conversion. Moore contends that Callen's claim fails as a matter of law because it seeks the return of money and does not fall within the limited circumstances in which a claim for the return of money lies in conversion. Moore also alleges that the circuit court's judgment is erroneous because it permits Callen to recover duplicate damages.

AFFIRMED.

Division Three holds:

(1) The circuit court did not err in granting summary judgment in favor of Callen on its claim for conversion. The undisputed evidence establishes that the property alleged to have been converted was an identifiable check; thus, it constituted specific chattel for which a claim for conversion could be maintained. The undisputed evidence further establishes that the check's issuer, PRS/HEDPG, sent the check to Moore in error; Moore's depositing the check and retaining its proceeds indicated a claim of right in opposition to Callen's rights; and Moore's refusal to give up possession of the check or its equivalent in money upon demand rendered it liable to Callen for damages for conversion in the amount of the face value of the check.

(2) The circuit court's judgment does not permit Callen to recover duplicate damages. There may be only one satisfaction for one injury. Therefore, that the court granted Callen a judgment against both PRS/HEDPG and Moore does not mean that Callen is entitled to receive satisfaction from both of them.

Opinion by: James Edward Welsh, Judge

October 27, 2009

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