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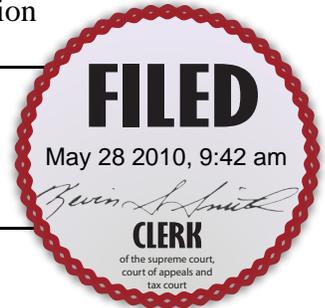
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**IN THE
COURT OF APPEALS OF INDIANA**



QUALITY LEASING CO., INC.,)
)
Appellant-Plaintiff,)
)
vs.)
)
DEALER SERVICES CORPORATION,)
)
Appellee-Defendant.)

No. 29A02-0908-CV-747

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable William J. Hughes, Judge
The Honorable William Greenaway, Magistrate
Cause No. 29D03-0812-CC-1489

May 28, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Quality Leasing Co., Inc. (“Quality”) alleged Dealer Services Corporation (“DSC”) converted a 2006 Porsche Carrera 911. DSC moved for summary judgment, which the trial court granted. Because Quality has not presented a cogent argument with appropriate citations, we affirm.

FACTS AND PROCEDURAL HISTORY

Quality held title to a 2006 Porsche Carrera 911. Quality decided to sell the Porsche and took it to Village Motor Sports (“Village Motor”) to be sold on consignment. DSC, which held a perfected security interest in Village Motor’s inventory, removed several vehicles, including the Porsche, from Village Motor’s premises. After DSC refused to return the Porsche, Quality then sued DCS for conversion. DCS moved for summary judgment, which the trial court granted with the following order:

FINDINGS OF FACT

1. Village Motor Sports, Inc. (“Village Motor”), a borrower from DSC, executed a Demand Promissory Note and Security Agreement in favor of DSC, dated August 9, 2005, in the principal amount of One Million and no/100 (\$1,000,000.00) (the “Note”).

* * * * *

3. The terms and conditions of the Original Note were renewed when Village Motor executed a second Demand Promissory Note and Security Agreement in favor of DSC on or about May 4, 2007, again in the principal amount of One Million and no/100 Dollars (\$1,000,000.00) (The “Renewed Note”).

* * * * *

5. As one of the terms of the Note and the Renewed Note, Village Motor granted DSC a security interest in all of its collateral, including all assets and properties wherever located, including without limitation all equipment of any kind or nature, all vehicles, vehicle parts and inventory now owned or hereafter acquired, without limitation, purchase money inventory, the purchase of which was financed or floorplanned by DSC for Village Motor of

whatever kind or nature, and all returns, repossessions, exchanges, substations, attachments, additions, accessions, accessories, replacements, and proceeds thereof; all accounts receivable, chattel paper, and general intangibles now owned or hereafter acquired by Village Motor together with the proceeds thereof, and all of Village Motor's documents, books and records relating to the foregoing (the "Collateral").

6. DSC duly perfected its security interest in the Collateral by filing a UCC Financing Statement with the Office of the Indiana Secretary of State on or about August 11, 2005 (the "Financing Statement"). DSC filed an amended UCC Financing Statement with the Office of the Indiana Secretary of State on or about December 27, 2006 (the "Amended Financing Statement", together with the Note, the Renewed Note, the Term Sheet, the Current Term Sheets and the Financing Statement, the "Loan Documents").

7. On or about November 3, 2007, Quality, an automobile leasing company delivered a 2006 Porsche Carrera 911 . . . to Village Motor . . . to be sold on consignment.

8. Following Village Motor's default under the Loan Documents, DSC exercised its rights under the Loan Documents and repossessed certain Collateral of Village Motor, including the Porsche, on or about November 21, 2008.

9. On November 28, 2008, counsel's office for Quality contacted DSC to request return of the Porsche. DSC replied to said email by inquiring whether Quality had placed the Porsche with Village Motor to be sold on consignment. A representative from counsel's office for Quality responded in the affirmative.

10. DSC responded to Quality's admission that it had left the Porsche with Village Motor to be sold on consignment by explaining its superior rights to the Porsche by virtue of the Financing Statement under Indiana's Uniform Commercial Code.

11. Quality did not file a UCC financing statement perfecting its security interest in the Porsche or send notice to DSC of its intent to hold a purchase money security interest in the Porsche.

* * * * *

CONCLUSIONS OF LAW

* * * * *

2. DSC possesses a valid and first priority lien on the Collateral of Village Motor.

3. Quality placed the Porsche with Village Motor to be sold on consignment.

4. The Porsche was a part of Village Motor's Collateral.

5. Quality did not properly perfect its security interest in the Porsche.

6. Quality did not possess[] an unqualified and immediate right to possession of the Porsche.

7. DSC was within its legal rights to take repossession of the Porsche pursuant to the security interest granted to it in the Loan Documents by Village Motor.

(Appellant's App. at 6-9.)

DISCUSSION AND DECISION

Quality raises four issues, which we consolidate and restate as whether the trial court erred by granting summary judgment for DSC.¹ The appellant bears the burden of persuading us the summary judgment was erroneous. *Cincinnati Ins. Co. v. Davis*, 860 N.E.2d 915, 922 (Ind. Ct. App. 2007).

Quality acknowledges it used the term "consignment," but argues it was using the term in a colloquial sense rather than as a term of art. Quality asserts that what it meant by "consignment" was that it was using Village Motor's lot to temporarily showcase the Porsche, but Village Motor had no authority to sell it. Quality argues this temporary placement did not transfer ownership, so the Porsche did not become part of Village Motor's inventory. Quality asserts it remained the owner of the Porsche because it retained the title.

¹ Quality states the issues are: (1) "Whether the action of the Appellant Quality Leasing Co. Inc [sic], constituted a formal consignment under the law which would render the vehicle, a 2006 Porsche, subject to creditors of a third party under UCC code [sic]," (2) "Whether the Trial Court erred in finding the transaction between Quality Leasing Co. Inc [sic], and Village Motor Sports to be a mere security interest," (3) "Whether the Trial Court properly applied I. C. 26-1 et. [sic] Seq. to the facts of this case," (4) "Whether the Trial Court applied the appropriate standards for determination of Summary Judgment or whether there were sufficient disputed facts or interpretation of law that made Summary Judgment inappropriate." (Appellant's Br. at 1.) The argument section of the Appellant's Brief does not contain any headings to help us determine which arguments relate to which issues, thus it is unclear whether Quality intends for these to be four distinct issues.

Quality believes it was not required to file a financing statement or give notice to DSC and claims it has never taken such steps. Quality claims this is the common practice in the industry and argues the “wheels of commerce would grind to a halt” if companies like Quality had to comply with the UCC requirements instead of relying on the fact that they hold title to a vehicle. (Appellant’s Br. at 16.)

None of these assertions is supported by citation to authority or the record.

Ind. Appellate Rule 46(A)(8)(a) requires an argument “contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on” Non-compliance with that rule results in waiver of the argument on appeal.

Nealy v. American Family Mut. Ins. Co., 901 N.E.2d 842, 849 (Ind. Ct. App. 2009). Quality has waived these arguments.

Quality cites only three decisions in support of its argument that the trial court erred in granting summary judgment: *Glenshaw Glass Co. v. Ontario Grape Growers’ Marketing Bd.*, 67 F.3d 470 (3d Cir. 1995); *Allgeier v. Campisi*, 159 S.E.2d 458 (Ga. Ct. App. 1968); and *In re Mincow Bag Co.*, 248 N.E.2d 26 (N.Y. 1969).² Initially, we note Quality has not provided pinpoint citations or followed the Bluebook format for citations. *See* Ind. Appellate Rule 22 (“Citation Form”). Quality includes a quote from *Glenshaw* in the summary of

² Quality did cite additional cases to establish the standard of review. Quality also cited Ind. Code § 26-1-9.1-303, which appears to be a choice of law provision, and “I. C. 26-1-2-3(26),” which does not exist.

argument section of its brief, but does not develop an argument based on *Glenshaw*. Quality describes *Allgeier* but offers no explanation of how *Allgeier* applies to this case. It then describes *In re Mincow* in three sentences that together span nearly a page, but again provides no analysis of how that decision applies to the facts before us. All these cases were decided before 2001, when the General Assembly adopted a new version of Article 9 of the Uniform Commercial Code. *See* Pub. Law No. 57-2000, §§ 45 and 48 (repealing Ind. Code ch. 26-1-9 and creating a new ch. 26-1-9.1). Quality does not explain whether the changes to Article 9 affect the decisions it has cited. Quality’s arguments concerning these cases are confusing and undeveloped. Therefore, we conclude Quality has not presented a cogent argument relating to these cases and therefore has waived any arguments based thereon. *See Vandenburg v. Vandenburg*, 916 N.E.2d 723, 730-31 (Ind. Ct. App. 2009) (issue is waived when party fails to develop cogent argument); Ind. App. R. 46(A)(8)(a).³

Because Quality has waived all the arguments it offered on appeal, it provided no ground on which we may reverse the judgment for DSC. Therefore, we affirm.

Affirmed.

BAILEY, J., and BARNES, J., concur.

³ In its reply brief, Quality argued for the first time that the UCC provisions DSC relies on are not applicable because DCS had actual knowledge that the Porsche did not belong to Village Motor. DSC filed a “Motion to Strike Reply Brief of Appellant,” arguing Quality impermissibly raised new issues in the reply brief. *See, e.g., Receveur v. Buss*, 919 N.E.2d 1235, 1239 n.6 (Ind. Ct. App. 2010) (issue may not be raised for first time in reply brief; issue not raise in trial court or appellant’s brief is waived). We have determined the arguments raised in the reply brief were either irrelevant to our decision or were improperly raised for the first time in the reply brief. As the reply brief therefore consists of “immaterial . . . or other inappropriate matter,” *see* Ind. App. R. 42 (“Motion To Strike”), and we have granted DSC’s motion by separate order dated XXXX.