

The Courted Corvette

Watch Out For Legal Clouds Overhead

In September's column, we discussed a case in which a restorer won a huge jury verdict against a collector who had allegedly defamed the restorer. But defamation is not limited to false statements that injure a person's personal or professional reputation. It can also relate to unwarranted negative assertions about a product, a business, or other items or entities. One variant, "slander to title" (also known as "slander of title" or "disparagement to/of title") is a statement, which impugns one's ownership of property, and thereby interferes with the owner's ability to sell the article.

The case of *V.J.M. Associates, Inc. v. Gilmore*, decided on April 24, 2001, by the Court of Appeals of Missouri, involved a "slander to title" claim relating to ownership of a collector car.

According to the Court, Glenn Gilmore owned a 1969 Chevrolet Corvette. In 1989, a California court issued a judgment in favor of the Bank of San Pedro against Gilmore for replevin (an action whereby the owner or person entitled to possession of goods seeks their return from another) of the car. However, that judgment was never filed with the California Department of Motor Vehicles so as to provide notice to any prospective purchaser. Gilmore sold the Corvette shortly after the California judgment.

The ownership of the car transferred three times before Robert Jepsen purchased it in Oklahoma from a used Corvette dealer in 1991. Jepsen titled the car in Missouri in early 1992. Upon the failure of the Bank of San Pedro, the Federal Deposit Insurance Corporation (FDIC) sold—and V.J.M. Associates, Inc. purchased—the right to enforce the Bank's 1994 judgment. V.J.M. brought its own replevin action against Jepsen in 1997, seeking to enforce the California judgment.

Jepsen filed a motion for summary judgement, seeking dismissal of V.J.M.'s action to recover the Corvette, which motion the trial court granted in Jepsen's favor. Prior to that ruling, Jepsen counterclaimed alleging V.J.M. knew when it filed its replevin action that it had no right to possession of the car, and thereby slandered Jepsen's title. The trial court granted judgment in favor of Jepsen on his counterclaim in the amount of \$24,000 and costs.

V.J.M. appealed only the trial court's ruling on Jepsen's counterclaim, and thus did not contest the dismissal of V.J.M.'s action to recover the Corvette. V.J.M. argued, among other things, that the trial court erred in entering judgement for Jepsen on his counterclaim because there existed no evidence or insufficient evidence to support the necessary elements of slander to title.

The Court of Appeals agreed with V.J.M., and reversed the trial court's judgment on Jepsen's counterclaim.


The Court began its analysis by reviewing the points that a plaintiff had to establish to prevail on such a claim. "In order to support a slander to title action, there must be false words that are maliciously published and the plaintiff must suffer a pecuniary loss or injury therefrom.... V.J.M. avers that Jepsen failed to meet all three elements of the claim. We address the issue of damages first as it is dispositive."

"Assuming, arguendo, that the evidence was sufficient to support a finding that V.J.M. maliciously published false statements about the car, there was insufficient evidence to determine damages. Generally, damages need not be established with absolute certainty, but reasonable certainty is required as to both existence and amount, and the evidence must not leave the matter to speculation."

"Jepsen believes that since the instigation of the lawsuit against him, the legal proceedings brought him opprobrium in the car collector community and diminished the value of the car. However, Jepsen has not alleged that he is interested in selling the car that he has tried to sell the car, or that if he did try to sell the car, that any buyer has become disinterested in purchasing the car. Therefore, any damages awarded by the trial court were speculative in nature, because it is uncertain whether Jepsen sustained any damages."

"Hence, Jepsen is not able to meet the three required elements of his slander to title claim. We find the element of damages addressed in point one to be dispositive and need not address V.J.M.'s other allegations. The judgment of the trial court is reversed."

In a concurring opinion (a separate opinion by one or more judges which agrees with the decision of the majority of the court but offers alternative reasons for reaching that decision), another judge on the Court of Appeals observed: "The filing and disposition of the replevin action did not create a cloud on Jepsen's title; it removed the cloud that already existed. Moreover, Jepsen offered no evidence that V.J.M. filed the replevin action for any purpose other than to enforce what it honestly believed was its right to possession of the car."

Thus, although Jepsen lost on his slander to title claim, he did prevail in his effort to keep the Corvette. 

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