

IN THE SUPREME COURT OF THE STATE OF NEVADA

KING AUDIO, INC., A CALIFORNIA  
CORPORATION, A/K/A KING AUDIO,  
Appellant,  
vs.  
TRADE SHOW SPECIALISTS CORP.,  
D/B/A TRADE SHOW SPECIALISTS,  
Respondent.

No. 44245

**FILED**

**JAN 23 2006**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This appeal challenges a district court judgment awarding respondent damages in a breach of contract action and dismissing appellant's counterclaim for conversion after a bench trial. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

On appeal, this court defers to a trial court's factual findings if they are not clearly wrong and are supported by substantial evidence,<sup>1</sup> which this court has defined as evidence that "a reasonable mind might accept as adequate to support a conclusion."<sup>2</sup> The general rule of this court, moreover, is that when the evidence conflicts and substantial evidence sustains the judgment, it will not be disturbed.<sup>3</sup>

Appellant alleges that since respondent, a warehouseman,<sup>4</sup> failed to establish the prerequisites for a warehouseman's lien under NRS

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<sup>1</sup>See NOLM, LLC v. County of Clark, 120 Nev. 736, 739, 100 P.3d 658, 660-61 (2004).

<sup>2</sup>First Interstate Bank v. Jafbros Auto Body, 106 Nev. 54, 56, 787 P.2d 765, 767 (1990) (quoting State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 792 P.2d 497, 498 (1986)).

<sup>3</sup>Cram v. Durston, 68 Nev. 503, 505, 237 P.2d 209, 210 (1951).

<sup>4</sup>See NRS 104.7209 (repealed 2005). We note that, although the legislature recently repealed this statute, it still applies in this case.

104.7209 and because no written agreement exists conferring on respondent a lien on appellant's goods (a display booth) stored in respondent's warehouse, the district court erred in denying its counterclaim for conversion. A conversion is a distinct act of dominion wrongfully exerted over another's personal property in denial of, or inconsistent with, his title or rights therein or in derogation, exclusion or defiance of such rights.<sup>5</sup> Appellant, then, must establish its entitlement to immediate possession of the property alleged to be converted.<sup>6</sup> Moreover, the act that allegedly denied appellant its right to possession must have been an unlawful act, or an act that could not be justified or excused by law.<sup>7</sup>

Applying these principles, the district court concluded that appellant failed to demonstrate the elements of conversion. Specifically, the district court found that appellant had failed to establish that it had a right to immediate possession of the display booth because it neither specifically demanded release of the booth<sup>8</sup> nor tendered any payment to

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<sup>5</sup>Wantz v. Redfield, 74 Nev. 198, 326 P.2d 414 (1958).

<sup>6</sup>See Bader v. Cerri, 96 Nev. 352, 357 n. 1, 609 P.2d 314, 317 n.1 (1980), overruled on other grounds by Evans v. Dean Witter Reynolds, Inc., 116 Nev. 598, 608, 5 P.3d 1043, 1050 (2000); United States v. Loughrey, 172 U.S. 206, 212 (1898).

<sup>7</sup>Wantz, 74 Nev. at 196, 326 P.2d at 413.

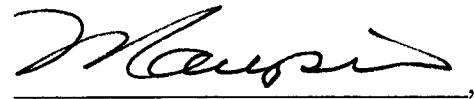
<sup>8</sup>See Studebaker Co. v. Witcher, 44 Nev. 442, 461, 195 P. 334, 339 (1921) (“[D]emand for the return of the property and a refusal establish a conversion.”); Finance Corporation v. King, 370 P.2d 432 (Colo. 1962) (recognizing that a demand and a refusal are necessary to show conversion, where the property's possession was lawfully acquired and there was neither assumption of ownership, wrongful use, nor any act of conversion, prior to the demand); Production Credit Ass'n, Etc. v. Nowatzski, 280 N.W.2d 118, 123 (Wis. 1979) (providing that where “there

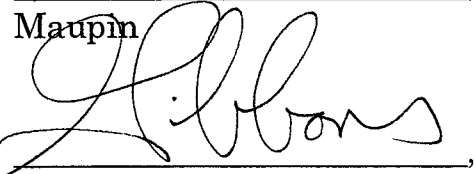
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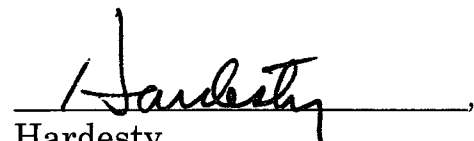
respondent, necessitating its release. Consequently, because it found that appellant was not entitled to immediate possession, the district court dismissed appellant's counterclaim for conversion.

Having reviewed the documents submitted to this court, including the parties' briefs, the transcript, and the appendix, we conclude that substantial evidence supports the district court's judgment and that it was not clearly incorrect based on the evidence presented. Accordingly, we

ORDER the district court's judgment AFFIRMED.<sup>9</sup>

 J.

Maupin  
 J.  
Gibbons

 J.  
Hardesty

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*... continued*

is no wrongful taking[,] . . . a demand by the rightful owner and a refusal by the alleged tortfeasor are necessary elements" to sustain a claim for conversion); cf. Western Indus., Inc. v. General Ins. Co., 91 Nev. 222, 230, 533 P.2d 473, 478 (1975) ("A demand for return of converted property is not necessary when the holder asserts ownership."); Studebaker, 44 Nev. at 461, 195 P. at 339 ("When a conversion is otherwise shown by the evidence, a demand is unnecessary.").

<sup>9</sup>Having considered all the issues raised, appellant's other contentions lack merit, and thus do not warrant reversal of the district court's judgment.

cc: Hon. Valerie Adair, District Judge  
Hong & Hong  
Thomas J. Tanksley  
Clark County Clerk