

At approximately 6:51 p.m., the drone crashed in the branch of a tree above the "Splash Factory" attraction at Roseland. According to data from the drone, it landed approximately 26-feet above the ground. The claimant testified that based on photos of the drone location admitted into evidence as Plaintiff's Exhibits 2 and 3, it landed right over the sidewalk. The claimant played a video retrieved from the drone of it crashing for the Court, Roseland's counsel and Ryan Fuller.

After the drone crashed, the claimant located a Roseland employee who went inside to make a phone call and came back and said that the claimant could not retrieve the drone because Roseland's policy is that drones are not permitted on or over the property. At that point, the claimant contacted the Canandaigua Police Department ("CPD").

CPD Officer Trevor Dobies responded to Roseland. According to the police report received into evidence as Plaintiff's Exhibit 4, Officer Dobies initially spoke to a maintenance worker who told him he would assist the claimant in retrieving the drone. Later, Officer Dobies was notified that the claimant called dispatch again because the manager, Ryan Fuller, would not allow him to retrieve the drone. Officer Dobies responded again where he spoke to Ryan Fuller directly. According to the police report, Ryan Fuller informed Officer Dobies that Roseland had a strict no filming policy and, if he found the drone, he would confiscate it and throw it out. Officer Dobies attempted to mediate the situation between the parties, but Ryan Fuller was adamant that he would not change his mind.

On September 5, 2021, Officer Dobies contacted the property owner, Dan Fuller, who advised that he spoke to Ryan Fuller and they agreed to return the drone to the claimant if located. On September 8, 2021, Officer Dobies went to Roseland and searched for the drone in the area of its landing to no avail. Officer Dobies advised the maintenance worker to call CPD if the drone was located.

The police report is consistent with what Ryan Fuller testified to at the hearing. Fuller testified that he was training Roseland staff when he received a call from the Wake Park Manager regarding a lost drone. Fuller informed the Wake Park Manager that Roseland's policy is not to allow the operation of drones from the property. Later that day, Fuller was approached by Officer Dobies and an employee, Steve Murphy. Fuller went to the maintenance gate to inform the claimant of the policy and that they were not interested in retrieving the drone

or assisting.

Fuller testified that he spoke to Dan Fuller the next day and they agreed that if the drone was retrieved they would return it to the claimant. Fuller indicated that several attempts were made to locate the drone, both by management and himself. Fuller specifically testified that several staff members looked for the drone on the day of the incident. Fuller stated that staff looked as recently as 10 days prior to the hearing, to no avail. Fuller also testified that approximately four feet behind the "Splash Factory" concrete pad there is nationally protected swamp land with up to 36-inches of water. He stated that the area directly to the west of the Splash Factory was covered on the date in question in foliage.

Fuller indicated that Roseland's insurance policy does not cover the use of drones over the property, which is partially the basis for Roseland's Drone Policy. Fuller also testified that drones are contrary to a family friendly waterpark and that he was concerned that assisting the claimant would set a precedent for this type of behavior. Fuller was also concerned from a general liability standpoint for the claimant and for any equipment if he was able to attempt to locate the drone.

The following exhibits were received into evidence:

1. Plaintiff's Exhibit 1- Images of the claimant's Drone taken on July 30, 2021 by the claimant noting it's FAA Registration number.
2. Plaintiff's Exhibit 2- Seven photos of flight path over Roseland Waterpark taken by the claimant on September 4, 2021.
3. Plaintiff's Exhibit 3 - Three photos of flight path over Roseland Waterpark taken by the claimant on September 4, 2021.
4. Plaintiff's Exhibit 4 - A copy police report from September 4, 2021 made by Officer Trevor Dobies and closed by investigation on September 8, 2021.
5. Plaintiff's Exhibit 5 - A copy of an e-mail from the Claimant to Roseland Waterpark on September 5, 2021 at 4:55 PM.

6. Plaintiff's Exhibit 6 - A copy of Roseland's Drone Policy.
7. Plaintiff's Exhibit 7 - A copy of e-mails exchanged between the claimant and the Federal Aviation Agency ("F.A.A.") dated November 2, 2021 and November 3, 2021.
8. Plaintiff's Exhibit 8 - A copy of e-mails between the claimant and Canandaigua Police Officer Dobies dated September 7, 2021.
9. Plaintiff's Exhibit 9 - A copy of the Record of Climatological observations for Canandaigua, New York September 1 through September 30, 2021.
10. Plaintiff's Exhibit 10 - A copy of the amazon receipt for the drone in the amount of \$599.00 and a total of \$657.40 with tax.

At the hearing, the claimant argued that a property owner does not own the airspace above its property. That assertion is accurate. Roseland could not prohibit flight over its property, as the use of airspace is regulated exclusively by the F.A.A., pursuant to Title 49 section 40103 of the U.S. Code. The ability to established a drone "No Fly Zone" is reserved to federal agencies (see, Plaintiff's Exhibit 7).

The claimant also asserts that he did not violate any rules prohibiting flight over large groups of people, as he did not fly the drone directly over any person. The claimant contended that once Roseland was notified, they had an obligation to return his property, or at least allow him an opportunity to locate it. However, the claimant conceded that Roseland was possibly within its rights to deny him entry.

At the hearing, Roseland's attorney essentially conceded that a property owner cannot restrict flight and does not own the airspace above its property. Roseland does contend, however, that a private property owner does have the ability to restrict take off and landing on its property, even if the landing is unplanned. This was confirmed by the F.A.A. itself in an email to the claimant wherein they stated that property owners can restrict or prohibit takeoffs, landings and manipulating of controls for their property (see Plaintiff's Exhibit 7).

Roseland's attorney further argued that there was no legal obligation to permit a member of the public to look for the item, especially because he could have endangered himself, or

Roseland's property, in attempting to retrieve it. Roseland's attorney also contends that the claimant assumed the risk of losing control of the item and losing it, analogizing to flying the drone over a body of water.

Initially, this Court notes that small claims hearings are to be conducted "in such manner as to do substantial justice to the parties according to the rules of substantive law" (Uniform City Court Act § 1804).

Claimant's claim sounds in the intentional tort of conversion of personal property. "A conversion takes place when someone, intentionally and without authority, assumes or exercises control over personal property belonging to someone else, interfering with that person's right of possession" (*Colavito v. New York Organ Donor Network, Inc.*, 8 NY3d 43, 4950 [2006]). "Two key elements of conversion are (1) plaintiff's possessory right or interest in the property and (2) defendant's dominion over the property or interference with it, in derogation of plaintiff's rights" (*id.* at 50 [internal citations omitted]).

Courts have expounded that "[a] conversion implies a wrongful act, a mis-delivery, a wrongful disposition, or withholding of the property. A mere non-delivery will not constitute a conversion, nor will a refusal to deliver, on demand, if the goods have been lost through negligence, or have been stolen" (*Diamond Quasar Jewelry, Inc. v Courtney Love Cobain*, 2011 N.Y. Misc. LEXIS 4839 [N.Y. Sup. Ct. 2011], quoting *A., Link Partners, Inc. v Senderowicz*, 2010 N.Y. Misc. LEXIS 2209, 2010 NY Slip Op 31215(U) [N.Y. Sup. Ct. 2010]).

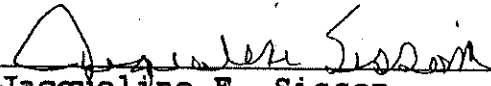
Although this Court agrees with the claimant that Roseland's initial position of refusing to assist in returning the drone was frustrating and, perhaps, unreasonable, it does not change the fact that the drone was never able to be located by Roseland. In fact, Mr. Fuller testified that staff attempted to locate the drone on multiple occasions, including several times on the date of the incident and it was never recovered. It is this Court's determination, therefore, that Roseland did not intentionally withhold the drone from the claimant. Rather, the drone was lost due to the claimant's actions of flying the drone over the waterpark and its unintentional crash into a tree approximately 26-feet high. Thus, the instant Small Claims acting sounding in conversion of personal property must be dismissed.

In any event, even assuming *arguendo* that the claimant is entitled to damages, such damages must be diminished in proportion to the assumption of risk attributable to the claimant

to the culpable conduct which caused the damages (see CPLR § 1411). The claimant admitted to flying his drone over bodies of water. The claimant also testified that if the drone was outside in a rainstorm it would be irrevocably damaged. The claimant chose to intentionally fly his drone over a waterpark that included not only large bodies of water but also areas of heavy foliage and swamp land.

Therefore, in the alternative, even if the substantive law supported any culpable conduct by Roseland, which it does not under the facts of this case, the Court would have to diminish any damages by the assumption of risk attributable to the claimant. It is this Court's opinion that by intentionally flying his drone over an area where the drone was likely to crash and be damaged or irretrievable the claimant's assumption of risk proportion would have reduced his damages to \$0.

This shall constitute the Decision and Order of this Court.



Jacqueline E. Sisson
Canandaigua City Court Judge

Dated: Canandaigua, New York
January 31, 2022