

VERMONT SUPERIOR COURT
Chittenden Unit
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CIVIL DIVISION
Case No. 26-CV-01894

Jake Emerick v. Frederick Barker et al

ENTRY REGARDING MOTION

Title: Motion to Dismiss; Motion to Dismiss; Motion for Leave to File Supplement
(Motion: 4; 5; 8)
Filer: Pietro J. Lynn; Jennifer E. Nelson; Jake Emerick
Filed Date: June 02, 2026; June 03, 2026; August 13, 2026

Plaintiff Jake Emerick brought this case against various defendants who he says have improperly taken his personal property from his former residence at 147 Lake Road in Craftsbury ("Lake Road"). That personal property includes vehicles allegedly towed by Defendant Trahan Towing and Recovery, LLC ("Trahan") which has filed a motion to dismiss under Rule 12(b)(6) (Mot. 4).

The remaining Defendants, owners or managers of Lake Road, Frederick Barker ("Fred"), Fred as Trustee ("Trustee Fred") of the Barker Revocable Living Trust ("Trust"), Carol Ann S. Barker ("Carol Ann"), Carol Ann as Trustee ("Trustee Carol Ann") of the Trust, Jonathan Barker ("Jonathan") and Carol Barker ("Carol") (collectively, the "Barker Defendants") have also moved to dismiss under Rule 12(b)(6) and res judicata (Mot. 5).

Emerick has filed a motion for leave to reply (Mot. 8). Emerick represents himself and defendants have counsel. For the reasons that follow, the court grants Mots. 4, 5 and 8.

I. Legal Standard

Under V.R.C.P. 12(b)(6), the court "must assume that the facts pleaded in the complaint are true and make all reasonable inferences in the plaintiff's favor." *Montague v. Hundred Acre Homestead, LLC*, 2019 VT 16, ¶ 10, 209 Vt. 514. The court does not accept as true "conclusory allegations or legal conclusions masquerading as factual conclusions." *Vitale v. Bellows Falls Union High Sch.*, 2023 VT 15, ¶ 28, 217 Vt. 611 (quotation omitted). The court considers whether "it appears beyond doubt that there exist no facts or circumstances that would entitle the plaintiff to relief." *Davis v. American Legion, Dept. of Vermont*, 2014 VT 134, ¶ 12, 198 Vt. 204 (quotation omitted). "The purpose of a motion to dismiss is to test the law of the claim, not the facts which support it." *Powers v. Off. of Child Support*, 173 Vt. 390, 395 (2002). Only "where the plaintiff does not allege a legally cognizable claim, [is] dismissal . . . appropriate." *Montague v. Hundred Acre Homestead, LLC*, 2019 VT 16, ¶ 11, 209 Vt. 514.

"The court's attention . . . is to be directed toward determining whether the bare allegations of the complaint constitute a statement of a claim under V.R.C.P. 8(a)." *Levinsky v. Diamond*, 140 Vt. 595, 600 (1982). "When deciding a motion to dismiss, the court may consider

documents attached to the complaint or incorporated in the complaint by reference.” *Walsh v. Chittenden Corp.*, 798 F. Supp. 1043, 1048 n. 3 (D. Vt. 1992). “Similarly, it is well settled that, in ruling on a Rule 12(b)(6) motion to dismiss, courts may properly consider matters subject to judicial notice, such as statutes and regulations, and matters of public record.” *Kaplan v. Morgan Stanley & Co.*, 2009 VT 78, ¶ 10 n.4, 186 Vt. 605.

Rule 8 requires a “short and plain statement of the claim” in “simple, concise, and direct” language with “all pleadings [to] be construed as to do substantial justice.” V.R.C.P. 8(a), (e), (f). “[T]he threshold a plaintiff must cross in order to meet our notice-pleading standard is exceedingly low.” *Bock v. Gold*, 2008 VT 81, ¶ 4, 184 Vt. 575 (citation omitted). Consequently, “[m]otions to dismiss for failure to state a claim are disfavored and should be rarely granted.” *Id.* (citation omitted). The court should be “particularly wary of dismissing novel claims because ‘[t]he legal theory of a case should be explored in the light of facts as developed by the evidence, and, generally, not dismissed before trial because of the mere novelty of the allegations.’” *Montague*, 2019 VT 16, ¶ 11 (citation omitted).

II. Background

The court applies this legal standard to describe the matters most relevant to the pending motions.

Emerick resided at Lake Road from March 2020 until his eviction on Apr. 17, 2025. Compl. ¶¶ 1, 4. Fred and Carol Ann own Lake Road as Trustee Fred and Trust Carol Ann through the Trust. Jonathan manages Lake Road for Fred. Carol is Jonathan’s wife. *Id.* ¶ 1.

Emerick’s eviction from Lake Road resulted from Case No. 24-CV-03117 in Orleans County brought by Fred individually against Emerick and others residing at Lake Road (“Eviction Case”). The court takes judicial notice of the Eviction Case as a public record. *Kaplan*, 2009 VT 78, ¶ 10 n.4; V.R.E. 201.

The May 15, 2025 judgment order provided in part that Fred “may dispose of any of [Emerick’s] personal property remaining [at Lake Road] no sooner than 15 days after this order is served on defendant.” Mot. 4 Ex. E at 1. The sheriff served Emerick with that order on May 17, 2025, *id.* at 2, ending the 15-day period on June 1.

The court in the Eviction Case issued a writ of possession for Lake Road on Mar. 17, 2025, restoring Fred to and divesting Emerick of possession of Lake Road. *Id.* Ex. C at 3. The sheriff served Emerick by tack order with the writ on Apr. 8, 2025. *Id.* Ex. D at 3. The sheriff executed the writ with Jonathan on Apr. 17. Compl. ¶ 4.

The judgment order and writ of possession in the Eviction Case entered under 12 V.S.A. § 4853a(h). The court had entered a Nov. 6, 2024 rent escrow order. Emerick did not comply. Eviction Case Mar. 13, 2025 entry regarding motion. Section 4853a(h) entitled Fred (sole plaintiff in the Eviction Case) to the judgment order and writ of possession. *Id.* The court made no reference to Emerick’s unrelated criminal case which had not yet occurred. Contrast Mar. 13, 2025 entry order (omitting any reference to any criminal case) with Compl. ¶ 5 (“There is no

dispute to the material facts that on April 18th, 2025 I took a sledge hammer to the door of 147 Lake Rd. and was subsequently arrested by Vermont State Police at the scene (Incident No. 25A5002009)”) and Compl. ¶ 6 (“On April 21st, 2025 prosecution was commenced by Orleans County Deputy State’s Attorney Samuel Swope with an arraignment [in] Docket No. 25-CR-04050 . . .”).

On Jan. 5, 2026, Trahan contacted Emerick about towing two of his vehicles from Lake Road. *Id.* ¶ 18. One of the Barker Defendants told Trahan Emerick had abandoned the vehicles. *Id.* One or more of the Barker Defendants hired Trahan. *Id.* Trahan, Fred and Emerick subsequently discussed returning Emerick’s vehicles to him. *Id.* ¶¶ 25-31, 35-40, 47-51.

The court reiterates it does not accept as true “conclusory allegations or legal conclusions masquerading as factual conclusions.” *Vitale*, 2023 VT 15, ¶ 28. For instance, Emerick believes the dismissal of unrelated criminal charges against him nullified his eviction which predated those charges. E.g., Compl. ¶ 8 (asserting “by any metric of reasonably minded men there should be no doubt concerning the existence and validity of a court ordered eviction; open and shut case it would seem Judge Rory T. Thibault dismissed without prejudice all three charges against me on December 31, 2025, thus by procedural default of constitutional due process, nullified the validity and enforceability of the civil proceedings by establishing I did not commit a criminal act by forcing entry to 147 Lake Rd on April 18”); *id.* ¶ 57 (“the criminal charges against me were dismissed thus the eviction was no longer valid as it had not been proven I was in the legal wrong to force entry to 147 Lake Rd. If I was not wrong I was right.”); *id.* (“Trooper Nash agreed with the legal and factual reality that if it could not be proven in a court of law I did not have a right to the residence then I did in fact have a right to the residence.”); *id.* ¶ 63 (“Since the dismissal of criminal charges the Barkers were immediately obligated to restore me to my residence and my personal property.”). As noted above, the Eviction Case makes clear that Emerick’s not-yet-existing criminal charges played no part in the Eviction Case’s outcome.

The court likewise does not accept Emerick’s conclusory allegation that Trahan contacted Brattleboro Retreat to try to tell him that it “wished to notify me they still had my truck and were going to begin the process of getting a title for the vehicle under the [false] premise it had been abandoned by me at their tow yard.” Compl. ¶ 47. *Vitale*, 2023 VT 15, ¶ 28. Emerick does not allege how he purports to know what Trahan “wished” or intended to do.

The court similarly does not accept Emerick’s legal conclusions that his vehicles “were lawfully parked at [Lake Road]” in Jan. 2026, Compl. ¶ 21, that “Lake Rd was in fact legally established to be [Emerick’s] residence,” *id.* ¶ 22, or that he established a “legal binding verbal contract” when Trahan called him on Jan. 5. *Id.* ¶ 24. See also *id.* ¶ 33 (“The trucks were parked lawfully in what had been legally established to be my residence through the avenue of dismissal of criminal charges failing to prove I was not allowed to be in the residence.”). *Vitale*, 2023 VT 15, ¶ 28.

III. Discussion

The court interprets Emerick’s complaint as bringing two claims against defendants: for conversion and violation of the Vermont Consumer Protection Act (“VCPA”).

A. Conversion

“Conversion consists in either appropriating property to one's own use and beneficial enjoyment, destroying or exercising dominion over it to the exclusion of owner's rights, or withholding possession from owner under claim of title inconsistent with his title.” *O'Bryan Const. Co. v. Boise Cascade Corp.*, 139 Vt. 81, 87 (1980) (internal quotations and citation omitted); see also *Montgomery v. Devoid*, 2006 VT 127, ¶ 12, 181 Vt. 154.

Emerick has not made any of these allegations against any of the defendants. Although one of the Barker Defendants hired Trahan, Emerick does not otherwise allege the elements of conversion. On the contrary, the orders in the Eviction Case authorized the Barker Defendants to take the actions Emerick alleges.

The court previously noted it did not accept Emerick's conclusory allegation about what he believed Trahan wanted to tell him when they contacted him at Brattleboro Retreat. See § I, above (citing Compl. ¶ 47). Emerick wrote in his complaint:

Trahan Towing & Recovery contacted the Brattleboro Retreat attempting to get into contact with me. They wished to notify me they still had my truck and were going to begin the process of getting a title for the vehicle under the [false] premise it had been abandoned by me at their tow yard. It was clear Frederick and/or Johnathan Barker had failed to relay to Trahan Towing & Recovery legally accurate information pertaining to their lawful right to have my vehicles towed. This would be for reasons of not wanting to admit their error, thus attempting to mitigate liability in future litigation, and not wanting to bear the expense of having to pay Trahan Towing & Recovery fees of towing and storage to get the vehicles back from their lot and into my actual/constructive possession.

Compl. ¶ 47. Even if the court accepted this conclusory allegation, it does not satisfy the elements of conversion. Emerick nowhere alleges Trahan proceeded or attempted to proceed with what he thought it planned to do.

B. VCPA

The VCPA allows recovery by a “consumer” -- “any person who purchases, leases, contracts for, or otherwise agrees to pay consideration for goods or services not for resale in the ordinary course of the person's trade or business but for the person's use or benefit or the use or benefit of a member of the person's household[.]” 9 V.S.A. § 2451a(1).

Emerick concedes the Barker Defendants hired Trahan. Emerick is not Trahan's consumer.

C. Other

Given today's ruling, the court does not reach the assertions raised by Carol Ann, Carol and the Trust. Mot. 5 at 1-2. Nor does it reach the res judicata contention raised by the Barker Defendants. *Id.* at 2-6.

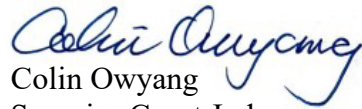
Trahan raised 23 V.S.A. § 2152(b)(2) that appears to insulate the Barker Defendants, not Trahan necessarily, from any liability in this case. The Barker Defendants did not raise the statute. The court does not reach this assertion as a result.

IV. Order

The court grants Mots. 4 and 5 and dismisses all claims as to all defendants.

The court has reviewed the parties' filings regarding Mot. 8. Emerick does not appear to have met the standard for his motion. See V.R.C.P. 7(b)(4) ("Any party may file a reply to a memorandum in opposition . . . within 14 days after service of the memorandum."). The court has nonetheless reviewed and considered all the filings related to Mot. 8 in making today's decision so the court grants Mot. 8.

Electronically signed pursuant to V.R.E.F. 9(d) on September 3, 2026.


Colin Owyang
Superior Court Judge