At a term of the Supreme Court held in and for the County of Wayne at the Hall of Justice in Lyons, New York on the 16th day of March, 2011.

Present: Honorable Daniel G. Barrett
Acting Supreme Court Justice

STATE OF NEW YORK
SUPREME COURT COUNTY OF WAYNE

KEVIN MATTONI and DAVID BRACE,

Plaintiffs,

DECISION
Index. No. 66997
Action One

-vs-

2008

JAMES E. and KATHLEEN HOLLINGSWORTH and LORCO, LLC,

Defendants

LOR-CO, LLC,

Plaintiff,

Index No. 70944
Action Two

-vs-

2011

KEVIN MATTONI and DAVID BRACE,

Defendants

Plaintiffs/Defendants, Kevin Mattoni and David Brace, have brought a summary judgment motion seeking the dismissal of Defendant's/Plaintiff's, Lor-Co, LLC's, Complaint in action number two.

Defendant/Plaintiff, Lor-Co, LLC, has brought a motion seeking multiple forms of relief:

1. A preclusion order with respect to documentation that has been requested from Plaintiff/Defendants during the course of their depositions;

2. A dismissal of the second cause of action in action number one;

3. A dismissal of the action against James E. And Kathleen Hollingsworth in action number one and a request for sanctions against Plaintiffs/Defendants for filing a claim against the Hollingsworths;

4. A request that the Complaint in its entirety be dismissed in action number one;

5. Dismissal of the conversion action in action number one as it relates to the hydraulic hoist and the Coca-Cola cooler.

At the beginning of the argument of these motions counsel for both parties indicated that they had agreed upon the form of a release and therefore James E. and Kathleen Hollingsworth are no longer a part of this litigation. The Court denies the application for sanctions against Kevin Mattoni and David Brace for filing an action against the Hollingsworths.

On July 29, 2008, Lor-Co,LLC assumed the role as the landlord of property located at 6341 Ontario Center Road, Ontario, New York. This property consisted of various buildings which were used for a restaurant, a garage and for storing vehicles and equipment.

Prior to July, 2008, David Brace had one vehicle stored on the property, a Kharman Ghia. Kevin Mattoni had a number of vehicles and other equipment stored on the property. According to the submissions, there were no formal documents which demonstrated that Kevin Mattoni or David Brace were the owners of the vehicles or the equipment in question.

In September, 2008, Lori Cleveland, President of Lor-Co, LLC and Kevin Mattoni had conversations and correspondence regarding the rental of the space in this facility. No agreement was reached with respect to the rental of the space. In the various discussions Lor-Co, LLC requested substantiation of ownership before the vehicles or equipment would be released and also requested an amount of money for the rental space.

In mid September, 2008 counsel for the parties became involved in negotiations with respect to the issues in this matter.

On or about May 1, 2009 Lor-Co, LLC released David Brace's Kharman Ghia in exchange for an executed indemnification agreement to Lor-Co, LLC and a deposit of $1,200.00 in escrow with his attorney. The funds are to be held by counsel pending a resolution of the rental issue.

After a preliminary conference with Judge Dollinger, the parties executed an indemnification agreement and the property held by Lor-Co, LLC, was released to Kevin Mattoni on October 9, 2009 and October 10,

2009. It is claimed that a hydraulic jack and a Coca- Cola cooler were missing.

In their application for dismissal of the Complaint by Lor-Co, LLC, Defendants Mattoni and Brace argued that since they never agreed to pay rent and also because Lor-Co, LLC let other tenants remove their property without charge that Lor-Co, LLC is not entitled to charge rent to them. This is merely an assumption on the part of the Mattoni and Brace. Lor-Co, LLC was free to permit other tenants to remove their property without charge. Lor-Co, LLC may be entitled to a recovery from Kevin Mattoni and David Brace even though there was no agreement between the parties, under the theory of quantum meruit.[See 18 Associates, LLC v. Nanjim Leasing Corp., 257 A.D. 2d 259, 683 N.Y.S. 2d 291; see also 501 East 87th St. Realty Company, LLC v. Ole Pa Enterprises Inc., 304 A.D. 2d 310, 757 N.Y.S. 2d 31 (tenant liable for the entire holdover period)]. Based on these holdings, this Court is precluded from granting Mattoni and Brace summary judgment dismissing the Complaint of Lor-Co, LLC.

Lor-Co, LLC has requested a preclusion order regarding documents from Kevin Mattoni and David Brace that were requested at the depositions of these parties. The Court hereby grants a 30 day preclusion Order against Kevin Mattoni and David Brace from the date that the order is served upon the parties.

Lor-Co, LLC requests a dismissal of the second cause of action pleaded in action number one in which Plaintiffs are seeking punitive damages. The Court hereby grants a dismissal of the second cause of action seeking punitive damages as the claim for punitive damages is not a separate cause of action. (See Rocanova v. Equitable Life Assur. Soc., 83

N.Y. 2d 603, 612 N.Y.S. 2d 339; Tate v. Metropolitan Life Ins. Co., 186 A.D. 2d 859, 587 N.Y.S. 2d 813.)

Even though there is no separate cause of action for punitive damages, these damages may be awarded in the appropriate case. Punitive damages are allowed when the Defendant's wrong doing is not simply intentional but indicates a high degree of moral turpitude and demonstrates such wanton dishonesty as to imply a criminal indifference to civil obligations. (Fragrancenet.com, Inc. v. Fragrancex.com, Inc. 68 A.D. 3d 1051, 890 N.Y.S. 2d 357.) The allegations in the Complaint do not support the imposition of punitive damages and so they are dismissed .

Lor-Co, LLC, has requested a dismissal of the Complaint in action number two relative to the conversion action. In a conversion action, the refusal that will turn lawful possession into conversion must be absolute. If it be qualified and the qualification is reasonable, and it is made in good faith and communicated to the owner, then there is no conversion, Bradley v. Roe, 282 N.Y. 525, 27 N.E. 2d 35.(complaint dismissed where administrator withheld delivery of stock certificates registered in plaintiff's name that was found in decedent's safe deposit box, in order to investigate ownership); McEnte v. New Jersey S.B. Co., 45 N.Y. 34 (refusal unless plaintiff produced identification of himself as a consignee). Whether the refusal was qualified, and if so, whether it was reasonable and was a true reason for not delivering the property is generally a question for the jury. Therefore, this request for relief is denied.

Lor-Co, LLC requested a dismissal of the conversion action as it relates to the hydraulic hoist and the Coca-Cola cooler. There is a divergence of testimony relative to these two items and therefore

presenting questions of fact. As a result, this application is denied.

The foregoing represents the Decision of this Court.

Dated: March 28, 2011
Lyons, New York

Daniel G. Barrett
Acting Supreme Court Justice