No. 05-391 C

(Filed November 18, 2005)

UNPUBLISHED

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REV. J.R. LIGGINS, CHARLES H. BRADFORD and HENRY LIGGINS, SR.,	*	*Pro se*; Motion to Dismiss for Lack of Subject Matter Jurisdiction; RCFC 12(b)(1); 28 U.S.C. § 1491(a)(1) (2000); Protest of Auction Sale of Government Real Estate; Formation of an Implied-in-Fact Contract; Conversion Claim
Plaintiffs,	*	
v.	*	
THE UNITED STATES,	*	
Defendant.	*	
* * * * * * * * * * * * * * * *	*	

OPINION

BUSH, *Judge*

Before the court is Defendant's Motion to Dismiss or, in the Alternative, for Summary Judgment, filed on August 31, 2005.[1] Plaintiffs, proceeding *pro se*, filed their complaint (Compl.) on March 22, 2005, and amended their complaint (Am.

[1]/ Plaintiffs may have attempted to file a cross-motion for summary judgment, because their response to defendant's motion was titled "Plaintiff's Answer and response to the defendant's purpose of finding of unconverted facts and plaintiff motion for a direct verdict." The court need not rule on any cross-motion filed by plaintiffs, if one could be discerned in their September 30, 2005 filing, because this court does not have jurisdiction over the subject matter of plaintiffs' suit.

Compl.) on June 30, 2005. At issue are two claims by plaintiffs, the first concerning alleged unfairness in the rejection of bids during the sealed bid sale by the United States of an improved parcel of real property in Bastrop, Louisiana (the Children's Home), and another claim for the allegedly improper disposition of plaintiffs' personal property located at the Children's Home at the time it was sold by the United States. For the reasons set forth below, this court does not have jurisdiction over plaintiffs' claims and defendant's motion to dismiss for lack of jurisdiction pursuant to Rule 12(b)(1) of the Rules of the United States Court of Federal Claims (RCFC) must be granted.

BACKGROUND[2]

The three plaintiffs in this suit were involved with the proposed development of "a facility to house wayward children" and with a nonprofit entity named Paradise Village Children's Home, Inc. (PVCH). Compl. ¶¶ 1-2. The Children's Home was built by PVCH using an FmHA loan, but due to default on that loan, the Children's Home was conveyed to the United States. *Id*. ¶¶ 2,7; Def.'s Mot. at 3. In July 2004, the United States Department of Agriculture (USDA) solicited bids for the Children's Home. Compl. ¶ 8; Def.'s Mot. at 4. Plaintiff Rev. J.R. Liggins bid twice on the Children's Home, each time as the sole bidder, but each time his bid was rejected as being noncompliant with the bid condition that required a ten percent bid deposit. Compl. ¶¶ 10-11; Def.'s Mot. at 5. Eventually, the Children's Home was sold to Liberty Care, LLC (Liberty Care), for less than its appraised value. Compl. ¶ 13; Am. Compl. Ex. A (showing a sale price of $725,000); Def.'s Mot. at 6 (stating that the appraised value for the Children's Home was $1,159,200). Plaintiff Rev. J.R. Liggins claims that the rejection of his bids and the subsequent sale of the Children's Home was unfair, and "caused [him] to lose some 2.5 million dollars by [USDA] not accepting [his] bid according [to] the bid process." Am. Compl. ¶ 3.

Plaintiffs' other claim is for the alleged loss of personal property located at the Children's Home at the time of the sale to Liberty Care. The list of personal property that is alleged to have been "not returned . . . to the proper owners," Compl. ¶ 14, is described as including "office furniture, office supplies, computers,

[2]/ For the purposes of deciding jurisdiction, the court assumes all facts presented by plaintiffs to be true unless otherwise specified.

copie[r] machines, fax machines, printers, pictures, lamps, book shel[ve]s, tables, chairs, computer[] software[], microwaves, refrigerators, clothing, telephones, personal papers, note books, brief cases, [and] typewriters." Am. Compl. ¶ 1. All three plaintiffs are said to have lost personal property at the time of the sale, *id.* ¶¶ 1-2, but only two of the plaintiffs have assigned a dollar amount to their loss, Compl. ¶ 14. Plaintiff Rev. J.R. Liggins claims a personal property loss of $125,000 and plaintiff Charles Bradford claims a personal property loss of $25,000. *Id.* PVCH is not a party to this suit, and plaintiffs assert that it is only their personal property, not the nonprofit PVCH's property, which is the subject of their claim. Am. Compl. ¶ 1 ("And the plaintiffs clearly state[] that this is not the property of the corporation, but the personal property of the plaintiffs.").

DISCUSSION

I. Standard of Review

A. *Pro Se* Plaintiffs

Pro se plaintiffs are entitled to a liberal construction of their pleadings. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972) (requiring that allegations contained in a *pro se* complaint be held to "less stringent standards than formal pleadings drafted by lawyers"). Accordingly, the court has examined the complaint thoroughly and attempted to discern all of plaintiffs' claims. However, "'[t]here is no "duty [on the part] of the trial court . . . to create a claim which [the plaintiff] has not spelled out in his pleading. . . ."'" *Scogin v. United States*, 33 Fed. Cl. 285, 293 (1995) (quoting *Clark v. Nat'l Travelers Life Ins. Co.*, 518 F.2d 1167, 1169 (6th Cir. 1975) (quoting *Case v. State Farm Mut. Auto. Ins. Co.*, 294 F.2d 676, 678 (5th Cir. 1961))).

B. Subject Matter Jurisdiction under RCFC 12(b)(1)

The court's "[d]etermination of jurisdiction starts with the complaint, which must be well-pleaded in that it must state the necessary elements of the plaintiff's claim, independent of any defense that may be interposed." *Holley v. United States*, 124 F.3d 1462, 1465 (Fed. Cir. 1997) (citations omitted). If jurisdiction is found to be lacking, this court must dismiss the action. RCFC 12(h)(3). In rendering a decision on a motion to dismiss for lack of subject matter jurisdiction pursuant to RCFC 12(b)(1), this court must presume all undisputed factual

allegations to be true and construe all reasonable inferences in favor of the plaintiff. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), *overruled on other grounds by Harlow v. Fitzgerald*, 457 U.S. 800, 814-15 (1982); *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 747 (Fed. Cir. 1988).

"If a motion to dismiss for lack of subject matter jurisdiction, however, challenges the truth of the jurisdictional facts alleged in the complaint, the . . . court may consider relevant evidence in order to resolve the factual dispute." *Reynolds*, 846 F.2d at 747 (citations omitted). The non-movant bears the burden of establishing subject matter jurisdiction by a preponderance of the evidence. *Cubic Def. Sys., Inc. v. United States*, 45 Fed. Cl. 239, 245 (1999) (citing *Cedars-Sinai Med. Ctr. v. Watkins*, 11 F.3d 1573, 1583 (Fed. Cir. 1993); *Reynolds*, 846 F.2d at 748; *Maniere v. United States*, 31 Fed. Cl. 410, 413 (1994)). The court may look beyond the pleadings in order to determine jurisdiction. *Martinez v. United States*, 48 Fed. Cl. 851, 857 (2001) (citing *Rocovich v. United States*, 933 F.2d 991, 993 (Fed. Cir. 1991)). As stated in *Martinez*, "[i]ndeed, the court may, and often must, find facts on its own." 48 Fed. Cl. at 857.

II. Analysis

A. Claim for Money Damages by a Disappointed Bidder Who Has Submitted a Nonresponsive Bid

Plaintiff Rev. J.R. Liggins protests that USDA's rejection of his two bids and the subsequent sale of the Children's Home to Liberty Care was unfair, and that USDA has "breached" the legal contract that is created by the bidding process. Am. Compl. at 4. When a complaint presents a claim that is unfounded on any principle of law to the point of frivolousness, dismissal of that claim for lack of subject-matter jurisdiction is appropriate. *See Moden v. United States*, 404 F.3d 1335, 1341 (Fed. Cir. 2005) (stating that "'[d]ismissal for lack of subject-matter jurisdiction because of the inadequacy of the federal claim is proper only when the claim is "so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve a federal controversy."'" (quoting *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89 (1998) (quoting *Oneida Indian Nation of N.Y. v. County of Oneida*, 414 U.S. 661, 666 (1974)))). Because Rev. Liggins' claim is "completely devoid of merit," as discussed below, it must be dismissed.

The undisputed facts presented by the parties show that Rev. Liggins twice submitted a bid which violated an essential requirement of the sale of the Children's Home by sealed bid, that of a ten percent bid deposit. With each bid, Rev. Liggins submitted a postal money order for one dollar. Def.'s App. at 74, 126. Each time, Rev. Liggins' bid was for the appraised value of the Children's home plus one dollar. Am. Compl. at 3. The appraised value of the Children's Home was $1,159,200. Def.'s App. at 77. Rather than submit the required bid deposit of $115,920, Rev. Liggins enclosed one dollar in support of each of his sealed bids. Unsurprisingly, these bids were rejected as nonresponsive, and the Children's Home was eventually sold to Liberty Care. Plaintiffs have alleged no facts which raise a colorable issue of law regarding the rejection of Rev. Liggins' bid for the Children's Home.

The court is aware of no precedent which holds that a disappointed bidder at a sealed bid sale of real estate by the United States is properly before this court when that bidder's sole claim of a contractual relationship with the United States is founded on the submission of an indisputably nonresponsive bid. Plaintiffs appear to assert that the Tucker Act provides jurisdiction over Rev. Liggins' claim because a contract between the United States and each bidder must be implied in the sealed bid real estate sale process, whether or not the bid submitted is responsive. *See* Compl. at 1 (citing the Tucker Act at 28 U.S.C. § 1491(a)(1) (2000)); Am. Compl. at 4 ("The plaintiff further states that the bidding process is a legal contract process and that the U.S. Department of Agriculture breache[d] the contract when it failed to honor the bid of Rev. J.R. Liggins in August 2004."). Plaintiffs misunderstand the basic requirements for the formation of an implied-in-fact contract.[3]

An implied-in-fact contract may exist when a meeting of the minds can be discerned from the circumstances of the dealings between the two parties. *Algonac Mfg. Co. v. United States*, 428 F.2d 1241, 1255 (Ct. Cl. 1970) (stating that "'an agreement "implied in fact," [is] founded upon a meeting of minds, which, although not embodied in an express contract, is inferred, as a fact, from conduct of the parties showing, in the light of the surrounding circumstances, their tacit

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[3]/ Tucker Act "[j]urisdiction based on contract 'extends only to contracts either express or implied in fact, and not to claims on contracts implied in law.'" *Trauma Serv. Group v. United States*, 104 F.3d 1321, 1324-25 (Fed. Cir. 1997) (quoting *Hercules, Inc. v. United States*, 516 U.S. 417, 423 (1996)).

understanding'") (quoting *Baltimore & Ohio RR v. United States*, 261 U.S. 592, 597 (1923)). Perhaps plaintiffs assume that the submission of a nonresponsive bid signals a meeting of the minds between Rev. Liggins and the United States, wherein the United States has bound itself to fairly consider his bid. This is not the law.

When the United States sells property through an invitation for bids, the implied contractual obligation to consider bids fairly only applies to responsive bids. *See Prineville Sawmill Co. v. United States*, 859 F.2d 905, 909 (Fed. Cir. 1988) ("An invitation for bids issued by the government carries, as a matter of course, an implied contractual obligation to fairly and honestly consider all responsive bids.") (citations omitted). Or, put another way, when Rev. Liggins failed to observe the bid deposit requirement for his bids on the Children's Home, he never manifested his assent to be bound by the bidding process. *See Motorola, Inc. v. United States*, 988 F.2d 113, 116 (Fed. Cir. 1993) (noting that it is "the contractor's engagement–the manifestation of an intention to be bound–[which] warrants reading into the situation a reciprocal commitment from the Government, *i.e.*, a promise to fairly and honestly consider the contractor's bid") (citation omitted); *Garchik v. United States*, 37 Fed. Cl. 52, 57 (1996) (stating that nothing "less than a formal responsive bid can give rise to an implied-in-fact contract of fair and honest dealing that would permit this court to exercise its equitable jurisdiction") (citing *Motorola*, 988 F.2d at 116); *Control Data Sys., Inc. v. United States*, 32 Fed. Cl. 520, 524 (1994) (stating that "only [the] submission of a formal responsive bid creates an enforceable government 'contract' to provide fair consideration that is specifically enforceable in this court") (citing *Motorola*, 988 F.2d at 114). Here, no implied-in-fact contract was formed and Tucker Act jurisdiction does not lie for Rev. Liggins' claim that the United States unfairly rejected his bids for the Children's Home.

The court notes that Rev. Liggins' claim concerning the "unfair" rejection of his nonresponsive bids also falls outside of another jurisdictional grant to this court, that of bid protests in government procurement. *See* 28 U.S.C. § 1491(b)(1) (2000). The sale of the Children's Home was not a government procurement contract solicitation and award; it was the sale of inventoried property of USDA. There is a distinction between disputes over the award of contracts for property and/or services which the government is seeking to purchase, and disputes over government sales of government property. *See Meyers Cos.*, 97-1 CPD ¶ 148 (Comp. Gen. April 23, 1997) (declining jurisdiction over "protests concerning

offers to sell or lease government-owned real property" because these sales "do not generally involve a procurement of property or services" for the government); *Fifeco*, 91-2 CPD ¶ 534 (Comp. Gen. Dec. 11, 1991) (noting that the General Accounting (now Government Accountability) Office (GAO) has statutory authority to consider procurement bid protests, but that government sales bid protests may be reviewed by GAO "only if the federal agency [selling the government property] agrees"). *But see Catholic Univ. of Am. v. United States*, 49 Fed. Cl. 795, 796, 799 (2001) (construing 28 U.S.C. § 1491(b) to provide jurisdiction in this court over a claim for injunctive relief by the holder of a statutory right to purchase, when the United States has solicited "proposals for the development, lease or possible future sale of . . . federal land," despite the restriction of this court's jurisdiction under section 1491(b) to procurement-related agency actions). Because the plain language of 28 U.S.C. § 1491(b)(1) concerns this court's procurement review jurisdiction, and not government real estate sales review, the court cannot entertain Rev. Liggins' claim under the statutory waiver of sovereign immunity found in section 1491(b)(1). *See, e.g.*, *Broughton Lumber Co. v. Yeutter*, 939 F.2d 1547, 1550 (Fed. Cir. 1991) ("Resolving the question whether a party may maintain a suit against the United States in a specific court necessarily implicates inquiry into the scope of any applicable waivers of sovereign immunity."); *see also Marathon Oil Co. v. United States*, 374 F.3d 1123, 1127 (Fed. Cir. 2004) ("If a statute is susceptible to a plausible reading under which sovereign immunity is not waived, the statute fails to establish an unambiguous waiver and sovereign immunity therefore remains intact.") (citing *United States v. Nordic Vill., Inc.*, 503 U.S. 30, 33 (1992)).

Waivers by the United States of its sovereign immunity against suit must be strictly construed. *City of Tacoma, Wash. v. Richardson*, 163 F.3d 1337, 1341 (Fed. Cir. 1998) (stating that "a waiver of sovereign immunity must be unequivocal and 'strictly construed, in terms of its scope, in favor of the sovereign'") (quoting *Lane v. Pena*, 518 U.S. 187, 192 (1996)). The court has found no waiver of sovereign immunity that permits plaintiffs to sue the United States for money damages, in this court or in any other federal court, because of an allegedly unfair rejection of a nonresponsive bid submitted during a sealed bid sale of government real estate. For this reason, Rev. Liggins' claim for $2,500,000, Am. Compl. ¶ 3, must be dismissed for lack of jurisdiction.

B. Claim for Money Damages Because Personal Property Was Allegedly Never Returned to Plaintiffs

Plaintiffs' other claim is for the loss of personal property that was allegedly in the Children's Home at the time it was sold by the United States to Liberty Care. Am. Compl. ¶ 2. The exact theories of liability upon which plaintiffs seek to recover are not perfectly clear from their filings. The acts of the United States upon which they focus are variously described as: "Taking of Private Property," Compl. at 1; "The U.S.D.A. ha[s] taken this personal property and ha[s] not returned any property to the proper owners," *id.* at 4; "The United States of America took the petitioners[']personal and business property . . . ," *id.* at 5; "[T]he U.S. Department of Agriculture . . . deed[ed] the facility known as [the Children's Home] and all the [plaintiffs' personal] property . . . to Liberty Care L.L.C. in the amount of $725,000.00," Am. Compl. ¶ 2. Although a takings theory appears to predominate in the presentation of plaintiffs' claim, it is possible that plaintiffs also allege tort claims against the United States, with regard to the disposition of their personal property, although no specific torts are named.[4]

If plaintiffs are asserting tort claims against the United States, this court generally has no jurisdiction over tort claims. *See* 28 U.S.C. § 1491(a)(1) (excluding cases "sounding in tort" from this court's jurisdiction under the Tucker Act); *Alves v. United States*, 133 F.3d 1454, 1459 (Fed. Cir. 1998) (same). There is a limited exception to this rule for tort claims which arise from a contract with the United States. *See Awad v. United States*, 301 F.3d 1367, 1372 (Fed. Cir. 2002) ("It is well established that where a tort claim stems from a breach of

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[4]/ In plaintiffs' amended complaint, plaintiffs abandoned any claims that might have been discerned from paragraphs one through eight of their original complaint, conceding that those paragraphs were "bas[ical]ly a short and plain statement of the history of" the Children's Home. Am. Compl. at 1. Insofar as those paragraphs might be construed to have contained tort claims against federal officials, *see* Compl. ¶ 6 ("The U.S.D.A. field representative and supervisor of the loan unfairly interfered with my office position on the Board of Directors of the corporation Paradise Village [PVCH], which led to the Morehouse Parish Fourth District Court removing me as the authorized officer of the corporation, which led to the loss of my private monies, as well as my properties."), such claims, even if they were to be asserted by plaintiffs in their complaint as amended, would not be cognizable in this court. *See Brown v. United States*, 105 F.3d 621, 624 (Fed. Cir. 1997) ("The Tucker Act grants the Court of Federal Claims jurisdiction over suits against the United States, not against individual federal officials.") (citing 28 U.S.C. § 1491(a)).

contract, the cause of action is ultimately one arising in contract, and thus is properly within the exclusive jurisdiction of the Court of Federal Claims to the extent that damages exceed $10,000.") (citations omitted). Here, plaintiffs have alleged no contract with the United States regarding their personal property at the Children's Home. Thus, this court has no jurisdiction for a tort claim against the United States for plaintiffs' loss of personal property.

This court does, however, possess general jurisdiction over takings claims. 28 U.S.C. § 1491(a)(1). The complaint in this case, even as amended, does not contain a clear exposition of the type of takings claim advanced by plaintiffs. Yet, because the court must liberally construe a *pro se* plaintiff's complaint, the court will examine whether the facts presented by the parties here could possibly support a takings claim against the United States.

In general, a takings claim may lie for personal property that is alleged to have been taken by the government. *See Air Pegasus of D.C., Inc. v. United States*, 424 F.3d 1206, 1212-13 (Fed. Cir. 2005) ("The protections of the Takings Clause apply to . . . personal property") (citing *Andrus v. Allard*, 444 U.S. 51, 65 (1979)). Here, plaintiffs allege that their personal property was at the Children's Home at the time it was transferred from USDA to Liberty Care, and that these facts support the jurisdiction of the court over their takings claim. This is not the case.

The warranty deed conveying the Children's Home from PVCH to USDA conveyed *real* property:

> [PVCH] has (have) bargained, sold, transferred, set over, conveyed and delivered, and does (do) by these presents, bargain, sell, transfer, set out, convey and deliver with full and complete warranty of title and subrogation to all rights and actions in warranty that s/he (they) may have against all former proprietors, and free from all encumbrances, unto [USDA], and unto its assigns, the following described *real* property [the Children's Home] . . . .

Def.'s App. at 60 (emphasis added). The quitclaim deed conveying the Children's Home from USDA to Liberty Care also transfers *real* property. Am. Compl. Attach. A. The pertinent language of this document states that USDA "does by

these presents convey, sell and quitclaim unto Liberty Care . . . the following described *real* property [the Children's Home]." *Id.* (emphasis added). These deeds show that PVCH conveyed real property (the Children's Home) to USDA, and USDA subsequently conveyed real property (the Children's Home) to Liberty Care. Plaintiffs' allegations of fact do not provide a detailed chronology of what happened to their personal property at the Children's Home.

One of the necessary elements of a physical takings claim against the United States is for the alleged interference with the plaintiff's property rights to have been caused by the United States. *See, e.g.*, *Moden v. United States*, 404 F.3d 1335, 1342 (Fed. Cir. 2005) (stating that a takings plaintiff "must show either that the government intended to invade a protected property interest or that the asserted invasion is the direct, natural, or probable result of an authorized [government] activity"); *Skip Kirchdorfer, Inc. v. United States*, 6 F.3d 1573, 1582 (Fed. Cir. 1993) (explaining that a physical taking "involves a substantial physical interference with property rights") (citing *Hendler v. United States*, 952 F.2d 1364, 1377 (Fed. Cir. 1991)). Here, as established by the undisputed documentary record provided by defendant, the dispute over the contents of the Children's Home predated the sale of the Children's Home to the United States. If there was any invasion of or interference with plaintiffs' personal property at the Children's Home, it occurred well before the United States acquired the property.

Control of PVCH and the Children's Home passed from Rev. Liggins to other officers of PVCH sometime before February 2000. Def.'s App. at 43-44; Compl. ¶ 6. Rev. Liggins apparently re-entered the Children's Home in February 2000, but a court ordered the property sequestered on June 29, 2000. Def.'s App. at 50. Litigation concerning the Children's Home proceeded in a variety of fora. The disposition of the personal property of Messrs Liggins and Bradford was the subject of at least one of these proceedings. *Id.* at 19-20a. A state court set July 5, 2000 as the date for the removal of the personal property of Messrs Liggins and Bradford from the Children's Home. *Id.* at 20a. Nothing in the record reflects whether plaintiffs complied with the court's order, but it is clear that the United States had no role in the disposition of plaintiffs' personal property during the time they occupied the Children's Home or during the time the facility was sequestered. Plaintiffs Messrs Liggins and Bradford, among others, were evicted and permanently enjoined from entering the Children's Home by court order dated October 15, 2003. *Id.* at 54-55.

Thus, if plaintiffs were deprived of their personal property at the Children's Home, the "invasion" of their property rights occurred on or before October 15, 2003, when they permanently lost access to the Children's Home.[5] Any invasion of or interference with plaintiffs' personal property was not caused by the United States, according to any reasonable inference from the facts before the court, because the sale of the Children's Home to USDA did not occur until November 14, 2003. *See id.* at 60. Plaintiffs have failed to allege any act of the United States which invaded or interfered with their property rights so as to constitute a taking.

"The court is not bound by the labels selected by a party in characterizing an action." *Wheeler v. United States*, 3 Cl. Ct. 686, 688 (1983) (citing *Mason v. United States*, 615 F.2d 1343, 1346 (Ct. Cl. 1980)). Although plaintiffs have pled a takings claim, the true nature of their complaint is that the United States failed to return property to them which was rightfully theirs. *See* Compl. ¶ 14 (stating that USDA has "not returned any property to the proper owners"). This type of claim is properly called "conversion,"[6] as is perhaps recognized in plaintiffs' briefing:

> The plaintiff[s] herein had personal and private property located in [the Children's Home] when it was converted on November 14, 2003 back to the United States Department of Agriculture.

Pls.' Resp. ¶ 2. Conversion is a tort, and as stated herein, this court has no jurisdiction for that type of claim.

CONCLUSION

For the foregoing reasons, it is hereby **ORDERED** that:

(1) Defendant's Motion To Dismiss, filed August 31, 2005, is **GRANTED**;

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[5]/ The effective date of the eviction and permanent injunction may have been earlier, because the judgment was "RENDERED in Open Court on June 9, 2003 at Bastrop, Louisiana, and signed at Bastrop, Louisiana on the 15[th] day of October, 2003." Def.'s App. at 55.

[6]/ *See Dual Drilling Co. v. Mills Equip. Invs., Inc.*, 721 So. 2d 853, 857 (La. 1998) (stating that "[a] conversion is committed when . . . possession is withheld from the owner").

(2) The Clerk's office is directed to **ENTER** judgment for defendant, **DISMISSING** plaintiff's complaint, filed March 22, 2005, as amended on June 30, 2005, without prejudice; and

(3) Each party shall bear its own costs.

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LYNN J. BUSH
Judge