

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND  
BUSINESS COURT**

**GOLDCORP, INC,  
Plaintiff,**

v.

**Case No. 15-147722-CB  
Hon. James M. Alexander**

**ZEIDMAN'S JEWELRY & LOAN OF MICHIGAN, ET AL,  
Defendants.**

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**OPINION AND ORDER RE: SUMMARY DISPOSITION**

This matter is before the Court on the Zeidman Defendants' motion for summary disposition. This case involves a dispute over the ownership and alleged conversion of a 3.24 carat G-VS2 diamond.

While the parties don't appear to agree on much, they agree on the following. In December 2014, Defendant Jirair Keypekian obtained the diamond on consignment from non-party KCD. A couple of weeks later, Keypekian pawned the diamond at Defendant Zeidman's for \$20,000. In early 2015, KCD began demanding money from Keypekian, and in response, he gave KCD three post-dated checks totaling approximately \$40,000. These checks were all returned non-sufficient funds.

After learning the Keypekian pawned the diamond, in March 2015, KCD then filed a police report claiming that Keypekian stole the diamond. KCD had also learned that Keypekian had pawned the diamond at Zeidman's, so KCD approached Zeidman's to get the diamond back.

On May 20, 2015, apparently at KCD's request, Keypekian appeared at Zeidman's and signed an "Affidavit of Lost Pawn Ticket," which provided that "the original pawn ticket has

been lost or destroyed and that [Keypekian has] not sold or transferred it to anyone.” Upon receiving this Affidavit and another diamond for collateral, Zeidman’s then released the diamond to KCD.

In June 2015, Plaintiff then appeared at Zeidman’s claiming that it was the proper owner of the diamond because, Keypekian had orally assigned and handed over the pawn ticket to Plaintiff in April or May 2015. But because the diamond was already “redeemed,” Zeidman’s did not have it to give to Plaintiff.

As a result, a few days later, Plaintiff then filed the present suit on common-law and statutory conversion claims based on Zeidman’s handing over the diamond to KCD. Shortly after being served with the Complaint, Zeidman’s contacted KCD and demanded the diamond back. KCD complied.

On October 19, 2015, the Court entered an order providing Plaintiff 14 days to redeem the diamond upon payment of \$23,606 balance on the original pawn. Plaintiff chose to not redeem the diamond, and instead, decided to proceed with its conversion claims.

The Zeidman Defendants now move for summary disposition under MCR 2.116(C)(8) and (C)(10). A (C)(8) motion tests the legal sufficiency of the complaint. A motion under this subrule may be granted only where the claims alleged are “so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.” *Wade v Dept of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992).

A (C)(10) motion tests the factual support for a plaintiff’s claims. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). Under (C)(10), “In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing

party to establish that a genuine issue of disputed fact exists.” *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

The Zeidman Defendants argue that they are entitled to dismissal of Plaintiff’s conversion claims because Plaintiff never had any ownership interest in the diamond, on which, to base the same. In other words, Zeidman’s argues that Plaintiff cannot claim a conversion of property belonging to others.

Indeed, Michigan law establishes that “[t]he tort of conversion is ‘any distinct act of domain wrongfully exerted over another’s personal property in denial of or inconsistent with the rights therein.’” *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App. 94, 111; 593 NW2d 595 (1999), quoting *Foremost Ins Co v Allstate Ins Co*, 439 Mich 378, 391; 486 NW2d 600 (1992).

And “Statutory conversion consists of knowingly buying, receiving, or aiding in the concealment of any stolen, embezzled, or converted property.” *Lawsuit Fin, LLC v Curry*, 261 Mich App 579, 592-93; 683 NW2d 233 (2004). The *Lawsuit Financial* Court held that the plaintiff’s conversion claim failed because “plaintiff never had a property interest in [the allegedly converted property].” *Id.* at 592.<sup>1</sup> This concept serves as the basis for Zeidman’s motion.

And Plaintiff appears to concede this point, arguing that (emphasis added): “Under Michigan Law conversion occurs at the moment a person exercises dominion and control wrongfully transferring title of personal property **from its owner**,” citing *Maycroft v The Jennings Farms*, 209 Mich 187, 192-93; 176 NW 545 (1920) (reasoning that it is the wronged

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<sup>1</sup> Although the *Lawsuit Financial* Court so ruled with respect to common-law conversion, this concept also applies to statutory conversion because the “person damaged” by an alleged conversion is the owner. See, e.g. *Aroma Wines & Equip, Inc v Columbian Distribution Services, Inc*, 497 Mich 337, 353; 871 NW2d 136 *reh den sub nom. Aroma Wines & Equip, Inc v Columbian Distribution Services, Inc*, 498 Mich 877; 869 NW2d 272 (2015) for an extensive discussion of statutory conversion claimed by “the owner” of personal property.

owner's choice to proceed with damages or retrieve his property). But Plaintiff argues that Keypekian purchased the diamond from KCD and then assigned the pawn ticket to Plaintiff to redeem in exchange for forgiving a debt owed by Keypekian to Plaintiff. This, Plaintiff claims, forms the basis for its **ownership** of the diamond.

Although the Zeidman Defendants dispute any assignment of the pawn ticket took place, they argue that it does not matter because Keypekian was only able to transfer the property interest that he held, which was mere possession – not ownership. In fact, at the time of the alleged pawn-ticket assignment (Plaintiff claims that this occurred in April or May 2015),<sup>2</sup> Zeidman's argues that Keypekian held no interest greater than temporary possession. The Court agrees.

KCD's representative, Avi Arusi, was deposed and testified that Keypekian delivered these three checks, not because he purchased the diamond himself, but because he sold the diamond to a third-party. Further, the three post-dated checks were necessary because the jewelry store buyer (again, not Keypekian) was making a ring, and the money would be forwarded as the ring deposit was made, and more when the ring was finished.

Although Kaypekian claims that he "purchased" the diamond with the three post-dated checks totaling some \$40,000, he also admitted that the accounts the checks were written on never contained enough money to cover said checks.<sup>3</sup> And he contradicted his "purchase" testimony later on when he said that he had no objection to KCD getting the diamond back from Ziedman's – even signing the Affidavit of Lost Pawn Ticket so Zeidman's would release the diamond to KCD.

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<sup>2</sup> Plaintiff's Response Brief at 3, Kaypekian Deposition at 44-45.

<sup>3</sup> Keypekian inconsistently testified that "I bought it legally but I couldn't pay it so it's not stolen." Deposition at 37.

In any event, it is undisputed that Kaypekian never paid for the diamond. As a result, the Court rejects any claim that he purchased the same.

Additionally, Kaypekian's deposition testimony is frustrating because it is internally contradictory and inconsistent. As a result, the Court finds it inappropriate to rely on the same to create a question of fact on the issue of Kaypekian's claimed "purchase" of the diamond with the three post-dated checks. See, e.g. *Casey v Auto Owners Ins Co*, 273 Mich App 388, 396; 729 NW2d 277, 283 (2006) (reasoning "a witness is bound by his or her deposition testimony, and that testimony cannot be contradicted by affidavit in an attempt to defeat a motion for summary disposition.").<sup>4</sup> As a result, the Court rejects Plaintiff's reliance on Kaypekian's deposition testimony that he **purchased** the diamond with the three post-dated, insufficient fund checks.

Further, "[i]t is well established that an assignee stands in the shoes of an assignor, acquiring the same rights and being subject to the same defenses as the assignor." *Coventry Parkhomes Condo Ass'n v Fed Nat Mortg Ass'n*, 298 Mich App 252, 256-57; 827 NW2d 379 (2012). In this case, assuming that Kaypekian assigned his interest in the diamond to Plaintiff, Plaintiff only obtained the interest that Keypekian had, which was **at most** possession. But, under no circumstances, did Keypekian have rightful ownership of the diamond.

Because Keypekian was never the rightful owner of the diamond, he had no ownership interest to transfer to Plaintiff. As a result, Plaintiff has no ownership interest on which to base its conversion claims, which therefore, fail as a matter of law.

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<sup>4</sup> Kaypekian also admits in his deposition that he signed an affidavit and put information in it simply because he was told to, and not necessarily because it was true. (Kaypekian Deposition at 52-53, 58-59).

For all of the foregoing reasons and viewing all evidence in the light most favorable to Plaintiff, the Court finds that there are no material facts in dispute regarding Plaintiff's lack of ownership of the diamond, such that the Zeidman Defendants are entitled to judgment as a matter of law. Therefore, said Defendants' motion is GRANTED, and Plaintiff's Complaint as to the Zeidman Defendants is DISMISSED in its entirety.

**IT IS SO ORDERED**

March 30, 2016  
Date

/s/ James M. Alexander  
Hon. James M. Alexander, Circuit Court Judge