STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

SANDRA BOWER, E.C. METRO, LLC,
OVERRIDE SYSTEMS, LLC, and STARTER
OVERRIDE SYSTEMS, LLC,

Plaintiffs/Counter-Defendants,

vs. Case No. 2013-3825-CB

SOTIRIOS a/k/a "Stewart" MELISTAS,
GEORGE MELISTAS, and ANDREAS
SEREMETIS,

Defendants,

and

SHAKESPEARE PROPERTIES, LLC,

Defendant/Counter-Plaintiff.
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OPINION AND ORDER

Defendants Shakespeare Properties, LLC ("Shakespeare"), Sotirios Melistas ("Defendant S. Melistas"), and Andreas Seremetis ("Defendant Seremetis")(collectively, "Movants") have filed a motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiffs have filed a response and request that the motion be denied. In addition, Movants have filed a reply and sur-reply in support of their motion. Plaintiffs have also filed a sur-reply in support of their response.

I. Factual and Procedural History

Plaintiff/Counter-Defendant Sandra Bower ("Plaintiff Bower") owns and operates Plaintiff E.C. Metro, LLC ("Metro"), a credit card processing company. Plaintiff Bower also is a partial owner of Plaintiff Starter Override Systems, LLC ("Starter"), a company

which manufactures and sells motorcycle starters. Defendant S. Melistas and Defendant Seremetis are co-owners of Shakespeare.

The parties' dispute centers on real estate commonly known as 22755, 22735 and 22725 Shakespeare, Eastpointe, MI 48021 ("Subject Properties"). In the early 2000s Defendant George Melistas ("Defendant G. Melistas") owned the Subject Properties; however, he ultimately lost his ownership interest via foreclosure. After foreclosure, the Subject Properties were purchased by Gold Coast IV, LLC ("Gold Coast"), an entity in which Plaintiff Bower holds a 1/3 ownership interest. Gold Coast allegedly purchased the Subject Properties after Defendant G. Melistas convinced Plaintiff Bower that it would be a good investment.

After Gold Coast purchased the Subject Properties, it leased the Subject Properties to Hightide Investments Co. ("Hightide"), a company operated by Defendant G. Melistas. (*See* Plaintiffs' Exhibit 4, referred to herein as "Hightide Lease") Hightide then subleased the Subject Properties to Metro. (*See* Plaintiffs' Exhibit 5, referred to herein as "Metro Lease").

In addition, Defendant G. Melistas allegedly became indebted to Plaintiff Bower over time. On May 12, 2011, Plaintiff Bower and Defendant G. Melistas executed a bill of sale pursuant to which Defendant G. Melistas sold various items to Plaintiff Bower, with the understanding that Plaintiff Bower would store the items until the debt had been repaid, and once the debt had been paid the items would be returned to Defendant G. Melistas. (*See* Plaintiffs' Exhibit 6.)

In 2012, Gold Coast sold the Subject Properties to Shakespeare. After selling the Subject Properties to Shakespeare, Bower, Gold Coast, Metro, and/or Starter

continued to utilize a portion of the Subject Properties. The parties dispute the terms of the lease, including the parties to the lease and the lease's payment terms.

On February 15, 2013, Plaintiff Bower allegedly found the portions of the Subject Properties she or her entities had been occupying padlocked. Additionally, the other potential ways to enter the Subject Properties had allegedly been closed. While the padlock was removed the same day, it was replaced on several occasions thereafter.

On March 20, 2013, Shakespeare served Plaintiffs with a notice to quit. (*See* Plaintiffs' Exhibit 8.) On March 28, 2013, Defendants allegedly padlocked the gate to the Subject Properties as well as the main office area. On April 1, 2013, Plaintiff attempted to remove the remaining equipment and other personal property from the Subject Properties. However, Movant prevented the removal of the items by allegedly contacting the police department.

Due to their inability to recover the items at issue, Plaintiffs filed an action in the 38th District Court in an effort to, *inter alia*, recover possession of the items at issue ("District Court Matter"). The District Court Matter was ultimately resolved in a manner that allowed Plaintiffs to commence this action.

On November 5, 2014, Plaintiffs filed their first amended complaint in this matter ("Complaint"). The Complaint contains the following claims: Count I- Unlawful Lock-Out in Violation of MCL 600.2918; Count II- Conversion; Count III- Tortious Interference with Business Relationships and Expectancies; Count IV- Concert of Action; and Count V- Civil Conspiracy. On September 16, 2015, Movants filed their instant motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiffs have since filed a response to the motion and request that the motion be denied. Each side has also filed

supplements to their positions. On October 13, 2015, the Court held a hearing in connection with the motion and took the matter under advisement.

II. Standard of Review

A motion under MCR 2.116(C)(10) tests the factual support of a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing such a motion, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* The Court must only consider the substantively admissible evidence actually proffered in opposition to the motion, and may not rely on the mere possibility that the claim might be supported by evidence produced at trial. *Id.*, at 121.

III. Arguments and Analysis

A. Unlawful Lock-Out under MCL 600.2918

Plaintiffs' lockout claim is brought pursuant to MCL 600.2918, which provides:

> (1) Any person who is ejected or put out of any lands or tenements in a forcible and unlawful manner, or being out is afterwards held and kept out, by force, if he prevails, is entitled to recover 3 times the amount of his actual damages or $200.00, whichever is greater, in addition to recovering possession.
>
> (2) Any tenant in possession of premises whose possessory interest has been unlawfully interfered with by the owner, lessor, licensor, or their agents shall be entitled to recover the amount of his actual damages or $200.00, whichever is greater, for each occurrence and, where possession has been lost, to recover possession. Unlawful interference with a possessory interest shall include:
>
> (a) The use of force or threat of force.

(b) The removal, retention, or destruction of personal property of the possessor.

(c) A change, alteration, or addition to the locks or other security devices on the property without forthwith providing keys or other unlocking devices to the person in possession.

(d) The boarding of the premises which prevents or deters entry.

(e) The removal of doors, windows, or locks.

(f) Causing, by action or omission, the termination or interruption of a service procured by the tenant or which the landlord is under an existing duty to furnish, which service is so essential that its termination or interruption would constitute constructive eviction, including heat, running water, hot water, electric, or gas service.

(g) Introduction of noise, odor or other nuisance.

(3) The provisions of subsection (2) shall not apply where the owner, lessor, licensor, or their agents can establish that he:

(a) Acted pursuant to court order or

(b) Interfered temporarily with possession only as necessary to make needed repairs or inspection and only as provided by law or

(c) Believed in good faith the tenant had abandoned the premises, and after diligent inquiry had reason to believe the tenant does not intend to return, and current rent is not paid.

(4) A person who has lost possession or whose possessory interest has been unlawfully interfered with may, if that person does not peacefully regain possession, bring an action for possession pursuant to section 5714(1)(d) of this act or bring a claim for injunctive relief in the appropriate circuit court. A claim for damages pursuant to this section may be joined with the claims for possession and for injunctive relief or may be brought in a separate action.

(5) The provisions of this section may not be waived.

(6) An action to regain possession of the premises under this section shall be commenced within 90 days from the time the cause of action arises or becomes known to the plaintiff.

> An action for damages under this section shall be commenced within 1 year from the time the cause of action arises or becomes known to the plaintiff.

In their response, Plaintiffs contend that Movants violated MCL 600.2918(2)(c) and (d) by building a wall to prevent them from accessing the common areas of the Subject Properties, by padlocking and/or changing the locks to certain portions of the Subject Properties, and by covering up certain windows. As Plaintiff Bower has testified that she does not know who installed the wall and/or locks that impeded her and her companies' access (See Plaintiffs' Exhibit 3.), the only cited evidence as to who engaged in the activities at issue is Defendant S. Melistas' testimony (See Plaintiffs' Exhibit 2.)

Defendant S. Melistas testified that Defendant G. Melistas told him that some equipment was missing and that he wanted to build a wall to protect the items in the warehouse. (Id. at 56.) Defendant S. Melistas stated that he told Defendant G. Melistas to go pull a permit and then build the wall to protect the equipment. (Id. at 57.) Further, Defendant S. Melistas conceded that the intent of the wall was to prevent Plaintiff Bower and her son from accessing the equipment. (Id. at 59-60.) With respect to the padlock, Defendant S. Melistas testified that Defendant G. Melistas installed the lock in order to protect his company's truck at night. (Id. at 62-64.) Defendant S. Melistas also conceded that he knew about the use of the padlock. (Id.)

As a preliminary matter, Plaintiffs have failed to present any evidence that Defendant Seremetis had any involvement with the alleged lock-out. Moreover, while Plaintiffs have presented evidence that Defendant S. Melistas knew about the padlock and approved the building of the wall, Plaintiffs have failed to present any basis for his

lock-out claim against Defendant S. Melistas in his invididual capacity rather than as the principal of Shakespeare, the owner and landlord of the Subject Properties. It is well established that a limited liability company is its own legal entity, separate and distinct from its members, even when a single members owns the entire company. *Hills v Dales Gen Hosp v Pantig*, 295 Mich App 14, 20; 812 NW2d 793 (2011). In this case, Plaintiffs have presented evidence that Defendant S. Melistas, acting as the principal of Shakespeare, permitted Defendant G. Melistas, a tenant, to build the wall and place the lock on the gate. However, Plaintiffs have failed to set forth or properly support a legal basis for holding Defendant S. Melistas liable. Consequently, the Court is convinced that Plaintiffs' unlawful lock-out claims against Defendants S. Melistas and Seremetis must be dismissed.

With respect to Plaintiffs unlawful lock-out claim against Shakespeare, the Court is convinced that Movants' motion must be denied. In this case, the parties dispute the terms of Plaintiffs' lease of the Subject Property after it was purchased by Shakespeare. If Plaintiffs are able to establish that they had leased portions of the Subject Property from Shakespeare, and they were prevented from accessing those areas by the wall and/or the padlock, the Court is convinced that Defendant S. Melistas' actions on behalf of Shakespeare in approving the use of the wall and padlock could be sufficient to support a claim for an unlawful lock-out.

B. Common Law Conversion

Movants also contend that Plaintiffs' conversion claim fails because they have never taken possession of the items at issue.

The common law tort of conversion is defined as "any distinct act of dominion

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). Common law conversion includes refusing to surrender the property of another upon their demand. *Thoma v Tracy Motor Sales, Inc.*, 360 Mich 434; 104 NW2d 360 (1960).

In this case, Plaintiffs contend that they attempted to collect the items at issue by hiring a moving company to load and transport the items, but that their attempt subverted by Defendants contacting the police to prevent Plaintiffs from recovering the items. (*See* Plaintiffs' Exhibits 3 and 11.) During his deposition, Defendant S. Melistas conceded that he directed Defendant G. Melistas to call the police. (*See* Plaintiffs' Exhibit 2, at 72-73.) However, Defendant S. Melistas also testified that the police officer stated that no one was to remove any of the items until a court decided who was entitled to the items. (Id. at 73.) This testimony is corroborated by the officer's report in which the officer reported that he directed the parties not to remove any items until the dispute was resolved by the Court, and that the parties agreed to leave the items where they were. (*See* Plaintiffs' Exhibit 11.) Based on the evidence presented, the Court is convinced that Plaintiffs' common law conversion claim fails to the extent it is based on their refusal to allow Plaintiffs' to remove the items on March 29, 2013 or April 1, 2013. The record demonstrates that the extent of Movants' involvement was directing Defendant G. Melistas to ask for police intervention to help determine who was entitled to the items at issue, and their acquiescence to the police officer's request to leave the items at the Subject Property until the court decided who was entitled to the items.

Further, Plaintiffs have failed to present any evidence of any properly supported request they submitted to one or more of the Movants to deliver the items. Based on the evidence submitted by the parties, the Court is convinced that Plaintiffs have failed to establish that a genuine issue of material fact exists with respect to whether one or more of the Movants violated the common law governing conversion. Accordingly, Movants' motion for summary disposition of Plaintiffs' common law conversion claims against them must be granted.

C. Statutory Conversion

Plaintiffs have also brought a statutory conversion claim. Statutory conversion, pursuant to the current version of MCL 600.2919a(1)(a), provides for damages three times the amount of actual damages to a person damaged as a result of another person's stealing or embezzling property or converting property to the other person's own use.

In their response, Plaintiffs contend that Movants have converted the items at issue to their own use by using them in the operation of their businesses and by moving some of the items to another building. As a preliminary matter, Plaintiffs have failed to present any evidence that Defendant Seremetis played any role in the alleged conversion in his individual capacity. Rather, Plaintiffs assert that Defendant S. Melistas aided in Defendant G. Melistas' alleged conversion of some of the items. Specifically, Plaintiffs aver that Defendant S. Melistas allowed Defendant G. Melistas to store some of the items at a property he owned the parties have referred to as the "Stephens Building".

Defendant S. Melistas testified that at some point he told Defendant G. Melistas that he was going to have to rent a hi-lo and a lift to do some work at the Stephens Building. (*See* Plaintiffs' Exhibit 2, at 38.) In response, Defendant G. Melistas advised Defendant S. Melistas not to rent the items because he owned a hi-lo and a lift. (Id. at 39.) While the items were used and stored at the Stephens Building for a time, Defendant S. Melistas testified that he has returned the items to the Subject Properties. (Id. at 43.)

While MCL 600.2919a(1)(b) provides that a party is liable for conversion if it receives, buys, possesses, conceals, or aids in the concealment of stolen, embezzled or converted property if it knew that the property was stolen, embezzled or converted, Plaintiffs have failed to provide the Court with any evidence the Defendant S. Melistas knew that his Defendant G. Melistas' ownership of the two items was in dispute when he used the items in connection with the Stephens Building. Accordingly, the Court is convinced that Plaintiffs have failed to establish that a genuine issue of material fact exists as to Plaintiffs' statutory conversion claim. As a result, Movants' motion for summary disposition of Plaintiffs' statutory conversion claim must be granted.

D. Tortious Interference

In their motion, Movants contend that Plaintiffs have failed to present facts sufficient to support a claim for tortious interference. Plaintiffs have not responded to Movants position in any of their pleadings or at the hearing held in connection with the instant motion. Accordingly, the Court is convinced that Movants' motion for summary disposition of Plaintiffs' tortious interference claims must be granted.

E. Conspiracy

In their motion, Movants contend that Plaintiffs' conspiracy claim fails because there can be no conspiracy between an alleged principal and its agents. A civil conspiracy is "a combination of two or more persons, by some concerted action, to accomplish a criminal or unlawful purpose, or to accomplish a lawful purpose by criminal or unlawful means." *Urbain v. Beierling,* 301 Mich App 114, 835 NW2d 455, 463 (2013). The intra-corporate conspiracy doctrine provides that a corporation cannot conspire with its own agents or employees, *Hull v. Cuyahoga Valley Joint Vocational Sch Dist Bd of Educ,* 926 F2d 505, 510 (CA 6, 1991).

In this case, Plaintiffs' only remaining underlying tort claim involving one or more of the Movants is the portion of its unlawful lock-out claim involving Shakespeare. While the intra-corporate conspiracy doctrine may operate to bar a conspiracy involving a company and its agents/employees, there has been no allegation that Defendant G. Melistas installed the wall or changed/installed the locks in question on behalf of Shakespeare. Rather, Defendant S. Melistas, on behalf of Shakespeare, allegedly allowed its tenant, Defendant G. Melistas, to install the wall and padlock the gate. As a result, Defendants have failed to establish that the intra corporate conspiracy doctrine bars Plaintiffs' conspiracy claims against Defendant S. Melistas. However, Plaintiffs' conspiracy claims against Defendant Seremetis and Defendant S. Melistas must be dismissed as all of Plaintiffs' claims against them have been disposed of and a civil conspiracy claim must be based upon an underlying tort or crime. *Advocacy Organization for Patients & Providers v Auto Club Ins Ass'n*, 257 Mich App 365, 384; 670 NW2d 569 (2003).

IV. Conclusion

For the reasons discussed above, Movants' motion for summary disposition is GRANTED, IN PART, and DENIED, IN PART. Specifically, Movants' motion for summary disposition of Plaintiffs' unlawful lock-out, conversion, tortious interference, and conspiracy claims against Defendants Andreas Seremetis and Sotirios Seremetis is GRANTED. Further, Movants' motion for summary disposition of Plaintiffs' conversion and tortious interference claims against Defendant Shakespeare Properties, LLC is GRANTED. The remainder of Movants' motion is DENIED.

Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order neither resolves the last claim nor closes the case.

IT IS SO ORDERED.

Date: DEC 04 2015

Kathryn A. Viviano

Hon. Kathryn A. Viviano, Circuit Court Judge