

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

JOLAN JACKSON; and JOLAN
JACKSON AS BENEFICIARY OF
EQUITY TRUST COMPANY FBO
JOLAN JACKSON IRA NO. 118410,

Plaintiffs,

vs.

JAY SPENCER,

Defendant.

Case No. 13-04271-NZB

HON. CHRISTOPHER P. YATES

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND VERDICT

Defendant Jay Spencer used his own company, Mackinac Realty Group, LLC (“Mackinac Realty”), as a conduit for conversion of funds that the plaintiffs invested with a separate entity called Mackinac Advisory Services, LLC (“Mackinac Advisory”). On March 31, 2015, the Court entered an opinion and order granting summary disposition to the plaintiffs on their claims for common-law and statutory conversion. On April 28, 2015, the Court conducted a hearing in the nature of a bench trial to determine the amount of damages that Spencer must pay to the plaintiffs on their conversion claims.¹ After receiving a post-hearing brief from Spencer on May 1, 2015, and denying Spencer’s motion for reconsideration on the issue of liability in an order entered on June 5, 2015, the Court can render a verdict that Defendant Spencer must pay \$180,000 plus interest from the dates of conversion on the common-law conversion claim and \$540,000 on the statutory conversion claim, offset by any amount of money that the plaintiffs have received from other sources to resolve this matter.

¹ Neither side made a timely request for a jury trial, see MCR 2.508(B)(1), so the Court had to resolve all issues either by summary disposition or by a trial to the bench. See MCR 2.509(B).

I. Findings of Fact

Pursuant to MCR 2.517(A)(1), in an action tried without a jury, “the court shall find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment.” The Court must render “[b]rief, definite, and pertinent findings and conclusions on the contested matters” that may take the form of a written opinion. See MCR 2.517(A)(2) & (3). Therefore, the Court shall begin with findings of fact, followed by conclusions of law, and ultimately the verdict.

As the Court explained in detail in its opinion and order granting summary disposition to the plaintiffs on their conversion claims, Defendant Spencer took \$241,000 that the plaintiffs loaned to Mackinac Advisory, diverted those funds to Mackinac Realty, and ultimately spent the money on his personal expenses. See Opinion and Order Granting Plaintiffs’ Motion for Summary Disposition Under MCR 2.116(C)(10) at 2-3 (March 31, 2015). Plaintiff Jolan Jackson testified at the hearing on April 28, 2015, that neither Spencer nor anyone else ever returned a single dollar to him or to his individual retirement account (“IRA”). Thus, in computing damages, the Court must simply decide how much of the \$241,000 loan Spencer converted because Spencer has no credit for funds that he returned to the plaintiffs.

Bank records supplied by the plaintiffs in support of their motion for summary disposition demonstrate conclusively that Defendant Spencer diverted \$180,000 of the plaintiffs’ funds through America’s One Title Agency to the account of Spencer’s company, *i.e.*, Mackinac Realty, in June of 2011. See Plaintiffs’ Brief in Support of Motion for Summary Disposition as to Defendant Jay Spencer, Exhibit 10 (bank records for “Mackinac Realty Group LLC” showing wire transfers in the amounts of \$124,000 on June 21 and \$56,000 on June 28). But the record does not establish what happened to the rest of the \$241,000 that the plaintiffs loaned to Mackinac Advisory, so the Court

is hard-pressed to conclude that Spencer converted the balance of the plaintiffs' money amounting to an additional \$61,000. Consequently, the Court finds as a matter of fact that Spencer converted \$180,000 of the plaintiffs' funds, but the Court cannot find, by a preponderance of the evidence, that Spencer should be held responsible for converting the entire \$241,000 that the plaintiffs loaned to Mackinac Advisory.

II. Conclusions of Law

At common law, conversion consists of ““any distinct act of dominion wrongfully exerted over another’s personal property in denial of or inconsistent with his rights therein.”” Aroma Wines & Equipment, Inc v Columbia Distribution Services, Inc, Nos 148907 & 148909, slip op at 15 (Mich June 17, 2015). Thus, ““it is not necessary that it should be shown that [the defendant] has applied [the converted property] to his own use.”” Id. at 14. Statutory conversion, in contrast, depends upon establishment of a common-law conversion “in which the common-law conversion was to the other person’s ‘own use.’” Id. at 18. In this case, that additional element – proof that Defendant Spencer converted funds to his own use – presents no impediment to the plaintiffs’ recovery on a statutory-conversion theory because Spencer so flagrantly used \$180,000 of the plaintiffs’ funds to pay for his own personal expenses. See id. at 23 (“someone alleging conversion to the defendant’s ‘own use’ under MCL 600.2919a(1)(a) must show that the defendant employed the converted property for some purpose personal to the defendant’s interests”).

Here, the remedy for common-law conversion is straightforward: the plaintiffs may recover the value of the property that Defendant Spencer converted, Bernhardt v Ingham Regional Medical Center, 249 Mich App 274, 280-281 (2002), augmented by “interest from the date of conversion.”

Ehman v Libralter Plastics, Inc, 207 Mich App 43, 45 (1994). Therefore, the appropriate award of damages on the plaintiffs’ common-law conversion claim is \$180,000 with interest computed from the dates of conversion in June of 2011. Thus, the plaintiffs are entitled to a verdict in that amount on their claim against Spencer for common-law conversion.

The remedies for statutory conversion are substantially more robust than the remedy available for common-law conversion. Specifically, a plaintiff harmed by statutory conversion “may recover 3 times the amount of actual damages sustained, plus costs and reasonable attorney fees[.]” MCL 600.2919a(1). “The term ‘may’ is permissive and indicates discretionary activity[.]” Aroma Wines & Equipment, Inc v Columbian Distribution Services, Inc, 303 Mich App 441, 449 (2013), aff’d, ___ Mich ___ (2015), so “treble damages and attorney fees are discretionary.” Id. The Court concludes that treble damages are appropriate because Defendant Spencer brazenly took the plaintiffs’ money and spent it on his own personal expenses. Statutory conversion can take many different forms, see Aroma Wines, Nos 148907 & 148909, slip op at 22 (Mich June 17, 2015), and Spencer’s conduct constitutes the most egregious form of statutory conversion. Therefore, the plaintiffs are entitled to treble damages of \$540,000 – which constitutes three times’ the plaintiffs’ loss – on their statutory-conversion claim. See New Properties, Inc v George D Newpower, Jr, Inc, 282 Mich App 120, 138 (2009) (explaining computation of treble damages for statutory conversion). In view of this sizable award of damages, and in recognition of the fact that the plaintiffs’ counsel devoted substantial effort to recovering from targets other than Spencer, the Court shall not grant attorney fees to the plaintiffs. The exercise of discretion encompasses the authority to award an amount of damages that adequately compensates the plaintiffs for their loss without unduly punishing the defendant. The damage award of \$540,000 on the statutory-conversion claim achieves that result.

Having determined the appropriate amount of damages for common-law conversion and for statutory conversion, the Court must provide two refinements to its award. First, the Court notes that the damages awarded on the two claims must not be aggregated. That is, the damage awards on the two claims provide compensation to the plaintiffs that is redundant, rather than cumulative, because the common-law and statutory conversion claims rest upon the same factual predicate. Accordingly, the plaintiffs may *not* obtain \$540,000 plus \$180,000 from Defendant Spencer. The ceiling for the plaintiffs' recovery must be set at \$540,000, augmented by any applicable interest and taxable costs. Second, Spencer is entitled to an offset against the award of damages for any amount of money that the plaintiffs have received from other targets in connection with this matter. Spencer has asserted in his supplemental brief that the plaintiffs have "been reimbursed by David Scholl and Tate Jesky" in "a total amount equal to \$188,431." See Supplemental Brief Regarding Damages at 2. The Court cannot verify the accuracy of that figure, but the plaintiffs can do so. Thus, the plaintiffs are invited to submit a proposed final judgment that reflects such a reduction in the awards of damages for the common-law and statutory conversion claims.²

III. Verdict

For the reasons stated in the Court's findings of fact and conclusions of law, the Court hereby renders a verdict in favor of Plaintiffs Jolan Jackson and Jackson's IRA, and against Defendant Jay Spencer, in the amount of \$180,000 plus interest on the common-law conversion claim and in the amount of \$540,000 on the statutory conversion claim. The plaintiffs' request for attorney fees on the statutory conversion claim is denied. The plaintiffs' aggregate recovery from Spencer shall not

² Submission of that proposed final judgment should conform to the requirements of the so-called seven-day rule. See MCR 2.602(B)(3).

exceed \$540,000 plus any appropriate amount of interest and taxable costs, and the amounts of the awards for common-law and statutory conversion shall be offset, dollar for dollar, by any amount of money that the plaintiffs have obtained from any other target in connection with this matter. The plaintiffs may submit a proposed final judgment, pursuant to MCR 2.602(B)(3), reflecting the awards set forth in this verdict. The plaintiffs shall contemporaneously submit a notice indicating whether they intend to proceed on the claims other than common-law and statutory conversion advanced in their pleadings.³

IT IS SO ORDERED.

Dated: June 25, 2015



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge

³ The Court's order on Defendant Spencer's motion for reconsideration directed the plaintiffs to submit such a notice, but the plaintiffs wrote to the Court (and to Spencer) on June 15, 2015, to advise the Court that their decision with respect to their other claims depended upon the decision of the Court on their request for damages for common-law and statutory conversion. The Court now believes that the plaintiffs must express their intent with regard to their remaining claims.