

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

ORDER GRANTING IN PART, AND DENYING IN PART,
DEFENDANT'S MOTION FOR RECONSIDERATION

On March 31, 2015, the Court issued an opinion and order granting the plaintiffs' motion for summary disposition under MCR 2.116(C)(10). On April 21, 2015, Defendant Jay Spencer filed a motion for reconsideration pursuant to MCR 2.119(F), which permits relief when the moving party "demonstrate[s] a palpable error by which the court and the parties have been misled and show[s] that a different disposition of the motion must result from correction of the error." To be sure, courts may "revisit issues they previously decided, even if presented with a motion for reconsideration that offers nothing new to the court." Hill v City of Warren, 276 Mich App 299, 307 (2007). But MCR 2.119(F)(3) strongly suggests that something in the motion must impel the Court to conclude that its chosen outcome is so erroneous that it must be rectified.

Here, the Court ruled that Defendant Spencer converted money that Plaintiff Jolan Jackson loaned to Mackinac Advisory Services, LLC ("Mackinac Advisory") when Spencer redirected those funds to a separate entity under his control called Mackinac Realty Group, LLC ("Mackinac Realty")

and then spent the money on personal expenses, leaving nothing to return to Jackson. In requesting reconsideration, Spencer contends that the Court improperly concluded that he converted money that belonged to Jackson. According to Spencer, the transaction took place in two stages. First, Jackson voluntarily entered into a debtor-creditor relationship with Mackinac Advisory, ceding control of his money to Mackinac Advisory in exchange for a promissory note and mortgages. Second, Mackinac Advisory transferred the money to Mackinac Realty, thereby depriving Jackson of standing to pursue a claim for anything that Mackinac Realty did with the money. Thus, in Spencer's view, he did not commit either common-law conversion or statutory conversion.¹

Conversion, both at common law and under MCL 600.2919a(1)(a), refers to "any distinct act of domain wrongfully exerted over another's personal property in denial of or inconsistent with the rights therein." Hoffenblum v Hoffenblum, 308 Mich App 102, 110 (2014). "Money is treated as personal property, and an action may lie in conversion of money provided that 'there is an obligation to keep intact or deliver the specific money in question, and where such money can be identified.'" Dunn v Bennett, 303 Mich App 767, 778 (2014). Under Michigan law, "[t]o support an action for conversion of money, the defendant 'must have obtained the money without the owner's consent to the creation of a debtor-creditor relationship' and 'must have had an obligation to return the specific

¹ Defendant Spencer has also directed the Court's attention to his assertion in an affidavit that "[h]e never used Jolan Jackson IRA NO. 118410 . . . or Mr. Jackson['s] funds to pay for his personal expenses. The bank account maintained by [Mackinac Realty] included funds from various business activities which were unrelated to Plaintiffs, as well as his own personal funds." See Affidavit of Jay Spencer, ¶ 3 (February 26, 2015). This Delphic pronouncement, which blurs the distinction between the sources of the money in the account and the uses to which Spencer put the money in the account, does not undercut the Court's determination that Spencer plainly poured tens of thousands of dollars of Jackson's money into that account and then withdrew tens of thousands of dollars from that very same account to pay for his personal expenses. Thus, the Court need not alter its factual conclusion about how Spencer used the money he obtained from Jackson.

money entrusted to his care.’’ Lawsuit Financial, LLC v Curry, 261 Mich App 579, 591 (2004). Therefore, a claim for conversion of money may be uncommon, but it certainly is permissible under Michigan law.²

Here, the details of the two-step “transaction” make clear why the plaintiffs can recover from Defendant Spencer on claims for common-law and statutory conversion. On June 16, 2011, Spencer sent an e-mail as the “Managing Partner” of Mackinac Advisory explaining how the \$241,000 from Plaintiff Jackson’s individual retirement account (“IRA”) should be handled. See Plaintiffs’ Brief in Support of Motion for Summary Disposition As to Defendant Jay Spencer, Exhibit 5. Five days later, Jackson signed a document entitled “Direction of Investment” stating that his “IRA is loaning these funds to Mackinac Advisory Services, LLC for the acquisition and rehabilitation/construction of several properties described” in that document. See id., Exhibit 6. Finally, Spencer signed a note on behalf of “Mackinac Advisory Services, LLC” on June 21, 2011, promising to pay Jackson his entire principal amount of \$241,000 plus interest for an aggregate return payment of \$257,870. See id., Exhibit 7. But in contravention of the plans explained to Jackson, Spencer almost immediately diverted at least \$180,000 in IRA funds to a JPMorgan Chase bank account of Mackinac Realty, see id., Exhibit 10, and then used that money to cover his personal expenses. See id., Exhibit 16. And in the end, Spencer did not return a single dime to Jackson or his IRA.

² Defendant Spencer’s motion for reconsideration identifies three alleged palpable errors that the Court committed in granting summary disposition to the plaintiffs. The third error identified by Spencer is as follows: “As a matter of law, Michigan does not recognize claims for the conversion of money, as alleged by Plaintiff.” See Defendant Jay Spencer’s Motion for Reconsideration at 2. This assertion cannot be squared with published precedent from our Court of Appeals stating: “an action may lie in conversion of money provided that ‘there is an obligation to keep intact or deliver the specific money in question, and where such money can be identified.’” Dunn, 303 Mich App at 778.

Defendant Spencer's response to Plaintiff Jackson's common-law and statutory conversion claims involves a curious admixture of sophistry and fiction. First, he suggests that Jackson simply loaned money to Mackinac Advisory in a conventional debtor-creditor relationship, so no conversion claim can exist. Although Jackson may have given his "consent to the creation of a debtor-creditor relationship" with Mackinac *Advisory*, see Lawsuit Financial, 261 Mich App at 591, Jackson never authorized Spencer to exert domain over the IRA funds through Mackinac *Realty* for Spencer's own personal use. Second, Spencer insists that neither he nor Mackinac Advisory had any obligation to return the specific funds that Jackson entrusted to Mackinac Advisory, so no claim for conversion can exist. But under Michigan law, a conversion claim simply requires proof that the defendant had "an obligation to return the specific money entrusted to his care." Lawsuit Financial, 261 Mich App at 591. Here, Spencer signed a note as the "CEO" of Mackinac Advisory promising to return all of the IRA funds plus interest to Jackson within 120 days. See Plaintiffs' Brief in Support of Motion for Summary Disposition as to Defendant Jay Spencer, Exhibit 7. Third, Spencer contends that he did not know he had received or concealed stolen, embezzled, or converted property, so no claim for conversion can exist. But the authority cited by Spencer for that requirement predates the expansion of the conversion statute to impose liability upon persons who commit conversion, Department of Agriculture v Appletree Marketing, LLC, 485 Mich 1, 9 n16 (2010), and the record belies Spencer's assertion that he lacked knowledge that Jackson's IRA funds had been converted. Indeed, Spencer himself committed that conversion by obtaining the funds for Mackinac Advisory and then diverting the funds to Mackinac Realty and, ultimately, to himself. In sum, the Court's careful analysis of the common-law and statutory conversion claims on reconsideration simply fortifies the Court's view that Spencer is liable to Jackson on those two claims.

Defendant Spencer's remaining assertion of palpable error concerns his challenge, through his own motion for summary disposition, to Counts Three, Four, and Five of the complaint.³ The Court noted in footnote three of its opinion subject to attack on reconsideration that:

Plaintiff Jackson has not sought summary disposition against Defendant Spencer on any of the other claims in his complaint [beyond the common-law and statutory conversion claims set forth in Counts Four and Five]. Although the Court presumes that Spencer [sic] has abandoned those other claims because they would be dischargeable in bankruptcy, the Court need not determine the justification for Spencer's [sic] decision. Instead, the Court simply must focus on the claims Spencer [sic] has chosen to advance in his motion for summary disposition.

The Court recognizes that it mistakenly referred to Spencer abandoning claims. The Court should have referred to Plaintiff Jackson abandoning claims, but the Court notes that Jackson responded to Spencer's motion for summary disposition with a full-throated defense of each and every claim in the complaint. Hence, the Court cannot grant summary disposition to Spencer on any count in the complaint without undertaking a detailed analysis of Spencer's request for summary disposition on that count and Jackson's response.

Given the Court's reaffirmation of summary disposition in favor of Jackson on the common-law and statutory conversion claims, the Court invites Plaintiff Jackson to advise the Court whether he intends to proceed on any other counts in the complaint. If Jackson does not wish to proceed on other counts, the Court shall enter summary disposition in favor of Defendant Spencer on all counts that set forth claims other than conversion. But if Jackson intends to proceed on claims other than

³ Defendant Spencer's motion for reconsideration demands summary disposition with respect to "Counts I, II, III, VI and VII" of the complaint, but his request for summary disposition was styled more modestly as "Defendant's Motion for Summary Disposition Pursuant to MCR 2.116(C)(8) and (C)(10) on Count III, IV and V of Plaintiff's Complaint and Brief in Support." To be sure, Spencer's motion analyzed more than those three counts, so the title of his motion cannot be readily squared with the text of his motion.

common-law and statutory conversion, the Court will resolve Spencer's summary-disposition motion on the other counts on the merits. Jackson shall have 14 days from the entry of this order to notify the Court and Spencer in writing whether he intends to proceed on claims other than common-law and statutory conversion. In any event, the Court shall deny Spencer's motion for reconsideration pursuant to MCR 2.119(F) with respect to the common-law and statutory conversion claims.

IT IS SO ORDERED.

Dated: June 5, 2015



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