

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

JAMES D. AZZAR,

Plaintiff,

vs.

Case No. 14-03515-NZB

HON. CHRISTOPHER P. YATES

UPRR SECURITIES, LLC, a Delaware  
limited liability company; and UNCLAIMED  
PROPERTY RECOVERY & REPORTING,  
LLC, a Delaware limited liability company,

Defendants.

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OPINION AND ORDER GRANTING, IN PART, AND DENYING,  
IN PART, DEFENDANTS' MOTION FOR SUMMARY DISPOSITION

The United States Postal Service is awash in mail solicitations for financial services such as mortgage refinancing, credit consolidation, and investment opportunities. Plaintiff James D. Azzar received such a solicitation from Defendant UPRR Securities, LLC (“UPRR Securities”) offering assistance in exchanging stock in JDS Uniphase Corporation (“JDSU”) for an eight-to-one reverse stock split that JDSU had approved. Azzar did not fully understand UPRR Securities’s solicitation, but he nonetheless filled out and sent in the authorization form to complete the exchange, albeit with one crossed-out signature. As a result, UPRR Securities exchanged Azzar’s 247,000 shares in JDSU to complete the reverse stock split, but UPRR Securities also sold a sizable portion of Azzar’s JDSU stock to cover processing fees and a surety bond. When Azzar discovered that UPRR Securities had charged him more than \$60,000 to effect the exchange, he filed suit alleging statutory and common-law conversion and violations of the Michigan Consumer Protection Act (“MCPA”), MCL 445.901, *et seq.* In response, UPRR Securities moved for summary disposition under MCR 2.116(C)(8).

“A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a complaint.” Michigan ex rel Gurganus v CVS Caremark Corp., 496 Mich 45, 62 (2014). Thus, when “reviewing a motion brought under MCR 2.116(C)(8), the court considers only the pleadings.” Id. at 63. “Moreover, the court must accept all factual allegations in the complaint as true, along with all reasonable inferences or conclusions that can be drawn from them.” Id. Accordingly, Plaintiff Azzar’s complaint provides the factual background for this motion.

Plaintiff Azzar does not deny signing and returning the authorization form he received from Defendant UPRR Securities.<sup>1</sup> Thus, the Court’s analysis hinges largely upon the authorization form sent by UPRR Securities to Azzar in 2013,<sup>2</sup> which states in pertinent part as follows:

Dear Shareholder:

According to our records, you hold certificates representing shares of the company listed above. Due to a merger or corporate action of the company you are required to surrender your shares. In return, you are entitled to “new” stock in the above mentioned company. American Stock Transfer and Trust Company LLC (AST), the Exchange Agent for this company’s corporate action, has previously notified you and you have not responded.

UPRR Securities, LLC (“UPRR”) has been retained to assist shareholders claim [sic] their due property through this voluntary program. Exchanging your shares is easy. Follow these simple steps.

1. In **Box 1**, provide your Social Security Number / Tax Identification Number (TIN), Date of Birth and Signature **Be sure to sign in Box 1**. If your mailing

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<sup>1</sup> Plaintiff Azzar has named two defendants, UPRR Securities and a related limited liability company called Unclaimed Property Recovery & Reporting, LLC. For the sake of convenience, the Court shall simply refer to the two defendants collectively as UPRR Securities.

<sup>2</sup> Plaintiff Azzar attached an essentially illegible copy of the signed authorization form to his complaint, so the Court shall rely instead upon a clearer copy of the signed authorization form and a blank form that Defendant UPRR Securities filed as a supplement to its motion. See Defendants’ Supplement to Motion for Summary Disposition, Exhibits 1 & 2.

address has changed, provide your new address with the materials you mail to us.

2. Complete **Box 2** if you are transferring shares. Note: A Medallion Guarantee must be provided on this form.
3. In **Box 3**, you must make an election to either sell all your shares or receive a stock certificate by checking the appropriate box. If no election is made a certificate will be issued for your shares.
4. In **Box 4**, provide your signature, telephone number, email address and date. **Be sure to sign Box 4.** Your signature is required and indicates your agreement to the below authorization.
5. Enclose this form, along with your certificate(s) in the envelope provided. If you have lost your certificates, you may still receive your property by completing and returning this form. A surety bond will be purchased on your behalf, at a cost of 2% of the value of the lost securities. The surety bond premium will be deducted from your proceeds.

See Defendants' Supplement to Motion for Summary Disposition, Exhibit 2. The authorization form also stated in two separate sections that UPRR Securities would charge a "processing fee of 15% of the value of your shares" that would "be deducted from your proceeds." Id. Additionally, the form explained on both the first and second pages that American Stock Transfer and Trust Company LLC would exchange the shares without "charg[ing] a processing fee." Id. In other words, the form gave the reader the essential information about the transaction and explained a less-expensive alternative available to the reader.

Despite the clear language of the authorization form, Plaintiff Azzar asserts that he initially thought the authorization form had been sent to him by JDSU. Thus, he filled in and signed Box 1, corrected his zip code, and signed Box 4, albeit with a line through that signature. See Defendants' Supplement to Motion for Summary Disposition, Exhibit 1. Azzar alleges that he read the language about the 15-percent processing fee after he had signed the authorization form, see id., Exhibit 2, so

he crossed out his signature in Box 4. See id., Exhibit 1. Nevertheless, he returned the authorization form to Defendant UPRR Securities and, upon receipt of the seemingly signed authorization, UPRR Securities completed the exchange of Azzar's stock for the eight-to-one reverse stock split. Because Azzar did not make any selection in Box 3, UPRR Securities issued Azzar a certificate for his new shares. See id., ¶ 3. Also, because Azzar did not return his old stock certificates, UPRR Securities sold a portion of Azzar's new shares to buy a surety bond on Azzar's behalf in the amount of \$7,465. See id., ¶ 5. Finally, UPRR sold a portion of Azzar's new shares to cover the 15-percent processing fee, which amounted to \$55,991.81. See id. When Azzar realized what had transpired, he filed this lawsuit against UPRR Securities for statutory conversion, common-law conversion, and violations of the MCPA.<sup>3</sup> UPRR Securities responded with a motion for summary disposition on each of the claims under MCR 2.116(C)(8). The Court must grant such relief to UPRR Securities if Azzar “has failed to state a claim on which relief can be granted.” Gurganus, 496 Mich at 63. Thus, the Court must assess each of Azzar's claims under that relatively lenient standard.

Even under the forgiving standard prescribed by MCR 2.116(C)(8), Plaintiff Azzar's MCPA claim cannot survive Defendant UPRR Securities's motion for summary disposition. “The MCPA prohibits ‘[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce.’” Lucas v Awaad, 299 Mich App 345, 366 (2013), quoting MCL 455.903(1). Azzar insists that the authorization form he received from Defendant UPRR was deceptive and, therefore,

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<sup>3</sup> Plaintiff Azzar's complaint also included a securities-fraud claim under section 10(b) of the Securities Exchange Act of 1934, 15 USC 78j(b), and Rule 10b-5, see 17 CFR 240.10b-5, but Azzar subsequently agreed to dismiss that claim without prejudice because Congress has given the federal courts exclusive jurisdiction over such claims. Silberkleit v Kantrowitz, 713 F2d 433, 436 (9th Cir 1983), citing 15 USC 78aa. The Court believes Azzar's basic contention is best characterized as a federal securities-fraud violation, but the decision to pursue such a claim must be left to Azzar.

violated the MCPA, but UPRR argues that the sale of securities falls outside the scope of the MCPA. To be sure, “the MCPA does not apply to ‘[a] transaction or conduct specifically authorized under laws administered by a regulatory board or officer acting under statutory authority of this state or the United States.’” See id. at 368, citing MCL 445.904(1)(a). Consequently, our Court of Appeals has ruled that “residential mortgage loan transactions fit squarely within the exemption” described in MCL 445.904(1)(a). Newton v Bank West, 262 Mich App 434, 438-439 (2004). Likewise, federal courts have ruled that the MCPA does not apply to sales of securities, a field regulated by the United States Securities and Exchange Commission. See Mercer v Jaffe, Snider, Raitt and Heuer, PC, 713 F Supp 1019, 1029-1030 (WD Mich 1989). Therefore, the Court concludes that the transaction at issue here falls beyond the reach of the MCPA, so the Court must grant summary disposition in favor of UPRR Securities on that claim pursuant to MCR 2.116(C)(8).

In contrast, the Court must deny Defendant UPRR Securities’s summary-disposition motion with respect to the claims for statutory and common-law conversion. “Conversion, both at common law and under the statute, is defined as ‘any distinct act of domain wrongfully exerted over another’s personal property in denial of or inconsistent with the rights therein.’” Aroma Wines & Equipment, Inc v Columbian Distribution Services, Inc, 303 Mich App 441, 447 (2013). In addition, the plaintiff must prove that the defendant’s “initial exercise of domain over the property was in fact wrongful.” Lawsuit Financial, LLC v Curry, 261 Mich App 579, 592 (2004). Here, the parties have presented a factual dispute as to whether UPRR Securities’s initial exercise of domain over Plaintiff Azzar’s stock was wrongful. Azzar contends that, although he signed Box 4, he crossed out that signature, and therefore did not authorize UPRR Securities to exchange his stock. UPRR Securities responds that the signature in Box 4 did not appear to be crossed out, so Azzar apparently did authorize the

exchange of shares. Because that disagreement turns upon a factual dispute, the Court cannot grant summary disposition on Azzar's claims for statutory and common-law conversion pursuant to MCR 2.116(C)(8).

For all of the reasons stated in this opinion, the Court must grant summary disposition under MCR 2.116(C)(8) in favor of Defendant UPRR Securities on Plaintiff Azzar's MCPA claim, but the Court must deny summary disposition and allow Azzar to go forward on his claims for statutory and common-law conversion. Accordingly, the Court shall promptly schedule an initial case conference to establish deadlines for the processing of this case.

IT IS SO ORDERED.

Dated: October 23 , 2014



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