

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

GRAPHIC SPECIALTIES, INC.,

Plaintiff,

vs.

ANTONIO RIVERA,

Defendant.

Case No. 14-08715-CBB

HON. CHRISTOPHER P. YATES

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND VERDICT

On April 28, 2014, Defendant Antonio Rivera appeared before the Honorable George Butth, swore to tell the truth, and pleaded guilty to a criminal charge of larceny in a building. See People v Rivera, 17th Cir Ct Case No 14-02802 (transcript of guilty-plea hearing). Significantly, the charge to which Rivera pleaded guilty alleged that Rivera “did commit the crime of larceny in a STORE by stealing #2 COPPER AND BRASS DIE PRESS” at the address of his former employer, Plaintiff Graphic Specialties, Inc. (“GSI”). See id. (amended felony information). For that crime, Judge Butth meted out a 45-day jail sentence and ordered Rivera to furnish restitution of \$168,379.88. See id. (judgment). After the criminal case ended, GSI filed this civil case against Rivera, seeking recovery on claims of statutory conversion, common-law conversion, and a host of other theories. Although Rivera began this action with the assistance of counsel, his attorney ultimately withdrew, so Rivera proceeded to trial on his own behalf on November 23, 2015. Predictably, it did not go well for him. Based upon the record developed at trial, the Court shall render a verdict in favor of GSI and against Rivera on GSI’s statutory-conversion claim in Count One of its complaint, and the Court shall award damages to GSI and against Rivera in the amount of \$168,379.88.

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.

From August 2012 until February of 2013, Defendant Rivera worked for Plaintiff GSI, which uses brass and copper dies made of high-grade metals. During his tenure with GSI, Rivera and his brother, Ruben Rivera, sold large amounts of #2 copper, yellow brass, and other metals to Enterprise Iron & Metal, Inc. See Plaintiff’s Exhibit G. Ultimately, Rivera’s activities attracted the attention of law-enforcement authorities. Kentwood Police Department Detective Amol Huprikar conducted an investigation and traced the metal sales to Rivera, who ultimately pleaded guilty to larceny of the valuable metal dies. Although Rivera stated at trial that he did not take the dies, the Court finds that statement not just unbelievable, but frankly ridiculous. Accordingly, the Court finds as a matter of fact that Rivera stole metal dies from GSI and then sold the dies for his own gain. The Court also finds as a matter of fact that the dies stolen by Rivera were worth \$168,379.88 to GSI, see Plaintiff’s Exhibit J, even though Rivera obtained nothing like that amount when he sold the dies as scrap.

II. Conclusions of Law

Plaintiff GSI’s complaint contains a mélange of claims, but at trial GSI elected to focus upon statutory conversion under MCL 600.2919a, so the Court shall treat that theory as the asserted basis for recovery. Our Supreme Court recently explained that “the scope of common-law conversion is

now well-settled in Michigan law as ‘any distinct act of dominion wrongfully asserted over another’s personal property in denial of or inconsistent with his rights therein.’” Aroma Wines & Equipment, Inc v Columbian Distribution Services, Inc, 497 Mich 337, 351-352 (2015). Statutory conversion requires proof of those elements of common-law conversion coupled with a demonstration that the defendant converted the personal property “to the [defendant’s] own use.” Id. at 354, quoting MCL 600.2919a(1)(a). Here, Defendant Rivera’s liability on the statutory-conversion theory is manifest.* Rivera took metal dies from his employer, GSI, and sold them as scrap, keeping the proceeds of the scrap sales for himself. Thus, the Court concludes as a matter of law that Rivera is liable to GSI for statutory conversion because Rivera engaged in a distinct act of dominion wrongfully asserted over GSI’s metal dies in denial of GSI’s right to those dies, and Rivera converted the dies to his own use by selling the dies and keeping the proceeds.

The appropriate measure of damages presents the Court with a quandary. Judge Buth set the amount of restitution in the criminal case against Defendant Rivera at \$168,379.88 based on the loss actually suffered by Plaintiff GSI. That loss figure comports with the evidence presented by GSI at the trial in this case, see Plaintiff’s Exhibit J, but several adjustments to that loss figure may well be in order in this action. First, MCL 600.2919a(1) states that a plaintiff in a statutory-conversion case “may recover 3 times the amount of actual damages sustained, plus costs and reasonable attorney fees[.]” Thus, GSI could recover three times its \$168,379.88 loss as well as its reasonable attorney fees and costs in this action. Indeed, in a case like this that involves egregious conversion, the Court

* In reaching this conclusion, the Court has chosen to rely upon the evidence presented at the bench trial, as opposed to Defendant Rivera’s guilty plea, even though “[t]he question of the effect of a guilty plea and a conviction based thereon raises issues of both collateral estoppel and equitable estoppel.” Lichon v American Universal Ins Co, 435 Mich 408, 431 n20 (1990). Consequently, the Court has made a finding of liability independent of Rivera’s guilty plea.

ordinarily would award treble damages, attorney fees, and costs. Second, however, GSI apparently obtained a substantial sum in insurance proceeds for its loss of the dies. As a result, the Court could reduce the trebled-damage award by the amount of the insurance proceeds to arrive at a verdict that does not provide double compensation to GSI. Here, GSI has disclaimed its right to treble damages, but it has asked for a verdict for the full amount of its loss. As a result, the Court shall enter a verdict in favor of GSI and against Rivera in the amount of GSI's loss, *i.e.*, \$168,379.88. To the extent GSI has received insurance proceeds to cover some of its loss, it may have to pay some of its recovery on the verdict to its insurance provider, but that matter is between GSI and its insurance provider, so the Court need not reduce the amount of the verdict in order to reflect GSI's insurance recovery.

III. Verdict

For all of the reasons stated in the Court's findings of fact and conclusions of law, the Court hereby renders a verdict for Plaintiff GSI and against Defendant Rivera on the statutory-conversion claim in Count One of the complaint. The Court concludes that Plaintiff GSI has sustained damages in the amount of \$168,379.88, so a verdict in that amount shall enter in favor of GSI. The plaintiff is invited to submit a proposed judgment that memorializes the Court's verdict under the seven-day rule. See MCR 2.602(B)(3).

IT IS SO ORDERED.

Dated: December 30, 2015



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