

ORIGINAL

STATE OF MICHIGAN
IN THE SUPREME COURT

AROMA WINES AND EQUIPMENT,
INC., a Michigan Corporation,

Plaintiff/Appellee,

v

COLUMBIAN DISTRIBUTIONSERVICES,
INC., a Michigan Corporation,

Defendant/Appellant.

Supreme Court No. 148909

Court of Appeals No. 311145

Lower Court No. 09-11149-CK

/ Donald R. Visser (P27961)
VISSER AND ASSOCIATES, PLLC
Attorneys for Plaintiff/Appellant
2480 - 44th Street, S.E., Suite 150
Kentwood, MI 49512
(616) 531-9860

Jon M. Bylsma (P48790)
VARNUM LLP
Co-Counsel for Defendant/Appellee
333 Bridge Street, NW
Grand Rapids, MI 49504
(616) 336-6000

Thomas A. Kuiper (P47285)
KUIPER ORLEBEKE PC
Co-Counsel for Defendant/Appellee
180 Monroe NW, Suite 400
Grand Rapids, MI 49503
(616) 454-3700

John Horvath
HORVATH & WEAVER, P.C.
Co-Counsel for Defendant/Appellee
10 South LaSalle Street, Suite 1400
Chicago, IL 60603
(313) 419-6600

148909
**PLAINTIFF/APPELLEE'S ANSWER TO
DEFENDANT/APPELLANT'S APPLICATION FOR LEAVE TO APPEAL**

EXHIBITS

PROOF OF SERVICE

FILED

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MICHIGAN SUPREME COURT

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**STATEMENT REGARDING THE
ORDER APPEALED FROM AND RELIEF SOUGHT**

On March 14, 2014, Appellant filed an Application for Leave to Appeal to this Court, seeking reversal of the Michigan Court of Appeals decision in *Aroma Wines and Equipment, Inc v Columbia Distribution Services, Inc*, ___ Mich App ___ (Dec. 17, 2013). Aroma Wines and Equipment, Inc (“Aroma”) files this Answer to the Application for Leave to Appeal submitted by Columbia Distribution Services, Inc (“Columbian”).¹

Aroma agrees that this case of statutory interpretation involves “legal principles of major significance to the state’s jurisprudence.” MCR 7.302(B)(3). But it denies Columbian’s basis for asserting that the Court of Appeals “erred in a way that will cause grave, manifest injustice.” In the Court of Appeals published decision, it correctly reversed the trial court’s decision (granting a directed verdict in favor of Columbian on the statutory conversion claim of Aroma). Still, it is Aroma’s position that the Court of Appeals remanded to the trial court with improper instructions due to an erroneous interpretation of MCL 600.2919a.

In granting Columbian’s motion for directed verdict, the trial court did not allow Aroma’s statutory conversion claim under MCL 600.2919a to go to the jury. It reasoned that in order for statutory conversion to be presented to the jury, Plaintiff must present evidence that Defendant essentially consumed the wine. Distilled down, the trial court determined that statutory conversion equaled common law conversion plus “use.” It then employed an extremely narrow interpretation of the term “use” and determined that Plaintiff’s evidence could not meet that requirement.

¹ Aroma also submitted an Application for Leave to Appeal to the Michigan Supreme Court on March 14, 2014 with respect to the same Court of Appeals decision. Both applications were given separate Docket Numbers. (See Supreme Court Docket Numbers 148907 and 148909). In addition to filing this Answer, Aroma intends to submit a cross appeal in order to preserve the issues that Aroma finds imperative to this Court’s decision, in the event that this Court decides to grant Columbian’s request and deny Aroma’s.

In its *de novo* review of the trial court's grant of a directed verdict, the Michigan Court of Appeals resolved the factual issue in favor of Aroma. It determined that plaintiff had presented enough evidence of "use" to allow the statutory conversion issue to go to the jury, and the Court of Appeals remanded to the trial court consistent with its opinion. In doing so, the Court of Appeals reasoned that the trial court had utilized much too narrow a definition of "use." Even though the Court of Appeals diminished the burden on the victim to prove "use," Appellant believes that the Legislature never intended for the statute to create this extra element for statutory conversion.

Columbian now asserts in its Motion for Leave to Appeal that "under the Court of Appeal's precedential opinion, parties will now be able to obtain treble damages by merely proving a technical common law conversion." Aroma contends that that is exactly what the Legislature intended in enacting MCL 600.2919a. Therefore, although the reasoning advanced by Columbian is flawed, Aroma requests that this Court grant leave to appeal in order to clarify the decision of the Michigan Court of Appeals and remand to the trial court with the proper statutory construction, and instructions to order treble damages in favor of Aroma.

QUESTION PRESENTED

- I. Should Leave to Appeal Be Denied on the Issue Raised by Appellant Columbian But Granted for Other Reasons of Clarifying MCL 600.2919a, When The Court of Appeals Erred When it Interpreted Michigan's Statutory Conversion Statute, MCL 600.2919a, in a Way That Created An Extra Element of "Use" That a Victim of Conversion Must Prove in Order To Recover The Treble Damages Remedy?

Appellee/ Plaintiff says: "Yes."

Appellant/ Defendant says: "No."

The Court of Appeals would answer: "No."

The Trial Court would presumably answer: "No."

STATEMENT OF FACTS

The facts of this case are further set forth in Aroma's Cross Appeal, as well as in Aroma's Application for Leave to Appeal filed with this Court on March 14, 2014 (Supreme Court No. 148907). Regardless, Aroma will provide a short summary of the facts as follows.

Plaintiff Aroma was a wholesale wine importer and distributor that stored its wine in Defendant Columbian's public warehouse. Plaintiff and Defendant had entered a contract for receiving and warehousing wine in temperature controlled storage between 50 - 65 degrees. As a result of problems with a distributor, Aroma fell behind in its storage payment in late 2008. Aroma's President, Christian Pavelescu, was cognizant of Aroma's obligation to make monthly payments and would make small payments whenever he could in attempts to make the account current. But, in early 2009, Columbian informed Mr. Pavelescu that unless he brought in at least \$6,109.00, he could not access any of the 8,374 cases of wine stored at its facility.¹

Despite being told by Aroma that it could not hold the wine and that the wine value greatly exceeded the amount owed, Columbian was steadfast in asserting control over the wine. Columbian then attempted to claim that the wine was only moved for a re-racking project. But, the jury saw right through Columbian's charades and excuses, and rendered a verdict in favor of Aroma on all counts presented to it for consideration - breach of contract, violation of the Uniform Commercial Code (UCC), and common law conversion. Notably, the jury also found that Aroma had not breached the contract between the parties but that Columbian had - i.e. that Columbian did not have a factual basis to claim a lien or withhold access to Aroma's wine in any amount. Even though the jury returned a special verdict finding common law conversion, the

¹ Contrary to Columbian's assertion that it had "threatened to deny Aroma any access to the wine," it in fact denied access to all 8,374 cases of wine stored at its facility. Furthermore, it did not assert a warehouseman's lien on Aroma's property as it wholly failed to follow proper procedures to do so. In actuality, Columbian unilaterally asserted complete control over Aroma's property without justification.

trial court had taken away the statutory conversion claim, and the potential for treble damages under MCL 600.2919a.

Trial Court

Relevant to the issues raised on appeal, defendant moved for directed verdict at the close of plaintiff's proofs. Defendant argued that plaintiff failed to demonstrate that defendant converted the wine to its own use and could therefore not recover for statutory conversion. Plaintiff rebutted that defendant had used the wine for its own purposes by withholding it and using it as leverage against plaintiff. Nevertheless, the trial court granted Columbian's Motion for Directed Verdict on the issue of statutory conversion based upon its perception that the plain language of the statute required that defendant should have "used" the wine by drinking it or selling it. Essentially, the trial court created an extra element of "use" in order for a victim to recover treble damages for statutory conversion.

Court of Appeals

On appeal, Aroma argued that the trial court should have denied Columbian's motion for directed verdict in regards to its statutory conversion claim. Specifically, Aroma argued that the trial court improperly interpreted MCL 600.2919a. The Michigan Court of Appeals granted Aroma's appeal by reversing the trial court's directed verdict and remanding the case for a decision consistent with the opinion. Ultimately, Aroma agrees that the trial court should be reversed, but not for the reasons stated by the Court of Appeals.

The Court of Appeals determined that "at issue in this case is whether plaintiff presented evidence that conversion was to defendant's 'own use' as required by MCL 600.2919a(1)(a)." *Aroma, supra*. Essentially, the court admitted that even though Aroma proved the elements of conversion, it must now prove an extra element of "use." It then embarked on a discussion of

statutory interpretation of “to one’s own use.” The Michigan Court of Appeals concluded that plaintiff submitted enough evidence that defendant converted the wine to its own use to survive a motion for directed verdict, and sent it back for a jury to consider the facts. Appellant argues that, by discussing the added “use” element, the Court of Appeals has strayed from the intent of the Michigan Legislature. It is Aroma’s position that upon proving conversion, it is now entitled to treble damages under MCL 600.2919a, not that it must first prove Columbian “used” the property in order to collect treble damages. In essence, Aroma asserts that a discussion revolving around how narrowly or broadly to interpret the term “use” is unnecessary because statutory conversion does not require this added element.

- I. LEAVE TO APPEAL SHOULD BE DENIED RELATIVE TO THE ISSUES AS STATED IN COLUMBIAN’S APPLICATION FOR LEAVE, BUT SHOULD BE GRANTED FOR THE NECESSITY OF CLARIFYING MCL 600.2919a AND THE DECISIONS OF THE COURT OF APPEALS INTERPRETING THAT STATUTE.

STANDARD OF REVIEW

All issues presented in the application for leave to appeal concern statutory construction. The standard of review the Court should employ in this matter is therefore *de novo*. The standard of review for statutory construction was reviewed in *People v Thomas*, 263 Mich App 70, 73; 687 NW2d 598 (2004), in which the court stated “[t]he question here turns on the interpretation of that statutory phrase, a matter we review *de novo*.” The review is consistent with the standard of review approved by the Michigan Supreme Court where the Court stated “[t]his Court reviews *de novo* issues of statutory interpretation.” *Halloran v Bham MD*, 470 Mich 572, 576, 683 NW2d 129 (2004).

ARGUMENT

Aroma agrees with the fact that the question at the heart of this case is the proper interpretation of MCL 600.2919a, but entirely disagrees with the interpretation that Columbian advances. The pertinent issue is not how narrowly or broadly to interpret the term “use,” but rather, the issue is whether the extra term “use” is relevant at all to a finding of statutory conversion. As discussed below, it is Aroma’s position that the Michigan Legislature never intended to create an added element of “use” in order for a victim to be able to recover treble damages for conversion. To the contrary, the legislative intent of the statute was simply to allow the victim, upon proving conversion, to recover treble damages from the convertor. In essence, common law conversion = statutory conversion.

Therefore, Aroma respectfully requests this Court to render an opinion that “will effectively collapse the distinction between common law and statutory conversion,” and allow a victim of conversion to recover treble damages entitled to them pursuant to MCL 600.2919a.²

A. The “Plain Language” Meaning of “Use” that Columbian Employs Results In An Absurd Application Of The Statutory Conversion Statute.

Before delving into its own analysis of the issue, Aroma wants to point out the absurdity in Columbian’s position. Columbian begins with a discussion of the dictionary definitions of “use.” It asserts that the “plain and ordinary” meaning of the term “use” can only be determined by a close examination and strict application of these dictionary definitions. But, the Michigan Court of Appeals has rightfully cautioned against the position that Columbian now attempts to advance. It acknowledged that the “plain and ordinary” meaning of a statutory term controls, but recognized that “by its very nature, a dictionary definition, which seeks to provide the most

² Again, Aroma will address the arguments that Columbian raises in its Application for Leave to Appeal, but more fully addresses the relevant issues in its Cross Appeal and own Application for Leave to Appeal filed in this Court. See Supreme Court No. 148907.

complete description possible of a particular word's meaning, may be broader in scope than the 'plain and ordinary' meaning of the word as it is commonly used and understood." *ADVO-Systems, Inc v Department of Treasury*, 186 Mich App 419, 425, 465 NW2d 349 (1990).

In its brief, Columbian cherry-picks the definitions of "use" from two editions of Black's Law Dictionary, one from The American Heritage Dictionary, and yet another from Random House Webster's College Dictionary. But, in *Aroma*, the Michigan Court of Appeals recognized that Random House Webster's College Dictionary alone offers 22 definitions of use. *Aroma, supra*. Columbian's attempt at narrowing the definition of use by advancing a few definitions, out of potentially hundreds of options, presents a clear example of dictionary definitions failing to provide the "plain and ordinary" meaning of a word as it is commonly understood.

After its citation of dictionary definitions, Columbian concludes that "the plain meaning and most natural construction of the phrase 'to the other person's own use' in MCL 600.2919a is the conversion of property to the use for which the property is intended." It then declares that Columbian could only be liable for statutory conversion if it had consumed or sold³ *Aroma's* wine. The absurdity of Columbian's position can be expressed with a number of examples:

- If a person converts a vehicle by towing it away and selling it for parts, would they not be liable for statutory conversion due to the fact they didn't actually drive the vehicle, which is its normal and intended purpose?
- Would farm equipment or construction tools have to be used to till a field or build a house in order for the convertor to be liable for treble damages?
- As in *Attorney General v Hermes*, 127 Mich App 777, 339 NW2d 545 (1983), where fish was the property converted, would the convertors not be liable for treble damages had they put the fish in a decorative fish tank as opposed to consuming them?
- If a person converts a gun can he/she avoid statutory conversion by claiming he/she did not intend to shoot it but only add it to a collection?

³ Presumably Columbian has even done so at this time. Trial exhibits 108 – 111 reflected Columbian's efforts to engage in a sale of *Aroma's* wine. What has happened since trial is unknown – except that no wine has been returned to *Aroma*.

- Can a mean spirited ex-spouse who did not intend to “use” his/her ex-lover’s asset for any announced purpose but just to deprive them of the asset, avoid liability under MCL 600.2919a?
- What if the mean spirited converter’s only intention was to illegally hide the asset until a replacement had to be purchased at full retail value?

Furthermore, in *J Franklin Interests, LLC v Mu Meng*, unpublished opinion of the Court of Appeals, issued September 29, 2011 (Docket No. 296525) (**Exhibit A**), the court found defendants liable for statutory conversion for simply changing the locks on plaintiff’s property and refusing them access. There is no evidence that the defendant used the contents within for the purpose which they are intended, such as by sitting on the furniture, consuming the food and beverages, or selling the assets. The tort of statutory conversion was fully accomplished when defendants refused plaintiffs access to its property. *Id.*

Lastly, Columbian’s theory would also require courts in the future to classify each and every item that had been converted, then determine its normal and intended use, and then decide if it had actually been used accordingly. Would the courts also have to classify an item differently depending on who possessed that item? Take wine, for example. In the hands of a distributor its intended use is to sell; in the hands of the consumer, it is to drink. The intended purpose and use of the wine changes as it proceeds through the chain, forcing courts to determine what the intended use would be for each individual. In sum, the burden on the courts would be dramatically and unnecessarily increased by employing Columbian’s theory.

B. Common Law and Statutory Conversion are the Same

Next, Columbian attempts to distinguish between common law conversion and statutory conversion by asserting that statutory conversion contains an element that common law conversion does not - “use.” But, for a number of reasons set forth below, it is Aroma’s position that common law conversion and statutory conversion are identical, and that, upon proving the

elements of common law conversion, a victim is entitled to the treble damages provided for in MCL 600.2919a.

First, in citing the Restatement of Torts, this Court deemed that conversion can be committed by any of the following ways:

- a) Intentionally dispossessing another of a chattel,
- b) Intentionally destroying or altering a chattel in the actor's possession,
- c) **Using a chattel in the actor's possession without authority so to use it,**
- d) Receiving a chattel pursuant to a sale, lease, pledge, gift or other transaction intending to acquire for himself or for another a proprietary interest in it,
- e) Disposing of a chattel by a sale lease, pledge, gift or other transaction intending to transfer a proprietary interest in it,
- f) Misdelivering a chattel, or
- g) Refusing to surrender a chattel on demand.

Thoma v Tracy Motor Sales, Inc, 360 Mich 434, 438, 104 NW2d 360 (1960) (emphasis added).

According to subsection (c), common law conversion can be committed by using property without authority to do so. See also *Dep't of Agriculture v Appletree Marketing, LLC*, 485 Mich 1, 13, 779 NW2d 237 (2010) ("conversion may occur when a party properly in possession of property uses it in an improper way, for an improper purpose.") It doesn't then logically follow that statutory conversion should require "use" as an extra element -- "use" is simply a factor in determining the underlying tort. It becomes duplicitous to require a plaintiff to prove common law conversion, which can encompass the defendant's wrongful use of the property, and then to prove "use" again for statutory conversion.

A recent article in the Michigan Bar Journal reinforces this position with an exemplary discussion regarding how common law conversion equates to statutory conversion:

To understand subparagraph (a), the key concern is the meaning of the phrase "own use." Defendants who have been sued under subparagraph (a) seek to avoid exposure to treble damages liability by arguing they have not *used* the chattel that was converted. The Michigan Court of Appeals recently validated this analysis by considering the dictionary definition of the word "use" and concluding, "[t]he term 'use' requires only that a person 'employ for some purpose'" the chattel at

issue. While setting out the a broad definition of “use,” this analysis maintains a distinction between statutory conversion, which requires that the chattel be converted to the tortfeasor’s own use, and common law conversion, which does not contain such a requirement.

This interpretation, however, disregards that the phrase “own use” is a term of art. As has been observed in the past, the conversion statute does not define the word “convert,” so the common law definition of “conversion” is incorporated into the statute by reference. The phrase “own use” is part of the name of the tort at common law, “conversion to another’s own use”; it is a vestigial remnant of the legal fiction that was the foundation for the tort of conversion. Because the legislature is presumed to be aware of the common law and legislate in light of it, and innovations on the common law are narrowly construed, treating the phrase “own use” as having independent meaning appears to overlook the provenance of the phrase. While it is true that “common law conversion does not necessarily require a determination regarding conversion to one’s own use,” this is because “own use” is not an element of the tort but part of the name of the tort itself; it is simply a rote legal formula with no independent meaning that satisfies antiquated requirements of the common law.

...

While courts continue to recognize common law and statutory conversion as separate causes of action, this distinction is predicated on investing the phrase “own use” with meaning which its common law heritage indicates it does not have - an argument the appellate courts have yet to confront.

...

The current interpretation of MCL 600.2919a may have overlooked the common law origins of the phrase “own use.” The statute can be interpreted as an enhancement of the remedy available for the common law tort of conversion and is thus incorporated in any complaint for conversion simply as a measure of relief without needing to plead it separately.

Adam D. Pavlik, *Statutory Conversion and Treble Damages*, 93 Mich BJ 34 (March 2014).

(citations omitted) (**Exhibit B**).

Viewing Columbian’s claim as an equation may be helpful:

Common law Conversion = the act of converting to one’s own use.

Statutory Conversion = [common law conversion] + [to one’s own use]

RESULT: Statutory Conversion = [the act of converting to one’s own use] [to one’s own use].

Viewing Columbian’s arguments in this fashion demonstrates the redundancy of its claim.



Columbian also states that Michigan courts have consistently recognized a difference between common law and statutory conversion. But, in fact, the Michigan courts have consistently recognized just the opposite. See *J&W Transportation, LLC v Frazier*, unpublished opinion of the Court of Appeals, issued June 1, 2010 (Docket No. 289711) (analyzing both common law and statutory conversion with the same factors and reasoning, and then deciding that because defendants have converted the trucks they were liable for treble damages) (**Exhibit C**); *J. Franklin Interests, LLC v Mu Meng*, unpublished opinion of the Court of Appeals, issued Sept. 19, 2011 (Docket No. 296525) (holding that plaintiff was entitled to treble damages under statutory conversion after proving the elements of common law conversion) (**Exhibit A**); *Victory Estates, LC v NPB Mortgage, LLC*, unpublished opinion of the Court of Appeals, issued Nov. 20, 2012 (Docket No. 307457) (stating that “the common-law definition defines both common-law and statutory conversion) (**Exhibit D**); *Paul v Paul*, unpublished opinion of the Court of Appeals, issued December 17, 2013 (Docket No. 311609) (claiming “plaintiff was required to show that defendants wrongfully exerted domain over his personal property in denial of his rights to sustain both his common-law and statutory conversion claims”) (**Exhibit E**).

If any theme was beginning to be established in the Michigan courts, it was that statutory conversion and common law conversion were the same. This theme was consistent with the clear legislative intent behind MCL 600.2919a. The narrow definition of the term “use” that Columbian urges this Court to adopt will result in a construction of MCL 600.2919a that is contrary to legislative intent. Aroma again agrees with Columbian in that “the fundamental rule of statutory construction is to give effect to the Legislature’s intent.” *Weakland v Toledo Engineering Co, Inc*, 467 Mich 344, 347, 656 NW2d 175 (2003). But, the clear legislative intent behind MCL 600.2919a was to allow the victim of common law conversion to recover treble

damages from the convertor. The intent was not to create a higher burden on the victim to recover statutory damages by requiring they prove common law conversion plus “use.” A look at the history and progression of MCL 600.2919a more appropriately puts this statute in prospective.

Prior to the amendment of MCL 600.2919a in 2005 the statute read:

A person damaged as a result of another person’s buying, receiving, or aiding in the concealment of any stolen, embezzled, or converted property when the person buying, receiving, or aiding in the concealment of any stolen, embezzled, or converted property knew that the property was stolen, embezzled, or converted may recover 3 times the amount of actual damages sustained, plus costs and reasonable attorney’s fees. This remedy shall be in addition to any other right or remedy the person may have at law or otherwise.

MCL 600.2919a. The courts began to recognize the problem with the statute in that it only assessed treble damages against aiders and abettors of conversion, leaving victims of conversion without a statutory right of recourse against the convertors themselves. See *Marshall Lasser PC v George*, 252 Mich App 104, 651 NW2d 158 (2002); *Campbell v Sullins*, 257 Mich App 179, 667 NW2d 887 (2003). In *Marshall Lasser*, the Michigan Court of Appeals pointed out that, by its clear language, “the statute is not designed to provide a remedy against the individual who has actually stolen, embezzled, or converted the property.” *Marshall Lasser, supra* at 112. According to the Court of Appeals, “If the Legislature had meant for the statute to also apply to the thief as well as someone who aids him it could have written the statute to include the thief’s action in possessing or concealing the property.” *Id.*

The Legislature did just that. In response to the Court of Appeals decision, the Michigan Legislature endeavored to correct the oversight by amending the statute - it proposed a bill to expand the provision to specify triple damage liability to the person who embezzled, stole, or converted the property. The legislative analysis of Substitute H-2 provided:

THE APPARENT PROBLEM:

Legislation in the 1960's was enacted to allow the victim of theft or embezzlement to bring a civil action against the "fence" or person who bought, received, or concealed the stolen property. Under the statute, the victim can recover up to three times the amount of actual damages sustained, plus costs and reasonable attorney fees. The provision did not, however, specifically mention that an action could be brought against the person who committed the original theft. The Michigan Court of Appeals recently ruled, in 2002, that the statute in question does not apply to the person who actual steals, embezzles, or converts the property; therefore, a victim may not currently sue the person who actually commits the theft (*Marshall Lasser PC v George*, 252 Mich App 104).

Legislation has been introduced to expand MCL 600.2919a to include the person who commits the theft, embezzlement, or conversion of another's property.

House Legislative Analysis, HB 4356 March 16, 2005. (**Exhibit F**). See also House Legislative Analysis, HB 4356, May 31, 2005. (**Exhibit G**). The Legislative Analysis indicates a clear intent to provide a statutory cause of action against the converters themselves.⁴ Further, it would allow the victim to seek enhanced damages from the person who actually stole or converted the money or property in the first place.

The result of the Michigan Legislature's consideration of the problem was a statute that read:

(1) A person damaged as a result of either or both of the following may recover 3 times the amount of actual damages sustained, plus costs and reasonable attorney fees:

(a) Another person's stealing or embezzling property or converting property to the other person's own use.

(b) Another person's buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property when the person buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or

⁴ "Courts may look to the legislative history of an act, as well as to the history of the time during which the acts was passed, to ascertain the reason for the act and the meaning of its provisions." *Twentieth Century Fox Home Entertainment, Inc v Dep't of Treasury*, 270 Mich App 539, 546, 716 NW2d 598 (2006).

converted property knew that the property was stolen, embezzled, or converted.

(2) The remedy provided by this section is in addition to any other right or remedy the person may have at law or otherwise.

MCL 600.2919a.

The Legislature's sole purpose in amending the statute and including Section (1)(a) was to allow a victim to recover treble damages from the converter. The term "to one's own use" was never intended as an extra element that must be proven, it was simply clarifying that the statute no longer applied only to aiders and abettors. The phrase "to one's own use" was simply clarifying that the person liable was the embezzler or convertor, not only the aider and abettor.

Clearly, and contrary to Columbian's position, MCL 600.2919a is a remedial statute which was implemented to address an oversight in existing law. A statute is remedial "if it is designed to correct an existing oversight in the law, redress an existing grievance, introduce regulations conducive to the public good, or is intended to reform or extend existing rights." *Nelson v. Assoc. Financial Services Co. of Indiana, Inc.*, 253 Mich App 580, 590, 659 N.W.2d 635 (2002). As explained above, MCL 600.2919a was revised to extend the right of recovery for a person damages by another who converted his/her property. As such, it should be liberally construed in favor of the persons intended to be benefited. *Dudewicz v. Norris-Schmid, Inc.* 443 Mich 68, 77, 503 N.W.2d 645 (1993).

Lastly, Columbian's attempt to de-minimize its conduct in converting Aroma's property is egregious in itself. Analogizing its conduct in this case to "using a bag of flour as a doorstep or footstool" is almost comical. Columbian refused Mr. Pavelescu access to all of his wine, essentially depriving him of the means for his livelihood. Certainly, the Legislature did intend for a "technical common law conversion" to be subject to treble damages. Prior to the amendment in

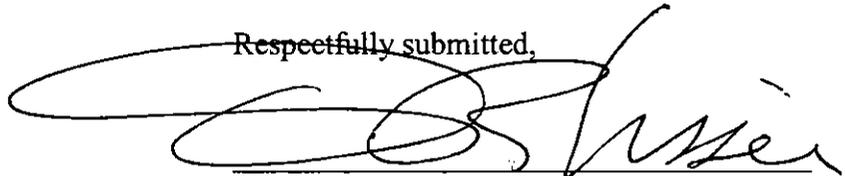
2005, the “fence” for converted property was liable for treble damages; there is no question the remedy should now apply to the converters themselves.

CONCLUSION

Ironically, Columbian continuously claims that statutes should be construed as to prevent absurd results, then advances a position that does just that. As explained above, Columbian’s position would force courts to undergo analyses that could result in illogical and incongruous results. Rather, the statute should be interpreted as an enhancement of the remedy for common law conversion. In light of the rules of statutory construction, the legislative intent behind the statute, and previous unpublished cases of the Michigan Court of Appeals, Appellee respectfully requests this court to recognize that statutory conversion does not require proof beyond common law conversion.

Dated: April 4, 2014

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Visser', written over a horizontal line.

Donald R. Visser (P27961)
Attorneys for Plaintiff/Appellant