

STATE OF MICHIGAN
IN THE SUPREME COURT

AROMA WINES and EQUIPMENT, INC.,
~~a Michigan corporation,~~

Plaintiff/Appellant

Case No. _____

Lower Court Case No. 09-1149-CK
Honorable Dennis B. Leiber

011149

Kent

v ~~Columbian~~

~~COLUMBIAN DISTRIBUTION SERVICES,~~
INC., ~~a Michigan corporation,~~

Defendant/Appellee

Michigan Court of Appeals No. 311145

Paul opa 12-77-73

Rec 1-31-74

Counter Plaintiff

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DEFENDANT/APPELLEE'S APPLICATION FOR LEAVE TO APPEAL

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

On December 17, 2013, the Court of Appeals, in a published opinion, reversed the circuit court's decision granting a directed verdict in favor of Defendant, Columbian Distribution Services, Inc. ("Columbian"), with respect to the statutory conversion claim of Plaintiff, Aroma Wines and Equipment, Inc. ("Aroma"). See *Aroma Wines and Equipment, Inc v Columbia Distribution Services, Inc*, Dkt. No. 311145 (Dec. 17, 2013) ("COA Op"), attached as **Exhibit A**. On January 7, 2014, Aroma moved for reconsideration of one portion of the Court of Appeals' opinion. On January 31, 2014, the Court of Appeals denied Aroma's motion for reconsideration. Because this case involves legal principles of major significance for this State's jurisprudence and on which the Court of Appeals clearly erred in a way that will cause grave, manifest injustice, Columbian seeks leave to appeal the Court of Appeal's decision pursuant to MCR 7.302(B)(3) & (5). Columbian files this application within 42 days of the Court of Appeals' denial of Aroma's Motion for Reconsideration. See MCR 7.302(C)(2)(c). Columbian seeks reversal of the Court of Appeals' decision and reinstatement of the circuit court's order granting Columbian's motion for a directed verdict on the statutory conversion issue.

STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

Did the Court of Appeals err when it read the term "use" in Michigan's statutory conversion provision so broadly as to eviscerate any distinction between statutory and common law conversion and in a way that renders the phrase to one's "own use" in MCL 600.2919a meaningless, subjecting any technical common law converter to treble damages?

Plaintiffs say: "No."

Defendant says: "Yes."

The Court of Appeals said: "No."

**STATEMENT REGARDING GROUNDS
FOR APPELLATE REVIEW**

This case involves the conversion of wine Aroma contracted to store at one of Columbian's warehouses. Aroma sued for, among other things, both common law and statutory conversion. At the close of Aroma's proofs, Columbian moved for a directed verdict as to the statutory conversion claim arguing that Aroma had failed to show that Columbian had converted the wine to its "own use" as required by MCL 600.2919a, Michigan's statutory conversion provision. The circuit court construed "use" plainly as meaning to employ something for its intended purpose. Because there was absolutely no evidence that Columbian had converted the wine at issue to its "own use" the circuit court granted Columbian's motion.

The Michigan Court of Appeals, in a published decision, held that the term "use" in MCL 600.2919a, "encompasses a much broader meaning" than that adopted by the circuit court. Whereas the circuit court interpreted use to mean to employ something for its intended purpose, the Court of Appeals held that the "term 'use' requires only that a person 'employ for *some* purpose.'" COA Op at 4 (emphasis added). Indeed, the Court of Appeals went so far as to hold that, in this case, even Columbian's "act of moving plaintiff's wine contrary to the contract" out of cold storage and into the general warehouse "in order to undertake an expansion project to benefit defendant could be considered an act of employing the wine to defendant's own purposes constituting 'use' of the wine." *Id.* In other words, moving Aroma's wine out of the way after Aroma stopped paying its bill was enough "use" to the Court of Appeals to satisfy the elements of statutory conversion. This holding, however, misreads the plain statutory language of MCL 600.2919a, misinterprets the Legislature's intent in enacting that provision, and effectively eliminates any distinction between statutory and common law conversion.

Under the Court of Appeals' precedential opinion, parties will now be able to obtain treble damages by merely proving a technical common law conversion. In other words, a party that has merely converted in a way that even indirectly benefits that party will now be subject to the draconian remedy of treble damages with this case as a prime example. But it is unclear under the Court of Appeals' analysis how any conversion would ever fail to benefit the converter. The Court of Appeals' reading makes a hash of the Legislature's intent in enacting the statutory conversion provision as expressed in MCL 600.2919a's clear language and opens the floodgates to claims of conversion that the Legislature never intended to be eligible for treble damages.

Accordingly, this Court should grant Defendant's Application for Leave to Appeal.

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

A. Factual Background

Defendant, Columbian Distribution Services, Inc., is a company that maintains warehouses in Michigan. Plaintiff, Aroma Wines and Equipment, Inc., was a wholesale wine importer and distributor. Aroma contracted with Columbian from 2006 through 2008 to store a large quantity of wine in a temperature controlled space at Columbian's Hall Street warehouse in Grand Rapids, Michigan. Specifically, the contracts called for the wine to be maintained between 50 and 65 degrees Fahrenheit. Oct 13, 2011 Trial Tr at 8; see also COA Op at 1. Columbian, at that time, had one cooler at the Hall Street location, the "S" Cooler, that could maintain the wine consistently within that temperature range. Oct 13, 2011 Trial Tr at 8.

In 2008, Aroma fell behind in its payments to Columbian. COA Op at 1. In response to Aroma's delinquency, Columbian asserted a warehouseman's lien on the 8,374 cases of Aroma's wine that it was then storing. Columbian allowed Aroma access to small portions of the wine after which Aroma paid \$1,000 towards its balance owing. Columbian later threatened to deny Aroma any access to the wine and demanded payment of \$6,109 to bring Aroma's account current. *Id.*

During this time Columbian engaged in a re-racking project in the "S" Cooler to increase its storage capabilities. Oct 13, 2011 Trial Tr at 26-27; COA Op at 1. During this project some of Aroma's wine was removed from the temperature controlled environment. Oct 13, 2011 Trial Tr at 27; COA Op at 1. Despite Aroma's breach of the contract for failure to pay its storage fees, Aroma brought suit against Columbian alleging a variety of claims including breach of contract, violation of the Uniform Commercial Code (UCC), common law conversion, and statutory conversion pursuant to MCL 600.2919a. The case was tried to a jury.

B. Procedural Background

At the close of Aroma's proofs, Columbian moved for a directed verdict on the statutory conversion issue.¹ Michigan's conversion statute, in relevant part, states:

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

MCL 600.2919a (emphasis added). Columbian argued that it was entitled to a directed verdict on the statutory conversion claim because Aroma failed to present any evidence that Columbian had converted Aroma's wine to its "own use." Columbian argued that the plain meaning of "use" was to employ something "for the purpose for which it is adapted, as distinguished from a possession and employment that is merely temporary or occasional." Columbian's Motion for Directed Verdict at 2 (quoting Black's Law Dictionary, at 1540 (7th ed 1999)). Because there was no evidence that Columbian had employed the wine for the purpose it was intended—to be consumed or to be sold for profit—Aroma's statutory conversion claim failed as a matter of law. The only evidence that Aroma had provided was that the wine had been moved to accommodate the re-racking project in the "S" Cooler. None of this suggested that Columbian had employed the wine for its own use.

¹ Columbian also moved for a directed verdict on damages but the circuit court denied that portion of the motion. It is not at issue here.

The Circuit Court agreed and granted Columbian's motion for a directed verdict on the question of statutory conversion. Subsequently, Aroma moved for reconsideration of the order granting the directed verdict. That motion was denied.

Aroma appealed as of right to the Court of Appeals. On appeal, Aroma argued that the circuit court erred by adopting a definition of "use" that was unduly narrow. Aroma's Brief on Appeal at 8 ("Aroma's Br"). Rather, according to Aroma, the definition of use has a variety of broader meanings. Aroma argued that "use" means "to put into action or service; avail oneself of," or means, as a noun, the "[a]ct of employing everything, or state of being employed; application; employment, as in the use of a pen," and the "purpose served, a purpose, object or end for useful or advantageous nature." *Id.* at 13 (internal quotation marks and citations omitted). Thus, Aroma argued, "[e]ven though Columbian did not consume all of the wine, Columbian clearly used the cases of wine to its purposes." Aroma's Br at 13. In particular, Aroma argued that the evidence established that Columbian "converted the wine to its own use by benefitting from the additional storage space created by moving Plaintiff's wine out of the cooler, and also by using all the wine as leverage against Plaintiff instead of setting aside only an amount sufficient to secure storage payments." *Id.* at 13-14. Aroma's argument equated "use" of the wine with the idea of realizing a "benefit" by having the wine.

In response, Columbian argued that MCL 600.2919a should not be broadly construed, but that it should be read according to the plain and ordinary meaning of its terms. Columbian Brief on Appeal at 8 ("Columbian Br"). Moreover, because MCL 600.2919a is a punitive statute, Columbian argued that it "should be narrowly construed." Columbian Br at 8. Columbian argued that in this case the "wine was not consumed or served or sold or given away, but was

only moved." *Id.* at 19. Given this, the evidence may have demonstrated a technical, common law conversion, but not a statutory conversion.

The Court of Appeals addressed the question of the meaning of "use" in the statutory conversion statute by beginning with several dictionary definitions. It looked to *Random House Webster's College Dictionary* (1992) and the Eighth Edition of Black's Law Dictionary. The former defines use as "to employ for some purpose" and the latter defines use as the "application or employment of something." COA Op at 4 (internal quotation marks and citations omitted). In light of these definitions, the Court of Appeals concluded that Aroma "submitted sufficient evidence that defendant converted the wine to its own use in order to survive" the motion for directed verdict. *Id.* The Court of Appeals stated:

Contrary to the trial court's conclusion that "to use a wine, one would have to drink it or perhaps sell it," we find that the definition of "use" encompasses a much broader meaning. The term "use" requires only that a person "employ for some purpose," *Random House Webster's College Dictionary* (1992), and clearly, drinking or selling the wine are not the only ways that defendant could employ plaintiff's wine to its own purposes. For example, in this case, it is not disputed that exhibits and testimony presented during trial established that the wine was moved from the temperature controlled storage area or that defendant refused to allow plaintiff to access any of its wine until plaintiff brought its account up to date. Moreover, plaintiff presented some evidence to support its theory that defendant filled the temperature controlled storage space that plaintiff's wine was moved out of with other customer's products. While this fact was disputed by defendant, there was enough evidence to submit the question to the jury.

Id. at 4. Indeed, the Court of Appeals added that "construing the statutory conversion statute's 'use' element to mean only consumption or sale would essentially require proof of larceny, which is characterized by an intent to permanently deprive the owner of possession, rather than mere use inconsistent with the owner's rights." *Id.* at 4 n.1.

The Court of Appeals went further however. Responding to Columbian's claim that "the wine was only moved to complete a re-racking project," the Court of Appeals held that "*even the act of moving plaintiff's wine contrary to the contract in order to undertake an expansion project to benefit itself could be considered an act of employing the wine to defendant's own purposes constituting 'use' of the wine.*" *Id.* at 4 (emphasis added). The Court of Appeals held that Columbian was not entitled to a directed verdict "because viewing the evidence in the light most favorable to plaintiff, there were factual questions regarding whether defendant converted plaintiff's wine to its own use." *Id.* The Court of Appeals accepted Aroma's argument that the term "use" should be read to mean "use or benefit." Accordingly, the Court of Appeals remanded the case for further proceedings consistent with its opinion.

Columbian now timely files this Application for Leave to Appeal the Court of Appeals' erroneous, published decision which, if left undisturbed by this Court, effectively would abolish the distinction between common law conversion and statutory conversion, would create a draconian remedy for technical conversions, and render meaningless the statutory language and intent of the phrase to one's "own use" in the conversion statute.

ARGUMENT

THE COURT OF APPEALS ERRED BY ADOPTING AN OVERLY BROAD READING OF THE TERM "USE" IN THE STATUTORY CONVERSION STATUTE THAT WILL EFFECTIVELY COLLAPSE THE DISTINCTION BETWEEN COMMON LAW AND STATUTORY CONVERSION

The relevant portion of the Michigan conversion statute states:

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

MCL 600.2919a (emphasis added). Here, there is no dispute for purposes of this appeal that Columbian committed a technical conversion of Aroma's wine. Nor is there any allegation of stealing or embezzlement. The relevant issue in this case is whether Columbian converted Aroma's wine to Columbian's "own use." In other words, the question at the heart of this case—a question that the Court of Appeals got completely wrong—is the proper construction of the phrase "to the other person's own use" in MCL 600.2919a.

A. The Plain Language Meaning of "Use" Dictates Reversal of the Court of Appeals' Published Decision

A "court's primary purpose in interpreting a statute is to ascertain and effectuate legislative intent." *Michigan Educ Ass'n v Secretary of State*, 489 Mich 194, 217-218; 801 NW2d 35 (2011); see also *Weakland v Toledo Engineering Co, Inc*, 467 Mich 344, 347; 656 NW2d 175 (2003) ("The fundamental rule of statutory construction is to give effect to the

Legislature's intent."). Courts "may not speculate regarding legislative intent beyond the words expressed in a statute" and "*nothing* may be read into a statute that is not within the manifest intent of the Legislature as derived from the act itself." *Omne Financial, Inc v Shacks, Inc*, 460 Mich 305, 311; 596 NW2d 591 (1999) (emphasis added). Indeed, "[w]hen parsing a statute," courts are to "presume every word is used for a purpose." *Pohutski v Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002). And courts should avoid interpreting statutes in such a way "that would render part of the statute surplusage or nugatory." *Robinson v City of Lansing*, 486 Mich 1, 21; 782 NW2d 171 (2010) (internal quotation marks omitted). Courts interpret statutes by "examining the plain language of the statute; where that language is unambiguous, [courts] presume that the Legislature intended the meaning clearly expressed—no further judicial construction is required or permitted, and the statute must be enforced as written." *Echelon Homes, LLC v Carter Lumber Co*, 472 Mich 192, 196; 694 NW2d 544 (2005) (internal quotation marks and citations omitted). And courts should "give the words of a statute their plain and ordinary meaning" and that meaning "can be ascertained by looking at dictionary definitions." *Id.*

Employing these canons, the meaning of the term "use" plainly requires that the use be related to the intended purpose of the property. Black's Law Dictionary defines use as the "application or employment of something; esp., a long-continued possession and employment of a thing *for the purpose for which it is adapted*, as distinguished from a possession and employment that is merely temporary or occasional." Black's Law Dictionary, at 1681 (9th ed 2009) (emphasis added); see also Black's Law Dictionary, at 1541 (6th ed 1990) (defining use as "to employ for or apply to a *given purpose*") (emphasis added). Another dictionary in giving definitions and examples of "use" makes clear that it is defining "use" in terms of the purpose for

which the thing is intended: "To bring or put into service; employ: *use soap for washing*. . . . The act of using; the application or employment of something for some purpose; *the use of a pencil for writing*." *The American Heritage Dictionary*, at 1331 (2d ed 1985) (emphasis in original); see also *Random House Webster's College Dictionary*, at 1347 (2001) (defining "use" as "a way of being used; a purpose for which something is used"). Indeed, one of the sources of the definition of "use" in the Sixth Edition of Black's Law Dictionary is the case of *Brown v Kennedy*, 49 NE2d 417; 419 (Ohio Ct App 1942) aff'd, 141 Ohio St. 457, 48 NE2d 857 (1943). There, the court made clear that whether property is used will depend on the nature of the property:

The word "use" is defined as the "Purpose served-a purpose, object or end for useful or advantageous nature." (Oxford English Dictionary.)

This implies that the person receives a benefit from the *employment of the factor involved*. It is this benefit, purpose, or end which defines the use. *I use a chisel to chip out a piece of wood*. The removal of the wood is the use to which I put the tool. I use a book, for the purpose of transmitting the thought of the author to my brain. It is used as a vehicle for thoughts or ideas. *I use a pen or pencil to draw a sketch or write a letter*. The pen or pencil is thus an instrument by which I receive the benefit of having the diagram or thought in my brain impressed upon the paper.

Brown, 49 NE2d at 419 (emphasis added).

Thus, 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. With respect to this case, this required asking whether under the plain reading of the statute, Columbian used the wine for the wine's intended purpose, namely to be consumed or sold. There is no absolutely no evidence that Columbian did anything of the sort. The circuit

court rightly granted Columbian's motion for a directed verdict on the statutory conversion question, and the Court of Appeals clearly erred in reversing the circuit court.

Moreover, in the case at bar there is no possible "use." The two alleged uses were 1) moving the wine out of cold storage into the general warehouse, and 2) threatening to keep Aroma from picking up the wine until the bill was paid. As to the former, Columbian did not use the wine in any fashion—it moved it out of the way. As to the latter, the most that can be said is that Columbian attempted to leverage the fact that it had possession of the wine—not that it used the wine itself.

B. Common Law and Statutory Conversion Are Distinct

This plain and straight-forward construction is further supported by looking to the common law definition of conversion. Common law conversion is "any distinct act of domain wrongfully exerted over another's personal property in denial of or inconsistent with the rights therein." *Foremost Ins Co v Allstate Ins Co*, 439 Mich 378, 391; 486 NW2d 600 (1992). Furthermore, common law conversion is generally considered "an intentional tort in the sense that the converter's actions are wilful, although the tort can be committed unwittingly if unaware of the plaintiff's outstanding property interest." *Id.* Thus, MCL 600.2919a's language adds an element to common law conversion. The plain language of MCL 600.2919a indicates that a defendant is not liable for statutory conversion unless it *both* (1) converts the property *and* (2) puts the property "to its own use." This statutory language clearly distinguishes between statutory conversion and common law conversion. In other words, to be liable for statutory conversion, a defendant must not only convert the property (i.e., exercise wrongful dominion over it), but must also *use* it. See MCL 600.2919a(1)(a). Any other interpretation, such as the Court of Appeals' interpretation here, ignores the statutory language.

Indeed, Michigan courts consistently have recognized that there is a difference between common law and statutory conversion. See, e.g., *J&W Transp, LLC v Frazier*, 2010 WL 2178555, at *13 (Mich App June 1, 2010) (defining common law conversion and stating that MCL 600.2919a allows plaintiffs to "recover damages for statutory conversion" if they prove both that defendants converted plaintiffs' property and converted it "to their own use"), attached as **Exhibit B**; *Paige v Paige*, 2009 WL 2426261, at *2 (Mich App Aug 6, 2009) (noting that "to state a claim for [statutory] conversion" plaintiff was required "to establish" both that defendants "wrongfully converted" property and converted it "to their 'own use'"), attached as **Exhibit C**.

C. MCL 600.2919a's Larger Context Supports the Plain Reading of "Use"

The plain reading of "use," as requiring conversion to the use for the purpose for which something was intended, is also supported by the larger context of the conversion statute. First, MCL 600.2919a is "a punitive statute." *Alken-Ziegler, Inc v Hague*, 283 Mich App 99, 104; 767 NW2d 668 (2009). As such it is to be strictly construed. *Goetz v Black*, 256 Mich 564, 572-573; 240 NW 94 (1932) ("A statute awarding a penalty is to be strictly construed, and, before a recovery can be had, the case must be brought clearly within its terms."). In constructing a punitive statute, a court should employ great caution so that it does not sweep in conduct that the Legislature clearly did not intend to include. Remarkably, here, the Court of Appeals did not even engage the question of MCL 600.2919a's punitive nature even though it was clearly raised by *Columbian* in its brief on appeal, which alone constitutes grounds for granting this application. See *Columbian Br* at 8. Instead, the Court of Appeals incorrectly adopted a broad reading of MCL 600.2919a, stating that "use" means to "employ for *some* purpose," COA Op at 4 (quoting *Random House*) (emphasis added), even though this contradicts this Court's

admonitions with respect to punitive statutes and, more generally, the various canons of statutory construction discussed above.

Second, the punitive nature of MCL 600.2919a also suggests that statutory conversion is something different from common law conversion—that it requires something more onerous than ordinary conversion. Such a punitive measure means that some element beyond the elements of basic common law conversion is needed to attain such damages. Indeed, this is the only sensible reading of the statute. If this were *not* the case, the Legislature could simply have passed a statute allowing treble damages whenever a party proves the technical tort of conversion or it could have written into the statute what *Aroma* and the Court of Appeals did—the words "or benefit." The Legislature obviously did *not* pass such a statute.

Third, the three actions that are sufficiently egregious to constitute statutory conversion are stealing, embezzlement, and conversion to one's own use. Stealing and embezzlement are clearly taking another's property permanently and deviously. See, e.g., *Webster's New College Dictionary*, at 1401 (2005) (defining "to steal" as "to take or appropriate . . . without permission, dishonestly, or unlawfully, esp. in a secret or surreptitious manner"); *American Life Ins Co v US Fidelity & Guar Co*, 261 Mich 221, 224; 246 NW 71 (1933) ("Embezzlement may be defined broadly as the fraudulent appropriation of another's property by a person to whom it has been intrusted or into whose hands it has lawfully come.") (internal quotation marks and citation omitted). Surely, the Legislature did not intend for a technical common law conversion where a converter uses a bag of flour as a doorstep or footstool to be subject to the same treble damages as a thief or embezzler. But this is exactly what the Court of Appeals' reading allows. Under its construction of the statute, a converter who temporarily refuses to return a bag of flour and uses it for a doorstep has used it for the purpose of benefitting itself and therefore would be subject to

treble damages. Such a technical conversion is nothing like stealing or embezzling. And, indeed, the phrase conversion to one's "own use" must be read in light of the terms "stealing" and "embezzling." *GC Timmis & Co v Guardian Alarm Co*, 468 Mich 416, 421-422; 662 NW2d 710 (2003) ("It is a familiar principle of statutory construction that words grouped in a list should be given related meaning.") (internal quotation marks and citation omitted). To do otherwise is to read the phrase to one's "own use" in an absurd manner—something against which this Court has often counseled. See, e.g., *McAuley v General Motors Corp*, 457 Mich 513, 518; 578 NW2d 282 (1998) ("Statutes should be construed so as to prevent absurd results.").²

D. Contrary to the Legislature's Intent the Court of Appeals' Construction of MCL 600.2919a Subjects Technical Common Law Converters to Treble Damages

The above errors are enough to grant Columbian's application. But the Court of Appeals' construction of MCL 600.2919a is compounded by the fact that it is a precedential opinion so sweeping in its scope that it will lead to the collapse of any distinction between common law and statutory conversion subjecting any person or party guilty of technical common law conversion to treble damages. Indeed, the Court of Appeals' opinion, itself, demonstrates this. The Court of Appeals held that "even the act of moving plaintiff's wine contrary to the contract in order to undertake an expansion project to benefit itself could be considered an act of employing the wine to defendant's own purposes constituting 'use' of the wine." *Id.* This demonstrates that there is no clear limiting principle to the Court of Appeals' construction of MCL 600.2919a.

² As the Court of Appeals noted: "[C]onstruing the statutory conversion statute's 'use' element to mean only consumption or sale would essentially require proof of larceny, which is characterized by an intent to permanently deprive the owner of possession, rather than mere use inconsistent with the owner's rights." COA Op at 4 n.1. Ironically, the Court of Appeals proved in this analysis that its reading was overly broad and the interpretation of "use" *should* render statutory conversion one where the acts are consistent with embezzlement and stealing.

Under the Court of Appeals' reading of "use" as long as the converter is exercising dominion over a piece of property for some reason the converter will be converting it for its own use. In the future, in order to collect treble damages a party will need to prove no more than that a person or party exercised dominion over a piece of property and received some *indirect* benefit.³ This is *no* different from what someone must already prove to establish common law conversion.

As discussed above, conversion is "any distinct act of domain wrongfully exerted over another's personal property in denial of or inconsistent with the rights therein" and it is generally considered "an intentional tort in the sense that the converter's actions are *wilful*." *Foremost Ins Co*, 439 Mich at 391 (emphasis added). "[W]ilful involves design and purpose" and means, among other things, "intentional" or "*purposeful*." *Jennings v Southwood*, 446 Mich 125, 139-140; 521 NW2d 230 (1994) (quoting Black's Law Dictionary, at 1599 (6th ed 1990)) (emphasis added); see also *People v Waterstone*, 296 Mich App 121, 138; 818 NW2d 432, 441 (2012) (stating that "'willful' also describes conduct that is intentional, *purposeful*, voluntary, deliberate, and knowing") (emphasis added). Purposeful, in turn, is defined by Black's Law Dictionary as "[d]one with a specific purpose in mind." Black's Law Dictionary, at 1356 (9th ed 2009). *Webster's New College Dictionary* defines purposeful as "resolutely aiming at a specific goal" or "directed toward a specific end." *Webster's New College Dictionary*, at 1165 (2005). Thus, if common law conversion is the wilful exercise of domain over someone else's property, as this Court has defined it, that means that the Court of Appeals' construction of MCL 600.2919a renders its definition of conversion to one's "own use" the same as common law conversion.

³ In the case at bar, Columbian did not even use the wine to its benefit, let alone use it. It held dozens of pallets of wine from Aroma, who was not paying its bill. Having possession of the wine was a burden, not a benefit. It was moved, at Columbian's expense, for a construction project. Moving the wine out of the way to complete the construction project is hardly a benefit.

Common law conversion is the purposeful exercise of domain over another's property. Under the Court of Appeals' reading that is all that is now required to prove statutory conversion and subject a technical converter to draconian sanctions.

Given all of the above, it is clear that the Court of Appeals committed error in its construction of "use" in MCL 600.2919a. If this Court does not grant Columbian's Application for Leave to Appeal and correct this error, it will have serious and harmful consequences for the law of conversion in the State of Michigan and subject anyone who commits a technical common law conversion to treble damages.

RELIEF REQUESTED

Columbian respectfully requests that this Court grant its Application for Leave to Appeal, reverse the Court of Appeal's erroneous decision reversing the circuit court's grant of Columbian's motion for a directed verdict, and reinstate the circuit court's order granting Columbian's motion for a directed verdict on the question of statutory conversion.

Respectfully submitted,

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