

# Statutory Conversion: Treble Damages and Attorney Fees

Recent Cases  
Offering Clarification  
for Plaintiffs' Advocates

By Gary M. Victor

## At a Glance

Statutory conversion can be an important claim for use by plaintiffs' advocates. It can play a part in numerous abuses of plaintiffs' property, and is an even more viable claim given a troika of cases that addressed attorney fees and treble damages.



Statutory conversion can provide an important arrow in the quiver of claims available to plaintiffs' advocates. Under the statute, the potential liability of treble damages along with reasonable attorney fees can motivate defendants to come to the table to negotiate settlement. Statutory conversion can often be an important claim in such cases as spot deliveries,<sup>1</sup> the retention of security deposit monies,<sup>2</sup> wrongful repossessions, lockouts, and many more. Attorneys representing plaintiffs in cases involving the misuse of property often work under statutes that provide for attorney fees and special damages. Naturally, those attorneys prefer to advocate claims under statutes that make fee and damage awards mandatory. Unfortunately, under the language of the statutory conversion statute,<sup>3</sup> the award of treble damages is permissive and the award of attorney fees is unclear.

The question, then, is whether a winning attorney's ability to obtain treble damages and/or attorney fees is simply subject to the whims of the trial judge. A recent unpublished Michigan Court of Appeals case<sup>4</sup> has provided guidance on the issue of treble damages, and a case from the United States Court of Appeals for the Sixth Circuit<sup>5</sup> has addressed attorney fees. This article will review the statutory conversion statute and the new guidance provided by the state Court of Appeals on treble damages and the Sixth Circuit case on attorney fees.

## Statutory conversion

The statutory conversion statute, MCL 600.2919a, reads, in pertinent part, as follows:

- (1) A person damaged as a result of either or both of the following **may recover** 3 times the amount of actual damages, plus costs and reasonable attorney fees (emphasis added):
  - (a) Another person's stealing or embezzling property or converting property to the other person's own use....
- (2) The remedy provided by this section is in addition to any other right or remedy the person may have at law or otherwise.

The leading case on statutory conversion is the 2015 Michigan Supreme Court case of *Aroma Wines & Equipment, Inc. v. Columbian Distribution Services, Inc.*<sup>6</sup> In it, a wine distributor sued a warehousing business for conversion and breach of contract when the warehouse moved plaintiff's wine from a climate-controlled environment to an uncontrolled environment. The trial court granted a directed verdict for the defendant on plaintiff's statutory conversion claim. The Court of Appeals reversed<sup>7</sup> and an appeal proceeded to the Supreme Court. The primary issue before the Supreme Court was the meaning of the statutory conversion statute and, in particular, "converting property to the other person's own use."

The Court engaged in an extensive analysis of the development of common-law conversion, concluding:

While the tort of conversion originally required a separate showing that the converter made some use of the property that amounted to a total deprivation of that property to its owner, by the twentieth century common-law conversion more broadly encompassed any conduct inconsistent with the owner's property rights.<sup>8</sup>

Under this definition, common-law conversion, though an intentional tort, can result from the mistaken dominion over someone else's goods. The Court explained that statutory conversion is different, holding that it is a modern view of common-law conversion coupled with the additional element of a showing that the defendant converted the property to its own use. It defined "own use," stating:

...someone alleging conversion to the defendant's "own use" under MCL 600.2919a(1)(a) must show that the defendant employed the converted property for some purpose personal to the defendant's interests, even if that purpose is not the object's ordinarily intended purpose.<sup>9</sup>

The Court concluded the trial court erred by granting a directed verdict on the plaintiff's statutory conversion claims since "Aroma has alleged facts that, if believed by a jury, would indicate Columbian's conversion of Aroma's wine for its own purposes."<sup>10</sup>

In sum, under *Aroma Wines*, a defendant violates the statutory conversions statute if it exercises dominion over someone else's goods in a manner inconsistent with the owner's property rights for some purpose personal to the defendant. One can see how readily statutory conversion can be applied to the types of cases listed above and any other misuse of a plaintiff's property.

The issue, then, is under what circumstances can a trial judge deny a successful plaintiff the benefits offered under MCL 600.2919(a)(1)? In other words, what is the meaning of "may recover" with regard to treble damages and attorney fees?<sup>11</sup> As to treble damages, we now know that a trial court's reasons for denying them must be articulated by the court and based on findings related to the case. We can now turn to the case creating this principle.

## Treble damages

The case on point is *Babri v. Great Lakes Property & Investment, Inc.*<sup>12</sup> The *Babri* case arose out of a tax foreclosure. The plaintiff had agreed to repurchase the property; her complaint alleged that she had paid the defendant \$10,000 plus \$1,795.50 in back taxes for the repurchase. The defendant never transferred the title. The plaintiff sued, seeking treble



damages under MCL 600.2919(a). The defendant did not respond to the plaintiff's complaint, and she obtained a default. Since the clerk could not enter a default for treble damages, the plaintiff moved the court for a default judgment of treble damages. At this point, the defendant entered the case. The defendant did not challenge the default and admitted that it had retained plaintiff's money, but did challenge the award of treble damages.

The trial court granted a default judgment for the money retained by the defendant but refused to grant treble damages. When the plaintiff's counsel asked why it had denied treble damages, the judge replied, "I don't think that that's appropriate here."<sup>13</sup> The plaintiff appealed, claiming that denial of treble damages constituted an abuse of discretion.

The Court of Appeals noted that under *Aroma Wines*, an award of treble damages is discretionary rather than mandatory.<sup>14</sup> However, where the issue is whether the trial court has abused its discretion in denying treble damages, there must be sufficient findings by the trial court for the appellate court to review. It found that sufficient findings were absent in this case. The Court of Appeals judges stated the following:

The only record finding made by the circuit court in this case was: "I don't think [treble damages] are appropriate here." This finding conveys no information beyond the court's extremely generalized opinion regarding the "appropriate[ness]" of the requested award. It is beyond "brief" and is in no way "direct." We cannot ascertain from this record what if any facts the circuit court relied on in reaching its decision. The court may be correct that treble damages are not warranted in this matter, but we cannot determine that at this time.

**"I don't think that that's appropriate here" is no longer going to be a basis for denying treble damages. The plaintiffs' advocates seeking treble damages for a statutory conversion violation are not as much at the mercy of the court.**

Therefore, we must remand this matter to the circuit court to make "[b]rief, definite, and pertinent findings" that reflect that the "court was aware of the issues in the case" and from which this Court could engage in meaningful review should either party again appeal.<sup>15</sup>

While *Babri* does not set up any criteria that a trial court must use to determine whether treble damages should be denied, it does require "pertinent findings" related to the case that the trial court must articulate to make that decision. This, certainly, is a move in the right direction. "I don't think that that's appropriate here" is no longer going to be a basis for denying treble damages. The plaintiffs' advocates seeking treble damages for a statutory conversion violation are not as much



at the mercy of the court. The next issue is the relationship between treble damages and attorney fees.

### Attorney fees without treble damages

Here again, “may recover” raises its ugly head, as in “may recover three times the amount of actual damages, plus costs and reasonable attorney fees.” The question is whether the “may recover” language applies to both “three times the amount” and “reasonable attorney fees.” This language has provided defendants with an argument seeking denial of attorney fees whenever a court has denied treble damages. It’s a simple “if you can’t get one, you can’t get the other” pitch. Fortunately, there is now caselaw plaintiffs’ advocates can use to support a successful statutory conversion plaintiff’s right to attorney fees whether or not the court awards treble damages. The case in point is the Sixth Circuit case of *Hunt v. Hadden*.<sup>16</sup>

*Hunt* involved a suit for statutory conversion by clients against an attorney and law firm that retained more money from several personal-injury settlements than permitted under the fee agreement. The federal district court granted partial summary judgment for the plaintiffs, awarded the actual damages and attorney fees, but did not award treble damages. The defendants appealed; one of the arguments on appeal was that the plaintiffs should be denied attorney fees because they were not awarded treble damages.

The court rejected that argument:

Michigan law expressly provides for an award of attorney’s fees in cases, like this one, where a plaintiff prevails on a claim of statutory conversion. MCL § 600.2919a. And contrary to Hadden’s argument here and in the district court, no case provides that a trial court may award attorney’s fees only if the court awards treble damages first. Moreover, as the district court correctly observed, under Michigan law the purposes of the two awards are different: treble damages are punitive whereas attorney’s fees are compensatory.<sup>17</sup>

There were myriad ways the state legislature could have written the statutory conversion statute to make it clear that attorney fees were mandatory while treble damages were discretionary; however, we are stuck with the words provided. Now, at least with *Hunt*, we have support for the proposition that attorney fees are indeed mandatory whether or not there is an award of treble damages.

### Conclusion

Statutory conversion can be an important claim for use by plaintiffs’ advocates. It can play a part in numerous abuses of plaintiffs’ property. The *Aroma Wines* and *Babri* cases provide guidance for proving statutory conversion and seeking awards of treble damages and attorney fees. While the permissive language of the conversion statute can create difficulty

in obtaining a treble damages award, attorneys can be encouraged to take on cases involving viable statutory conversion claims with the caselaw seemingly making an award of attorney fees mandatory. In *Hunt*,<sup>18</sup> the Sixth Circuit made the difference between treble damages and attorney fees clear, stating that “under Michigan law the purposes of the two awards are different: treble damages are punitive whereas attorney’s fees are compensatory.”<sup>19</sup> It would appear settled that a successful statutory conversion plaintiff is entitled to attorney fees regardless of whether treble damages are awarded.

All in all, statutory conversion is now an even more viable claim given *Aroma Wines*, *Babri*, and *Hunt* than it was before this troika of cases. Hopefully, attorneys familiar with the caselaw will be encouraged to use the claim more often in the future. ■



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### ENDNOTES

1. See Gary M. Victor, *Tyson v Sterling Rentals, Inc, dba Car Source—The 6th Circuit Renders an Important Decision on Spot Deliveries, Adverse Action Notices, and Statutory Conversion*, 21 Consumer Law Newsletter 1 (No 1, January 2017).
2. See Gary M. Victor, *Security Deposits, the Michigan Consumer Protection Act and Statutory Conversions*, 23 Consumer Law Newsletter 2 (No 3, August 2016).
3. MCL 600.2919(a).
4. *Babri v Great Lakes Property and Investment, Inc*, 2020 WL 86261 (February 20, 2020).
5. *Hunt v Hadden*, 665 F Appx 435 (CA 6, 2016).
6. 497 Mich 337 (2015).
7. 303 Mich App 441 (2013).
8. 497 Mich 353.
9. *Id.* at 359.
10. *Id.* at 361.
11. It should be noted that in *Hunt v Hadden*, 159 F Supp 3d 800, 898 (2016), the court found in an attorney fee request that researching the meaning of word “may” for 17.3 hours was not excessive. The court also stated that “there was little guidance in the case law on the subject.”
12. *Babri v Great Lakes Property and Investment, Inc*, 2020 WL 86261 (February 20, 2020).
13. *Id.* at 1.
14. *Id.* at 2.
15. *Id.*
16. 665 F Appx 435 (CA 6, 2016).
17. *Id.* at 438.
18. 665 F Appx 435 (CA 6, 2016).
19. *Id.* at 438.