STATE OF MICHIGAN

COURT OF APPEALS

ENTECH PERSONNEL SERVICES, INC.,

Plaintiff/Counter-Defendant-Appellant/Cross-Appellee,

v

FELICIANO TRANSPORT, INC., FELICIANO LOGISTICS, INC., MANUEL FELICIANO, DEIDRE FELICIANO, and MICHAEL COCHRAN,

Defendants-Cross-Appellants,

and

FALCON GROUP, INC., and DAVID MACIEJEWSKI,

Defendants/Counter-Plaintiffs-Appellees,

and

LEE YESH and NICOLE YESH,

Defendants-Appellees,

and

JOHN VICK, MARIA VICK, and GREAT LAKES JANITORIAL SERVICES, INC.,

Defendants.

UNPUBLISHED
December 14, 2004

No. 249003
Oakland Circuit Court
LC No. 2002-042875-CZ

Before: Zahra, P.J., and White and Talbot, JJ.

PER CURIAM.

Plaintiff Entech Personnel Services, Inc., appeals by leave granted the circuit court's order granting defendants David Maciejewski ("Mack"), Falcon Group, Inc., and Lee and Nicole Yesh (collectively "appellees") summary disposition under MCR 2.116(C)(8) of plaintiff's conversion claims (count VI). Defendants Feliciano Transport, Inc., Feliciano Logistics, Inc.,

Manuel and Deidre Feliciano, and Michael Cochran (collectively "cross-appellants") cross-appeal the court's order denying their motion to set aside the defaults and default judgment entered against them.[1] We affirm in part and reverse in part.

I

This Court reviews de novo the circuit court's grant of summary disposition to defendants. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). A court considers only the pleadings. All factual allegations are taken as true, and any reasonable inferences or conclusions that can be drawn from the facts are construed in the light most favorable to the nonmoving party. *Id*. The motion may be granted only were the claims alleged are "so clearly unenforceable as a matter of law that no factual development could possibly justify a right to recovery." *Id.,* quoting *Wade v Dep't of Corrections,* 439 Mich 158, 162; 483 NW2d 26 (1992).

A

Plaintiff's conversion claims were alleged in count VI of her complaint:

> VI. CONVERSION / MCLA 600.2919a
>
> 73. Entech reincorporates the foregoing in its entirety.
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> 74. By joining in the fraudulent and conspiratorial actions set forth above, Defendants Transport, Logistics, Feliciano, Deidre, Mack, Falcon, L. Yesh, N. Yesh, J. Vick, M. Vick and Great Lakes have converted funds of Entech's totalling [sic] over $2.0 million.
>
> 75. Defendants have, jointly and severally, received converted funds, and/or aided in the concealment of the stolen, embezzled or converted funds, knowing that the funds were stolen and converted in derogation f [sic] MCLA 600.2919a. As such, each is jointly and severally liable for three (3) times Entech's actual damages, plus costs and attorney's fees.

Plaintiff's conversion count (count VI), ¶ 73 (quoted *supra*), incorporates the remainder of the complaint, and ¶ 74 links the conversion allegations to the complaint's "fraudulent and conspiratorial allegations," thus we quote plaintiff's complaint at some length:

> 20. At all relevant times, Entech has been in the business of providing services to businesses for various employee-related needs, including without limitation,

[1] Defendants John and Maria Vick, and Great Lakes Janitorial Services, Inc., are not parties to the appeal or cross-appeal.

temporary and contract staffing, payroll, employee benefits, Workers' Compensation, personnel and human resources, etc.

21. In 2001, Entech retained Defendants Mack and Falcon to assist Entech in attracting and establishing a new banking relationship. As such, Defendants Mack and Falcon were privy to extensive, confidential information regarding Entech's finances and business.

22. Further, in 2001, Defendants Mack and Falcon began to broaden the scope of their alleged service to Entech, to include referring Entech to potential customers, such as Defendants Feliciano and Transport.

23. Upon information and belief, in 2001, Defendants Feliciano and Transport retained Defendants Mack and Falcon to obtain financing for Defendant Transport's operations.

24. Upon information and belief, the relationship between Defendants Mack/Falcon and Defendants Feliciano/Transport predated Entech's relationship with Defendants Mack and Falcon. The relationship among said Defendants predated Defendant Mack's introduction of Entech to Defendant Feliciano.

* * *

26. During the winter of 2001/2002, Defendant Mack advised Entech of Defendant Transport's existence, and recommended Defendant Transport to Entech as a customer. In so doing, Defendant Mack expressly represented to Entech that Defendant Feliciano has been in the trucking business for a substantial period of time, and that Defendants Feliciano and Transport had just been awarded a large new contract by General Motors Service Parts Organization (GMSPO) necessitating a large increase in Defendant Transport's work force, and, of course, a large increase in income to Defendant Transport and, consequently, Entech.

27. In the winter of 2001/2002, Defendant Feliciano personally met with Entech, confirmed all the representations made by Defendant Mack as set forth in paragraph 24, above, and sough [sic] Entech's services under a Professional Employee Organization Agreement (PEO) pursuant to which Entech was to hire and pay Defendant Transport's employees and contractors and Defendant Transport was to pay Entech 1.25 times Entech's outlays within 30 days of same.

28. Both Defendants Mack and Feliciano separately emphasized to Entech the alleged for Entech to accord Defendant Transport extra time to pay Entech, citing GMSPO's "slow pay" habits and reputation.

29. Entech believed the statements of Defendants Mack and Feliciano and, in entering the PEO Agreement, agreed to wait 30 days for payment.

30. Defendant Transport expressly undertook to determine and report to Entech accurately its current payroll, the correct amount to pay each payee, and, in general, submit honest and accurate payroll requests.

31. Defendant Transport expressly agreed to indemnify and hold harmless from any damage and expense attributable to Transport's failure to perform any of its obligations under the PEO Agreement, including costs of collection.

32. Attached as Exhibit A is a true and accurate copy of the PEO Agreement.

33. Pursuant to the PEO Agreement, Entech began making payments on Defendant Transport's behalf on/about March 17, 2002, and, as of June 15, 2002, when Entech terminated the PEO Agreement, paid over $2,030,500 on Defendant Transport's behalf, at the direction and request of Defendants Transport, Feliciano, Cochran, and Mack.

34. No Defendant has paid Entech any monies in relation to the PEO Agreement.

35. By the terms of the PEO Agreement, Entech is currently owed more than $2.6 million.

36. In July, 2002, Entech learned that, the Defendants individually and collectively have been engaged in a scheme to defraud Entech, convert Entech funds, and obtain unjust enrichment by various means. Initially, Entech has learned that, at no time did Defendant Transport have any contract with GMSPO. Further, Entech has learned that Defendants have colluded to:

a) submit false payroll requests to Entech to pay former employees of Transport;

b) submit false payroll requests to Entech to pay family members, friends, and unrelated business associates of Defendant Feliciano who are not commercial drivers and have never been even putatively employed by Defendant Transport, totaling at least $.8 million;

c) submit false payroll requests on behalf of Defendant Feliciano and Deidre [Feliciano] totaling more than $1.0 million;

d) submit false payroll requests on behalf of individuals who, in turn either endorsed the check to Defendants Feliciano and/or Defendant Transport or, in the alternative, had their endorsements forged; (See attached affidavit of Sean Scott, Exhibit B).

e) divert over $450,000 of funds traceable to Entech payroll payments to Defendant Mack and Defendant Falcon, though neither have ever performed driving services for Defendant Transport;

f) fail, refuse, and neglect to provide the information called for under the PEO Agreement thereby avoiding Entech's discovery of the above noted scheme and malfeasance;

g) create and fund Defendant Logistics, in June, 2002, to receive Defendant Transport's assets including funds from Entech and leave Defendant Transport uncollectable [sic]; and

h) process unearned payments to Defendant's [sic] Mack and Falcon from Entech funds.

37. As a result of the foregoing, Defendant Transport has received the beneficial use of more than $2,000,000 without paying for same.

38. As a result of the foregoing, Defendant Logistics has received the beneficial use of more than $500,000 without paying for same.

39. As a result of the foregoing, Defendant Feliciano has received the beneficial use of more than $800,000 without paying for same, which facilitated personal purchases, including but not limited to the following:

a) a Harley Davidson motorcycle

b) a Nissan Maxima

c) a Lexus automobile

d) a travel trailer, and

e) renovations of his home (see attached Exhibit B, § 15).

Further, Defendant Deidre has received over $130,000 (see attached Exhibit C).

40. As a result, Defendants Mack and Falcon have received, from Defendant Transport, over $400,000 in cash or checks.

41. As a result of the foregoing, Defendant Cochran has received unknown sums of money, not less than $97,800 (see attached Exhibit C).

42. As a result, Defendant's [sic] L. Yesh and N. Yesh, have received unknown sums of money and employment with Defendant Falcon.

43. As a result, Defendants J. Vick, M. Vick and Great Lakes have received at least $175,000 in funds paid by Entech under the PEO Agreement (see attached Exhibit C).

44. The actions of the Defendant have caused Entech to suffer a monetary loss in uncompensated payroll payments in excess of $2.0 million, which, as a result, has caused Entech to fail to conform to its current financing agreement with its bank.

> As a result, Entech shall incur costs and charges . . . [which] as yet unliquidated, can be expected to exceed $25,000. . . .

Plaintiff's count II alleged tortious interference with contract against Mack and Falcon, specifically, that Mack and Falcon "advised Defendants Feliciano and Transport to submit false and inflated payroll payment requests; fail to pay Entech, divert funds obtained thereby; divert funds so obtained to Defendants Mack and Falcon, all of which constituted breaches of Defendant Transport's contract with Entech."

Plaintiff's complaint alleged fraud (count III) against defendants Mack, Falcon, Feliciano, Transport, Logistics and Cochran, including that these defendants "knew that Defendant Transport had no contract with GMSPO. . . that Defendant Transport . . . did not currently employ several of the employees on whose behalf Defendant Transport requested payroll payments from Entech; Defendant Transport would not pay Entech in accordance with the PEO Agreement; and that Defendant Logistics would be incorporated and funded with funds obtained from Entech via the fraudulent schemes described above."

Additionally, plaintiff's complaint alleged that defendants Mack, Falcon, Feliciano, Transport, Cochran, L. Yesh, N. Yesh and Logistics "proceeded with the planning, creation and organization of Defendant Logistics knowing that Defendant Logistics would be capitalized with funds fraudulently obtained from Entech. None of the above name[d] Defendants so informed Entech."

Count IV alleged civil conspiracy against defendants Feliciano, L. Yesh, N. Yesh, Transport, Cochran, Mack, Falcon, Logistics, J. Vick, M. Vick and Great Lakes. In this count, plaintiff alleged that these defendants "entered into an agreement or preconceived plan to accomplish one or more unlawful purpose including, via the fraud and breach of contract described above, to obtain payroll funds from Entech, thus damaging Entech and enriching themselves." Further, that defendants participated in one or more overt acts in furtherance of said conspiracies, including "misrepresenting to Entech the existence and import of the above noted GMSPO contract and other alleged business of Transport," "submitting false payroll requests for . . . former employees," and "concealing this scheme and withholding necessary information from Entech concerning the identity and status of actual employees of Defendant Transport . . . "

The circuit court granted defendants-appellees partial summary disposition, dismissing count six under MCR 2.116(C)(8), its opinion and order noting:

> In viewing the pleadings alone, as mandated by MCL 2.116(G)(5), the Court agrees with the first and second argument espoused by Defendants herein. First paragraphs 74 and 75 of Plaintiff's Complaint identify the moving Defendants as both "converters" and "aiders and abettors"; they cannot possibly be both for purposes of seeking recourse under MCL 600.2919a, which provides a remedy against the individual(s) who have actually converted the property. MCL 600.2919 and *Marshall Lasser, PC v George,* 252 Mich App 104, 111 (2002).
>
> Second, paragraphs 74 and 75 of Plaintiff's Complaint fail to identify what specific money the moving Defendants allegedly converted. "There can be * * *

no conversion of money, unless there was an obligation on the part of defendant to deliver specific money to plaintiff. 65 C.J. p. 23, § 24." *Garras v Bekiares,* 315 Mich 141, 148 (1946), *citing Alfred Shrimpton & Sons v Culver,* 109 Mich 577; 67 NW 907 (1896). (emphasis added). For both reasons, Plaintiff's claim of conversion fails as a matter of law as to these Defendants and, thus, the Court grants Defendants' motion for summary disposition, pursuant to MCR 2.116(C)(8).

Having made this determination, the Court is compelled to consider whether Plaintiff should be given the opportunity to amend its Complaint under MCR 2.116(I), which states:

> If the grounds asserted [by the moving party for summary disposition] are based on subrule (C)(8), (9), or (10), the court shall give the parties an opportunity to amend their pleadings as provided by MCR 2.118, unless the evidence then before the court shows that amendment would not be justified.

MCR 2.116(I)(5). The Court, having thoroughly reviewed the pleadings and evidence currently before this Court, finds that an amendment by Plaintiff would be not only be [sic] unjustified, but an exercise in futility. MCR 2.116(I)(5). Plaintiff has not pleaded any facts sufficient to state a claim of conversion under MCL 600.2919a against the moving Defendants. Consequently, Plaintiff shall not be given the opportunity to amend its Complaint with regard to this specific claim, against these specific Defendants.

* * * summary disposition of Plaintiff's conversion claim is GRANTED, pursuant to MCR 2.116(C)(8).

B

The circuit court cited the well-established proposition that there can be no conversion of money, unless there was an obligation on the part of defendant to deliver specific money to plaintiff. However, the court failed to take into account that plaintiff's conversion count incorporated the remainder of the complaint, and that attached to the complaint was a list of checks made payable to purported employees of defendants whom, plaintiff alleged, included those who no longer worked there, and allegations that some of the payee-employees were made to turn over their checks to defendants, or had their endorsements forged. In contrast, in *Garras, supra* at 147, the Supreme Court noted: "It should be noted that defendant was not required to deliver to plaintiff the specific or identical moneys which he collected for merchandise sold or on accounts receivable [pursuant to the parties' consignment agreement], but was only required to pay plaintiff the invoiced price for merchandise delivered to him." Similarly, *Shrimpton & Sons, supra,* was an appeal from a directed verdict in the defendant's favor. The defendant was an attorney, who cashed a check of the plaintiff to cover disbursements. The Court affirmed the grant of directed verdict, concluding that "trover for the check cannot be maintained, for both parties contemplated that the check would be cashed by defendant, as it was. There was no wrong in converting the check into money when the plaintiff expressly authorized it." *Shrimpton & Sons, supra* at 579. The Court further noted that the evidence had "no tendency to show any []

intent [to embezzle existing at the time the draft was cashed]; nor do we think the general count in trover can be maintained on the ground that there was a conversion of money. This is not a case of special deposit of money to be returned in specie." *Id.* at 580.

In *Tidey v McDonald*, 179 Mich 580; 146 NW 224 (1914), however, the Court recognized a claim for conversion of a check and its proceeds where the defendant wrongfully cashed a check that was intended for another. We conclude that plaintiff's allegations in this regard were sufficient to withstand defendants' C(8) motion.

Common-law conversion

Common-law conversion and common-law aiding and abetting conversion are discussed in *Echelon Homes, LLC v Carter Lumber Co,* 261 Mich App 424; 683 NW2d 171 (2004):

> The common-law tort of conversion consists of 'any distinct act of dominion wrongfully exerted over another person's personal property.' *Pamar Enterprises, Inc v Huntington Banks of Michigan,* 228 Mich App 727, 734; 580 NW2d 11 (1998), citing *Trail Clinic, PC v Bloch,* 114 Mich App 700, 705; 319 NW2d 638 (1982). In *Trail Clinic, PC, supra* at 706, citing 18 Am Jur 2d, Conversion[], § 120, p 231, this Court set forth the elements of a claim of aiding and abetting conversion:
>
> > [A] person may be guilty of a conversion by actively aiding or abetting or conniving with another in such an act. Indeed, one may be liable for assisting another in a conversion though acting innocently. These rules are especially applicable where the defendant received benefit from the conversion and subsequently approved and adopted it.
>
> [*Echelon Homes, LLC, supra* at 436.]

6 Mich Civil Jurisprudence, § 26 provides:

> One merely participating in the wrongful taking of another's goods is liable for their conversion even if the goods were not appropriated for his or her own use. Thus, where one knowingly assists others in the fraudulent disposition of goods, all are jointly liable for conversion, even those who received no direct benefit from it. [Citing *Bush v Hayes,* 286 Mich 546; 282 NW 239 (1938), and *Trail Clinic, PC v Bloch,* 114 Mich App 700; 319 NW2d 638 (1982).]

C

Statutory conversion

> In addition to the common-law claim, Michigan provides a statutory cause of action against those who aid in the conversion of property. Statutory conversion under MCL 600.2919a "'consists of knowingly 'buying, receiving, or aiding in the concealment of any stolen, embezzled, or converted property.'" *Campbell v*

> *Sullins,* 257 Mich App 179, 191; 667 NW2d 887 (2003), quoting *Head* [*v Phillips Camper Sales & Rental, Inc,* 234 Mich App 94, 111; 593 NW2d 595 (1999)]. The statute provides a remedy against the accomplice only and not against the person who actually stole, embezzled, or converted the property. *Campbell, supra* at 191-192, citing *Marshall Lasser, PC v George,* 252 Mich App 104, 112; 651 NW2d 158 (2002). [*Echelon Homes, LLC, supra* at 438-439.]

D

Viewing the allegations in the light most favorable to Entech, plaintiff's complaint states a claim for common-law conversion and a claim for statutory conversion. MCR 2.111(A)(2) permits a party to state as many separate claims as the party has, regardless of consistency; inconsistent claims are not objectionable.

We conclude that count six, ¶ 74, states a claim of common-law conversion when read with the fraud and conspiracy allegations ¶ 73 incorporates into count six. Entech's complaint alleged that defendants obtained Entech's funds by misrepresenting their payroll and the persons listed as payees on the payroll, and that the payees either endorsed the checks to defendants Feliciano and Transport or had their endorsements forged. Entech alleged that over $450,000 of the payroll payments were diverted to Mack and Falcon alone, and that Lee and Nicole Yesh received "unknown sums of money . . ." and that they therefore received checks and the proceeds thereof, to which they had no right.

Entech also stated a claim for statutory conversion under MCL 600.2919a. In addition to ¶ 75 of count six, Entech alleged that defendants Yesh, Mack and Falcon, **and** the Feliciano defendants, were engaged in a scheme to defraud Entech, which scheme included diverting proceeds of payroll funds to Feliciano and Mack, that Falcon and Mack received over $400,000 of the proceeds, and that Lee and Nicole Yesh received part of the proceeds while employed by Falcon and Mack. Entech's complaint also alleged that defendants knew about the conversion. Defendants-appellees could be found to have violated § 2919a because § 2919a applies to buyers, receivers, or aiders of stolen, embezzled, or converted property.

We conclude that the circuit court improperly dismissed count VI under MCR 2.116(C)(8), as it states claims for both common-law and statutory conversion. We thus reverse the circuit court's grant of summary disposition to defendants and remand for further proceedings consistent with this opinion.

In light of our disposition, we need not address Entech's arguments that the circuit court erred by not clarifying the scope of its dismissal of the conversion/MCL 600.2919a count (count six) of Entech's complaint, and that Entech should have been allowed to amend its complaint. Nor do we address appellees' request to impose sanctions on Entech for filing a vexatious appeal, MCR 7.216(C)(1)(a), beyond noting that Entech's appeal is not vexatious. *Tingley v Wardrop*, ___ Mich App ___; ___ NW2d ___ (Docket No. 243171, issued 6/24/04), slip op at 14; *Haliw v Sterling Heights*, 257 Mich App 689, 704; 669 NW2d 563 (2003), app grtd in part 470 Mich 869; 682 NW2d 84 (2004).

II – **Cross-appeal**

The circuit court entered defaults and a default judgment against defendants Feliciano and Cochran. On cross-appeal, these defendants argue that the circuit court erred in entering the default judgment because their failure to respond to several discovery deadlines was a result of advice of former counsel, whom they were unable to contact for approximately one month and who then was granted leave to withdraw as counsel. Thus, they argue, their conduct was not willful, and they responded within a reasonable time after procuring new counsel. Cross-appellants also assert that even if their failure to provide discovery was a proper basis to enter the default, the default should be vacated for lack of proper notice, which contributed to their failure to respond. Cross-appellants contend that the circuit court erred in refusing to set aside the default judgment because their inability to communicate with counsel and lack of proper notice to them constitute reasonable cause for their failure to comply, and that allowing the default to stand would result in a manifest injustice.

Nothing in the record, e.g., a supporting affidavit, supports cross-appellants' contentions regarding any correspondence with their previous counsel or that they failed to receive notice. The record reflects that cross-appellants were served with the motion to withdraw, the order granting withdrawal, the entry of defaults, and the default judgment. Further, to the extent that cross-appellants claim that the addresses to which the notices were sent were incorrect, cross-appellants again fail to provide any support for their contention, e.g., an affidavit setting forth the true addresses, and regardless, the typos do not cause the addresses as served to differ in any significant way from the allegedly correct addresses. Therefore, these contentions are without merit.

A default or a default judgment will not be reversed on appeal absent a clear abuse of discretion. *Park v American Casualty Ins Co*, 219 Mich App 62, 66; 555 NW2d 720 (1996). Once a default or default judgment is entered a motion to set it aside generally "may be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed." *Id.,* at 66-67; MCR 2.603(D)(1). Good cause includes:

> (1) a substantial defect or irregularity in the proceeding on which the default was based, (2) a reasonable excuse for the failure to comply with requirements that created the default, or (3) some other reason showing that manifest injustice would result if the default or default judgment were allowed to stand. [*Park*, *supra*, 219 Mich App 67.]

In *Mink v Masters*, 204 Mich App 242, 244; 514 NW2d 235 (1994), the plaintiff requested discovery from the defendants, who refused to honor the request. The plaintiff moved to compel production of the discovery, and the court ordered a response within thirty days. *Id*., 244-245. The defendants failed to comply, and four weeks after the deadline the plaintiff moved to compel compliance with the court's order. *Id*., 245. The court gave the defendants an additional seven days to respond and warned the defendants that failure to comply would result in the entry of a default judgment. *Id*. After the defendants had still failed to respond three weeks later, the court granted the plaintiff a default judgment. *Id*. On appeal, this Court held that the trial court had not abused its discretion in granting the default because the defendants

were provided with a number of opportunities to comply and were warned ahead of time about the possibility of defaulting, yet they still failed to comply with discovery requests. *Id*.

Despite cross-appellants' reliance on *Mink*, that case actually serves to support a finding that the default should stand in this case. Here, just as in *Mink*, the discovery requests went substantially unanswered for approximately five months despite the court's extensions. In *Mink*, the court only waited two weeks after the last deadline before entering the default judgment. Here, the default judgment was not entered until six weeks after the January 31, 2003 deadline. And in *Mink*, in upholding the default judgment, this Court found it significant that the defendants were warned of the default sanction in the last extension order. In this case, cross-appellants were similarly warned. Default was neither improper nor harsh where cross-appellants violated the applicable discovery rules by repeatedly and knowingly violating the numerous discovery orders.[2]

Additionally, cross-appellants note that the court's order allocating liability "jointly and severally" is in contravention of this state's abolition of that form of liability, MCL 600.2956. Acknowledging this, the court granted in part cross-appellants' request to set aside the default judgment for purposes of an evidentiary hearing on damages. And although Entech argues that a hearing is not necessary because MCL 600.2919a mandates the trebling of damages, we agree with the trial court that an evidentiary hearing on damages would be appropriate. See MCL 600.2956; see also *American Central Corp v Stevens Van Lines, Inc,* 103 Mich App 507, 512; 303 NW2d 234 (1981) (stating that an admission by virtue of entry of a default is an admission regarding liability but not an admission regarding damages).

We reverse the dismissal of Entech's claim of common-law conversion and the dismissal of Entech's claim of statutory conversion and remand for further proceedings consistent with this opinion. With respect to the cross-appeal, the circuit court's entry of the default judgment is affirmed. We do not retain jurisdiction.

/s/ Brian K. Zahra
/s/ Helene N. White
/s/ Michael J. Talbot

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[2] We disagree, however, with Entech's contention to the effect that the cross-appeal in this case should be dismissed as an untimely appeal. Where an appeal is initiated by application for leave to appeal, under MCR 7.207(B)(2), a claim of cross-appeal must be filed within twenty-one days after the clerk certifies the order granting leave to appeal. Here, the order granting leave to appeal was entered on September 12, 2003. Exactly twenty-one days later on October 3, 2003, cross-appellants filed their application for cross-appeal. Additionally, under MCR 7.207(C), cross-appellants must perform the steps required by MCR 7.204(E) and (F), except that cross-appellants are generally not required to order a transcript or file a court reporter's certificate, and in all other respects the cross-appeal proceeds in the same manner as an ordinary appeal.