Order

Michigan Supreme Court
Lansing, Michigan

June 17, 2022

Bridget M. McCormack,
Chief Justice

162375

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

ALISA A. PESKIN-SHEPHERD, PLLC,
Plaintiff-Appellee,

v

SC: 162375
COA: 348023
Oakland CC: 2016-154544-CK

NICOLE BLUME, f/k/a NICOLE KNUFF,
Defendant-Appellant,
and

SEAN BLUME,
Defendant.

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On April 6, 2022, the Court heard oral argument on the application for leave to appeal the November 5, 2020 judgment of the Court of Appeals. On order of the Court, the application is again considered. MCR 7.305(H)(1). In lieu of granting leave to appeal, we REVERSE Part II(A) of the Court of Appeals opinion regarding statutory conversion, VACATE Part II(B) of the opinion regarding treble damages, and REMAND this case to the Oakland Circuit Court for further proceedings not inconsistent with this order. In all other respects, the application for leave to appeal is DENIED, because we are not persuaded that the remaining question presented should be reviewed by this Court.

Plaintiff, Alisa Peskin-Shepherd, claims that defendant, Nicole Blume, committed conversion by selling the real property on which plaintiff had an attorney's lien without providing plaintiff her share of the proceeds. "Under the common law, conversion is any distinct act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with his rights therein."[1] MCL 600.2919a(1)(a) provides for treble damages to compensate a plaintiff for "[a]nother person's . . . converting property to the other person's own use."

[1] *Aroma Wines & Equip, Inc v Columbian Distribution Servs, Inc*, 497 Mich 337, 346 (2015) (quotation marks and citation omitted).

Because real property cannot be converted,[2] plaintiff instead claimed that defendant had converted her attorney's lien. However, though it may be possible to convert a lien in some circumstances,[3] we do not believe that the lien was converted in this case. First, defendant's actions were taken in regard to the real property and the proceeds, but not the lien or any document memorializing the lien. In this case, the lien was not property that was converted; the lien only acted as the basis for plaintiff's interest in the real property.[4] Second, to hold that plaintiff's conversion claim succeeds in

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[2] *Eadus v Hunter*, 268 Mich 233, 237 (1934) ("Trover lies only for the conversion of personal property and not for property while it is a part of the realty."); 6 Michigan Civil Jurisprudence (April 2022 update), Conversion, § 8 ("An action for conversion may only be brought for personal property."), citing *Collins v Wickersham*, 862 F Supp 2d 649 (ED Mich, 2012), and *Eadus*, 268 Mich 233.

[3] There is caselaw recognizing the conversion of personal property similar to the lien at issue, such as leases, deeds, and mortgages. See, e.g., *Eadus*, 268 Mich at 233 (involving conversion of a lease); 44 ALR2d 927 (1955), § 9 ("A mortgage is subject to conversion, for which an action will lie."); 6 Michigan Civil Jurisprudence (April 2022 update), Conversion, § 8 ("Actions for conversion will also lie for leases, deeds, causes of action, shares or certificates of corporate stock, bonds, checks, drafts, and promissory notes.").

[4] In contrast, in those cases involving conversion of property similar to liens, such as leases and mortgages, see note 3 of this statement, the defendants wrongfully exerted dominion over that property—often the document—itself. See, e.g., *Eadus*, 268 Mich at 235-237 (recounting that the lease was wrongfully taken out of escrow). See also *Norton v Bankers' Fire Ins Co of Lincoln*, 116 Neb 499 (1928) (upholding a finding of conversion when the plaintiff was defrauded into giving his note and mortgage to conspirators); *Rogers v Rogers*, 96 Colo 473, 477-478 (1935) (holding that the plaintiff sufficiently alleged conversion when the defendant wrongly caused the mortgage on the land to be released); *Barber v Hathaway*, 47 App Div 165, 168-169 (1900) (holding that there was conversion when the defendant held the bond and mortgage as collateral with no right to sell but sold them anyway); *Gleason v Owen*, 35 Vt 590, 598 (1863) (holding that there was sufficient evidence to support the plaintiff's trover claim when the defendant had agreed to deliver the mortgage deed to the plaintiff but then refused). The facts in those cases differ from the facts here, in which defendant sold the real property and plaintiff had an interest in the property via the lien. See *Sleeper v Wilson*, 266 Mich 218 (1934) (discussing the conversion of tools and pipes in which the plaintiff had a mortgage interest and holding that the tools and pipes, rather than the mortgage, were converted); *Aroma Wines*, 497 Mich 337 (discussing the conversion of the wine when the plaintiff had a lien on the wine). See also 51 Am Jur 2d (May 2022 update), Liens, § 77 ("A lienholder may sue *for conversion of the property on which the lienholder's lien exists* if it is wrongfully disposed of by the owner . . . .") (emphasis added).

these circumstances, in which the property is sold and the effect on the lien is incidental to that sale, would create a loophole to the general rule that real property is not subject to conversion—actions taken with regard to the real property would be conversion if they had even an incidental effect on the lien.

Alternatively, plaintiff argues that it was the proceeds of the sale that defendant converted. It is true that proceeds of a real-estate sale are personal property[5] and thus may be subject to conversion. However, there are specific requirements pertaining to when money can be converted: "[W]here there is no duty to pay the plaintiff the specific moneys collected, a suit for conversion may not be maintained."[6] Here, plaintiff's claim to the sale proceeds as a result of her lien was just a claim for a certain amount of money up to the amount of the lien, but it did not relate to any specific monies. The lien was never recorded against the Escanaba property for a specific monetary value and thus was never made a formal encumbrance requiring resolution prior to closing. Plaintiff also did not claim that she was entitled to the specific money that the purchaser used to buy the Escanaba property; plaintiff merely claimed that defendant should have given plaintiff her share of the proceeds as per the lien.[7] Therefore, because neither the proceeds nor the lien were converted in this case, and because real property cannot be the subject of conversion, plaintiff's conversion claim fails.[8] Because plaintiff's conversion claim fails, the Court of Appeals did not need to reach the treble-damages issue.

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[5] *Stewart v Young*, 247 Mich 451, 455 (1929).

[6] *Warren Tool Co v Stephenson*, 11 Mich App 274, 299 (1968), citing *Anderson v Reeve*, 352 Mich 65, 69, 70 (1958).

[7] See *Garras v Bekiares*, 315 Mich 141, 147 (1946) ("It should be noted that defendant was not required to deliver to plaintiff the specific or identical moneys which he collected . . . , but was only required to pay plaintiff the invoiced price . . . . Therefore, as plaintiff was not entitled to the specific or identical moneys collected by defendant from his customers, he was not entitled to a judgment in tort for conversion.").

[8] Because we believe there was no conversion, we take no position on whether an attorney may ethically request treble damages if a conversion claim based on an outstanding fee were successful.