

STATE OF MICHIGAN  
COURT OF APPEALS

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STOCKBRIDGE CAPITAL, LLC,

Plaintiff-Appellee,

v

MICHAEL WATCKE,

Defendant/Cross-Defendant-  
Appellant,

and

JP MORGAN CHASE BANK, NA,

Defendant/Cross-Plaintiff.

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UNPUBLISHED

March 4, 2014

No. 313241

Wayne Circuit Court

LC No. 11-001382-CH

Before: HOEKSTRA, P.J., and MURRAY and RIORDAN, JJ.

PER CURIAM.

Defendant/cross-defendant Michael Watcke (“defendant”) appeals as of right an order granting summary disposition to plaintiff Stockbridge Capital, LLC, denying defendant’s motion for summary disposition, and entering judgment in favor of plaintiff in this conversion action. We affirm.

Defendant argues that the lower court erred in granting plaintiff’s motion for summary disposition, and denying defendant’s motion for summary disposition, because there were genuine issues of material fact regarding whether plaintiff had an ownership interest in the insurance proceeds, whether defendant converted the proceeds when he deposited the insurance check without notification to plaintiff, whether defendant was required to keep the proceeds as “special monies” for plaintiff, and whether treble damages awarded to plaintiff should have been reduced.

Both plaintiff and defendant moved for summary disposition pursuant to MCR 2.116(C)(10). This Court reviews a trial court’s decision on a motion for summary disposition de novo. *Johnson v Recca*, 492 Mich 169, 173; 821 NW2d 520 (2012). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Joseph v Auto Club Ins Ass’n*, 491 Mich 200, 206; 815 NW2d 412 (2012). This Court reviews a “motion

brought under MCR 2.116(C)(10) by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party.” *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). This Court will only consider “what was properly presented to the trial court before its decision on the motion.” *Pena v Ingham Co Rd Comm*, 255 Mich App 299, 310; 660 NW2d 351 (2003). Summary disposition “is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law.” *Latham*, 480 Mich at 111. A genuine issue of material fact exists “when, viewing the evidence in a light most favorable to the nonmoving party, the record which might be developed . . . would leave open an issue upon which reasonable minds might differ.” *Debano-Griffin v Lake Co*, 493 Mich 167, 175; 828 NW2d 634 (2013) (quotation marks and citations omitted).

Plaintiff was granted summary disposition on both its statutory and common law conversion claims against defendant. First, to prove common law conversion of money, a plaintiff must show that the defendant obtained the money “without the owner’s consent to the creation of a debtor-creditor relationship and must have had an obligation to return the specific money entrusted to his care.” *Lawsuit Financial LLC v Curry*, 261 Mich App 579, 591; 683 NW2d 233 (2004) (quotation marks and citations omitted). Second, MCL 600.2919a, statutory conversion, provides:

- (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.

Plaintiff correctly notes that MCL 600.2919a(1)(a) was added in 2005 to establish a cause of action against the individual who converts the property. See MCL 600.2919a, as amended by 2005 PA 44, effective June 16, 2005. Following the amendment, a plaintiff now has a cause of action against a defendant if that defendant stole, embezzled, or converted property. MCL 600.2919a(1)(a). Thus, plaintiff could have a valid statutory conversion claim against defendant as the actual converter.

Viewing the evidence in a light most favorable to defendant, we hold that there was no genuine issue of material fact regarding whether plaintiff had an ownership interest in the insurance proceeds, entitling it to receive the proceeds, and whether defendant converted the proceeds when he deposited the insurance check into his own bank account. Based on defendant’s obligations to plaintiff as outlined in the mortgage and note, it is undisputed that defendant and plaintiff were in a debtor-creditor relationship, and that plaintiff had an ownership interest in the insurance proceeds. First, defendant was required, by the mortgage, to add

plaintiff as an additional insured party on the homeowner's insurance, which he failed to do. Second, defendant was required to "give prompt notice to the . . . lender," in the "event of loss," which he also failed to do. Lastly, defendant assigned his rights to plaintiff for "any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Investment." Defendant therefore had independent obligations to plaintiff pursuant to the mortgage and note. Based on the clear provisions of the mortgage agreement, there was no genuine issue of material fact regarding whether plaintiff had an ownership interest in the insurance proceeds. Thus, there was also no genuine issue of material fact that defendant converted the proceeds when he received a check for the insurance proceeds with plaintiff's name listed as a payee, and neither notified plaintiff nor obtained consent to deposit the check, but instead, obtained the proceeds and kept them for his own use by depositing the entire check in his own corporate bank account. Defendant failed to establish a genuine issue of material fact regarding this issue, as defendant had a specific obligation under the mortgage to return the insurance proceeds to plaintiff and his failure to do so constituted conversion pursuant to both the common law and statute.

Defendant also argues that a genuine issue of material fact exists regarding whether specific monies were to be held for plaintiff because multiple entities were listed on the check without clarification regarding to which entity the money was to be delivered, and in what amount. To the contrary, this Court has held that "[a]n action for conversion lies where an individual cashes a check and retains the full amount of the check when he is entitled to only a portion of that amount." *Citizens Ins Co v Delcamp Truck Ctr, Inc*, 178 Mich App 570, 576; 444 NW2d 210 (1989). Plaintiff's conversion claims against defendant were not destroyed simply because the money was not specifically delineated to each payee on the check. Again, defendant has failed to establish a genuine issue of material fact regarding whether plaintiff was entitled to specific monies. Thus, the lower court properly granted plaintiff's motion for summary disposition, and denied defendant's motion for summary disposition.

Finally, we reject defendant's argument that the lower court erred in granting plaintiff treble damages without reducing the amount to reflect the amount he alleges that JP Morgan Chase Bank paid out to plaintiff. First, defendant's argument that JP Morgan Chase Bank paid a settlement to plaintiff is not supported by any evidence. Although there is a Consent Judgment granting judgment in favor of JP Morgan Chase Bank against defendant that orders defendant to pay JP Morgan Chase \$40,000, there is no indication in the record that JP Morgan Chase Bank paid plaintiff any amount of money.

Second, pursuant to MCL 600.2919a, the lower court properly granted treble damages to plaintiff. Treble damages awarded under MCL 600.2919a are punitive in nature. *Alken-Ziegler, Inc v Hague*, 283 Mich App 99, 104; 767 NW2d 668 (2009). In *Hague*, we held that decreasing the amount of treble damages to reflect other amounts paid out to a victim "thwarts" the punitive purpose of the statute – namely to punish "dishonest defendants" and to set an example for "similar wrongdoers." *Id.* Further, defendant has failed to offer any case law or other evidence that the damage award should have been reduced, and thus, this issue is abandoned. See *Prins v Michigan State Police*, 299 Mich App 634, 647; 831 NW2d 867 (2013). The lower court properly awarded plaintiff full treble damages.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Christopher M. Murray  
/s/ Michael J. Riordan