STATE OF MICHIGAN

COURT OF APPEALS

JP MORGAN CHASE BANK, NA,

Plaintiff-Appellee,

v

JACKSON GR, INC,

Defendant,

and

KALAMAZOO GR, INC,

Defendant/Third-Party Plaintiff-Appellant,

v

HAROLD ZIEGLER AUTO GROUP, INC, a/k/a HAROLD ZIEGLER LINCOLN MERCURY, INC, and AJZ STADIUM LLC,

Third-Party Defendants-Appellees.

UNPUBLISHED
July 15, 2014

No. 311650
Kalamazoo Circuit Court
LC No. 2011-000326-CK

Before: SAWYER, P.J., and MARKEY and STEPHENS, JJ.

PER CURIAM.

Defendant Kalamazoo GR, Inc. (KGR), appeals by right the trial court's June 11, 2012 order granting summary disposition to third-party defendants Harold Ziegler Auto Group, Inc. (HZ) and AJZ Stadium LLC (AJZ) on KGR's claims of trespass and conversion of personal property left at premises it formerly sublet to operate a restaurant. KGR also appeals the trial court's March 19, 2012 order granting summary disposition to plaintiff JP Morgan Chase Bank,

NA (Chase or the bank), on various notes, security agreements, and guarantees, and granting an order for claim and delivery of collateral that KGR owned.[1] We affirm.

I. FACTS AND PROCEEDINGS

The first loan at issue was from Chase's predecessor, Bank One, in the amount of $463,600 on December 15, 2003. This loan funded the purchase of two Ground Round restaurants, one each purchased by KGR and Jackson GR, Inc. (JGR).[2] Ronald E. Johnston is the sole shareholder of both KGR and JGR. The documents supporting the December 2003 loan included a business loan agreement, a promissory note, and a commercial security agreement granting a security interest in "All Inventory, Chattel Paper, Accounts, Equipment and General Intangibles" of debtors whether existing or thereafter acquired. Each document was signed by KGR and JGR, by Ronald E. Johnston as president of KGR and JGR, and on a separate signature line by Ronald E. Johnston as an individual.

Chase made a second loan to JGR on November 6, 2006 in the amount of $203,700. The promissory note on this loan was signed on behalf of JGR by Ronald Johnston, without listing Johnston's corporate title. The JGR corporate resolution of November 6, 2006 authorizing Johnston to sign on JGR's behalf also does not list Johnston's corporate title.

Other documents regarding the two loans at issue include another commercial security agreement dated October 7, 2004—signed by KGR and JGR, by Ronald E. Johnston as president of KGR and JGR—and a commercial guaranty on November 6, 2006 issued by KGR to Chase and signed on behalf of KGR by Ronald Johnston, president of KGR.

After the loans became delinquent, a 2009 agreement temporarily permitting interest-only payments on the debts proved unsuccessful. At the end of May 2010, KGR ceased operating its Ground Round restaurant at 3939 Stadium Drive, Kalamazoo, Michigan. KGR subleased the premises from The Ground Round, Inc. At the time, the building was owned by CNL Funding 2000-A, LP (CNL), an affiliate of GE Capital. In a May 2, 2010 letter, Johnston acting as KGR

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[1] Third-party defendants assert that this Court lacks jurisdiction over KGR's appeal of the trial court's March 19, 2012 order because, with regard to it, KGR did not file a claim of appeal or an application for leave to appeal. This argument is without merit. Third-party defendants acknowledge that this Court has jurisdiction over the appeal by right of the June 11, 2012 order granting summary disposition in their favor because it is a final order. The earlier March 19, 2012 order granting summary disposition in favor of Chase was not a final order under MCR 7.202(6)(a)(i). It is settled that a party may challenge an earlier order in an appeal from the final order. *Green v Ziegelman*, 282 Mich App 292, 301 n 6; 767 NW2d 660 (2009).

[2] JGR filed a bankruptcy petition on March 16, 2012, and proceedings with respect to it were automatically stayed.

president notified Gary Serino, treasurer and CFO of the Ground Round IOC, LLC, (GRIOC), [3] sublessor of the property: "We have chosen May 30, 2010 to permanently close this operation and to terminate all utilities, security system and insurance and vacate the building on June 7, 2010." Johnston sent an email to Serino on May 25, 2010, which stated:

> I need to advise everyone that our last day of business will be this Saturday May 29, 2010. . . . If I don't hear from anyone I will drop the keys off at the Kalamazoo Police Station on June 7, 2010. Please remember there will be no insurance, utilities or security after that date.

On June 17, 2010, Chase declared debtors in default and accelerated payment due at that time of $261,419.24 on the 2003 loan and $138,455.06 on the 2006 loan. On October 13, 2010, Chase filed its complaint against JGR and KGR alleging (and attaching) all the various notes, security agreements, and guarantees, pleading the fact of default, and seeking money damages on the 2006 loan (Count I), money damages from KGR on its guaranty of the 2006 loan (Count II), and money damages on the 2003 loan from KGR and JGR (Count III). Chase also sought an order for claim and delivery of JGR collateral (Count IV), and an order for claim and delivery of KGR collateral (Count V). KGR filed an answer that neither admitted nor denied any of Chase's factual allegations, except admitting that KGR and JGR were corporations, Ronald E. Johnston is an individual, and that the amount in controversy was over $25,000. KGR asserted as an affirmative defense that Chase's claims were "barred by illegality of performance."

Subsequently, KGR asserted third-party claims against HZ, who purchased 3939 Stadium Drive from CNL on December 7, 2010, and assigned its rights to AJZ. KGR's third-party claim asserted trespass and conversion of personal property located at 3939 Stadium Drive in which Chase claimed a security interest. After procedural failures, the trial court permitted KGR to file an amended third-party complaint against HZ and AJZ that alleged (1) trespass, (2) common law conversion/chattel trespass, (3) violation of M CL 600.2919a, and (4) tortious interference with contractual and advantageous business relationships. KGR later added counts of (5) unjust enrichment, (6) constructive fraud, and (7) claim and delivery.

After discovery, Chase moved for summary disposition. The trial court heard the parties' arguments on March 19, 2012. The trial court rejected defendant's arguments that summary disposition should be denied because (1) the second note was not signed by Johnston in his corporate capacity, and (2) issues of fact existed regarding Chase's alleged breach of good faith and fair dealing regarding two mortgages Johnston and his wife executed in 2004 and 2006. The trial court found the loan documents clear and unambiguous and that Chase had established both the existence and validity of the notes and guaranty, as well as default. KGR, on the other hand, had not produced evidence to show that a material fact dispute existed. With respect to KGR's argument regarding the second note, the trial court observed that KGR did not contend that Johnston did not sign the note or that the loan itself was not used for the benefit JGR. The court

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[3] The Ground Round Independent Owners Cooperative, LLC, succeeded The Ground Round, Inc., after its bankruptcy reorganization.

ruled the evidence clearly established the parties' intent regarding the note and that the borrower was unambiguously JGR. In sum, the trial court found that KGR failed to present any evidence the documents were invalid or unenforceable and did not show a material fact dispute existed.

The trial court declined to rule on defendant's claim of forgery and false notarizations of mortgage documents involving Johnston and his wife. The court noted Chase was not suing on the mortgages, and neither Johnston nor his wife was a party to the present case. Accordingly, the trial court entered its order on March 19, 2012 granting plaintiff summary disposition and judgment against KGR on the two notes at issue. The trial court also granted an order for claim and delivery of "Kalamazoo Collateral (as that term is defined in the Complaint)."

KGR's third-party complaint involved the premises it subleased at 3939 Stadium Drive and the personal property KGR left in the building when it quit the premises in May 2010. On April 2, 2012, HZ and AJZ filed a motion for summary disposition arguing that KGR had no month-to-month tenancy in the property, had abandoned any property left at the premises, and if any property were there, that the bank had the lawful right to its possession after the default of KGR and JGR, which the trial court's March 19, 2012 order confirmed. Third-party defendants also argued that they had cut off any of KGR's claims to the personal property on the premises when AJZ purchased title to it from Chase for $10,000. KGR argued that the property was not abandoned and that the property was worth more than the $10,000 that AJZ paid the bank.

The trial court ruled that undisputed evidence showed KGR could not establish its trespass claim by proving that either HZ or AJZ intended to intrude on the property of another. Specifically, it was not disputed that during the negotiations to purchase the building "CNL informed Zeigler that KGR was the previous tenant and that it had vacated the premises and its lease and right to possession had expired." Furthermore, before any entry, HZ had entered into a purchase agreement for the premises, which granted HZ the right to enter and inspect the premises until the closing date. Thus, the undisputed evidence established that HZ and AJZ believed they had a right to enter the premises, defeating any claim for trespass.

Regarding KGR's claim of wrongful conversion of the personal property at 3939 Stadium Drive, the trial court ruled that because KGR no longer had any interest in the property, it could establish no injury and, therefore, lacked standing and was not the real party in interest. The trial court on June 11, 2012 entered its order granting HZ and AJZ summary disposition and judgment. The trial court subsequently denied KGR's motion for reconsideration.

II. ANALYSIS

A. STANDARD OF REVIEW

This Court reviews de novo a trial court's decision on a motion for summary disposition. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). Under MCR 2.116(C)(10), the motion tests the factual adequacy of a complaint and must be supported by affidavits, depositions, admissions, or other documentary evidence. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). The trial court in deciding the motion must view the substantively admissible evidence submitted up to the time of the motion in a light most favorable to the party opposing the motion. *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d

817 (1999). Summary disposition may be granted if there is no genuine issue of any material fact, and the moving party is entitled to judgment as a matter of law. *West*, 469 Mich at 183. "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Id*.

Questions of law pertinent to this appeal, including the interpretation of statutes and the terms of a contract, are reviewed de novo. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463, 480; 663 NW2d 447 (2003); *Gen Motors Corp v Dep't of Treasury*, 290 Mich App 355, 369; 803 NW2d 698 (2010).

B. THE THIRD-PARTY COMPLAINT

KGR first argues that the trial erred dismissing its third-party complaint because it had not been served with a notice to quit and therefore had an ongoing right of exclusive possession when its personal property was seized during a wrongful trespass. We disagree. The trial court correctly ruled that whether KGR was served with a notice to quit the premises was not material to determine whether under the undisputed facts KGR's trespass claim failed as a matter of law.

MCL 600.5714, on which KGR relies, provides for summary proceedings to recover possession of premises when a tenant "holds over." KGR's reliance on this statute is misplaced for several reasons. First, recovery of possession of the premises from KGR was unnecessary because months before the alleged trespass, KGR had voluntarily vacated the premises. Undisputed evidence shows that KGR had vacated the building by June 7, 2010, and did not maintain the premises or keep it secured. Thus, it was unnecessary for HZ or AJZ, after purchasing the property, to serve a notice to quit or to initiate summary proceedings because KGR had already vacated the premises months before.

More importantly, KGR fails to present any argument or legal authority to support the proposition that the failure to serve a notice to quit on a former tenant, after the tenant has voluntarily vacated the premises, confers any possessory rights whatsoever on the former tenant. Likewise, KGR does not cite any authority for the premise of its argument that a tenant maintains a possessory interest in formerly leased premises, after the lease has expired and the tenant has vacated the premises, by leaving personal property at the unsecured premises. "It is not sufficient for a party 'simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.'" *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100, 105 (1998) (citation omitted); see also *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999) ("[W]here a party fails to cite any supporting legal authority for its position, the issue is deemed abandoned.").

The trial court correctly concluded that the failure to serve a notice to quit on KGR was immaterial to whether its trespass claim could survive third-party defendants' motion for summary disposition. To recover for trespass to land, a plaintiff must prove "'an unauthorized direct or immediate intrusion of a physical, tangible object onto land over which the plaintiff has a right of exclusive possession.'" *Terlecki v Stewart*, 278 Mich App 644, 654; 754 NW2d 899 (2008), quoting *Adams v Cleveland-Cliffs Iron Co*, 237 Mich App 51, 67; 602 NW2d 215 (1999). Furthermore, the trespasser "must intend to intrude on the property of another without

authorization to do so." *Cloverleaf Car Co v Phillips Petroleum Co*, 213 Mich App 186, 195; 540 NW2d 297 (1995).

Here, the undisputed evidence established that third-party defendants were authorized to enter the premises by their purchase agreement with the owner of the property. Consequently, the undisputed facts show that KGR could not prove any entry by third-party defendants was unauthorized. Further, the undisputed evidence disclosed that KGR did not have the exclusive right to possession of the premises. Actually, KGR had no legal rights to possess the premises and had abandoned possession of the premises long before any alleged trespass. As a result, the trial court correctly ruled that, notwithstanding the fact that KGR was not served with a notice to quit, KGR's trespass claim failed as a matter of law.

Next, KGR argues that the trial court erred by ruling it lacked standing to assert a conversion claim regarding personal property it left at the Stadium Drive premises. KGR argues that at the time of the wrongful act of dominion, it had ownership, possession, or the right to the possession of the property located at the Stadium Drive premises, thus giving it standing to bring a claim for conversion.[4] We agree but nevertheless affirm the trial court.

First, we note that the trial court correctly determined that KGR lacked standing to assert claims regarding property that it did not own, possess, or have a right to possess, i.e., property to which the bank's security interest did not attach. With respect to KGR's claim for conversion of property to which it formerly held title, the trial court erred by reasoning that KGR lacked standing or was not the real party in interest, MCR 2.201(B). But the trial court properly granted third-party defendants' summary disposition, not least because KGR could not prove it suffered anything other than nominal damages. Moreover, additional reasons justifying the trial court's ruling include abandonment and lack of proof that third-party defendants converted the property or acted wrongfully. This Court will affirm a trial court's decision if it reaches the correct result, even if it does so for the wrong reason. *Burise v City of Pontiac*, 282 Mich App 646, 652 n 3; 766 NW2d 311 (2009).

MCR 2.201(B) provides that "[a]n action must be prosecuted in the name of the real party in interest . . . ." The real party in interest is a party "'who is vested with a right of action in a given claim, although the beneficial interest may be with another.'" *MOSES, Inc v SEMCOG*, 270 Mich App 401, 415; 716 NW2d 278 (2006)(citation omitted). In general, standing requires not only that a party have a sufficient interest in the outcome of litigation to ensure vigorous advocacy, but also have "'in an individual or representative capacity some real interest in the cause of action, or a legal or equitable right, title, or interest in the subject matter of the controversy.'" *Bowie v Arder*, 441 Mich 23, 42; 490 NW2d 568 (1992), quoting 59 Am Jur 2d, Parties, § 30, p 414 (1987 ed). Under the current iteration of the doctrine of standing, "a litigant has standing whenever there is a legal cause of action." *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 372; 792 NW2d 686 (2010). Further, a litigant has standing "if the litigant

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[4] KGR presents no argument regarding its other tort theories resulting in abandonment of those claims. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002).

has a special injury or right," or a substantial interest that will be detrimentally affected in a manner different from the general citizenry. *Id*. A plaintiff must assert his own legal rights and cannot rest his claim to relief on the rights or interests of third parties. *Barclae v Zarb*, 300 Mich App 455, 483; 834 NW2d 100 (2013).

A tort action for the conversion of personal property exists at common law[5] and by statute, MCL 600.2919a. See *Dep't of Agriculture v Appletree Marketing, LLC*, 485 Mich 1, 9-10, 13-14; 779 NW2d 237 (2010). "Conversion is any distinct act of dominion wrongfully exerted over another's personal property inconsistent with, or in denial of, the owner's interest in that property and it occurs at the point that such wrongful dominion is asserted." *Gum v Fitzgerald*, 80 Mich App 234, 238; 262 NW2d 924 (1977). Acts of conversion include:

> "(a) intentionally dispossessing another of a chattel,
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> "(b) intentionally destroying or altering a chattel in the actor's possession,
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> "(c) using a chattel in the actor's possession without authority so to use it,
>
> "(d) receiving a chattel pursuant to a sale, lease, pledge, gift or other transaction intending to acquire for himself or for another a proprietary interest in it,
>
> "(e) disposing of a chattel by a sale, lease, pledge, gift or other transaction intending to transfer a proprietary interest in it,
>
> "(f) misdelivering a chattel, or
>
> "(g) refusing to surrender a chattel on demand." [*Thoma v Tracy Motor Sales, Inc*, 360 Mich 434, 438; 104 NW2d 360 (1960), quoting 1 Restatement, Torts, § 223.]

As to the last type of conversion, a plaintiff must make "a reasonable attempt . . . to recover their property in order to establish that their right to possession has been refused." *Gum*, 80 Mich App at 239. Moreover, there can be no liability for conversion where the actor is privileged to dispose of the property. *Thoma*, 360 Mich at 438.

Here, KGR asserts claims of conversion regarding property it left at the Stadium Drive premises it vacated by the beginning of June 2010. The conversion is alleged to have occurred sometime in mid-November or early December 2010. But, any right that KGR may have had to the possession of the premises itself ended as of September 30, 2010 by both the plain terms of the sublease between KGR and GRIOC, and also those of the main lease between then owner

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[5] "Trover" was the common-law action for the conversion of personal property. *Dep't of Agriculture v Appletree Marketing, LLC*, 280 Mich App 635, 643; 761 NW2d 277 (2008), rev'd 485 Mich 1 (2010).

CNL and GRIOC. Moreover, the terms of KGR's lease provided that "[a]ll property of [KGR] remaining on the Premises after the termination of the term hereof shall be deemed to have been abandoned[.]" Consequently, because KGR lacked a possessory interest in the premises, it failed to maintain a possessory interest in any personal property left at the premises, especially in light of the plain terms of the lease.

KGR presents an unavailing argument that it maintained a possessory interest in the premises because it was attempting to sell its "equipment and liquor license," from June to September 2010, to prospective new tenants. KGR's effort to sell equipment does not establish where the equipment was located, or that KGR maintained possession of the equipment. Similarly, KGR's belated efforts to conduct an online auction of personal property that may have been located on the premises does not establish a possessory interest in the premises, even if KGR held an ownership interest or title to the personal property. KGR fails to cite any authority for the proposition that leaving property at formerly leased premises that has been vacated creates or maintains a possessory interest in the premises. The mere statement of an issue without authority is insufficient to properly bring a matter before the Court. *Wilson*, 457 Mich at 243. And, where here, a party fails to cite any supporting legal authority for its position, the issue is deemed abandoned. *Prince*, 237 Mich App at 197.

Based on the foregoing analysis, KGR held no legal or equitable right, title, or possessory interest in any personal property it left at the premises it vacated in May or June 2010 and to which Chase did not hold a security interest. As to this property, the trial court correctly concluded that KGR was not the real party in interest, MCR 2.201(B), and it lacked standing to assert a claim of conversion. *Bowie*, 441 Mich at 42. Although a cause of action might exist if the property were wrongfully converted, *Lansing Sch Ed Ass'n*, 487 Mich at 372, the cause of action did not belong to KGR. Because KGR was not in possession of the property, asserted no right to possession that was wrongfully interfered with, and also had no basis for asserting that it had suffered a special injury, it lacked standing. *Id.*; *Barclae*, 300 Mich App at 483. KGR could not assert the rights of others because it possessed the property at some point in the past.

Regarding the personal property that KGR owned and had a right to possess, even though Chase held a security interest in the property, KGR possessed a statutory and common law cause of action for the wrongful exercise of dominion over the property by another. MCL 600.2919a; *Appletree Marketing*, 485 Mich at 9-10, 13-14. Thus, at the time KGR filed its third-party complaint, it held legal title to the property and possessed a cause of action for its conversion, which occurs at the point of wrongful dominion, *Gum*, 80 Mich App at 238. Thus, KGR had standing to bring its third-party complaint for conversion. *Lansing Sch Ed Ass'n*, 487 Mich at 372; *Bowie*, 441 Mich at 42. Nevertheless, for a variety of reasons, the trial court correctly granted summary disposition to third-party defendants.

First, there is a dearth of evidence that third-party defendants ever came into possession of the property that KGR claims third-party defendants converted. The property was essentially abandoned months before third-party defendants lawfully gained access to the Stadium Drive premises and lawfully took possession of the premises as its new owner. Thus, there is no evidence that third-party defendants ever wrongfully came into possession of the property. Under KGR's sublease, any property left behind was deemed abandoned. To establish actionable conversion the actor must wrongfully exercise of dominion over another's personal

property inconsistent with, or in denial of, the owner's interest in the property. *Gum*, 80 Mich App at 238. Furthermore, there can be no liability for conversion where the actor is privileged to dispose of the property. *Thoma*, 360 Mich at 438. Here, third-party defendants did not wrongfully come into possession of the property and under the terms of KGR's sublease, could consider the property abandoned for the purpose of disposing of it.

Second, to the extent that KGR produced evidence that third-party defendants wrongfully converted certain property by selling it for less than $5,000, the trial court's order granting Chase a claim and delivery order for its possession eliminated any claim of KGR for anything more than nominal damages. KGR argues, citing *Hall v Schoehnwetler*, 239 Conn 553; 686 A2d 980 (1966), that third-party defendants cannot defend against an action for conversion by asserting that a third person is the true title holder. But, contrary to KGR's argument, third-party defendants can assert the rights of Chase because third-party defendants established privity with Chase through purchase. "In a suit by a possessor of property against a converter, the converter may not defend by asserting that a third person is the true title holder of the property *unless the converter is in privity of title with the third person*." *Id*. at 563 (emphasis added).

In addition, because KGR lost title to the property via the trial court's claim and delivery order, it could no longer maintain a suit for damages for its alleged conversion by third-party defendants. *Brady v Whitney*, 24 Mich 154, 156 (1871). In that case, Whitney brought an action for the conversion of a melodeon, which at some point before or after filing suit, he sold to a third person. The Court held that Whitney lost his right to all but nominal damages for the alleged conversion. The Court noted the general rule that if a party were awarded damages for the conversion of property (trover), title to the property would pass to the defendant by the judgment or payment. *Id*. In the case of the melodeon that Whitney sold, the Court opined that the most that could be recovered "would be nominal damages only, unless there has been some special damage caused by the taking and detention." *Id*.

In the present case, title to the personal property passed to Chase not by purchase and sale but by order of the trial court enforcing Chase's security interest. The principle remains, however, that unless KGR can establish special damages that occurred before title passed to Chase, who sold its interest in the property to third-party defendants, KGR could obtain only nominal damages at most. *Id*.; see also *Wilcox v Morton*, 132 Mich 63, 65; 92 NW 777 (1902) (when property ceased to be the property of the plaintiff "if there was a prior technical conversion, the plaintiff was entitled to recover no more than nominal damages, if anything").

KGR argues that it should have been permitted to pursue its conversion claim for exemplary and treble damages. This argument fails. First, KGR has the burden to prove its claim for damages, which cannot be based on mere speculation and conjecture. *Central Transport, Inc v Fruehauf Corp*, 139 Mich App 536, 546; 362 NW2d 823 (1984). To obtain treble damages under either a statutory or common law claim, KGR must establish that it suffered actual damages before those damages may be trebled. "A person damaged" by someone "converting property to the other person's own use" "may recover 3 times the amount of *actual damages* sustained[.]" MCL 600.2919a(1)(a). Similarly, at common law, only proven damages were subject to being trebled. See *Carman v Scott*, 172 Mich 44, 50; 137 NW 655 (1912), and *Mattice v Brinkman*, 74 Mich 705, 710; 42 NW 172 (1889).

With respect to exemplary damages, which may be obtained in some cases of conversion, *Appletree Marketing*, 485 Mich at 16, the undisputed material facts establish that KGR was entitled to none. Exemplary damages in Michigan "are recoverable as compensation to the plaintiff, not as punishment of the defendant." *Kewin v Massachusetts Mutual Life Ins Co*, 409 Mich 401, 419; 295 NW2d 50 (1980). The purpose of exemplary damages is to make the injured party whole by providing recovery only for intangible injuries such as injuries to feelings. *Unibar Maintenance Services, Inc v Saigh*, 283 Mich App 609, 630; 769 NW2d 911 (2009). Where the injuries are purely pecuniary and compensatory damages make the complaining party whole, exemplary damages are not allowed. *Id.*; *Law Offices of Lawrence J Stockler, PC v Rose*, 174 Mich App 14, 45; 436 NW2d 70 (1989). Although a corporation cannot have injured feelings, it may obtain exemplary damages for non-pecuniary injuries that are incapable of precise calculation. *Unibar*, 283 Mich App at 631; *Joba Const Co, Inc v Burns & Roe, Inc*, 121 Mich App 615, 643; 329 NW2d 760 (1982). Such intangible injuries to a corporation may include "loss of reputation as a skillful company" or "loss of good will." *Unibar*, 283 Mich App at 631. Here, KGR had ceased doing business and was attempting to sell its assets when the alleged conversion occurred. Under these circumstances, KGR has alleged no basis for intangible injuries, and there is no evidence that would justify an award of exemplary damages.

Moreover, to justify an award of exemplary damages, the conduct of the defendants causing the injuries must have been willfully malicious and wanton. See *Kewin*, 409 Mich at 419 (injuries must be maliciously, willfully and wantonly inflicted); *Yamaha Motor Corp, USA v Tri-City Motors and Sports, Inc*, 171 Mich App 260, 281; 429 NW2d 871 (1988) (to justify exemplary damages the defendants conduct must have been in "wanton and reckless disregard of the plaintiff's rights"). Thus, to justify exemplary damages, the defendant's actions "must be malicious or so willful and wanton as to demonstrate a reckless disregard of plaintiff's rights." *Veselenak v Smith*, 414 Mich 567, 574-575; 327 NW2d 261 (1982). Third-party defendants' acts regarding property presumptively abandoned in the building they had just purchased do not establish the willful and wanton action necessary to support an award of exemplary damages.

In sum, although KGR had standing to assert its third-party complaint for conversion as to property to which it held legal title, after legal the trial court's claim and delivery order transferred title to Chase, KGR at most could obtain only nominal damages. *Brady*, 24 Mich at 156. For the same reason, KGR cannot establish actual damages subject to being to be trebled. MCL 600.2919a(1)(a); *Carman*, 172 Mich at 50. Furthermore, the undisputed evidence establishes KGR has no claim for exemplary damages. *Kewin*, 409 Mich at 419; *Unibar*, 283 Mich App at 630-631. A judgment for the defendant regarding alleged conversion of property will be affirmed "where it appears that plaintiff is entitled to no more than nominal damages." *Wilcox*, 132 Mich at 64. Thus, in this case, while KGR may have initially had standing to bring its third-party complaint, the trial court properly granted summary disposition to third-party defendants after Chase was awarded the property because KGR could no longer prove damages. This Court will affirm the trial court when it reaches the correct result, even if it does so for the wrong reason. *Burise*, 282 Mich App at 652 n 3.

Finally, KGR asserts that summary disposition premature because further discovery was necessary. We disagree.

Summary disposition under MCR 2.116(C)(10) is premature when it is granted before discovery on a disputed material issue of fact is complete. *Marilyn Froling Revocable Living Trust v Bloomfield Hills Country Club*, 283 Mich App 264, 292; 769 NW2d 234 (2009). But "the mere fact that the discovery period remains open does not automatically mean that the trial court's decision to grant summary disposition was untimely or otherwise inappropriate." *Id*. The pertinent question is whether a party through further discovery has a fair chance of uncovering factual support for its position. *Id*.; *Liparoto Constr Co v Gen Shale Brick, Inc*, 284 Mich App 25, 33-34; 772 NW2d 801 (2009). Of course, the very purpose of summary disposition is to avoid extensive discovery and proceedings when a case can be quickly resolved as an issue of law. *Shepherd Montessori Ctr Milan v Ann Arbor Twp*, 259 Mich App 315, 324; 675 NW2d 271 (2003).

Here, KGR presents no meaningful argument regarding how deposing additional potential witnesses would lead to admissible evidence to assist it in establishing its third-party claims of trespass and conversion. In the trial court, KGR offered no more than vague assertions that the proposed deponents knew what other people were doing. Vague generalities are insufficient to establish a fair probability that further discovery would lead to evidence to create a material question of fact regarding KGR's third-party claims. *Froling Living Trust*, 283 Mich App at 292-293; *Liparoto Constr Co*, 284 Mich App at 34. Rather, for the reasons previously stated, the undisputed evidence established that third-party defendants were entitled to judgment as a matter of law, MCR 2.116(C)(10), and the trial court properly put an end to further discovery. *Shepherd Montessori Ctr*, 259 Mich App at 324.

C. THE COLLECTION ACTION

KGR argues that for it to be liable on the 2006 loan the supporting documents must have been signed by its agent or representative, citing MCL 440.3401. Further, KGR argues that the documents were signed by Ronald Johnston without a disclosed corporate capacity, creating an ambiguity and a material issue of fact for trial. Defendant additionally argues that if the 2006 note is unenforceable against JGR, then the commercial security agreement of October 7, 2004 that JGR signed, on which Chase based its claim and delivery count regarding equipment that KGR possessed, likewise cannot be enforced. We disagree.

The main goal of contract interpretation is to enforce the parties' intent as expressed in their written agreement. *Burkhardt v Bailey*, 260 Mich App 636, 656; 680 NW2d 453 (2004). An unambiguous contract must be enforced according to its terms. *Id*. Whether contract language is ambiguous and requires resolution by the trier of fact is a question of law reviewed de novo on appeal. *Klapp*, 468 Mich at 463. A contract is ambiguous if it permits two or more reasonable interpretations, or if one provision cannot be reconciled with another. *Woodington v Shokoohi*, 288 Mich App 352, 374, 792 NW2d 63 (2010). Thus, where a contract is subject to two reasonable interpretations, factual development is necessary and summary disposition is inappropriate. *Meagher v Wayne State Univ*, 222 Mich App 700, 722; 565 NW2d 401 (1997).

KGR's argument is without merit. The plain and unambiguous terms of the 2006 note provide that JGR is the borrower; the note is signed on behalf of JGR by Ronald Johnston, the only authorized signer for JGR. Further, by not specifically denying the allegation in plaintiff's

complaint that JGR "executed and delivered" the 2006 note to Chase, and supporting the denial with an affidavit, JGR and KGR admitted the signature of JGR on the 2006 note.

KGR relies for its argument on this issue on MCL 440.3401(1), which provides: "A person is not liable on an instrument unless (*i*) the person signed the instrument, or (*ii*) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under section 3402." Here, JGR signed the note by its undisputed authorized signer, Ronald Johnston; consequently, JGR is liable on the note under MCL 440.3401(1)(*i*). JGR is also liable under subsection (*ii*) when § 3402 is considered. MCL 440.3402(1) provides in pertinent part that "[i]f a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person *or the name of the signer*, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract." Here, Johnston signed the 2006 note, which is clearly identified as the note of JGR, with his own signature and acting as JGR's authorized representative. JGR as the represented person is bound.

KGR also argues that lack of Johnston's corporate title on the 2006 note creates an ambiguity requiring a trial to resolve. This argument also fails. The note plainly and unambiguously is the note of JGR and must be enforced as written. *Burkhardt*, 260 Mich App at 656. The only possible ambiguity created by the failure to state Johnston's corporate title relates to whether Johnston is personally liable on the note. If Johnston's title had been listed, he could not be held personally liable on the note. MCL 440.3402(2)(a) provides, "If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument." Assuming not stating Johnston's corporate title creates an ambiguity regarding Johnston's status as a representative, he could be liable to a "holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument." MCL 440.3402(2)(b). Because plaintiff only sued JGR on the note, whether Johnston also signed the note in his individual capacity, is not material to JGR's liability or the liability of KGR under its guarantee. Thus, the trial court properly granted plaintiff summary disposition.

Furthermore, defendants never placed the validity of JGR's signature on the 2006 note in issue. MCR 2.112(E)(1) provides, "[i]n an action based on a written instrument, the execution of the instrument and the handwriting of the defendant are admitted unless the defendant specifically denies the execution or the handwriting and supports the denial with an affidavit filed with the answer." Here, both JGR and KGR failed to deny with a supporting affidavit that the signature of Johnston on the 2006 note was the authorized signature of JGR. Thus, the execution of the 2006 note by JGR was admitted in the pleadings. This result is reinforced by MCR 2.111(E)(1), which provides: "Allegations in a pleading that require[] a responsive pleading, other than allegations of the amount of damage or the nature of the relief demanded, are admitted if not denied in the responsive pleading." Here, JGR and KGR failed to deny the allegation that JGR executed the 2006 note, to which a response was required by MCR 2.112(E)(1). Therefore, KGR's and JGR's failing to deny the allegation results in KGR's and JGR's admitting that JGR executed the 2006 note. *Id*.

Finally, KGR asserts that Chase forged Mrs. Johnston's signature on certain mortgages in 2004 and 2006, and improperly asserted setoff against an account of JGR, and these acts

constitute bad faith and breaches of the implied covenant of good faith imposed under MCL 440.1203, [6] thus rendering the loan transactions at issue in this case void. KGR's argument presents questions of law related to statutory interpretation and is therefore reviewed de novo. *Gen Motors Corp*, 290 Mich App at 369.

KGR's argument fails for lack of a logical argument and legal authority supporting its claim that alleged breaches of the obligation of good faith imposed under the UCC with respect to other transactions not at issue in the present case and involving another party (JGR) and a nonparty (Mrs. Johnston) could possibly affect plaintiff's ability to obtain judgment against KGR on the notes, security agreements, and guarantees that KGR signed. "It is not sufficient for a party 'simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.'" *Wilson*, 457 Mich at 243 (citation omitted). "And, where a party fails to cite any supporting legal authority for its position, the issue is deemed abandoned." *Prince*, 237 Mich App at 197.

III. CONCLUSION

For the reasons discussed in Part II (B), while we agree that defendant had standing to assert its third-party claim for conversion with respect to personal property it owned that remained at the Stadium Drive premises, we also conclude that the trial court properly granted third-party defendants summary disposition after the bank prevailed as to the Kalamazoo collateral in the underlying collection action. We will affirm the lower court when it reaches the correct result even if we do not entirely agree with all the lower court's reasoning.

For the reasons discussed in Part II (C), we affirm the trial court's rulings in the underlying collection action. Specifically, we affirm the trial court's grant of summary disposition to Chase and the issuance of an order for claim and delivery of collateral.

We affirm. As prevailing parties, plaintiff and third-party defendants may tax their respective costs. MCR 7.219.

/s/ David H. Sawyer
/s/ Jane E. Markey
/s/ Cynthia Diane Stephens

[6] "Every contract or duty within [Michigan's UCC] imposes an obligation of good faith in its performance or enforcement." This provision is now MCL 440.1304. See 2012 PA 86.