STATE OF MICHIGAN

IN THE 20th CIRCUIT COURT FOR THE COUNTY OF OTTAWA
SPECIALIZED BUSINESS DOCKET
414 Washington Street
Grand Haven, MI 49417
616-846-8315

* * * * *

CASSIDY RAE STUDIO, LLC, a Michigan Limited Liability Company, and **CASSIDY RAE DO**, an Individual,
Plaintiffs,

v

MICHAEL BOCKS, an Individual, and **SOF HOLLAND TOWN CENTER, LLC**, a Virginia Limited Liability Company,
Defendants.
/

TRIAL OPINION AND ORDER

File No. 17-5093-CB

Hon. Jon A. Van Allsburg

Michael Villar (P46324)
Attorney for Plaintiffs

Ronald J. Vander Veen (P33067)
Attorney for Defendants

At a session of said Court held in the Ottawa County Courthouse in the City of Grand Haven, Michigan, On the 12th day of September, 2018
PRESENT: HON. JON A. VAN ALLSBURG, CIRCUIT JUDGE

Plaintiff Cassidy Rae Do ("Cassidy") and her single-member limited liability company, Cassidy Rae Studio, LLC ("Studio"), seek damages against defendants Michael Bocks ("Bocks") and SOF Holland Town Center, LLC ("SOF") on a variety of contract and tort grounds, arising out of plaintiffs' claim of ownership of various trade fixtures. Defendants are the plaintiffs' property manager and lessor, respectively, and are alleged to have improperly claimed ownership of the same items of property and thereby caused the failure of a pending sale of the plaintiff business' assets. Plaintiffs' complaint alleged a breach of contract, unjust enrichment,[1] tortious interference with a business relationship, and conversion, and requested a declaratory judgment and injunctive relief. Defendants answered and filed a counter-claim for conversion.

The Court concludes that the trade fixtures at issue are plaintiffs' property and awards damages to plaintiff for conversion and breach of contract. The Court finds no cause for action for plaintiffs' tort claim or defendants' conversion claim, and declines further declaratory or injunctive relief.

[1] The unjust enrichment count was dismissed by summary disposition on January 31, 2018.

RELEVANT FACTS AND EVIDENCE

The Negotiation and Execution of the Lease Agreement

On July 3, 2012, Cassidy Rae Do, as owner of Cassidy Rae Studio, LLC (a salon), signed a lease agreement with SOF for the lease of premises located in Holland, MI (Lease Agreement, Defendants' Exhibit A). Bocks testified that at that time he was a licensed residential building contractor[2] and acted as property manager for the Holland Town Center property for SugarOak Management Services, LLC, the property manager for the owner, SOF Holland Town Center, LLC (both of which entities are located in Herndon, Virginia). Bocks did not receive direct compensation for handling SOF's negotiations with plaintiffs or other tenants. Instead, he received compensation as a builder[3] when performing construction projects on the SOF property for either the landlord or the tenants. He testified that as delayed compensation for his services to SOF, he and SOF agreed in February 2018 that he will receive a conveyance of 24 acres of land adjacent to the Holland Town Center and fronting on James Street (which he says is mostly wetlands). The property currently has a building on it used by the adjacent Dutch Village business as an office.

Drew Durham testified that he was the marketing manager for SOF in 2012 when Cassidy negotiated and entered into her Lease Agreement. He is a real estate agent, employed by Colliers International for the past seven years. Colliers received a fee of $1,500.00 per month for his services, which ended in July 2015. He noted that when SOF purchased the Holland Town Center, it had 50 empty rental spaces, and only seven spaces were occupied.[4] At the time Cassidy leased her space, there were still 20 vacant lease spaces. He attended one pre-lease negotiation meeting with Cassidy and Bocks, where the scope of work necessary to transform the proposed lease space from a "white box" into a studio was discussed. He did not have a specific recollection of the terms of the Landlord's Work or the Guaranty, but did not recall the value of the Landlord's Work being referred to as a "loan." The Lease Agreement itself was drafted by SugerOaks in-house counsel, with direct involvement by Bocks. After the lease was signed, he had no further involvement other than to refer Cassidy to Bocks when she had a lease-related question, and to talk briefly with Cassidy's husband in November 2017 after the lease had expired.

Cassidy's brother-in-law, Mitchell Paul de Boer, testified that he introduced Cassidy to Bocks about 4-6 months before the Lease Agreement was executed, as his wife then had a business located in the Holland Town Center. He attended the first two pre-lease meetings between Cassidy and Bocks when the build-out of the proposed rental space was discussed. He

[2] Bocks noted that a license is not required for his commercial contracting work.

[3] Usually in the form of a construction fee based on a percentage of the construction cost (ranging from 7% to 15%).

[4] Bocks described the Holland Town Center as a "dead mall" when SOF purchased it (i.e., in a poor state of repair with low occupancy).

was vague as to exactly what was said in the course of these two meetings, but clearly recalled that the cost of the proposed Landlord's Work (the "build-out") was discussed as a loan to Cassidy. He agreed that when he first read the actual lease agreement, over a year ago, the lease terms did not match those pre-lease discussions.

Cassidy testified that she met Bocks through her brother-in-law Mitchell and his wife Candace about 4-6 months before signing the Lease Agreement. She was then running her salon in a second-floor rental space in downtown Holland. Her rental space was too small, and she was coming to the end of her lease term. However, she did not have the funds to expand, and said so to Bocks and her brother-in-law in one of their initial meetings. She said that was when Bocks offered to extend $60,000 of the landlord's money to build-out the lease space, which she could then "pay back" through lease payments. She noted that Bocks was the first person to suggest the $60,000 number. She told him that she wanted to buy additional salon chairs, sinks, shelves, a facial machine, a shower facility, and a color bar.[5] She acknowledged that Bocks never used the term "loan" specifically, but he did make an analogy to the build-out finds being like a home equity loan, and said to her, "we'll be like a bank."

Bocks did not recall whether he ever made the "home equity" analogy to Cassidy, but denied that he told Cassidy that SOF was making a loan. He recalled Cassidy saying she needed a loan because she didn't have enough money to equip the salon. Bocks said he told her that SOF wouldn't make a loan, but would put money in an account for improvements. He denies telling Cassidy that the salon would own these items.

As they negotiated the terms of the proposed lease, Cassidy testified that Bocks told her that her rent would be higher due to the build-out expenses being paid by SOF, and told her that her personal guaranty was to secure repayment of that expense.[6] She said she was initially confused about the personal guaranty, and concerned about her ability to retain ownership of the trade fixtures. She read the lease before signing it (and sought some help to go through it), and she did not ask for any changes. She acknowledges that the word "loan" does not appear either in the Lease or the Guaranty, but says she was satisfied that she would be able to retain ownership of her trade fixtures. The parties signed the Lease Agreement on July 3, 2012.

The Lease Agreement provided that it would expire on July 31, 2017, and required plaintiffs to pay gradually increasing rental rates over the approximate five-year term (Lease Agreement, Exhibit A). Section 4 of the Lease provided that SOF would perform "Landlord's

[5] The "color bar" is a six-foot tall piece of furniture (the largest item of all the disputed "trade fixtures") with a sink and countertop on one side and cabinets and storage space on the other side. It was used for all hair coloring activity, and was built on-site by Bocks. Cassidy designed it to be wheelchair-friendly, and to "make a statement" about her salon. It contains lighting, as well as plumbing for a sink which had been given to Cassidy and brought by her to the SOF location. It was "affixed" to the lease premises through its electrical and plumbing connections.

[6] Both Cassidy and Bocks testified that the lease Guaranty was fully satisfied at the point when her accumulated monthly lease payments totaled $60,000.00.

Work" on the rental premises not to exceed $60,000 (as described in Exhibit B to the Lease), and further provided that "[a]ny additions to, or alterations of, the Premises, *except trade fixtures*, shall upon expiration or termination of the Lease Term become a part of the realty and belongs to the Landlord [SOF]." (Exhibit A, Sec. 4) (emphasis added). However, the lease also provided that if the studio defaulted on the lease by failing to pay rent (or triggering another listed contractual default), the default would "entitle Landlord to terminate this Lease and the Lease created hereby by giving notice of such election to Tenant, and Landlord may reenter and take possession of the Premises and all goods, inventory, equipment, *fixtures* and all other personal property of Tenant which is located in the Premises" (Exhibit A, Sec. 19) (emphasis added).

Attached to the lease was a personal guaranty signed by Cassidy Rae Do, which provided that in "consideration of the foregoing of mutual promises of the parties hereto, and of other good and valuable consideration," she would personally guaranty to SOF the payment of rents up to a maximum of $60,000 (Exhibit A, Guaranty is attached as Exhibit D to Lease Agreement).

The Lease Space Build-Out

During the build-out of the lease space, Bocks initially constructed the interior walls and half-walls shown on Exhibit B to the Lease Agreement (the Lease premises comprised a portion of a previously larger lease space), and relocated the front entrance and windows to accommodate the lease premises. Bocks constructed the color bar, reception desk,[7] and remaining build-outs (as shown on Exhibit B to the Lease) during the months of July and August 2012. However, the lighting on the color bar wasn't completed for almost three years. On September 17, 2012, because the Landlord's Work had not been completed, the Studio and SOF amended the July 3, 2012 lease to add a month of rent-free use of the premises, and to extend the expiration of the lease to September 30, 2017 (Exhibit B, First Amendment to Lease, September 17, 2012).

On August 1, 2012, several orders were placed by Cassidy with providers of salon equipment. The first was for a black dual dryer chair with box dryers with SalonGuys.com, at a price of $1,193.03 including shipping (Exhibit E). The second was to Minerva Beauty, Inc., for four hydraulic styling chairs and mobile styling stations,[8] as well as a skin care package including a facial bed with hydraulic base, skin care machine, sanitizer, hot towel cabinet, and other accessories, at a price of $5,030.00 including shipping (Exhibit F). These were shipped to Cassidy Rae Studio, and the parties agree that the invoices were turned over to Bocks and paid from the $60,000 fund designated in the Lease as "Landlord's Work." Cassidy testified that she made the decision to buy Minerva products, and Bocks left that decision to her, saying, "you know how much money we have to lend you."

[7] Cassidy said the reception desk was built to fit the lease space, and to be wheelchair-friendly. It is "affixed" to the lease space only through its electrical connection.

[8] Cassidy already owned two chairs and work stations, which she moved from her former salon.

Cassidy designed two signs for her salon, one with white vinyl letters on a brushed aluminum base, and a second with stainless steel letters/logo on a black acrylic base. These were invoiced to SOF Holland Town Center LLC by invoices dated August 27, 2012 and October 8, 2012, respectively, at a total cost of $1,547.65, and paid for out of the "Landlord's Work" fund. Cassidy testified that she wanted to have lighted signs made, but was warned by Bocks that she didn't have enough money left in her build-out fund, so she decided to forego the lighting. Bocks agreed that he may have told Cassidy that "her money was gone."

On September 10, 2012, Bocks, acting through Dutch Village (the business adjacent to the Holland Town Center which provides maintenance services to SOF), submitted an invoice to "Sugar Oak Corporation" for $15,273.68 in remodeling and renovation expenses for the Studio space (known as Space B60) as well as the newly-created space (Space B65) next to it (Exhibit C). With respect to the Studio's space, the invoice included floors ($1,621.00), the color bar ($3,000.00), the reception desk ($1,000.00), mirrors and cabinets ($1,294.26), telephone/sound system ($779.88), light fixtures ($593.54), and finish carpentry and miscellaneous labor ($4,000.00), for a total cost of $12,288.68.

On September 18, 2012, Cassidy Rae Salon was invoiced by Accurate Sheet Metal for stainless steel countertops designed to fit the color bar, in the amount of $661.97. Finally, on October 9, 2012, Cassidy purchased a variety of mirrors, lighting, bulbs, and shelving units for the Studio at Ikea. She presented both of these invoices to Bocks for reimbursement from the "Landlord's Work" build-out account, which Bocks paid on behalf of SOF.

After the build-out was complete and the salon was operational, Cassidy testified that she has had a few warranty claims and maintenance expenses with respect to the trade fixtures claimed by her, and she has always dealt with those issues as the owner of the fixtures, including assuming the expense of any maintenance costs.[9]

Cassidy testified that she never received a final breakdown of the $60,000.00 allocated to "Landlord's Work," and is unsure whether that amount was actually spent. Bocks testified that the actual cost of the build-outs came to $99,000.00, of which $87,000 was allocated to the Studio space (space B60). However, Bocks also acknowledged that he sent an email to Cassidy on August 23, 2017 (Exhibit T) claiming that over $78,000 was spent on the Studio space. The discrepancy was not clarified.

Post-Lease Performance and Discussions

Cassidy's husband, Luu Crung Do, Jr. ("Luu"), was in the military and overseas on active duty when the Lease Agreement was negotiated and signed. He returned home in October 2012. Shortly thereafter, he talked to Bocks about finishing the flooring in two of the back rooms of the

[9] The Lease Agreement between the parties allocates all maintenance expenses to the tenant in any event (Lease Agreement, Section 10).

Studio and installing the shower, which were not completed. He testified that Bocks told him that the fund for "Landlord's Work" was gone, and referred to that as "her [Cassidy's] money," saying that "her money ran out." Luu then used funds from his deployment compensation to pay for materials. He said Bocks offered to use his contractor's license to reduce the cost of materials, and Luu finished the flooring and installed the shower.[10]

More than a year after the commencement of the Lease term, sometime in 2014, Cassidy was dissatisfied with some items that had not been completed at the opening of the salon. She thought completion of these items would improve the ambience and the business at her salon. She approached the sister-in-law of one of her aunts, Lisa Gonzalez, who worked as a marketing executive for a title insurance company, to go with her to meet with Bocks about these issues. Lisa agreed, and testified that she and Cassidy met with Bocks a couple of times in his office. They talked about several unfinished items that gave the salon an "unfinished" look. These items included the lack of lighting in the color bar, the unfinished sections of flooring, and the lack of baseboard. She said Bocks told them that Cassidy "had spent all of her money" from the $60,000 fund, and specifically noted that Cassidy had opted to buy a facial machine instead of the other items. At the end of their first meeting Bocks agreed to provide receipts as to the disposition of the build-out funds.

At their second meeting, Lisa acknowledged that she had seen some receipts (which were passed on to her through Cassidy), but she still didn't think that SOF spent all $60,000.00. Cassidy noted that the invoices provided included expenses for both her space and the space next door, and several invoices were vague and not well-explained. Lisa agreed that Bocks never used the word "loan," but also never corrected her when she characterized the "Landlord's Work" in that way. Cassidy testified that she made clear in their meeting that she wanted to be able to move her trade fixtures whenever she moved, and Bocks never raised an objection. Lisa notes that he did, however, preface a few of his responses with the words, "While I don't necessarily agree,...." Cassidy testified that until she attempted to sell her business assets in 2017, Bocks had never said that she didn't own all of the trade fixtures. He never inspected or inquired about any of these fixtures during the five-year term of the Lease. Cassidy testified that the lighting in the color bar was finally completed in 2015, three years into the lease term.

Lease Expiration and Attempted Sale of the Studio's Assets

In mid-July 2017, with about six weeks left on her lease term, Cassidy testified that she came to the decision to get out of the salon business. She noted her lease payments were high and required her to work too much; she had missed family vacation time with her kids as a result. She first told Bocks of her decision about July 15 or 16, 2017, and then told her stylists (Rachel DeBoer, Michelle Geoghegan, and Teresa Piatek) and aestheticians (of whom there were three or

[10] Unfortunately, the shower was later found not to meet local building codes, and had to be removed.

four on staff). Rachel and Michelle were immediately interested in buying her out, and three days later they confirmed their interest.

Cassidy prepared an inventory list after doing a "walk-through" of the salon with Rachel, and used the values she had from the initial opening of the salon, which totaled $29,876.00. Because she and her husband had been depreciating all of the assets for tax purposes over the five-year term of the Lease, she and Rachel and Michelle tentatively agreed to a price of $20,000.00, which was the approximate depreciated value of the inventory.

Rachel, Michelle, and Teresa retained an attorney and formed a limited liability company under the name Black Tulip Salon & Spa, LLC ("Black Tulip"). Their attorney prepared an asset purchase agreement offering to pay $20,000.00 for the assets of the Studio in August 2017. However, Cassidy testified that about that time she sensed that the "vibe" in the salon had changed, and that Rachel and Michelle had stopped talking to her. She inquired and learned that they had questions about her ownership of the salon property. On Saturday, August 12, 2017, Cassidy emailed Bocks:

> "Hey mike the girls are asking for a written letter that states all my debts have been paid to sugaroak and I am the sole owner of my equipment and they also want the date when my lease is terminated. If you can have sugar oak write that letter early this week, we need to finalize the purchase this week, we are on a deadline. Thanks
> Cassidy
> Cassidy Rae Studio"

Mike responded on Monday, August 14, 2017, as follows:

> "Hi Cassidy,
> Sorry, just getting caught up on my weekend emails. This won't be a problem in turning something around in a few days. Question, did they do it in writing? If they did, could you send me that excerpt?
> Thanks!"

Cassidy responded that evening:

> "The purchase agreement is still being worked on so at this time it's not written. Basically a request from their lawyer. Can you have them email that to me when they can and I will give that to my lawyer. Thanks
> Cassidy
> Cassidy Rae Studio" (Exhibit 3)

Bocks next reply was on August 17, 2017, when he emailed a reply to Cassidy attaching a letter signed by Philip Nickles on Sugar Oak Management Services, LLC letterhead dated August 17, 2017, saying:

> "Dear Cassidy,
> This letter shall serve as confirmation that as of August 17, 2017, Cassidy Rae Studio's account is current and has no outstanding balance.
> Thank you.
> Sincerely,
> Philip Nickles" (Exhibit 5)

Sugar Oak's letter clearly did not address the property ownership issue. On August 19, 2018, plaintiff's attorney proposed a revised paragraph in the proposed asset purchase agreement prepared by the attorney for Black Tulip, reading, in part:

> "Seller has no knowledge of any claim SOF Holland Town Center, LLC, its successors, or its assigns (collectively, the "Lessor") may have to one or more Assets on the ground an asset is a non-trade fixture of the premises. Purchaser releases Seller from any liability arising out of any claim the Lessor may have, presently or in the future, to one or more Assets as a non-trade fixture." (Exhibit L).

This paragraph was incorporated, with other revisions, into the final draft of the Asset Purchase Agreement, according to Rachel DeBoer, who was the member of Black Tulip who was most actively involved in the negotiations with plaintiff.

Bocks followed up with a lengthy email to Cassidy the following week, on August 23, 2017 (Exhibit T) under the subject "Requested Letter," which he began with the words, "There seems to be a misunderstanding." He wrote, "You had limited funds so I got SugarOak to contribute a sum of $60,000 to be put towards a tenant improvement for you." With respect to the equipment purchases he said, "You still indicated that you needed a few items crucial to your business that you couldn't afford. I really stretched the classification of those items and purchased them for you."

Significantly, Bocks next noted, "They [the purchased items] were always in SugarOak's and my mind improvements to the suite." Bocks had testified that he had classified the expenses which were paid as "Landlord's Work," such as those noted in his handwriting on Exhibit H, so that SugarOak could amortize them for tax purposes. As to the trade fixtures in dispute, it appears that both Cassidy and SugarOak were claiming depreciation on the same assets for tax purposes. Bocks noted this confusion when he wrote:

> "... I do acknowledge that the mirrors, chairs, and styling cabinets for example could be misinterpreted as trade fixtures which the lease states are yours to remove at the end of the lease. But, that wasn't the intent. We paid for them and leased them to you. Clearly, however, the items like the built-ins (color station, reception desk, etc.) do belong to the real estate. These are definitely not yours to remove, sell, or in any way alter from their present state." (Exhibit T).

Plaintiffs retained an attorney and continued discussions, but did not resolve the ownership dispute over the trade fixtures. Bocks emailed plaintiffs' counsel on August 29, 2018, stating, in part, "We are still at odds with regards to the ownership of the improvements within Suite B-060 that Cassidy wishes to sell to Black Tulip Salon & Spa, LLC. We built and paid for the improvements at issue. Therefore, they are a part of the premises and cannot be a trade fixture." (Exhibit U).

In the meantime, plaintiffs filed suit against SOF and Bocks in this case on September 12, 2017. Cassidy continued to negotiate with the members of Black Tulip, but because tensions were rising over the property ownership dispute, Cassidy said she was asked to convey all proposals and responses through their respective attorneys.

Rachel DeBoer testified that Black Tulip was ready to close on the basis of the Asset Purchase Agreement (Exhibit L) with the condition that the closing be in escrow pending the resolution of the ownership dispute. The property at issue in that dispute had narrowed to the color bar and the reception desk,[11] and the dispute then shifted to the terms of the proposed escrow. Black Tulip's attorney had offered to serve as escrow agent for a fee of $2,500.00, and plaintiff was unwilling to pay one-half of that fee, as her attorney had offered to serve as escrow agent for no additional fee. The members of Black Tulip, however, were unfamiliar with plaintiff's attorney and therefore unwilling to agree to that offer.

It appeared that the parties had reached a tentative agreement by September 25, 2017 except for the escrow agent fee-sharing issue. A closing was scheduled for September 27, 2018, but the escrow fee issue had still not been resolved, and with the parties not speaking directly, both Cassidy and Rachel testified to feeling frustrated and ready to walk away from the deal. Rachel said her fellow Black Tulip member Michelle may have told Cassidy that they didn't have sufficient funds to close, but Rachel (in her testimony) disagreed and said they did have sufficient funds. Rachel admitted that she and her fellow Black Tulip members were not speaking with one voice at that time. Rachel also testified that the following day she had even offered to pay the entire escrow fee, but by then the deal had "fallen through."

In the meantime, also on September 27, 2017, at 3:16 p.m. following the canceled closing, SOF sent Black Tulip Salon's attorney an email stating the following:

> As you know, there is a dispute regarding ownership of the color bar and reception desk between us and Cassidy Rae Studio LLC. If the color bar and reception desk are removed for any reason by Cassidy Rae Studio LLC, we will

[11] Rachel testified that Bocks told her that SOF owned the color bar and the reception desk. Cassidy's husband Luu testified that shortly before the failed closing in late September 2017, Bocks told him that he didn't care about any of the alleged trade fixtures other than the color bar and reception desk; Bocks agrees that he may have said this.

promptly construct similar items of the same quality at landlord's cost, to substitute for them. (Exhibit 5).

By September 28, 2017, Black Tulip Salon's efforts to buy Cassidy Rae Studio had failed, and plaintiffs' attorney emailed SOF's and Bock's attorney at 5:08 p.m., saying, "It appears that the deal with Black Tulip has fallen through. The Black Tulip women have indicated that they are falling short on the cash they need to complete the deal and are packing up their personal belongings as we speak." (Exhibit K). It appears that plaintiffs' attorney was relaying the statement made by Michelle Geoghegan through Cassidy, though whether it was accurate has not been resolved.

On September 30, 2017, the last day of the Lease Agreement, Cassidy's husband arranged for all of Cassidy's personal property, including the disputed trade fixtures, to be removed from the premises at a cost of $1,600.00. He has been storing this property at a cost of $175.00 per month. Cassidy asserts that the proposed asset sale to Black Tulip broke down as a result of Bocks informing the Black Tulip Salon stylists that she did not own the disputed trade fixtures included in the asset purchase agreement. While the escrow agent fee was the final straw, that issue only arose because of plaintiffs' and defendants' dispute over ownership of the significant items of property alleged to be trade fixtures. This issue had been unrecognized and unresolved, and the dispute was first plainly recognized and expressed in Bock's email of August 23, 2017.

LEGAL ANALYSIS

1. The Law of Fixtures and Trade Fixtures

The Michigan Uniform Commercial Code defines "fixtures" as "goods that have become so related to particular real property that an interest in them arises under real property law." MCL 440.9102(oo). "Goods," in turn, are "all things that are movable when a security interest attaches. The term includes fixtures...." MCL 440.9102(qq). In *Wayne County v William G. Britton and Virginia M. Britton Trust*, 454 Mich 608, 610; 563 NW2d 674 (1997), the Michigan Supreme Court, in a condemnation case, reaffirmed the three-part test enumerated in *Morris v Alexander,* 208 Mich 387; 175 NW 264 (1919), for determining what constitutes a fixture. Property is a fixture if (1) it is annexed to the realty, whether the annexation is actual or constructive; (2) its adaptation or application to the realty being used is appropriate; and (3) there is an intention to make the property a permanent accession to the realty. The Court in *Britton*, 454 Mich 608, offered this aside in a footnote:

> "this Court notes that a trade fixture is a fixture installed on a leasehold by a tenant that the tenant may remove at the termination of the lease.... See *In re Widening of Gratiot Ave.,* 294 Mich 569, 577; 293 NW 755 (1940); 9 Michigan Civil Jurisprudence (1992 rev vol), Fixtures, § 3, pp 415-416...." *Id.*, at 612 n 2.

Two years later, in In *Outdoor Systems Advertising, Inc. v Korth*, 238 Mich App 664, 667-669; 607 NW2d 729 (1999), the Court of Appeals defined "trade fixtures" as follows:

> A trade fixture is merely a fixture which has been annexed to leased realty by a lessee for the purpose of enabling him to engage in a business. The trade fixture doctrine permits the lessee, upon the termination of the lease, to remove such a fixture from the lessor's real property. [*Michigan Nat'l Bank, Lansing v Lansing*, 96 Mich App 551, 555; 293 NW2d 626 (1980), aff'd 414 Mich 851, 322 NW2d 173 (1982).]
>
> A trade fixture is considered to be the personal property of the lessee. *Wentworth v Process Installations, Inc.*, 122 Mich App 452, 465; 333 NW2d 78 (1983). A chattel is a trade fixture if devoted to a trade purpose, regardless of its form or size. *Id.*; see also *Waverly Park Amusement Co. v Michigan United Traction Co.*, 197 Mich 92; 163 NW 917 (1917). The question if a given object is a trade fixture is a mixed question of law and fact, which we review de novo on appeal as issues of law. 35 AmJur2d, Fixtures, § 40, p. 731; *Johnson v Harnischfeger Corp.*, 414 Mich 102, 121; 323 NW2d 912 (1982).
>
> The Supreme Court long ago addressed the policy behind allowing a tenant to remove trade fixtures installed in furtherance of the tenant's business:
>
> The right of the tenant to remove the erections made by him in furtherance of the purpose for which the premises were leased is one founded upon public policy and has its foundation in the interest which society has that every person shall be encouraged to make the most beneficial use of his property the circumstances will admit of....
>
> The reason property of this kind is personal, rather than real, is based upon the rule the law implies [that the parties made] an agreement that it shall remain personal property from the fact the lessor contributes nothing thereto and should not be enriched at the expense of his tenant when it was placed upon the real estate of the landlord with his consent. There is no unity of title between the owner of the land and the owner of the structures, and the buildings were not erected as permanent improvements to the real estate, but to aid the lessee or licensee in the use of his interest in the premises. [*Cameron v Oakland Co. Gas & Oil Co.*, 277 Mich 442, 452; 269 NW 227 (1936).]
>
> In *Wentworth, supra* at 467, 333 NW2d 78, this Court held that:
>
> trade fixtures remain the personal property of the lessee as long as the lessee remains in legitimate possession of the property unless: 1) it is expressed or clearly implied in a second lease, executed after the term in which the fixtures were erected, that the fixtures belong to the leasehold, or 2) such a fundamental change in the nature of the tenancy has occurred that it would not unjustly enrich the lessor to include the fixtures as a permanent part of his real property.

The intention referenced in element (3) of the *Morris* test is the intention of the owner of the realty, i.e., the party who annexed the purported fixture to the realty. *Wayne County*, 454 Mich at 613, n 4 (citing former SJI2d 90.20, currently, M Civ JI 90.20). Intention is judged from "the objective, visible facts ...." *Id.* at 619. "The surrounding circumstances determine the intent of the party making the annexation, not the annexor's secret subjective intent." *Id.*[12] "Intent may be inferred from the nature of the article affixed, and the manner of annexation." *Id.* "When the court looks for evidence of intention, it looks to the overt act or failure to act of the party in question rather than to the party's 'state of mind.'" 1 Cameron, Jr., Michigan Real Property Law (3d ed), § 4.6, p 137 (citing *First Mortgage Bond Co* v *London*, 259 Mich 688; 244 NW 203 (1932).

In this case the alleged trade fixtures in question were annexed to the realty, in the case of the styling chairs by being actually affixed to the floor, and in the case of the color bar and reception desk by being constructively affixed to the real estate by electrical and/or plumbing connections. These items were either constructed on site or otherwise designed to fit into the space provided for them. They were not adapted specifically for the real estate in question, but their use in the leased space was appropriate. The key factor is whether there was an intention to make the property a permanent accession to the realty, and this requires an analysis of the parties' agreement.

Construction of the Parties' Lease Pertaining to Trade Fixtures

The parties' lease agreement is a contract, and must be interpreted and enforced as such. "The cardinal rule in the interpretation of contracts is to ascertain the intention of the parties. To this rule all others are subordinate." *McIntosh v Groomes,* 227 Mich. 215, 218; 198 N.W. 954 (1924). A contract requires an offer and acceptance, and mutual assent or a meeting of the minds is required on all the essential terms. Parties are free to contract as they see fit, and the courts must enforce the agreement as written absent some highly unusual circumstance, such as a contract in violation of law or public policy.

The judiciary may not rewrite contracts based on discerned reasonable expectations of the parties. *Burkhardt v Bailey*, 260 Mich App 636, 655-657; 680 NW2d 453 (2004), lv den 471 Mich 920; 688 NW2d 826 (2004). The actual mental processes of the contracting parties are irrelevant to the construction of contractual terms. Rather, the law presumes that the parties understood the import of a written contract and had the intention manifested by its terms. *Zurcher v Herveat*, 238 Mich App 267, 299; 605 NW2d 329 (1999).

[12] Citing *Kent Storage Co*, 239 Mich at 161.

The elements of a valid contract are: (1) parties competent to contract, (2) a proper subject matter, (3) a legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation. *Hess v Cannon Township*, 265 Mich App 582, 592; 696 NW2d 742 (2005), lv den 474 Mich 923; 706 NW2d 8 (2005). A meeting of the minds is determined objectively, however, based on the express words of the parties and their visible acts. *Kloian v Domino's Pizza, LLC,* 273 Mich App 449, 454; 733 NW2d 766 (2006).

"In interpreting a contract, it is a court's obligation to determine the intent of the parties by examining the language of the contract according to its plain and ordinary meaning. If the contractual language is unambiguous, courts must interpret and enforce the contract as written, because an unambiguous contract reflects the parties' intent as a matter of law. However, if the contractual language is ambiguous, extrinsic evidence can be presented to determine the intent of the parties." *In re Smith Trust*, 480 Mich 19, 24; 745 NW2d 754 (2008) (citations omitted).

"A contract is ambiguous when two provisions irreconcilably conflict with each other, or when a term is equally susceptible to more than a single meaning." *Coates v Bastian Bros, Inc.*, 276 Mich App 498, 503; 741 NW2d 539 (2007) (quotations and citations omitted). However, "[i]f the contract, although inartfully worded or clumsily arranged, fairly admits of but one interpretation, it is not ambiguous." *Holmes v Holmes*, 281 Mich App 575, 594; 760 NW2d 300 (2008) (citation and quotation omitted).

In the present case, plaintiffs interpret the phrase, "except trade fixtures," in paragraph 4 of the Lease, to mean that the Studio may remove all of the trade fixtures, *including those constructed or purchased for plaintiffs by SOF*, upon the completion of the lease (assuming no default by the tenant). Plaintiffs reach this conclusion on the basis of the parties' words and conduct before and after the lease was signed, in which the Landlord's Work was referred to as "her money," to be spent as Cassidy determined, for the purpose of permitting *her* to equip her leasehold as a salon. She personally guaranteed the precise dollar amount of the funds made available by the landlord for this work, and the parties noted that when "her money" was gone, no further trade fixtures were purchased or built on site, except out of her own pocket. Plaintiffs also note that once she had paid $60,000 in rental payments, her personal guaranty was deemed satisfied, and, she asserts, it was reasonable for her to conclude that she had paid for all of the trade fixtures, which were thus removable by her upon the successful completion of the Lease (again, assuming no default by the tenant).

SOF and Bocks disagree with this interpretation, relying on the absence of specific language in the Lease or in the Guaranty to support a finding that there was any intention that improvements by the Landlord (whether trade fixtures or not) would become the property of the tenant upon the successful completion of the Lease. SOF and Bocks are relying upon the case law that states that a trade fixture is a fixture *installed by the tenant*, and trade fixtures installed

by the landlord therefore don't fit that definition, and are not included in the exception found in paragraph 4 of the Lease.

Unfortunately, neither party can persuasively establish their respective interpretation of the Lease language by looking only at the Lease document. It appears, therefore, that the lease language is ambiguous, to the extent that it fails to define the scope of the term "trade fixtures," leaving each party with a reasonable, but conflicting, interpretation of that term. Extrinsic evidence is therefore admissible to establish whether the writing was in fact intended by the parties as a completely integrated contract. See *Brady v Central Excavators, Inc.*, 316 Mich 594; 25 NW2d 630 (1947); *In re Frost*, 130 Mich App 556, 562, n 1; 344 NW2d 331 (1983). The parties' lease did not contain a merger agreement or an integration clause, and the extrinsic evidence (testimony) received during trial makes clear that the parties did not fully express their agreement in the written Lease agreement.

In this case, the parties could have clearly avoided the dispute in this case if the relevant language in paragraph 4 of the Lease, beginning with the words, "except trade fixtures," had added a clause or parenthetical providing, for example, "including those constructed or purchased by for tenant by SOF," or "excluding those constructed or purchased for tenant by SOF." In the absence of such language, the Court construes the term "trade fixtures" to include all trade fixtures, including all those in dispute in this case. There are several reasons for this.

First, SOF created the ambiguity over the term "trade fixtures" by its characterization of the build-out funds in communications with Cassidy by using terms such as "her money" and analogizing the fund to a home equity loan, and by failing to distinguish it from the guaranty amount, negotiated concurrently, which used the same dollar amount).

Second, SOF failed to clearly express its intentions in the language employed in conversations with Cassidy. Bocks impliedly acknowledged this when he wrote, "They [the purchased items] were always in SugarOak's and my mind improvements to the suite." (Exhibit T). SOF's subjective intent, expressed after the fact, isn't persuasive, and the Court instead relies upon the objective evidence, i.e., what was said and done by the parties.

Third, the application of the legal principle that trade fixtures apply only to those fixtures *installed or annexed by the tenant* was muddied in this case by the fact that Cassidy designed, selected, ordered, and/or purchased the fixtures in dispute. The fact that SOF built the color bar and reception desk pursuant to Cassidy's design (and in the case of the color bar, incorporating components supplied by Cassidy), paid for the fixtures or reimbursed Cassidy for the fixtures, or made the electrical or plumbing connections, is not sufficient to resolve the dispute.

Finally, if the extrinsic evidence noted above were not sufficient to resolve the ambiguity over the scope of the reference to trade fixtures, the fact that SOF drafted the Lease would require the court to construe ambiguities in the Lease against it. "...the rule of *contra proferentem,* i.e., that ambiguities are to be construed against the drafter of the contract, should only be applied if all conventional means of contract interpretation, including the consideration of relevant extrinsic evidence, have left the finder of fact unable to determine what the parties intended their contract to mean." *Woodington v Shokoohi*, 288 Mich App 352, 376; 792 NW2d 63 (2010).

The Court therefore finds that the personal property and fixtures listed in Plaintiff's Exhibit 2 belong to the plaintiff studio. With that key finding in mind, the Court turns to the plaintiffs' claims and defendants' counterclaim.

Plaintiffs' Conversion Claim

Plaintiffs raise a claim of statutory conversion pursuant to MCL 600.2919a. MCL 600.2919a provides, in relevant part, that:

> (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.

The meaning and scope of the word "converting" in MCL 600.2919a is at issue in the context of this case. The Court previously addressed the issue of "whether a plaintiff may have sole possession of a piece of property, and yet maintain a meritorious conversion claim against a defendant regarding that property under certain circumstances."[13] This Court analyzed the discussion of the tort of conversion in *Aroma Wines & Equip, Inc. v Columbian Distribution Services, Inc.,* 497 Mich 337; 871 NW2d 136 (2015), and concluded that, "both common law conversion and statutory conversion are not, as argued by defendants, limited to those cases where a plaintiff is dispossessed of property." The Court reiterated that decision following a second motion for partial summary disposition, in its Opinion and Order of July 13, 2018.

In *Aroma Wines*, the Michigan Supreme Court interpreted what constitutes "converting property to the other person's own use." Regarding the meaning of the word "converting" in MCL 600.2919a(1)(a), the Supreme Court recognized that the definition of that word in the context of that statute is found in the common law definition of that word. *Id.* at 347-348. Common law conversion is defined as "any distinct act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with his rights therein." *Id.* at 351-352

[13] Opinion and Order on Motion for Summary Disposition, February 2, 2018, p3.

(quotation and citation omitted). Additionally, in *Aroma Wines*, the Supreme Court explained how Michigan courts' interpretation of common law conversion had shifted over the past century: "[w]hile 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*." *Id.* at 353 (emphasis added).

In support of this summary of the jurisprudential shift regarding common law conversion, the Supreme Court in *Aroma Wines* reiterated its approval of a series of examples first expressed in the Restatement of Torts regarding of what could satisfy the modern conception of common law conversion:

> A conversion may be committed by
>
> (a) intentionally dispossessing another of a chattel,
>
> (b) intentionally destroying or altering a chattel in the actor's possession,
>
> (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 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. [*Id.* at 352, quoting *Thoma v Tracy Motor Sales, Inc.*, 360 Mich 434, 438; 104 NW2d 360 (1960) (quoting with approval, 1 Restatement, Torts, § 223).]

The Court concludes that common law conversion [and, therefore, the word "converting" in MCL 600.2919a(1)(a)] is defined as "any distinct act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with his rights therein," that broadly encompasses "any conduct inconsistent with the owner's property rights." *Aroma Wines*, 497 Mich at 351-353.

The evidence shows that defendants, in disputing plaintiffs' ownership of the trade fixtures at issue, asserted a wrongful "act of dominion" over plaintiffs' trade fixtures in a way that denied plaintiffs' the ability to exercise their rights to that property. *Aroma Wines*, 497 Mich at 351-353. Thus, the evidence shows that defendants converted plaintiffs' "assets and trade fixtures" pursuant to *Aroma Wines*, without defendants ever taking possession of that property.

Further, regarding the requirement in MCL 600.2919a(1)(a) that property be converted "to the other person's own use," the Supreme Court in *Aroma Wines* held that "conversion 'to

the other person's own use' requires a showing 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." *Id.* at 358-359. In the present case, the evidence shows that the defendants employed the converted property to its own purposes by means of an incorrect claim of ownership. The defendants successfully leased its premises based upon its claim of ownership of the property, and by its offer to replace that property after it was removed by the plaintiffs. Defendants' claim of ownership resulted in the successful lease of the salon premises at a lease rate that included the value of the plaintiffs' assets.

With respect to damages, the Court of Appeals held in *Aroma Wines* [303 Mich App 441; 844 NW2d 727 (2013)], "MCL 600.2919a(1) provides that a person damaged under the statute '*may* recover 3 times the amount of actual damages sustained, plus costs and reasonable attorney fees[.]' (Emphasis added.) The term "may" is permissive and indicates discretionary activity. Thus, under the language in MCL 600.2912a(1), treble damages and attorney fees are discretionary. Accordingly, whether to award treble damages is a question for the trier of fact,...." *Id.*, at 449 (citation omitted).[14]

The Court in a prior opinion referenced the case of *Fisher v Cornell Engineering*, unpublished opinion per curiam of the Court of Appeals (Docket Nos. 270252, 270258, Oct. 18, 2007),[15] which asserted the longstanding proposition that a plaintiff in a claim for conversion should not be twice compensated with both the value of the property converted as well as the return of the property itself. *Maycroft v The Jennings Farms,* 209 Mich 187, 192-193; 176 NW 545 (1920). In the present case, the plaintiffs have retained the value of the assets, although they were deprived of the proceeds which the sale of such assets would have provided.[16] The value of the assets is determined to be $20,000, and the trebling of damages could result in an award of $60,000.

However, as plaintiffs have retained the assets, avoiding a double recovery would require reducing the award by the value of the assets, reducing a treble damage award to $40,000. As the Court of Appeals noted in *Aroma Wines*, the trebling of conversion damages is discretionary, and it could be argued that with plaintiffs having retained the trade fixtures (and the value of those fixtures) there is nothing left to treble, and no damages should be awarded. The court would

[14] The Michigan Supreme Court denied leave to appeal on this issue. *Aroma Wines*, 497 Mich, at 345 n 10.

[15] *Leave to appeal denied*, 480 Mich 1188 747 NW2d 291 (2008). The court recognizes that it is not bound by the unpublished Court of Appeals decision, MCR 7.215(C)(1), and merely views the opinion as instructive or persuasive on this point. *Beyer v Verizon North, Inc,* 289 Mich App 195; 795 NW2d 826 (2010); *Paris Meadows, LLC v City of Kentwood*, 287 Mich App 136 n 3; 783 NW2d 133 (2010).

[16] Plaintiff Cassidy is no longer in business, so the assets arguably have less value to her now than they would have had as part of an ongoing salon business. In addition, due to the uncertainty of ownership due to the pending litigation, she has been reticent to make active use of the property while the case has been pending.

disagree, as plaintiffs lost the value of the bargain they would otherwise have made, and have incurred further damages in the moving and storing of their property.

The defendants on the other hand, will pay damages not based on any malicious intent or improper purpose, but on the basis of their faulty analysis of their ownership claim to the trade fixtures arising under the Lease agreement. Under the circumstances presented here, the Court exercises its discretion to double (not treble) plaintiff's damages to $40,000, and then reduces the award by $20,000 to reflect the value of the trade fixtures remaining in plaintiffs' possession. Plaintiffs are therefore awarded $20,000 in damages for conversion on Count 4 of the Complaint, together with taxable costs.

The court reserves plaintiffs' claim for reasonable attorney fees pursuant to MCL 600.2919a(1). Although a request for reasonable attorney fees pursuant to statute was made, the record does not contain sufficient information to evaluate and determine the reasonableness of a fee request, and the court therefore will provide the opportunity for a post-trial hearing to determine the amount of fees claimed and their reasonableness. Plaintiff may file motion for attorney fees within twenty-one (21) days after entry of judgment, attaching a reasonable itemization of fees requested in accord with *Smith v Khouri*, 481 Mich 519; 751 NW2d 472 (2008), and *Pirgu v United Servs Auto Ass'n*, 499 Mich 269; 884 NW2d 257 (2016).

Plaintiffs' Breach of Contract Claim

The party claiming a breach of contract "must establish by a preponderance of the evidence that (1) there was a contract, (2) the other party breached the contract, and (3) the breach resulted in damages to the party claiming breach." *Bank of Am, NA v First Am Title Ins Co*, 499 Mich 74, 100; 878 NW2d 816 (2016). Plaintiffs in this case established that the Lease (i.e., the contract between the parties) provided that the color bar and receptionist desk were among the trade fixtures described as Cassidy Rae Do's property. Contrary to the Lease, defendants asserted dominion and control over the trade fixtures by claiming ownership of them, and thus disrupting the sale of those assets to Black Tulip Salon.

The general rule is that a remedy for breach of contract should make the nonbreaching party whole or put the nonbreaching party in as good a position as if the breach had not occurred. *Roberts v Farmers Ins Exchange*, 275 Mich App 58, 69; 737 NW2d 332 (2007). Put another way, the nonbreaching party is entitled to the monetary value of the bargain made by the parties. "In an action based on contract, the parties are entitled to the benefit of the bargain as set forth in the agreement." *Ferguson v Pioneer State Mut Ins Co*, 273 Mich App 47, 54; 731 NW2d 94 (2006). The testimony establishes that plaintiff would have received $20,000 for the assets, which was described as the depreciated value of the listed assets. Plaintiffs retained those assets and therefore the value of those assets, but incurred moving costs of $1,600.00, and storage costs

of $2,100.00 ($175.00 per month from October to the present) to do so. Plaintiffs are entitled to damages of $3,700.00 as to Count 1 of the Complaint.

Plaintiffs' Tortious Interference with Business Relationship Claim

The elements of tortious interference with a business relationship are (1) the existence of a valid business relationship or expectancy, (2) knowledge of the relationship or expectancy on the part of the defendant, (3) an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and (4) resultant damage to the plaintiff. *Dalley v Dykema Gossett*, 287 Mich App 296, 323; 788 NW2d 679 (2010).

Plaintiffs have established that Cassidy Rae Do and the stylists of Black Tulip Salon, with whom plaintiffs had a business relationship, also had a valid expectancy in that they had tentatively agreed upon a sale price of $20,000 for the assets of the studio, which included all trade fixtures. It was Black Tulip Salon's intention to remain in the premises previously leased by Cassidy Rae Studio and to continue operating as a salon. The evidence also established that defendants knew of that relationship, and that expectancy, and interfered in the negotiations between plaintiffs and Black Tulip Salon by intentionally informing the potential buyer that the trade fixtures in the premises were not owned by Cassidy, but were owned by SOF.

However, to fulfill the third element of the claim, plaintiffs must demonstrate that the defendants acted both intentionally and either improperly or without justification. *Bonelli v Volkswagen of America, Inc.,* 166 Mich App 483, 498; 421 NW2d 213 (1988). To establish that a defendant's conduct lacked justification or showed malice, "the plaintiff must demonstrate, with specificity, affirmative acts by the defendant that corroborate the improper motive of the interference." *BPS Clinical Laboratories v Blue Cross & Blue Shield of Michigan (On Remand),* 217 Mich App 687, 699; 552 NW2d 919 (1996).

In the present case, however, there is no evidence that defendants acted maliciously. While the Court finds that defendants breached the Lease by asserting ownership over the trade fixtures belonging to the plaintiffs, this was a breach of contract, not tortious conduct. In *Early Detection Ctr., PC v New York Life Ins. Co.,* 157 Mich App 618, 631; 403 NW2d 830 (1986), the Court of Appeals concluded that there was nothing illegal, unethical or fraudulent in filing a lawsuit, even if groundless, as the complainant was only asserting its legal rights in a permissible way. In the present case, defendants incorrectly asserted legal rights over the plaintiffs' trade fixtures, but not with any improper motive. Plaintiffs have not proven the third element, and the claim of tortious interference with a business relationship in Count 3 fails.

Plaintiffs' Request for Declaratory Judgment and Injunctive Relief

In Count 5 of the complaint, plaintiffs sought both a declaratory judgment and injunctive relief. The Circuit Court has the authority in a case of actual controversy within its jurisdiction to declare the rights and other legal relations of the parties, whether or not other relief is or could be sought or granted. MCR 2.605(A)(1). In the present case, the Court has made findings of fact and conclusions of law on the relevant matters raised in Counts 1, 3, and 4 of plaintiffs' complaint, and a further declaratory ruling is not necessary.

Plaintiffs' claim for injunctive relief was made in the complaint filed September 12, 2017. However, plaintiffs unilaterally removed the disputed trade fixtures from the lease premises when the lease expired on September 30, 2018, and thereafter never pursued injunctive relief to "enjoin[] Bocks and SOF from asserting dominion and control over the assets and trade fixtures." (Complaint, prayer for relief, Count 5). Plaintiffs' claim for injunctive relief is moot.

Defendant's Counterclaim for Conversion

Defendant SOF filed a one-count counterclaim for conversion. As the Court has determined that the trade fixtures in dispute are plaintiffs' personal property, the Court concludes that that defendant has no cause for action, and defendant's counterclaim is dismissed.

CONCLUSION

Plaintiff is awarded money damages of $3,700.00 as to Count 1, and $20,000.00 as to Count 3, of Plaintiff's Complaint. Count 2 has been previously dismissed on summary disposition, and Counts 4 and 5 are dismissed for the reasons stated above. Count 1 of Defendant's counterclaim is dismissed for no cause of action.

Plaintiff may submit a judgment for $23,700.00. Plaintiff may further file a motion for attorney fees within twenty-one (21) days after entry of judgment, attaching a reasonable itemization of fees requested in accord with *Smith v Khouri*, 481 Mich 519; 751 NW2d 472 (2008), and *Pirgu v United Servs Auto Ass'n*, 499 Mich 269; 884 NW2d 257 (2016).

IT IS SO ORDERED.

Dated: September 12, 2018

Hon. Jon Van Allsburg, Circuit Judge