

ORIGINAL

IN THE SUPREME COURT  
Appeal from the Michigan Court of Appeals  
William C. Whitbeck, Joel P. Hoekstra, Elizabeth L. Gleicher

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AROMA WINES and EQUIPMENT, INC.,  
a Michigan corporation,

Sup Ct Case No. 148909

Plaintiff/Counter-  
Defendant-Appellee, Cross-Appellant

Michigan Court of Appeals No. 311145

v

COLUMBIAN DISTRIBUTION SERVICES,  
INC., a Michigan corporation,

Lower Court Case No. 09-1149-CK  
Honorable Dennis B. Leiber

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

**BRIEF ON APPEAL OF DEFENDANT/COUNTER-PLAINTIFF-APPELLANT  
COLUMBIAN DISTRIBUTION SERVICES, INC.**

**ORAL ARGUMENT REQUESTED**

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### **STATEMENT OF BASIS OF JURISDICTION**

By applications dated April 7, 2014, both Plaintiff/Counter-Defendant-Appellee, Aroma Wines and Equipment, Inc. ("Aroma")—despite prevailing below—and Defendant/Counter-Plaintiff-Appellant, Columbian Distribution Services, Inc. ("Columbian"), sought, pursuant to MCR 7.302, leave to appeal the December 17, 2013 Opinion of the Michigan Court of Appeals in *Aroma Wines and Equipment, Inc v Columbia Distribution Services, Inc*, 303 Mich App 441; 844 NW2d 727 (2012), App at 4a, motion for reconsideration denied on January 31, 2014, App at 12a. This Court granted those applications by an Order dated September 19, 2014. App at 41a. Thus, jurisdiction is proper pursuant to MCR 7.301(A)(2) and MCR 7.302(H)(3).

**STATEMENT OF QUESTION INVOLVED**

Did the Court of Appeals commit error warranting reversal when it read the term "use" in Michigan's statutory conversion provision so broadly as to eviscerate any distinction between statutory and common law conversion and in a fashion that rendered the phrase to one's "own use" in MCL 600.2919a(1)(a) meaningless, subjecting any technical common law converter to treble damages?

Aroma says: "No."

Columbian says: "Yes."

The Court of Appeals said: "No."

## STATEMENT OF FACTS AND MATERIAL PROCEEDINGS

### **A. Factual Background**

Defendant, Columbian Distribution Services, Inc., is a Grand Rapids-based company that maintains warehouses and provides storage and shipping services. Plaintiff, Aroma Wines and Equipment, Inc., was a wholesale wine importer and distributor. Aroma contracted with Columbian from 2006 through 2008 to store a large quantity of wine in temperature controlled space at Columbian's warehouse in Grand Rapids, Michigan. Specifically, the contracts called for the wine to be maintained between 50 and 65 degrees Fahrenheit. Oct 13, 2011 Trial Tr at 8, App at 29a; see also *Aroma Wines and Equipment, Inc v Columbia Distribution Services, Inc*, 303 Mich App 441, 443; 844 NW2d 727 (2012), App at 4a. Columbian, at that time, had one cooler at its warehouse, the "S" Cooler, that could maintain the wine consistently within that temperature range. Oct 13, 2011 Trial Tr at 8, App at 29a.

In 2008, Aroma fell behind in its payments to Columbian. *Aroma Wines*, 303 Mich App at 443, App at 4a. In response to Aroma's delinquency, Columbian informed Aroma that it was considering asserting a warehouseman's lien on the 8,374 cases of Aroma's wine that it was then storing. Columbian allowed Aroma access to small portions of the wine after Aroma paid \$1,000 towards its unpaid balance. Columbian later threatened to deny Aroma any access to the wine and demanded payment of \$6,109 to bring Aroma's account current. *Aroma Wines*, 303 Mich App at 443, App at 4a.

During this time, Columbian engaged in a re-racking project in the "S" Cooler to increase its storage capabilities. Oct 13, 2011 Trial Tr at 26-27, App at 30a-31a. During the project, Columbian removed some of Aroma's wine from the temperature controlled environment. Oct 13, 2011 Trial Tr at 27, App at 31a; *Aroma Wines*, 303 Mich App at 443, App at 4a. Despite Aroma's breach of the contract for failure to pay its storage fees, Aroma brought suit against

Columbian alleging a variety of claims. In its original complaint, Aroma alleged claims of breach of contract and violation of the Uniform Commercial Code ("UCC"). See Oct 15, 2009 Compl, App at 13a-16a. Aroma subsequently filed an amended complaint alleging the original breach of contract and UCC violation claims, but added an allegation of conversion. See Dec 1, 2009 Amended Compl, App at 17a-21a. In July 2010, long past the time motions to amend were due, Aroma filed a motion to amend its complaint to add an allegation of statutory conversion in addition to common law conversion. That motion was granted and Aroma filed a second amended complaint. See Aug. 11, 2010 Second Amended Compl, App at 22a-27a.<sup>1</sup> The case was tried to a jury.

## **B. Procedural Background**

At the close of Aroma's proofs, Columbian moved for a directed verdict on the statutory conversion issue.<sup>2</sup> Michigan's conversion statute, in relevant part, states:

(1) A person damaged as a result of either or both of the following may recover 3 times the amount of actual damages sustained, plus costs and reasonable attorney fees:

(a) Another person's stealing or embezzling property or *converting property to the other person's own use.*

(b) Another person's buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property when the person buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property knew that the property was stolen, embezzled, or converted.

MCL 600.2919a (emphasis added).

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<sup>1</sup> The parties later stipulated to a Third Amended Complaint that removed a claim for lost business and lost profits, but which did not substantively change the allegations of conversion.

<sup>2</sup> Columbian also moved for a directed verdict on damages, but the circuit court denied that portion of the motion. It is not at issue here.

Columbian argued that it was entitled to a directed verdict on the statutory conversion claim because Aroma failed to present any evidence that Columbian had converted Aroma's wine to its "own use." Columbian argued that the plain meaning of "use" was to employ something "for the purpose for which it is adapted, as distinguished from a possession and employment that is merely temporary or occasional." Columbian's Motion for Directed Verdict at 2 (quoting Black's Law Dictionary, at 1540 (7th ed 1999)). Because there was no evidence that Columbian had employed the wine for the purpose it was intended—to be consumed or to be sold for profit—Aroma's statutory conversion claim failed as a matter of law. The only evidence that Aroma had provided was that the wine had been moved to accommodate the re-racking project in the "S" Cooler. None of this suggested that Columbian had employed the wine for its own use. Essentially, Columbian argued that to prevail, Aroma and the trial court would need to read the word "use" to mean "use or benefit." Aroma, on the other hand, argued that the word "use" included the concept of "benefit." Columbian also argued that because Aroma had not even submitted a jury instruction related to statutory conversion, it could not claim such right after the close of proofs.

The Circuit Court agreed that any indirect benefit of possessing the wine did not constitute "use" and granted Columbian's motion for a directed verdict on the question of statutory conversion. Subsequently, Aroma moved for reconsideration of the order granting the directed verdict. That motion was denied.

Aroma appealed as of right to the Court of Appeals. Aroma also sought and obtained an order from the trial court that the record on appeal was limited to the transcripts, closing statements, and the argument on the directed verdict motion, the motion for reconsideration, and its motion for fees and costs post-trial. As a result, none of Aroma's case in chief is a part of the

record in this appeal. On appeal, Aroma argued that the circuit court erred by adopting a definition of "use" that was unduly narrow. Aroma's Brief on Appeal at 8 ("Aroma's COA Br"). Rather, according to Aroma, the definition of use has a variety of broader meanings. Aroma argued that "use" means "to put into action or service; avail oneself of," or means, as a noun, the "[a]ct of employing everything, or state of being employed; application; employment, as in the use of a pen," and the "purpose served, a purpose, object or end for useful or advantageous nature." *Id.* at 13 (internal quotation marks and citations omitted). Thus, Aroma argued, "[e]ven though Columbian did not consume all of the wine, Columbian clearly used the cases of wine to its purposes." *Id.* at 13. In particular, Aroma argued that the evidence established that Columbian "converted the wine to its own use by benefitting from the additional storage space created by moving Plaintiff's wine out of the cooler, and also by using all the wine as leverage against Plaintiff instead of setting aside only an amount sufficient to secure storage payments." *Id.* at 13-14. Aroma's argument equated "use" of the wine with the idea of realizing a theoretical "benefit" by possessing the wine.

In response, Columbian argued that MCL 600.2919a should not be broadly construed, but that it should be read according to the plain and ordinary meaning of its terms. Columbian Brief on Appeal at 8 ("Columbian COA Br"). Moreover, because MCL 600.2919a is a punitive statute, Columbian argued that it should be narrowly construed. Columbian COA Br at 8. Columbian argued that the "wine was not consumed or served or sold or given away, but was only moved." *Id.* at 19. Given this, the evidence may have demonstrated a technical, common law conversion, but not a statutory conversion.

The Court of Appeals addressed the question of the meaning of "use" in the statutory conversion statute by beginning with several dictionary definitions. It looked to *Random House*

*Webster's College Dictionary* (1992) and the Eighth Edition of Black's Law Dictionary. The former defines use as "to employ for some purpose" and the latter defines use as the "application or employment of something." *Aroma Wines*, 303 Mich App at 447-448, App at 7a (internal quotation marks and citations omitted). In light of these definitions, the Court of Appeals concluded that Aroma "submitted sufficient evidence that defendant converted the wine to its own use in order to survive" the motion for directed verdict. *Aroma Wines*, 303 Mich App at 448, App at 7a The Court of Appeals stated:

Contrary to the trial court's conclusion that "to use a wine, one would have to drink it or perhaps sell it," we find that the definition of "use" encompasses a much broader meaning. The term "use" requires only that a person "employ for some purpose," *Random House Webster's College Dictionary* (1992), and clearly, drinking or selling the wine are not the only ways that defendant could employ plaintiff's wine to its own purposes. For example, in this case, it is not disputed that exhibits and testimony presented during trial established that the wine was moved from the temperature controlled storage area or that defendant refused to allow plaintiff to access any of its wine until plaintiff brought its account up to date. Moreover, plaintiff presented some evidence to support its theory that defendant filled the temperature controlled storage space that plaintiff's wine was moved out of with other customer's products. While this fact was disputed by defendant, there was enough evidence to submit the question to the jury.

*Aroma Wines*, 303 Mich App at 448, App at 7a. Indeed, the Court of Appeals added that "construing the statutory conversion statute's 'use' element to mean only consumption or sale would essentially require proof of larceny, which is characterized by an intent to permanently deprive the owner of possession, rather than mere use inconsistent with the owner's rights." *Aroma Wines*, 303 Mich App at 448, n 1 App at 7a n 1.

The Court of Appeals went further, however. Responding to Columbian's claim that "the wine was only moved to complete a re-racking project," the Court of Appeals held that "*even the act of moving plaintiff's wine* contrary to the contract in order to undertake an expansion project

to benefit itself could be considered an act of employing the wine to defendant's own purposes constituting 'use' of the wine." *Aroma Wines*, 303 Mich App at 448-449, App at 7a (emphasis added). The Court of Appeals held that Columbian was not entitled to a directed verdict "because viewing the evidence in the light most favorable to plaintiff, there were factual questions regarding whether defendant converted plaintiff's wine to its own use." *Aroma Wines*, 303 Mich App at 449, App at 7a. The Court of Appeals accepted Aroma's argument that the term "use" should be read to mean "use or benefit." Accordingly, the Court of Appeals remanded the case for further proceedings consistent with its opinion.

Aroma and Columbian both timely filed applications for leave to appeal dated April 7, 2014. The Court granted those applications by Order dated September 19, 2014. App at 41a.

### ARGUMENT

#### **A. Standard of Review.**

The issue in this case involves the proper interpretation of Michigan's statutory conversion provision. Questions of statutory interpretation are questions of law which this Court reviews *de novo*. *Fradco, Inc v Department of Treasury*, 495 Mich 104, 112; 845 NW2d 81 (2014); see also *Michigan Dep't of Transp v Tomkins*, 481 Mich 184, 190; 749 NW2d 716 (2008). Likewise, a decision on a directed verdict is reviewed *de novo* and a "reviewing court must consider the evidence in the light most favorable to the nonmoving party." *Zsigo v Hurley Medical Center*, 475 Mich 215, 220-221; 716 NW2d 220 (2006).

#### **B. The Plain Language Meaning of The Phrase "Converting Property to The Other Person's Use" Requires that to Commit Statutory Conversion a Person Must Convert Property To The Use for Which The Property Is Intended.**

The relevant portion of the Michigan conversion statute states:

- (1) A person damaged as a result of either or both of the following may recover 3 times the amount of actual damages sustained, plus costs and reasonable attorney fees:

(a) Another person's stealing or embezzling property or *converting property to the other person's own use*.

(b) Another person's buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property when the person buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property knew that the property was stolen, embezzled, or converted.

MCL 600.2919a (emphasis added). Here, there is no dispute for purposes of this appeal that Columbian committed a technical conversion of Aroma's wine. Nor is there any allegation of stealing or embezzlement. The relevant issue in this case is whether Columbian converted Aroma's wine to Columbian's "own use." In other words, the question at the heart of this case—a question that the Court of Appeals got completely wrong—is the proper construction of the phrase "to the other person's own use" in MCL 600.2919a(1)(a). Indeed, the Court of Appeals' decision, by adopting an overly broad reading of the term "use," effectively collapses the distinction between common law and statutory conversion and subjects any person who commits the tort of conversion to statutory conversion with its enhanced treble damages and attorney fees penalties.

A "court's primary purpose in interpreting a statute is to ascertain and effectuate legislative intent." *Michigan Educ Ass'n v Secretary of State*, 489 Mich 194, 217-218; 801 NW2d 35 (2011); see also *Weakland v Toledo Engineering Co, Inc*, 467 Mich 344, 347; 656 NW2d 175 (2003) ("The fundamental rule of statutory construction is to give effect to the Legislature's intent."). Courts "may not speculate regarding legislative intent beyond the words expressed in a statute" and "*nothing* may be read into a statute that is not within the manifest intent of the Legislature as derived from the act itself." *Omne Financial, Inc v Shacks, Inc*, 460

Mich 305, 311; 596 NW2d 591 (1999) (emphasis added). Indeed, "[w]hen parsing a statute," courts are to "presume every word is used for a purpose," *Pohutski v Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002), and courts should avoid interpreting statutes in such a way "that would render part of the statute surplusage or nugatory." *Robinson v City of Lansing*, 486 Mich 1, 21; 782 NW2d 171 (2010) (internal quotation marks omitted). Courts interpret statutes by "examining the plain language of the statute; where that language is unambiguous, [courts] presume that the Legislature intended the meaning clearly expressed—no further judicial construction is required or permitted, and the statute must be enforced as written." *Echelon Homes, LLC v Carter Lumber Co*, 472 Mich 192, 196; 694 NW2d 544 (2005) (internal quotation marks and citations omitted). As this Court has stated, courts should "give the words of a statute their plain and ordinary meaning" and that meaning "can be ascertained by looking at dictionary definitions." *Id.*

Employing these canons, the meaning of the phrase "converting property to the other person's own use" plainly means something more than mere common law conversion, and requires that the use be related to the intended purpose of the property. Black's Law Dictionary defines "use" as the "application or employment of something; esp., a long-continued possession and employment of a thing *for the purpose for which it is adapted*, as distinguished from a possession and employment that is merely temporary or occasional." Black's Law Dictionary, at 1681 (9th ed 2009) (emphasis added), App at 44a; see also Black's Law Dictionary, at 1541 (6th ed 1990) App at 42a (defining use as "to employ for or apply to a *given purpose*") (emphasis added). Another dictionary, in giving definitions and examples of "use," makes clear that it is defining "use" in terms of the purpose for which the thing is intended: "To bring or put into service; employ: *use soap for washing*. . . . The act of using; the application or employment of

something for some purpose; *the use of a pencil for writing.*" *The American Heritage Dictionary*, at 1331 (2d ed 1985) (emphasis in original), App at 45a; see also *Random House Webster's College Dictionary*, at 1347 (2001) App at 46a (defining "use" as "a way of being used; a purpose for which something is used"). Indeed, one of the sources of the definition of "use" in the Sixth Edition of Black's Law Dictionary is the case of *Brown v Kennedy*, 49 NE2d 417; 419 (Ohio Ct App 1942) aff'd, 141 Ohio St. 457, 48 NE2d 857 (1943). There, the court made clear that whether property is used will depend on the nature of the property:

The word "use" is defined as the "Purpose served-a purpose, object or end for useful or advantageous nature." (Oxford English Dictionary.)

This implies that the person receives a benefit from the *employment of the factor involved*. It is this benefit, purpose, or end which defines the use. *I use a chisel to chip out a piece of wood*. The removal of the wood is the use to which I put the tool. I use a book, for the purpose of transmitting the thought of the author to my brain. It is used as a vehicle for thoughts or ideas. *I use a pen or pencil to draw a sketch or write a letter*. The pen or pencil is thus an instrument by which I receive the benefit of having the diagram or thought in my brain impressed upon the paper.

*Brown*, 49 NE2d at 419 (emphasis added).

Thus, the plain meaning and most natural construction of the phrase "to the other person's own use" in MCL 600.2919a(1)(a) is the conversion of property to the use for which the property is intended. With respect to this case, this required asking whether under the plain reading of the statute, Columbian used the wine for the wine's intended purpose, namely to be consumed or sold. There is no absolutely no evidence that Columbian did anything of the sort. The circuit court rightly granted Columbian's motion for a directed verdict on the statutory conversion question, and the Court of Appeals clearly erred in reversing the circuit court.

Moreover, here, there cannot be any possible "use." The two alleged uses were: 1) moving the wine out of cold storage into the general warehouse; and 2) threatening to keep Aroma from picking up the wine until the bill was paid. As to the former, Columbian did not use the wine in any fashion—it moved it out of the way. As to the latter, the most that can be said is that Columbian attempted to leverage the fact that it had possession of the wine—not that it used the wine itself.

**C. Common Law and Statutory Conversion Are Distinct.**

This plain and straight-forward construction is further supported by looking to the common law definition of conversion. Common law conversion is "any distinct act of domain wrongfully exerted over another's personal property in denial of or inconsistent with the rights therein." *Foremost Ins Co v Allstate Ins Co*, 439 Mich 378, 391; 486 NW2d 600 (1992). Furthermore, common law conversion is generally considered "an intentional tort in the sense that the converter's actions are wilful, although the tort can be committed unwittingly if unaware of the plaintiff's outstanding property interest." *Id.* Thus, MCL 600.2919a(1)(a)'s language adds an element to common law conversion. The plain language of MCL 600.2919a(1)(a) indicates that a defendant is not liable for statutory conversion unless it *both* (1) converts the property *and* (2) puts the property "to its own use." This statutory language clearly distinguishes between statutory conversion and common law conversion. In other words, to be liable for statutory conversion, a defendant must not only convert the property (i.e., exercise wrongful dominion over it), but must also *use* it. See MCL 600.2919a(1)(a). Any other interpretation, such as the Court of Appeals' interpretation here, ignores the statutory language.<sup>3</sup> It would be nonsensical

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<sup>3</sup> Michigan courts consistently have recognized that there is a difference between common law and statutory conversion. See, e.g., *J&W Transp, LLC v Frazier*, 2010 WL 2178555, at \*13 (Mich App June 1, 2010) App at 60a (defining common law conversion and

for the Legislature to enact a law that has enhanced damages and attorney fees as a penalty and then construe the statute as being no different from common law conversion that does not allow for treble damages or attorney fees.

Indeed, Aroma's own actions and pleadings in this case confirm the understanding that common law conversion and statutory conversion are distinct. Months after the deadline for amending pleadings, Aroma successfully moved to amend its complaint to make clear it was seeking treble damages for statutory conversion. If the Court of Appeals' reading of MCL 600.2919(a)(1)(a) were the correct one, there would have been no need for Aroma to amend its complaint to make clear that it was alleging common law conversion *and* statutory conversion. Rather, Columbian would have been on notice of this from Aroma's initial allegation of conversion. That it was not and that Aroma recognized the need to amend its complaint serve as further proof that common law conversion and statutory conversion are, in fact, distinct causes of action. In addition, this point was conceded at the trial court during the hearing on the motion for directed verdict when Aroma's counsel stated, "We do agree that common law conversion has a slightly different standard" than statutory conversion. Oct 24, 2011 Trial Tr at 23, App at 33a.

**D. MCL 600.2919a's Larger Context Supports the Plain Reading of "Use".**

As this Court has stated, in interpreting a statute, courts are "to consider the plain meaning of the critical word or phrase as well as 'its placement and purpose in the statutory scheme.'" *Fradco, Inc*, 495 Mich at 112 (internal quotation marks omitted). This means that the "the provisions of a statute should be read reasonably and in context." *McCahan v Brennan*, 492

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stating that MCL 600.2919a allows plaintiffs to "recover damages for statutory conversion" if they prove both that defendants converted plaintiffs' property and converted it "to their own use"); *Paige v Paige*, 2009 WL 2426261, at \*2 (Mich App Aug 6, 2009) App at 65a (noting that "to state a claim for [statutory] conversion" plaintiff was required "to establish" both that defendants "wrongfully converted" property and converted it "to their 'own use'").

Mich 730, 739; 822 NW2d 747 (2012). In other words, courts are to read a statute's words in "their context within the statute and read them harmoniously to give effect to the statute as a whole." *Johnson v Recca*, 492 Mich 169, 177; 821 NW2d 520 (2012) (emphasis added).

Applying these principles, it is clear that the plain reading of "use," as requiring conversion to the use for the purpose for which something was intended, is also supported by the larger context of the conversion statute. First, MCL 600.2919a is "a punitive statute." *Alken-Ziegler, Inc v Hague*, 283 Mich App 99, 104; 767 NW2d 668 (2009). As such it is to be strictly construed. *Goetz v Black*, 256 Mich 564, 572-573; 240 NW 94 (1932) ("A statute awarding a penalty is to be strictly construed, and, before a recovery can be had, the case must be brought clearly within its terms."). In construing a punitive statute, a court should employ great caution so that it does not sweep in conduct that the Legislature clearly did not intend to include. Remarkably, here, the Court of Appeals did not even engage the question of MCL 600.2919a's punitive nature even though it was clearly raised by *Columbian* in its brief on appeal. See *Columbian COA Br* at 8, App at 40a. Instead, the Court of Appeals incorrectly adopted a broad reading of MCL 600.2919a, stating that "use" means to "employ for *some* purpose," *Aroma Wines*, 303 Mich App at 448, App at 7a (citing *Random House Webster's College Dictionary* (1992)) (emphasis added), even though this contradicts this Court's admonitions with respect to punitive statutes and, more generally, the various canons of statutory construction discussed above.

Second, the punitive nature of MCL 600.2919a also suggests that statutory conversion is something different from common law conversion—that it requires something more onerous than ordinary conversion. Such a punitive measure means that some element beyond the elements of basic common law conversion is needed to attain such damages. Indeed, this is the

only sensible reading of the statute. If this were *not* the case, the Legislature could simply have passed a statute allowing treble damages whenever a party proves the technical tort of conversion or it could have written into the statute what *Aroma* and the Court of Appeals did—the words "or benefit." The Legislature obviously did *not* pass such a statute.

Third, the three actions that are sufficiently egregious to constitute statutory conversion, and impose the draconian remedy of treble damages, are stealing, embezzlement, and conversion to one's own use. Stealing and embezzlement are clearly taking another's property permanently and deviously. See, e.g., *Webster's New College Dictionary*, at 1401 (2005), App at 48a (defining "to steal" as "to take or appropriate . . . without permission, dishonestly, or unlawfully, esp. in a secret or surreptitious manner"); *American Life Ins Co v US Fidelity & Guar Co*, 261 Mich 221, 224; 246 NW 71 (1933) ("Embezzlement may be defined broadly as the fraudulent appropriation of another's property by a person to whom it has been intrusted or into whose hands it has lawfully come.") (internal quotation marks and citation omitted). Surely, the Legislature did not intend for a technical common law conversion where a technical converter uses a bag of flour as a doorstep or footstool to be subject to the same treble damages as a thief or embezzler. But this is exactly what the Court of Appeals' reading allows. Under its construction of the statute, a converter who temporarily refuses to return a bag of flour and uses it for a doorstep has used it for the purpose of benefitting itself and, therefore, would be subject to treble damages. Such a technical conversion is nothing like stealing or embezzling. And, indeed, the phrase conversion to one's "own use" must be read in light of the terms "stealing" and "embezzling." *GC Timmis & Co v Guardian Alarm Co*, 468 Mich 416, 421-422; 662 NW2d 710 (2003) ("It is a familiar principle of statutory construction that words grouped in a list should be given related meaning.") (internal quotation marks and citation omitted). To do otherwise is to

read the phrase to one's "own use" in an absurd manner—something against which this Court has often counseled. See, e.g., *McAuley v General Motors Corp*, 457 Mich 513, 518; 578 NW2d 282 (1998) ("Statutes should be construed so as to prevent absurd results.").<sup>4</sup>

**E. Contrary to the Legislature's Intent the Court of Appeals' Construction of MCL 600.2919a Subjects Technical Common Law Converters to Treble Damages.**

The Court of Appeals' construction of MCL 600.2919a is so sweeping in its scope that it will lead to the collapse of any distinction between common law and statutory conversion, subjecting any person or party guilty of technical common law conversion to treble damages. Indeed, the Court of Appeals' opinion, itself, demonstrates this. The Court of Appeals held that "even the act of moving plaintiff's wine contrary to the contract in order to undertake an expansion project to benefit itself could be considered an act of employing the wine to defendant's own purposes constituting 'use' of the wine." *Aroma Wines*, 303 Mich App at 448-449, App at 7a. This demonstrates that there is no clear limiting principle to the Court of Appeals' construction of MCL 600.2919a(1)(a).

Under the Court of Appeals' reading of "use" as long as the converter is exercising dominion over a piece of property for some reason the converter will be converting it for its own use. In the future, in order to collect treble damages a party will need to prove no more than that a person or party exercised dominion over a piece of property and received some *indirect*

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<sup>4</sup> As the Court of Appeals noted: "[C]onstruing the statutory conversion statute's 'use' element to mean only consumption or sale would essentially require proof of larceny, which is characterized by an intent to permanently deprive the owner of possession, rather than mere use inconsistent with the owner's rights." *Aroma Wines*, 303 Mich App at 448 n 1, App at 7a n 1. Ironically, the Court of Appeals proved in this analysis that its reading was overly broad and the interpretation of "use" *should* render statutory conversion one where the acts are consistent with embezzlement and stealing.

benefit.<sup>5</sup> This is *no* different from what someone must already prove to establish common law conversion.

As discussed above, common law conversion is "any distinct act of domain wrongfully exerted over another's personal property in denial of or inconsistent with the rights therein" and it is generally considered "an intentional tort in the sense that the converter's actions are *wilful*." *Foremost Ins Co*, 439 Mich at 391 (emphasis added). "[W]ilful involves design and purpose" and means, among other things, "intentional" or "*purposeful*." *Jennings v Southwood*, 446 Mich 125, 139-140; 521 NW2d 230 (1994) (quoting Black's Law Dictionary, at 1599 (6th ed 1990)) (emphasis added); see also *People v Waterstone*, 296 Mich App 121, 138; 818 NW2d 432 (2012) (stating that "'willful' also describes conduct that is intentional, *purposeful*, voluntary, deliberate, and knowing") (emphasis added). Purposeful, in turn, is defined by Black's Law Dictionary as "[d]one with a specific purpose in mind." Black's Law Dictionary, at 1356 (9th ed 2009), App at 43a. *Webster's New College Dictionary* defines purposeful as "resolutely aiming at a specific goal" or "directed toward a specific end." *Webster's New College Dictionary*, at 1165 (2005), App at 47a. Thus, if common law conversion is the wilful exercise of domain over someone else's property, as this Court has defined it, that means that the Court of Appeals' construction of MCL 600.2919a(1)(a) renders its definition of conversion to one's "own use" the same as common law conversion. Common law conversion is the purposeful exercise of domain over another's property. Under the Court of Appeals' reading, that is all that is now required to prove statutory conversion and subject a technical converter to draconian sanctions.

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<sup>5</sup> In the case at bar, Columbian did not even use the wine to its benefit, let alone use it. It held dozens of pallets of wine from Aroma, who was not paying its bill. Having possession of the wine was a burden, not a benefit. It was moved, at Columbian's expense, for a construction project.

Given all of the above, it is clear that the Court of Appeals committed error in its construction of "use" in MCL 600.2919a(1)(a). This Court should rectify that error and adopt the plain language and contextual meaning of the phrase "converting property to the other person's own use." Adopting the Court of Appeals' reading will have serious and harmful consequences for the law of conversion in the State of Michigan and subject anyone who commits a technical common law conversion to treble damages. That is clearly not what the legislature intended.

**RELIEF REQUESTED**

Columbian respectfully requests that this Court reverse the Court of Appeals' erroneous decision and reinstate the circuit court's order granting Columbian's motion for a directed verdict on the question of statutory conversion.

Respectfully submitted,

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