STATE OF MICHIGAN

COURT OF APPEALS

J. FRANKLIN INTERESTS, L.L.C., Plaintiff/Counter-Defendant-Appellee/Cross-Appellant,	UNPUBLISHED September 29, 2011
v	No. 296525 Muskegon Circuit Court
MU MENG and MENGS PROPERTIES, L.L.C., Defendants/Counter-Plaintiffs-Appellants/Cross-Appellees.	LC No. 08-045835-CB

Before: TALBOT, P.J., and GLEICHER and M. J. KELLY, JJ.

PER CURIAM.

This commercial landlord-tenant dispute arose when an agitated tenant expressed dissatisfaction with the condition of the premises and terminated the lease. The landlord responded by thwarting the tenant's access to the property. The legal questions presented center on whether the landlord's actions constituted an illegal "lockout" under Michigan law, and if so, the extent of the tenant's resultant damages.

The circuit court first determined that the landlord unlawfully locked out the tenant by barring the access door, changing the locks, and placing a sign in the window declaring that the tenant's business had closed. The court then found that the landlord converted a portion of the tenant's belongings by holding them as security against overdue rent and other debts. The court held the landlord responsible for converting only the assets exceeding the value of those claimed as security. We affirm the circuit court's ruling that the landlord locked out the tenant and converted the tenant's property, but vacate the award of damages and remand for a recalculation of damages consistent with this opinion.

I. UNDERLYING FACTS AND PROCEEDINGS

Mengs Properties, L.L.C. (MP) owns an office building in Muskegon County. In 2007, J. Franklin Interests, L.L.C. (JFI) entered into a three-year lease with MP for 1,624 square feet of unfinished building space. Jeffrey Franklin, the sole member of JFI, and Mu Meng, one of three principals of MP, signed the agreement. The lease recited that JFI would use the premises to operate a computer gaming business and internet access center, subsequently dubbed the LAN Lounge. Meng operated a computer business, AFD Solutions, located in the same building. The

two businesses maintained separate outdoor entrances but shared a common area containing restrooms, a drinking fountain, and a mop sink.

Franklin testified that he invested $60,000 in developing the LAN Lounge, including an equipment expenditure of $48,000 for computers, big-screen televisions, pizza warmers, cabling, office equipment and furniture. Franklin hired AFD Solutions to assemble the computers and to configure the LAN Lounge computer network. AFD Solutions invoiced the LAN Lounge $7,586.25 for this service. A notation on the invoice indicated that Franklin personally guaranteed payment "based on 10% of net quarterly profits." Meng maintains that Franklin unilaterally added the notation without Meng's concurrence.

The LAN Lounge opened for business on May 1, 2007. The lease recited that JFI would pay $750 monthly rent commencing on July 16, 2007. Franklin made a $1,500 security deposit payment with a check drawn to Meng personally, rather than to MP. Subsequently, Franklin wrote eight $750 checks payable to AFD Solutions, noting on the checks that they represented "rent." Franklin asserts that Meng instructed him to make the rent checks payable to AFD Solutions, and claims that because the LAN Lounge failed to generate any profits, he made no payments on the computer services invoice after tendering a $750 "down payment." Meng denies directing Franklin to draw the rent checks payable to AFD Solutions, and insists that the $750 payments applied to Franklin's invoiced indebtedness.

On February 19, 2008, Franklin arrived at the LAN Lounge and found the parking lot unplowed and inaccessible. He voiced his unhappiness to Meng, who "just kind of shrugged it off" and advised that the snow would be plowed later that day. Dissatisfied with this response, Franklin consulted an attorney. That afternoon, Franklin terminated the lease by delivering to Meng a letter written by the attorney, stating in relevant part:

> Please be advised that [JFI] hereby terminates the lease dated March 16, 2007 between [MP], as landlord, and [JFI], as tenant, pursuant to the terms of said lease as set forth in paragraphs 4 and 18 of the lease. Be advised that the lease is being terminated without prejudice as to all claims which [JFI] has regarding [MP]'s breaches of the lease, including the breach of quiet enjoyment and breach of your duty to maintain the premises which you have failed to cure with the time provided in the lease.

Franklin claims that he informed Meng of his intention to vacate the premises in 30 days. Michael Swenor, an AFD Solutions employee, recounted that Franklin threatened to "sue" Meng, and that when Meng inquired whether Franklin would return to the premises, Franklin replied, "You're not getting another penny out of me. Too bad, so sad, I'm gone." Meng similarly described Franklin's words, and contends that they signaled Franklin's intent to permanently abandon the LAN Lounge. Despite the discord, Franklin complied with Meng's

request that the common-area door leading to the LAN Lounge remain unlocked to facilitate access by a heating contractor.[1]

That evening, Franklin returned to the building to retrieve some personal items, and observed that the snow had been plowed. Franklin attempted to enter the LAN Lounge through the outside door, but discovered that an iron bar secured with computer wire prevented the door from opening. A sign appeared in the LAN Lounge window proclaiming "Closed for business. Property belongs to Meng's Properties. Any questions please call 231-759-0888." Franklin complained to the police, who advised that he contact his attorney.

The next day, February 20, 2008, Franklin's attorney prepared a second letter:

> Please be advised that by locking [JFI] out of the leased premises you have further breached the terms of the lease and also have converted all of [JFI]'s, property in violation of Michigan law.
>
> It is all too certain that you have knowingly converted [JFI]'s personal property. Such a conversion is actionable under Michigan common law and MCLA 600.2919(A), which entitles [JFI] to three times the actual damages sustained, plus his costs and reasonable attorney fees in accordance with the provisions of MCLA 600.2919(A). Additionally Michigan law provides that as a consequence of your actions, [sic] of forcible ejectment and unlawful detainer you have violated MCLA 600.2918 thereby entitling [JFI] to recover 3 times the amount of his actual damages or $200.00, whichever is greater, in addition to recovering possession.
>
> Finally, [JFI] and [Franklin] is [sic] entitled to exemplary damages as your actions in seizing their collective personal possession [sic] were either a wanton or reckless act or a deliberate and intentional act. Further your actions were egregious and unlawful.
>
> Be advised that [JFI] and [Franklin] will take all necessary steps to protect their legal rights and to recover damages for your actions.

Franklin recounted that when he returned to deliver the letter to Meng, he verified that the LAN Lounge door remained barred and the same sign hung in the window. Another door had been placed against the door frame, preventing anyone from seeing inside the LAN Lounge. Meng admitted that in addition to barricading the door, he changed the LAN Lounge's locks and alarm code.

[1] At this point, Meng could legally demand, pursuant to ¶ 4 of the lease agreement, that Franklin remit two additional months of rent payments and reimburse MP for four months of rent abatement.

Meng's attorney also drafted a letter on February 20, 2008. That letter asserted that Meng "has no problem" with terminating the lease, "and in fact terminates this lease as Landlord." As noted, Meng treated JFI's eight monthly payments of $750 as payment toward the computer services invoice, not as rent. Meng therefore demanded payment of rent from July 16, 2007 through February 15, 2008, and claimed additional rent pursuant to several lease terms, totaling $11,325. The letter declared that Meng had elected to exercise "the Landlord's right to maintain Tenant's assets within the Premises until such time as Tenant has paid in full the amounts above due and owing to landlord on the date of termination." According to the letter, Meng changed the locks and the LAN Lounge alarm code "to prevent unauthorized access to the premises with the intention of safeguarding the assets securing the lease." The letter continued, "Mr. Meng will allow Mr. Franklin reasonable escorted access to the premises to facilitate the sale of these assets so that Mr. Meng may recover the sums due to Landlord." Meng's attorney further demanded immediate payment of the remaining balance on the computer services invoice based on Franklin's personal guaranty.

In March 2008, JFI sued Meng and MP, alleging common law and statutory conversion under MCL 600.2919; violation of the anti-lockout statute, MCL 600.2918; breach of the covenant of quiet enjoyment and wrongful impairment of plaintiff's business in violation of the lease; tortious interference with a business relationship and business defamation. Meng and MP counterclaimed seeking the sums remaining due under the lease. Meanwhile, AFD Solutions sued Franklin in district court seeking the unpaid balance of AFD Solutions' computer network services.

The circuit court consolidated the cases and conducted a two-day bench trial. In a detailed written opinion, the circuit court found that Meng's actions violated the anti-lockout statute, MCL 600.2918, entitling JFI to damages for conversion and for unlawful interference with JFI's possessory interest. Despite finding a lock-out, the circuit court determined that because Franklin failed to make a reasonable effort to recover the assets exceeding $11,235 in value, his conversion claim was limited to the assets valued above that amount. The court trebled the damages for the conversion of assets worth $11,235 and the damages for loss of use of the premises, resulting in an award of $35,455 in favor of JFI. The circuit court found that "Mr. Meng's active participation in the conversion renders him personally liable along with [MP] for this action."

The court rejected Franklin's claim that the checks made payable to AFD Solutions represented rent. After crediting JFI with the security deposit, the circuit court awarded MP $8,325 on its counter claim for unpaid rent, plus taxable costs. Regarding the consolidated case, the circuit court found in favor of AFD Solutions and awarded $1,586 as the balance due under the invoice.

Meng and MP now challenge the circuit court's lock-out and conversion rulings, while JFI confines its cross-appeal to the court's calculation of conversion damages.

II. ANALYSIS

A. THE LOCK-OUT

MP raises several challenges to the circuit court's finding that Meng locked out the LAN Lounge. We review a trial court's findings of fact at a bench trial for clear error and its conclusions of law de novo. *Ligon v Detroit*, 276 Mich App 120, 124; 739 NW2d 900 (2007). "A finding is clearly erroneous where, although there is evidence to support the finding, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been made." *Ambs v Kalamazoo Co Rd Comm*, 255 Mich App 637, 651; 662 NW2d 424 (2003).

Meng and MP first contend that because Meng did not "forcibly and unlawfully" eject anyone from the LAN Lounge and used no force to keep Franklin from entering the premises, the circuit court erred by applying the treble damages provision found in MCL 600.2918(1). The anti-lockout statute, MCL 600.2918, provides as follows:

> (1) Any person who is ejected or put out of any lands or tenements in a forcible and unlawful manner, or being out is afterwards held and kept out, by force, if he prevails, is entitled to recover 3 times the amount of his actual damages or $200.00, whichever is greater, in addition to recovering possession.
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> (2) Any tenant in possession of premises whose possessory interest has been unlawfully interfered with by the owner, lessor, licensor, or their agents shall be entitled to recover the amount of his actual damages or $200.00, whichever is greater, for each occurrence and, where possession has been lost, to recover possession. Unlawful interference with a possessory interest shall include:
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> (a) The use of force or threat of force.
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> (b) The removal, retention, or destruction of personal property of the possessor.
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> (c) A change, alteration, or addition to the locks or other security devices on the property without forthwith providing keys or other unlocking devices to the person in possession.
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> (d) The boarding of the premises which prevents or deters entry.
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> (e) The removal of doors, windows, or locks.
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> (f) Causing, by action or omission, the termination or interruption of a service procured by the tenant or which the landlord is under an existing duty to furnish, which service is so essential that its termination or interruption would constitute constructive eviction, including heat, running water, hot water, electric, or gas service.

(g) Introduction of noise, odor or other nuisance.

(3) The provisions of subsection (2) shall not apply where the owner, lessor, licensor, or their agents can establish that he:

(a) Acted pursuant to court order or

(b) Interfered temporarily with possession only as necessary to make needed repairs or inspection and only as provided by law or

(c) Believed in good faith the tenant had abandoned the premises, and after diligent inquiry had reason to believe the tenant does not intend to return, and current rent is not paid.

(4) A person who has lost possession or whose possessory interest has been unlawfully interfered with may, if that person does not peacefully regain possession, bring an action for possession pursuant to section 5714(1)(d) of this act or bring a claim for injunctive relief in the appropriate circuit court. A claim for damages pursuant to this section may be joined with the claims for possession and for injunctive relief or may be brought in a separate action.

(5) The provisions of this section may not be waived.

(6) An action to regain possession of the premises under this section shall be commenced within 90 days from the time the cause of action arises or becomes known to the plaintiff. An action for damages under this section shall be commenced within 1 year from the time the cause of action arises or becomes known to the plaintiff.

In *Deroshia v Union Terminal Piers*, 151 Mich App 715, 719-720; 391 NW2d 458 (1986), this Court explained that the anti-lockout statute is intended to encourage landlords to select judicial process rather than self-help remedies, including forceful dispossession of a tenant. Subsection (1) "prohibit[s] forceful self-help regardless of whether or not the tenant was in rightful possession of the premises." *Id.* at 718. Subsection (2) "prohibits a landlord from resorting to self-help even where the landlord is entitled to possession." *Id.* at 720. "To discourage self-help, the Legislature has provided that the tenant may recover treble damages for forcible ejectment under subsection (1), and actual damages for other unlawful interference under subsection (2). *Id.*

Meng and MP contend that if a landlord "does not enter by force or by threatened force," subsection (1) of the statute does not apply. Meng and MP imply that the necessary "force" must be physical or possibly violent. We find this view of the statutory language overly narrow. Subsection (1) bars a landlord from forcibly ejecting a tenant, and from holding and keeping the tenant out "by force." In the distant past, courts interpreted the force necessary to violate an anti-lockout statute as "riotous" or violent force used or threatened against a person and designed "to inspire terror or alarm." *Shaw v Hoffman*, 25 Mich 162, 169 (1872). However, the legal conception of "force" has evolved over time. In *McIntyre v Murphy*, 153 Mich 342, 346; 116

NW 1003 (1908), for example, Justice Carpenter quoted favorably the following excerpt from a California case:

> To constitute a forcible entry –
>
> It is not necessary that it should be accompanied with tumult or riot, directed against the person of the party in possession. It will be sufficient if the entry is attended with such a display of force as manifests an intention to intimidate the party in possession, or deter him from defending his rights, or to excite him to repel the invasion of his possession, and thus bring about . . . a breach of the peace. *Ely v Yore*, [71 Cal 130; 11 P 868 (1886)].[2]

We find instructive the more recent elucidation of this principle by the Oklahoma Supreme Court in *Ramirez v Baran*, 1986 OK 76; 730 P2d 515, 517-518 (1986):

> In order to constitute force as contemplated by the Forcible Entry and Detainer Act, it is not necessary that actual violence be used. If a person takes possession of real property during the temporary absence and without the consent of one who is in peaceable and quiet possession of realty and bars the former occupant from possession, persistently refusing to surrender the premises, he is guilty of forcible and unlawful detainer. . . . Under the statutes and the cases, it is wholly immaterial whether the tenant be in possession of either residential or commercial property, a landlord may not resort to force to gain possession of a leased premise. *Changing a lock to exclude a tenant from possession against his or her will has been found to constitute forceful entry and amounts to wrongful detainer as a matter of law*. If one enters into the possession of another against the will of him whose possession is invaded, however quietly he may do so, the entry is forcible in legal contemplation. [Citing *Berg v Wiley*, 264 NW2d 145 (Minn, 1978); *Jordan v Talbot*, 55 Cal 2d 597; 12 Cal Rptr 488; 361 P2d 20 (1961); *Harper v Sallee*, 376 Ill 540; 34 NE2d 860 (1941) (emphasis added).]

Here, after Franklin announced his intent to terminate the lease, Meng physically obstructed ingress to the LAN Lounge, and subsequently entered the premises to change the locks and the alarm code. Meng's attorney advised in the February 20 letter that Meng would allow Franklin only "escorted access to the premises to facilitate sale of" the assets securing the lease. Meng placed a sign in the LAN Lounge window announcing that the premises belonged to MP. The circuit court reasonably construed these actions as representing a display of force intended to deter Franklin from entering the LAN Lounge, satisfying MCL 600.2918(1). The circuit court's findings also support that Meng violated subsection (2), which prohibits a landlord from unlawfully interfering with a tenant's possessory interest by "boarding" the premises in a manner preventing or deterring entry, or removing, retaining, or destroying the tenant's personal property. MCL 600.2918(2)(a), (d). In summary, we detect no error in the circuit court's

[2] Justice Carpenter also quoted English common law for the proposition that a forcible assault is unnecessary to establish a forcible entry. *McIntyre*, 153 Mich at 346.

determination that Meng locked out the LAN Lounge, subjecting himself and MP to liability under both MCL 600.2918(1) and (2).

MP next contends that JFI defaulted on the lease by failing to pay rent, thereby entitling MP to hold the LAN Lounge property as security for the amount due. According to MP, the lease established a security interest in the tenant's personal property as defined by the Uniform Commercial Code, MCL 440.1201(37). Paragraph 33 of the lease provides:

> In the event Landlord terminated this Lease due to Tenant's default pursuant to the terms of this Lease, Tenant agrees to maintain Tenant's assets within the Premises including any furnishings, equipment, fixtures, inventory, accounts receivable, and other personal property of any kind belonging to Tenant on the Premises ("assets") until such time as Tenant has paid any and all amounts due and owing to Landlord on the date of termination. Upon Landlord's election, Landlord may remove assets to a storage facility within Muskegon County so that the Premises can be used in an alternative manner. Tenant agrees to sell the assets and the proceeds of the sale will first be applied to compensate Landlord for any and all amounts due and owing Landlord pursuant to this Lease on the date of termination. Following the date of termination, the Premises and Landlord shall allow Tenant reasonable access to the Premises, or the storage facility the assets may be housed in, to facilitate the sale of the assets pursuant to this section.

Under the anti-lockout law, however, a landlord who retains personal property belonging to the tenant "unlawful[ly] interfere[s]" with a tenant's "possessory interest." MCL 600.2918(2)(b). Despite the parties' agreement to ¶ 33 of the lease, the anti-lockout statute provides that its provisions "may not be waived." MCL 600.2918(5). The evidence amply supported the circuit court's finding that by denying Franklin access to the computers and other LAN Lounge property, Meng acted in violation of the anti-lockout statute. Regardless of the lease language, a landlord may not lock out a tenant and adversely hold hostage the tenant's property. Accordingly, ¶ 33 lacks applicability, and the circuit court correctly refused to enforce it.

Next, MP contends that by failing to pay any rent, JFI committed the first breach of the lease and thereby relinquished any right to seek breach of contract damages. Although the circuit court found that Meng and MP "breached the covenant of quiet enjoyment by unlawfully interfering with Plaintiff's possessory interest," the court's damage award rested entirely on MCL 600.2918 and MCL 600.2919a. Because the circuit court did not rely on a breach of contract theory in the portion of the judgment favoring JFI, we find no merit in MP's "first breach" claim. Based on similar reasoning, we reject MP's argument that the circuit court erred by ignoring its right to cure its perceived breach of the lease. The circuit court's ultimate findings in JFI's favor simply did not implicate this issue.

B. CONVERSION

Both parties challenge the circuit court's conversion verdict. We conclude that the evidence supported the circuit court's finding that Meng converted JFI's property, and correctly relied on Franklin's unrebutted testimony regarding the value of the property owned by the LAN

Lounge. But because the court miscalculated the damages flowing from the conversion, we must reverse its damage award.

Meng and MP first assert that the circuit court erred by awarding damages for conversion, because Franklin abandoned the property, made no attempt to recover it, and never demanded the property's return. "The tort of conversion is defined as 'any distinct act of domain wrongfully exerted over another's personal property in denial of or inconsistent with the rights therein.'" *Head v Phillips Camper Sales & Rentals, Inc*, 234 Mich App 94, 111; 593 NW2d 595 (1999), quoting *Foremost Ins Co v Allstate Ins Co*, 439 Mich 378, 391; 486 NW2d 600 (1992). JFI's conversion claim also rests on MCL 600.2919a, which provides:

> (1) A person damaged as a result of either or both of the following may recover 3 times the amount of actual damages sustained, plus costs and reasonable attorney fees:
>
> (a) Another person's stealing or embezzling property or converting property to the other person's own use.
>
> (b) Another person's buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property when the person buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property knew that the property was stolen, embezzled, or converted.
>
> (2) The remedy provided by this section is in addition to any other right or remedy the person may have at law or otherwise.

Meng and MP essentially argue that Franklin made only a half-hearted effort to recover JFI's property, entitling Meng to conclude that the property had been abandoned. We reject this argument for three reasons. First, the day after Franklin terminated the lease, JFI's attorney accused Meng of converting JFI's property and advised that Franklin and JFI "will take all necessary steps to protect their legal rights and to recover damage for your actions." This evidence refutes that Franklin intended to simply relinquish to Meng the LAN Lounge property. Second, no evidence suggests that Meng would have politely returned JFI's property upon Franklin's demand, particularly in light of Meng's redundant efforts to keep Franklin out of the LAN Lounge. Third, and most importantly, once Meng deliberately converted the property, the law imposed on Franklin no duty to insist on its return.

In *Gum v Fitzgerald*, 80 Mich App 234, 235-236; 262 NW2d 924 (1977), the plaintiffs sued for conversion after the defendant landlords "locked plaintiffs from the rental premises prior to a termination of the tenancy and while plaintiffs' personal possessions and household goods remained in the premises." The defendants claimed that the plaintiffs had abandoned the premises. *Id.* at 236. This Court held that a conversion occurred "when defendants interfered with plaintiffs' dominion over their property by locking them from the rental premises," explaining that once a tenant has been refused possession, "no further demand is necessary." *Id.* at 238-239. Professor Prosser has explained that when "the taking itself is wrongful, . . . the tort is complete without any demand for the return of the goods." Prosser & Keeton, Torts (5th ed),

§ 15, p 93. Thus, when Meng changed the LAN Lounge locks and his attorney informed JFI that Meng intended to "safeguard" the assets securing the lease "to facilitate the sale of these assets," the conversion of the LAN Lounge contents had been fully accomplished. The evidence fully supported the circuit court's determination that Franklin had not abandoned the property, and was entitled to treble damages for MP's and Meng's conversion.

MP next contends that the circuit court erred by valuing the converted property at $11,235 based solely on Franklin's testimony. In a motion for reconsideration filed after the circuit court rendered its verdict, MP submitted two appraisals suggesting far lower values. The circuit court rejected this evidence, reasoning that MP failed to present any evidence at trial challenging Franklin's testimony. In an action for conversion of personal property, damages are measured according to the fair market value of the property at the time of the conversion. *Bernhardt v Ingham Regional Med Ctr*, 249 Mich App 274, 280-281; 641 NW2d 868 (2002) (citations omitted). If the converted property "does not have a regular market value, the measure of damages is the value of the property to the owner at the time of the conversion." *Ehman v Libralter Plastics, Inc*, 207 Mich App 43, 45; 523 NW2d 639 (1994) (citation omitted). An owner of property "is competent to give testimony regarding its value." *Willis v Ed Hudson Towing, Inc*, 109 Mich App 344, 349-350; 311 NW2d 776 (1981). Consequently, we find no error in the circuit court's rejection of the late-filed appraisals.

Lastly, JFI's cross-appeal asserts that Meng and MP converted all the property within the LAN Lounge, and that the circuit court erred by limiting the extent of the converted property to $11,325. We conclude that the circuit court incorrectly imposed on Franklin the duty to demand return of the property Meng claimed to be willing to release.

> Conversion has long been considered a strict liability tort.
>
> > The foundation for the action of conversion rests neither in the knowledge nor the intent of the defendant. It rests upon the unwarranted interference by defendant with the dominion over the property of the plaintiff from which injury to the latter results. Therefore neither good nor bad faith, neither care nor negligence, neither knowledge nor ignorance, are of the gist of the action. [*Poggi v Scott*, 167 Cal 372, 375; 139 P 815 (1914).]

By locking out the LAN Lounge, Meng and MP concomitantly converted the business's property. "[T]he great weight of authority regards the mere acquisition of the goods under such circumstances as in itself an assertion of an adverse claim, so detrimental to the dominion of the owner that it completes the tort, and no demand is required." Prosser & Keeton, Torts (5th ed), § 15, p 94. In essence, the trial court ruled that Franklin failed to mitigate JFI's damages by neglecting to demand return of the assets that exceeded the value of those Meng claimed as security. However, "[t]he rule requiring the injured party to mitigate damages does not apply where the invasion of property rights is due to defendant's intentional, or positive and continuous, tort." *Willis*, 109 Mich App at 349-350. Because Meng and MP wrongfully took and maintained possession of *all* property within the LAN Lounge, the circuit court misplaced its damage analysis on Franklin's failure to seek possession of the assets that exceeded the value of $11,325. Once Meng and MP wrongfully took possession of the LAN Lounge, Franklin was

under no duty to demand return of any of his assets. Accordingly, the circuit court erred by circumscribing JFI's conversion damages to the assets exceeding $11,235 in value.

We vacate only that portion of the judgment awarding JFI damages against Meng and MP, and remand for recalculation of those damages consistent with this opinion. We affirm the circuit court's judgment in all other respects. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly