

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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WORLDWIDE EQUIPMENT COMPANY,

Plaintiff-Appellant,

v

KENNETH FREEMAN and RECOVERY  
SYSTEMS INTERNATIONAL, INC, a/k/a RSI,  
INC,

Defendants-Appellees.

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UNPUBLISHED  
December 28, 2004

No. 249313  
Oakland Circuit Court  
LC No. 2001-032515-NZ

Before: Meter, P.J., and Wilder and Schuette, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

**I. FACTS**

Plaintiff alleged that defendants committed common law and statutory conversion and interfered with a business expectancy when they kept plaintiff from retrieving a machine left on defendants' premises by a former tenant. The trial court granted defendants' motion for summary disposition, finding that plaintiff failed to make a case of conversion as a matter of law, and failed to identify the business relationship with which defendants interfered.

**II. STANDARD OF REVIEW**

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating the motion, the trial court considers affidavits, pleadings, depositions, admissions and other evidence submitted by the parties in a light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). On appeal, a trial court's decision on a motion for summary disposition is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003).

A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone; the motion may not be supported with documentary evidence. *Beaudrie v Henderson*, 465

Mich 124, 129; 631 NW2d 308 (2001); *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994), *Mable Cleary Trust v Edward-Marlah Muzyl Trust*, 262 Mich App 485, 491; \_\_\_ NW2d \_\_\_ (2004). All factual allegations in support of the claim are accepted as true, as well as any reasonable inferences or conclusions which can be drawn from the facts, and construed in the light most favorable to the nonmoving party. *Adair v State*, 470 Mich 105, 119; \_\_\_ NW2d \_\_\_ (2004); *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 508; 667 NW2d 379 (2003). The motion should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. *Adair, supra*. A grant or denial of summary disposition based upon a failure to state a claim is reviewed de novo on appeal. *Id.*

### III. ANALYSIS

The tort of 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). Statutory conversion consists of knowingly buying, receiving, or aiding in the concealment of any stolen, embezzled, or converted property. MCL 600.2919a; *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 111; 593 NW2d 595 (1999). A statutory conversion claim is inappropriate where plaintiff did not allege that defendants received converted property, but rather that defendants converted the property themselves. Plaintiff failed to establish a claim for statutory conversion as a matter of law. *Campbell v Sullins*, 257 Mich App 179, 191-192; 667 NW2d 887 (2003).

To support a common law claim of conversion, plaintiff was required to show a distinct act exercising dominion over the property. *Foremost Ins, supra*. The only indication of dominion alleged was the verbal statement that plaintiff could not have the machine. When plaintiff sent a contractor to pick up the machine, defendants did not interfere. Where defendants took no action that prevented plaintiff from recovering the machine, there was no exercise of dominion and no conversion.

To establish a prima facie case of tortious interference with a contract or business expectancy, a plaintiff must establish the existence of a valid business relationship or expectancy, knowledge of the relationship on the part of the defendant, an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and resultant damage to the plaintiff. *BPS Clinical Laboratories v Blue Cross & Blue Shield of Michigan (On Remand)*, 217 Mich App 687, 698-699; 552 NW2d 919 (1996). A tortious interference claim only arises when improper conduct by a defendant causes or induces another not to deal with the plaintiff. *Winiemko v Valenti*, 203 Mich App 411, 416; 513 NW2d 181 (1994).

The trial court granted summary disposition on this count based on plaintiff's failure to identify the customer with whom defendants interfered. To make its claim, plaintiff was required to establish a valid business relationship or expectancy. Where plaintiff failed to identify a customer affected by defendants' acts, it could not establish one of the required elements of the cause of action. In response to defendants' motion for summary disposition, plaintiff was required to come forward with evidence to support its claim and raise a genuine issue of fact. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). It did not do so, and the trial court properly granted summary disposition.

Plaintiff argues that if defendants' actions did not amount to conversion, they did support a claim for trespass to chattel. However, plaintiff never raised this claim below, and did not seek to add the claim by amendment. This issue is unpreserved where plaintiff failed to raise it before the trial court. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999).

Affirmed.

/s/ Patrick M. Meter

/s/ Kurtis T. Wilder

/s/ Bill Schuette