

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

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GREENFIELD COMMERCIAL CREDIT, L.L.C.,

Plaintiff-Appellant,

v

COMERICA BANK, DTE ENERGY COMPANY,  
INC., DTE ENERGY SOLUTIONS, INC., and  
DTE TECHNOLOGIES,

Defendants-Appellees.

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UNPUBLISHED

June 21, 2005

No. 260123

Wayne Circuit Court

LC No. 04-412828-CZ

Before: Gage, P.J., and Whitbeck, C.J., and Saad, J.

PER CURIAM.

Plaintiff, a commercial lender that does business in factoring receivables, appeals the trial court's orders that granted summary disposition to defendants. We affirm.

I. Facts

Plaintiff's claims arise from a \$4,316,520.07 electronic payment that the Universal Service Administrative Company ("USAC") made to a Comerica Bank account held by Global View Technologies ("Global View"). Comerica "swept" this transfer out of Global View's account to pay down a \$10 million line of credit that Global View held with Comerica. This "sweep" was made in accordance with the terms of that line of credit. USAC had ordered the electronic funds transfer to pay an invoice for services that Global View's subsidiary, Clover Technologies ("Clover"), performed for the Detroit Public Schools ("DPS") pursuant to a contract that Global View had assigned to Clover. Plaintiff held a senior security interest in Clover's assets and accounts receivable from the DPS contract.

Plaintiff claimed that Comerica's "sweep" of the funds constituted a wrongful conversion of money that belonged to plaintiff pursuant to its security interest in Clover's invoice. Plaintiff brought this three-count action against Comerica, asserting claims for common-law conversion, statutory conversion, and unjust enrichment. Plaintiff also sued DTE Energy Co., Inc., DTE Energy Solutions, Inc., and DTE Technologies (collectively the "DTE Entities"), who were guarantors of Global View's line of credit. Plaintiff subsequently dismissed the common-law and statutory conversion claims against the DTE Entities, leaving only the unjust enrichment claim against those defendants. The trial court granted defendants' motions for summary disposition of all claims pursuant to MCR 2.116(C)(8) and (10).

## II. Standard of Review

We review de novo a trial court's resolution of a motion for summary disposition. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 159; 645 NW2d 643 (2002). A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. *Adair v State*, 470 Mich 105, 119; 680 NW2d 386 (2004). The reviewing Court accepts all well-pleaded factual allegations as true and construes them in a light most favorable to the non-moving party. *Id.* A motion under subrule (C)(10) tests the factual sufficiency of the complaint. *Kraft v Detroit Entertainment, LLC*, 261 Mich App 534, 539; 683 NW2d 200 (2004). The trial court must consider the affidavits, pleadings, depositions, admissions, and any other documentary evidence submitted by the parties in a light most favorable to the nonmoving party. *Id.* at 539-540.

Although the trial court indicated that it was granting Comerica's summary disposition motion under MCR 2.116(C)(8), it considered documentary evidence attached to Comerica's summary disposition brief. Thus, in substance, the court granted summary disposition under MCR 2.116(C)(10). This Court may review the order under the appropriate subrule. *Stewart v Isbell*, 155 Mich App 65, 74; 399 NW2d 440 (1986).

## III. Analysis

The common-law tort of conversion is defined as "any distinct act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with the rights therein." *Head v Phillips Camper Sales & Rental, 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). "The gist of conversion is the interference with control of the property." *Sarver v Detroit Edison Co*, 225 Mich App 580, 585; 571 NW2d 759 (1997), quoting Prosser & Keeton, Torts (5th ed), § 15, p 102.

Plaintiff's common-law conversion claim fails as a matter of law for reasons other than the reason relied upon by the trial court,<sup>1</sup> and this Court will not reverse a trial court's order if it reached the right result for the wrong reason. *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 470; 628 NW2d 577 (2001). Plaintiff fails to cite any provision of the Uniform Commercial Code, MCL 440.4101 *et seq.*, that gives it a priority interest over the USAC payment to Global View's account, particularly because there were no special instructions regarding this wire

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<sup>1</sup> We find two flaws in the trial court's reasoning that Global View's September 25 and 26 payments to plaintiff defeat plaintiff's common-law conversion claim. First, the submitted evidence does not clearly connect these payments to the Clover invoice in question. Plaintiff argued that these payments were associated with other Clover invoices under the DPS contract. Consequently, there is a question of fact whether these post-September 24 payments constituted restoration of the allegedly converted funds, and summary disposition on this basis would be improper. Additionally, the gist of plaintiff's common-law conversion claim is that Comerica wrongfully swept funds that it knew were intended for plaintiff. Accordingly, evidence that Global View later paid plaintiff from its line of credit does not preclude a finding that Comerica acted wrongfully against plaintiff, although the evidence would be relevant to the amount of plaintiff's damages.

transfer. Plaintiff's status as Clover's senior lender did not give it any control over Global View's account under MCL 440.9104(1);<sup>2</sup> this status belonged to Comerica. However, plaintiff says that it was entitled to the payment because Comerica collected the money knowing that plaintiff held a senior security interest in the USAC payment on the Clover invoice. Plaintiff's claim raises the question whether a creditor's secured interest in a payment, which is deposited directly in a debtor's bank account, takes precedence over the bank's interest in the deposit, where the bank had general knowledge of a security interest, though there was no specific agreement to hold the payment in trust for plaintiff.

To resolve this issue, we turn to the law governing special and general bank deposits. Our Supreme Court distinguished between general and special bank deposits in *Owosso Masonic Temple Ass'n v State Savings Bank*, 273 Mich 682, 689-690, 263 NW 771 (1935):

Deposits in banks are ordinarily divided into general and special deposits. A general deposit creates the relation of debtor and creditor between the bank and the depositor, and may be repaid on demand, in whole or in part, in current money. It consists of money which is mingled with the money of other depositors in a general fund chargeable with the payment of general deposits, possesses no trust quality, and loses its special identity in its general commingling with the funds of the bank. A special deposit of money is a deposit for safe-keeping. It contemplates the return of the identical money deposited. The relation of bailor and bailee exists between the depositor and the bank. The bank has no right to handle or use the money constituting a special deposit. No relation of debtor and creditor exists between the depositor and the bank. In case of a general deposit, there is a depositor, not a bailor; a debtor, not a bailee; a creditor, not an owner. The title of the money constituting a special deposit does not pass to the bank. The title to the money constituting a general deposit does pass to the bank.

Where one receives money as a trustee and it is not placed in a special deposit in the bank but in a general deposit so its identity is lost, it becomes

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<sup>2</sup> MCL 440.9104(1) provides:

A secured party has control of a deposit account if 1 or more of the following apply:

(a) The secured party is the bank with which the deposit account is maintained.

(b) The debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor.

(c) The secured party becomes the bank's customer with respect to the deposit account.

debtor for money, and the bank becomes debtor for the amount. *Neely v Rood*, 54 Mich 134; 19 NW 920 (1884).

In *Portage Aluminum Co v Kentwood Nat'l Bank*, 106 Mich App 290; 307 NW2d 761 (1981), this Court considered the *Owosso Masonic Temple* Court's distinction between general and special deposits. The plaintiffs in *Portage Aluminum* were employers who used a payroll service, Computer Payroll and Accounting Systems, Inc. ("CPAS"), to process payroll checks. *Id.* at 292. CPAS held a bank account with the defendant bank to hold the funds for the payroll checks; the employers paid the payroll amount and service fees into this account, and the payroll checks were drawn against this account. *Id.* Because CPAS experienced chronic difficulty in keeping the account fully funded in time for the employees to cash their paychecks, the defendant bank closed the account, forcing CPAS into involuntary bankruptcy. *Id.* at 293. The plaintiffs brought an action against the bank for breach of contract, breach of fiduciary duty, negligence, fraud, and conversion, and the trial court found in favor of the plaintiffs with respect to liability for breach of fiduciary duty and negligence. *Id.*

This Court held that the bank held no fiduciary duty to the plaintiffs. The Court considered and rejected the plaintiffs' argument that CPAS's general account with the defendant bank "possessed any special 'trust' qualities." *Id.* at 295. The Court explained:

The fact that the money deposited in the account was intended to be used for a specific purpose by CPAS does not make it a trust fund on behalf of a defendant bank. *The money deposited becomes a trust fund only if it had been deposited with defendant bank on the understanding that it should be set apart for a particular purpose and not commingled with other money of the bank. A trust cannot be implied unless the understanding was that the money deposited for a specific purpose was not to be mingled.* [*Id.* (Emphasis added.)]

This Court reversed the trial court, and specifically commented that the record was "barren of any unique relationship by which we can factually distinguish the instant case from other commercial transactions regulated by traditional banking laws and the Uniform Commercial Code." *Id.* at 298-299. The Court emphasized "that to hold defendant liable under these facts is too radical a departure from well-established law." *Id.* at 299.

Plaintiff's claim that Comerica owed it a duty to honor plaintiff's interest in a particular deposit in a customer's account is analogous to the plaintiffs' claim in *Portage Aluminum* that the bank owed them a duty to protect the payroll funds in a customer's account. In both cases, the bank received no instructions regarding the deposit, and the deposit was not identified as a special deposit to be held for the plaintiff's benefit. Additionally, as in *Portage Aluminum*, plaintiff claims that Comerica should have known, from the circumstances surrounding the transaction, that plaintiff had a special interest in the deposit that Comerica was obligated to protect. Although plaintiff characterizes *Portage Aluminum* as an irrelevant case that "simply concerned the issues of whether the bank owed its depositors' customers a fiduciary duty and whether the account at issue was a special trust account," the underlying issue, whether the bank was obligated to give special treatment to a particular deposit, is substantially similar in both cases.

The Court's reasoning in *Portage Aluminum* is equally applicable here. The USAC payment was not identified as payment for an accounts receivable in which plaintiff had a superior security interest. Neither Global View nor USAC gave Comerica any instructions to treat the deposit as a special deposit, to be segregated from Global View's other funds and held in trust for plaintiff. These are the crucial facts leading to the conclusion that Comerica had no obligation to segregate the deposit and immunize it from the ordinary terms of Global View's account and \$10 million line of credit agreement.

Under *Owosso Masonic Temple* and *Portage Aluminum*, Comerica's knowledge of plaintiff's, Global View's, Clover's, and DPS's business transactions does not warrant any exception to relevant UCC provisions. Those provisions, including MCL 440.9104, cited above, and MCL 440.9327, are controlling and clearly provide that the bank's security interest has priority over a conflicting interest held by another secured party.<sup>3</sup> Also, plaintiff has cited no authority holding that a bank must honor a third party's senior security interest in a deposit to a customer's account where the deposit is not identified, though the customer's file contains sufficient information to trace the deposit to the third party's security interest. A party who fails to cite authority in support of his position on appeal waives the argument. *Amerisure Ins Co v Auto-Owners Ins Co*, 262 Mich App 10, 22; 684 NW2d 391 (2004). Absent special instructions regarding the disputed deposit, banks are not required to treat deposits as special deposits, despite the bank's knowledge of the security interests of the third parties.

Plaintiff's reliance on *Blair v Trafco Products, Inc*, 142 Mich App 349; 369 NW2d 900 (1985), and *Hansman v Imlay City State Bank*, 121 Mich App 424; 328 NW2d 653 (1982), is misplaced. *Blair* involved a claimant's right to funds under the building contract fund act, MCL

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<sup>3</sup> MCL 440.9104 is set forth above. MCL 440.9327 provides:

The following rules govern priority among conflicting security interests in the same deposit account:

(a) A security interest held by a secured party having control of the deposit account under section 9104 has priority over a conflicting security interest held by a secured party that does not have control.

(b) Except as otherwise provided in subdivisions (c) and (d), security interests perfected by control under section 9314 rank according to priority in time of obtaining control.

(c) Except as otherwise provided in subdivision (d), a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.

(d) A security interest perfected by control under section 9104(1)(c) has priority over a security interest held by the bank with which the deposit account is maintained.

Clearly, subdivision (c) gives Comerica priority over the account.

570.151 *et seq.*, which is not relevant here. Plaintiff correctly asserts that in *Hansman*, a case involving a bank's right to setoff, this Court held that there were material questions of fact with regard to whether the debtor was the owner of the set-off funds. However, ownership was in question because the account was jointly held by the debtor and his wife, and the bank had not shown that the deposited money belonged to the debtor. Accordingly, these cases do not warrant relief for plaintiff.

Comerica also was entitled to summary disposition on the statutory conversion count. In *Campbell v Sullins*,<sup>4</sup> this Court held:

“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). The clear language of the statute indicates that the “statute is not designed to provide a remedy against the individual who has actually stolen, embezzled, or converted the property.” *Marshall Lasser, PC v George*, 252 Mich App 104, 112; 651 NW2d 158 (2002). Rather, “[t]he actions proscribed—buying receiving, or aiding in the concealment—all occur after the property has been stolen, embezzled, or converted by the principal.” *Id.* “If the Legislature had meant for the statute to also apply to the thief as well as someone who aids him, it could have written the statute to include the thief's action in possessing or concealing the property.” *Id.*

Here, plaintiff's complaint alleged only that Comerica itself converted the funds when it conducted the electronic sweep of funds from Global View's account to pay down Global View's line of credit. Plaintiff did not allege that Global View, USAC, Clover, or any other party converted the money before Comerica received it. Accordingly, summary disposition was proper under MCR 2.116(C)(8). Because plaintiff's complaint was deficient on its face with respect to this claim, plaintiff was not entitled to further discovery to establish that Comerica committed statutory conversion.

Because plaintiff clearly failed to allege statutory conversion as defined in MCL 600.2919a, we need not consider plaintiff's argument that the trial court misapplied MCL 440.4603(1), MCL 440.4604, and MCL 440.4904.

Comerica also was entitled to summary disposition on the unjust enrichment claim. To prove a claim of unjust enrichment, the plaintiff must establish (1) that the defendant received a benefit from the plaintiff, and (2) that an inequity resulted to the plaintiff because of the defendant's retention of the benefit. *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 478; 666 NW2d 271 (2003). In *Michigan Educational Employees Mutual Ins Co v Morris*, 460 Mich 180, 198; 596 NW2d 142 (1999), our Supreme Court, citing *Hoyt v Paw Paw Grape Juice Co*, 158 Mich 619, 626; 123 NW 529 (1909), ruled that the right to bring an unjust enrichment claim exists when a person has in his possession money which in equity and good conscience belongs

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<sup>4</sup> 257 Mich App 179, 191-192; 667 NW2d 887 (2003).

to the plaintiff. Unjust enrichment is an equitable doctrine that requires a person who has been unjustly enriched at the expense of another to make restitution to the other. *Id.*

Though we have already concluded that Global View's payments to plaintiff on September 25 and 26, 2002, did not preclude plaintiff's common-law conversion claim against Comerica, we nonetheless conclude that these payments preclude plaintiff's unjust enrichment claim. Regardless whether these payments restored plaintiff's right to the disputed invoice payment, they reversed any benefit that Comerica was allegedly holding at plaintiff's expense. The crux of a conversion claim is the defendant's wrongful exercise of dominion over property, but the crux of an unjust enrichment claim is the defendant's retention of a benefit at the plaintiff's expense. When Global View drew on its line of credit to pay plaintiff, Comerica was no longer retaining the benefit from the previous day's sweep. These payments thus negate plaintiff's unjust enrichment claim.

Because the balance on Global View's line of credit immediately arose following the reduction on September 24, 2002, there was no lasting reduction of Global View's debt that reduced the DTE Entities' exposure as guarantors. Under these circumstances, there can be no material fact with respect to the elements of an unjust enrichment claim, because the DTE Entities could not have received the alleged benefit.<sup>5</sup>

Affirmed.

/s/ Hilda R. Gage  
/s/ William C. Whitbeck  
/s/ Henry William Saad

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<sup>5</sup> Plaintiff also argues that the trial court should have permitted it to dismiss the unjust enrichment claim against the DTE Entities without prejudice. However, plaintiff does not explain why this argument provides an alternative ground for granting it relief on appeal. This issue is therefore waived, because a party may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim. *American Transmission, Inc v Channel 7 of Detroit, Inc*, 239 Mich App 695, 705; 609 NW2d 607 (2000). Plaintiff also asserts in its statement of questions presented that the trial court erred in granting the DTE Entities' motion for sanctions, but plaintiff fails to provide any argument concerning sanctions. Therefore, this issue also is waived. *Id.*

Lastly, plaintiff sets forth a detailed analysis of Global View's financial statements to show that the allegedly wrongful reduction of Global View's line of credit on September 24, 2002, saved Global View and Clover from imminent financial ruin, and spared DTE Entities the severe hardship of paying off Global View's line of credit at that time. This evidence is not part of the lower court record, and plaintiff did not raise this argument in the trial court. Consequently, this argument does not provide a basis for challenging the trial court's grant of summary disposition.