

## Automation Alley Newsletter

May 2010

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### Treble Damages, Costs and Attorney's Fees Awarded to Tenant in Statutory Anti-Lock-Out and Conversion Case

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#### LANDLORDS BEWARE. LARGE DAMAGES AWARDED TO TENANT FOLLOWING LOCKOUT BY LANDLORD

In a recent Michigan Court of Appeals case, a landlord's exercise of self-help after his tenants missed a \$300 monthly rent payment turned into a \$300,000 verdict for the tenant (plus statutory interest).

The tenants in this case sued the landlord claiming that the landlord had unlawfully locked them out of their residential cabin and had also moved a large quantity of tenant's valuable equipment from the cabin into storage, where it was subsequently damaged. Landlord claimed that the tenants were behind in rent, that the tenants had abandoned the premises and that the tenants had numerous opportunities to, but failed to, retrieve their personal property after it was moved.

This case was submitted to the jury on two claims: (1) violation of the anti-lockout statute, MCL 600.2918 (which provides for an award of three times actual damages, but not less than \$200), and (2) statutory conversion under MCL 600.2919a (which also permitted trebling of actual damages under certain circumstances). A jury found for the tenants on both claims granting \$141,500 (apparently already trebled) under the anti-lockout claim and \$89,000 in damages (before trebling) for the conversion claim. The court ruled that damages were only allowed for one of the two theories: so the award on the conversion claim was trebled (to \$267,000), and attorneys' fees and costs were added (but exclusive of statutory interest) for a total of \$299,256.21. The judgment was affirmed on appeal.

This case is notable for two reasons. First, the damages awarded, under both theories, were tremendously disproportionate to the rental value of the premises. Second, the Michigan Court of Appeals, in an unpublished opinion, held that actual damages, as opposed to "punitive" or "exemplary" damages, may now include compensation for "mental distress and anguish," citing the Michigan Supreme Court decision in *Veselenak v Smith*<sup>1</sup>.

The Court of Appeals further held that the conversion statute allows treble damages plus costs and reasonable attorneys' fees for possessing and concealing converted property if a tenant has made a reasonable attempt to recover its property (in this case, just a demand). Once there has been a refusal of a right to possession, the tenant need not make any further demand for the property in order to recover.

This decision should cause all landlords considering the exercise of self-help to first carefully consider their potential liability to defaulting tenants under the anti-lockout statute and conversion statute.

For more information regarding this topic, please contact D. Stewart Green, Patrick A. Karbowski or Geoffrey S. Gallinger.

If you have any questions regarding the information contained in this E-news bulletin, please contact your Butzel Long attorney or a member of our Real Estate Practice Group:

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<sup>1</sup> 414 Mich 567, 574; 327 NW2d 261 (1982)

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