IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

RANDALL STICKNEY, Plaintiff, v. JEFFREY P. GOLDSTEIN, TONY DOMINO and A.M. DOMINO, JR. SALVAGE CO., Defendants.	)	Civil Action No. 1997-10-011

Date Submitted: February 20, 2002
Date Decided: March 14, 2002

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FINAL ORDER AND OPINION

Following the receipt of evidence and testimony after three (3) days of trial, the Court reserved decision. This is the Court's Final Order and Opinion in the above-captioned matter. Plaintiff Randall Stickney, ("Stickney") has filed a conversion action seeking compensatory and punitive damages and costs against defendants Jeffrey P. Goldstein, ("Goldstein"), Tony Domino, ("Domino") and A.M. Domino, Jr. Salvage Co., ("Domino Salvage Co.") for

allegedly removing salvaged motor vehicles and parts from 518 South Heald Street, ("the premises").

Defendants Goldstein, Domino and Domino Salvage Co. have answered the complaint, denied liability and contend that plaintiff is not afforded protection under the Landlord Tenant Code because no such relationship existed between Goldstein and Stickney. Defendants also assert they are not liable for the conversion of plaintiff's salvage motor vehicles and parts. Domino raised as defenses that he was an independent contractor, not an agent, an that Stickney failed to mitigate damages. Domino asserts individually and on behalf of the corporation, that they have been contractually indemnified for any liability from Goldstein.

Domino and Domino Salvage Co. have filed a cross claim against Stickney. For the reasons set forth below this court enters judgment in favor of Stickney for Twenty-three Thousand Five Hundred Dollars ($23,500.00) and costs against Goldstein and Domino Salvage Co. The Court finds no liability against Domino individually. The Court enters judgment against Goldstein on Domino individually and Domino Salvage Co.'s cross claim. This finding is now moot as the pre-trial stipulation in paragraph 4 indicates a default has already been entered against Goldstein by "the Domino defendants." Finally, the Court enters judgment in favor of Stickney against Goldstein for Ten Thousand Dollars ($10,000) in punitive damages.

The Facts

The Court finds the following relevant facts after trial. Wilbert Knotts, Sr., ("Knotts") an employee of Frank's Auto Sales, testified at trial[1]. During his lunch hour, Knotts routinely walks past 518 South Heald Street (the premises) and observes activity in the neighborhood. On the date the salvaged motor vehicle and parts were being removed, August 6, 1996 at

[1] The following facts were stipulated into the record pursuant to paragraph 15(a) of the parties pre-trial stipulation.

15. Narrowing of Issues

a. Stipulations/Admission of Fact[1a]

1. Abram Goldstein was the owner of 518 Heald St. during the time period of January 1, 1996 through December 31, 1996.

2. Jeffrey P. Goldstein acted as attorney-in-fact from Abram Goldstein with regard to 518 Heald St. during the time period of January 1, 1996 through December 31, 1996.

3. Jeffrey P. Goldstein, individually or as attorney-in-fact for Abram Goldstein, had an oral agreement with Randall Stickney for Mr. Stickney to provide maintenance services at 518 Heald St. and to show that property to prospective purchasers and tenants in return for Mr. Stickney's being able to use the property.

4. At some time in the Spring or Summer of 1996 Jeffrey P. Goldstein informed Tony Domino that motor vehicles located at 518 Heald St. had been abandoned.

5. At no time in 1996 did Jeffrey P. Goldstein have title to the motor vehicles located at 518 Heald St.

6. At some time in the Spring or Summer of 1996 Jeffrey P. Goldstein communicated with Tony Domino with regard to the removal of motor vehicles from 518 Heald St.

7. At some time in the Spring or Summer of 1996 Jeffrey P. Goldstein informed Tony Domino that he had Goldstein's permission, individually or on behalf of Abram Goldstein, to remove motor vehicles located at 518 Heald St.

8. At some time in the Spring or Summer of 1996 Jeffrey P. Goldstein, individually or on behalf of Abram Goldstein, contracted with Tony Domino to remove motor vehicles located at 518 Heald St.

9. At some time in the Spring or Summer of 1996 Jeffrey P. Goldstein, individually or on behalf of Abram Goldstein, agreed to sell motor vehicles located at 518 Heald St. to Tony Domino and/or A.M. Domino, Jr. Salvage Co.

10. Dennis C. Weisberg, Esquire, represented Jeffrey P. Goldstein with regard to 518 Heald St. during the time period of January 1, 1996 through August 1996.

11. Brian R. Murray, Esquire, of Newark, Delaware, informed Jeffrey P. Goldstein, directly or through his legal counsel, that he represented Randall Stickney with regard to 518 Heald St.

12. To your knowledge there does not exist either a lease or lease purchase agreement signed by both Randall Stickney and Jeffrey P. Goldstein (either individually or as attorney in fact).

13. The genuineness of the following documents are admitted:

A. March 15, 1996 letter from Dennis Weisberg to Brian T. Murray

B. April 4, 1996 letter from Brian T. Murray to Dennis Weisberg

C. August 5, 1996 letter from Dennis Weisberg to Brian T. Murray

[1a] These are facts admitted by defendant Goldstein due to his failure to deny Requests for Admission served upon him on January 16, 1998. Responses were due December 19, 1999 after defendant Goldstein Demanded Trial De Novo.

approximately 12:00 p.m., Knotts observed bulldozers, flatbed trucks and10-wheelers "snatching up cars". Knotts also observed damage to these salvaged motor vehicles, including damage to roofs and windshields, and also observed windows being cracked or smashed. Knotts observed two (2) motor vehicles being placed "on top of each other" and placed on flatbed trucks. Knotts observed a "number of cars inside the building" and also "whole cars on the premises with body damage". Knotts also observed a Mercedes "sitting along side the flatbed" as well as a Lincoln Town Car. Knotts believed the Lincoln Town Car looked in "good shape." Knotts recognized Domino as operating a flat bed trucks, as well as one of Domino's employees.

Reverend Pauline Motley, ("Motley") testified at trial. Motley's church was interested in purchasing the premises for use as a church. Motley along with the Bishop and the Board of her church traveled from New York to Delaware to inspect the premises. During Motley's visit to the premises sometime in August 1995 Motley observed "a whole lot of motor vehicles" on the premises. Motley has in the past worked for and volunteered as a worker for "Randall's Cute Little Coupes", a company Stickney owned and operated on Market Street. Motley spoke with Goldstein on several occasions to discuss purchasing the premises as a church. During the first phone call with Goldstein, Motley testified that Goldstein was "very agitated". During the second phone call Goldstein became "very upset" about the progress of the negotiations. In June, 1995 Motley met with Stickney to view the location and observed the salvaged motor vehicles inside the building. Motley saw "one car

banged up" and "a whole lot of cars inside the premises". Eventually, Motley on behalf of the church board made the decision not purchase the premises for use as a church.

Stickney testified at trial. Stickney owns "Randall's Cute Little Coupes". He has been in the business of selling used auto parts and salvaged motor vehicles at 3208 North Market Street for many years. In August 1995, Stickney served as Vice President and Trustee of the Board of his church. He was appointed to the committee assembled to consider purchasing the premises for use as a church. Stickney spoke with Goldstein on several occasions. Stickney also visited the premises. At the time Stickney inspected the premises on August 1995, the building was full of debris, carpet and chemical drums.[2]

Stickney testified at trial there were concrete cylinders "six-feet in length on the premises." Stickney also testified that was a series of cardboard cylinders and concrete forms "six-feet tall" stored on the premises.[3]

At some point Stickney agreed with Goldstein in August 1995 to act as a caretaker for the premises. Stickney also agreed with Goldstein to seek a potential purchaser for use as a church. During this period, Goldstein received "many complaints" from the Department of Licenses and Inspections of Wilmington concerning problems with the premises. Stickney believed it was

[2] Plaintiff's Exhibit "A" for identification purposes was moved into evidence without objection which was a diagram drawn by Stickney of the premises.
[3] Stickney believed he was owed by Goldstein for $1,500.00 for his costs to remove this debris. However, Stickney testified Goldstein never paid him the money. Stickney also testified there "was numerous break-ins" at the premises for which he had the responsibility to contact local law enforcement and authorities.

his responsibility to handle these complaints from governmental agencies as part of his agreement with Goldstein. At some point Stickney commenced "overall management" of the premises but was "not paid anything." In August 1995, Stickney received permission from Goldstein to store "several cars" in the building.[4]

Stickney, in exchange for the One Thousand Five Hundred Dollars ($1500.00) Goldstein allegedly owed him, believed a "quo pro quo" existed to store these used salvage cars on the premises. Stickney also believed "there was no limit" imposed by Goldstein concerning the amount or number of cars he could store on the premises.[5]

In September 1995, Stickney was using approximately 2,700-3,000 square feet of the premises for storage of his salvaged motor vehicles and parts. At this point in time, Stickney decided to negotiate with Goldstein to purchase the property for himself.

On September 6, 1995 Murray wrote to Goldstein offering to pay One Hundred Twenty-five Thousand Dollars ($125,000.00) for the premises subject to "all other terms and conditions of his July 31, 1995 letter".[6] Murray also offered to draft a "Lease Purchase Agreement" for all parties to sign on September 6, 1995 and advised Goldstein that Stickney "would like to move as

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[4] Plaintiff agrees that "several" meant two to three (2-3) used or salvaged motor vehicles.
[5] Stickney viewed the relationship with Goldstein as a "tenant" in exchange for "care taking" of the premises as well as his duties to contact Licensing and Inspections to respond to complaints while continuing his obligations to look for a prospective buyer. At some point in August 1995, Stickney began negotiating for the sale of the premises directly for himself. Stickney retained Brian Murray as his attorney to represent him during these negotiations with Goldstein.
[6] See plaintiff's Exhibit "1" and "2"

quickly as you could in this matter".[7] On October 10, 1995 Murray forwarded Goldstein a copy of the proposed Lease Purchase Agreement.[8]

In September 1995, Stickney spoke with Goldstein directly regarding zoning problems for the premises as the building was still commercially zoned, not residentially owned property which Stickney preferred. Goldstein informed Stickney that the commercial zoning "could be changed," and that several individuals, including Leo Marshall, and some other City Council members would assist Goldstein to secure such zoning if Stickney decided to purchase the premises. On or about September 1995, Goldstein called Stickney and became upset because a monthly electric bill from Delaware Power indicated electricity was being used at the premises. Goldstein believed Stickney owed the bill. Stickney denied to Goldstein that he was using any electricity in the building. Bonnie Patrillo, assistant to Goldstein on March 1, 1996 forwarded Murray a copy of the Delmarva Power and Light bill and requested payment by Stickney.[9]

On March 15, 1996 Weisberg, Goldstein's Maryland attorney, forwarded a letter to Murray as a counteroffer for the purchase of the premises. Weisberg was Goldstein's Maryland attorney but not admitted to the Delaware Bar.[10]

Weisberg in his March 15, 1996 letter offered on behalf of Goldstein a price reduction of approximately five percent of the final closing

[7] See plaintiff's Exhibit "2"
[8] See plaintiff's Exhibit "3"
[9] See Exhibit "4" and "5"
[10] See Exhibit "5"

price if settlement occurred between Goldstein and Stickney within 60 days from the date of the letter.[11]

In the March 15, 1996 letter, Weisberg also requested certain changes to the agreement. Weisberg requested that Stickney pay the sum of $700 per month rent through date of closing commencing with the first rental payment due on or before April 1, 1996. The remaining payments were to be due on or before the first day of each month thereafter.[12] Also under the proposed revisions, Stickney would be required to pay the sum of One Thousand Five Hundred Dollars ($1,500.00) to Goldstein "quarterly" with the first payment due on or before the first day of July 1996. Further payments were due quarterly on the first day of each third month until the date of closing.[13]

All other remaining provisions of the previous agreement remained in full force and effect according Weisberg's March 15, 1996 letter. In his March 15, 1996 letter, Weisberg requested that Stickney execute the lease purchase agreement with these changes.

On March 26, 1996 Weisberg again wrote Murray and indicated that Goldstein recently visited the premises and that Goldstein was "extremely agitated" with regard to the condition of the property. The basis of Goldstein's

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[11] See Exhibit "5."
[12] See plaintiff's Exhibit "5" paragraph 4
[13] The March 15, 1996 Weisberg letter provided that Stickney may make changes in the structure of the premises subject to the contractor that Stickney furnished Goldstein design drawings and specifications with the proposed changes and that no material deviations from the final plans and specs would be permitted "unless necessary to comply with the applicable Building or Zoning Codes." No liens could be placed on the premises on behalf of Stickney if he consummated the agreement.

complaints were that allegedly extensive use of the premises was now being made by Mr. Stickney. Weisberg also advised Murray, inter alia, that upon entering the premises "there [was] a substantial amount of debri [on the premises]; the fire doors have been left open; and the locks have been changed for which Mr. Goldstein has no keys".[14] Weisberg also advised Murray that Stickney has made "extensive use of the property for the past several years at virtually no cost and with no effort to comply with the promises made to Mr. Goldstein".[15]

In paragraph 2 of Weisberg's March 26, 1996 letter to Murray, Weisberg advised that Stickney "either immediately enter into the contract to purchase or immediately vacate the premises leaving them in the condition promised".[16]

On April 4, 1996 Murray responded in writing that he was reviewing Weisberg's letter with Stickney.[17] Murray advised in his letter to Weisberg that he would get Stickney to agree to terms "as soon as possible."

Of significance in Murray's April 4, 1996 letter to Weisberg was his request that Goldstein "agree to assist in getting the buildings commercial zoning restored."[18] Murray offered to "redraw the contract and or lease purchase agreement "appropriately."

[14] See plaintiff's Exhibit "6."
[15] See plaintiff's Exhibit "6."
[16] See plaintiff's Exhibit "6."
[17] See plaintiff's Exhibit "7."
[18] See plaintiff's Exhibit "8."

On August 5, 1996 Weisberg again wrote to Murray and advised Goldstein felt "that we have been deceived by your client and lured into permitting his use of property for a substantial time period."[19] Weisberg also advised that Goldstein believed Stickney "never intended to perform under the lease purchase agreement originally called for rent commencement November 1995." Weisberg advised that despite repeated demands for Stickney to either execute the contract and perform his obligations or vacate the premises that Stickney has continued to occupy the building "without payment." Weisberg advised that a final demand was made and still Stickney engaged in deceptive practices even though he had agreed to move his property and nothing has been removed.[20]

Weisberg advised finally in his August 5, 1996 letter that in addition to placing Murray on notice of the removal of the property Goldstein demanded for payment for the fair market value of the rental "deceptively obtained by Stickney" which both parties viewed at $700 a month. Weisberg requested $15,400 from Stickney. On August 5, 1996 Murray wrote to Weisberg as follows.[21] Murray advised Weisberg that he had spoken to Stickney and assured him that the removal process "has started as of Monday, August 5, 1996. This process will be expedited by Mr. Stickney".[22] Murray also advised in his August 5, 1996 letter to Goldstein that demand for payment "would not be met" because Stickney not only removed a large amount of trash and debri

[19] See plaintiff's Exhibit "8."
[20] See plaintiff's Exhibit "8."
[21] See plaintiff's Exhibit "9."
[22] See plaintiff's Exhibit "9" paragraph 2.

as well as other items from the premises. Stickney was also responsible for "cutting the grass, making sure the property stays boarded and dealing with all community complaints" and "generally making sure the property is not a nuisance."[23] Murray in paragraph 4 of his August 5, 1996 letter indicated that Stickney would remove his vehicles and personality from the property "starting immediately" and that Stickney's responsibility for the property will [then] cease immediately.

Later on or about September 7, 1996, Stickney received a call at his Market Street business informing him that his salvage motor vehicles and parts were being removed from the premises. Stickney drove to 518 South Heald Street and observed Domino and Domino Salvage Co. present and cars being "smashed and being placed on flat bed trucks." Stickney also observed other salvaged motor vehicles present and being removed including his wife's blue Mercedes and his 1969 convertible. Stickney observed that the Mercedes was "hit in the back." Stickney made a phone call to Domino and Domino informed Stickney he could retrieve the cars for $75 a piece and storage costs of $25 per day for each salvaged motor vehicle.

With regard to the issue of damages, Stickney introduced into evidence car fax reports. See, D.R.E. 803(17). These car fax reports allegedly detail the value of each of the salvaged motor vehicles and parts that were stored on the premises by Stickney. Stickney also testified orally as to the value of each salvaged motor vehicle from a handwritten document he prepared

[23] See, plaintiff's Exhibit "9."

at trial as well as a chart marked as plaintiff's Exhibit "13" received into evidence depicted the purchase price, average sale price and average salvage amount for vehicles numbered 1-30. As to vehicles numbered 31-43, Stickney's chart set the purchase price of the vehicle and value of remaining parts. The third page listed six (6) vehicles on consignment with a "customer demand" price.[24]

The value of damages as the approximate result of defendants' conduct, according to Stickney, was $96,000.[25] Stickney testified at trial the seizure by Goldstein of his salvage auto parts and motor vehicles caused him to go "bankrupt," although Stickney never filed a formal petition with the Bankruptcy Court.

Weisberg testified at trial out of turn for the defense. He testified he wrote the subject letters that were received into evidence.[26]

Weisberg also testified regarding the revisions to the proposed contracts exchanged between the parties. Weisberg also conceded that he was not admitted to the Delaware Bar, was unaware whether Delaware law allows "self help" to remove tenants from their premises or whether lease agreement may be recognized under Delaware law which are consummated "orally."

Stickney was recalled to testify by Mr. Perry.[27] Stickney testified that plaintiff's Exhibit "7" deals with the purchase price of the salvaged motor

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[24] Stickney moved into evidence directly a three-page handwritten list of his salvaged motor vehicles detailing the purchase price, auction fee, plus towing and other expenses for each salvaged motor vehicle.

[25] This Court's jurisdiction is limited in civil cases "where the amount or controversy exclusive of interest is $50,000." 10 Del.C, § 1322(a).

[26] See plaintiff's Exhibit "5" and "6."

vehicles that and only seven (7) of the motor vehicles "had such receipts." Stickney could not present cancelled checks for the receipts of other salvaged motor vehicles or parts but believes he has a receipt for the 85 Lincoln Town Car and "has vehicle identification numbers for other vehicles."

On the Stickney handwritten list of salvaged motor vehicles, Stickney testified that item 13 was described in detail as a motor vehicle which is set forth by vehicle identification number, title number. Stickney testified the purchase price was $550.

Stickney also testified there was "nine Hondas" on the premises when they were seized by Domino and that "he did not have the funds to pay Domino to remove the vehicles" because it would cost "approximately $5,000 to get his cars back".

With regard to plaintiff's Exhibit "13", Stickney testified that the document is a typed list of his salvaged motor vehicles. Stickney agreed that he has "no other records than this list represents "estimates of the motor vehicles" on the premises before they were removed by Domino. Stickney agreed that some of the salvaged motor vehicles "had parts taken out of them". Stickney also advised that he does not have a recycler's license and only has a salvage motor vehicle license. Stickney testified he is no longer active in the auto business trade, but still presently owns eighteen (18) salvaged motor vehicles.[28]

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[27] See plaintiff's Exhibit "7."
[28] See Domino's "A" for Identification, documents representing Stickney's 1994, 1995 and 1996 schedule. See federal income tax records.

Stickney testified at trial in 1994 he made a $10,718 profit from his various businesses selling salvaged motor vehicles and/or parts. In 1995 Stickney lost $73,328 and in 1996 he made a $3,904 profit.[29]

Stickney testified as to several of his salvaged motor vehicles and what he believed the estimated value of each salvaged motor vehicle the time of Domino transporting them to his salvage yard. These motor vehicles included a 1988 Audi, a Chrysler LeBaron, a Dodge Colt, a Mitschibitsi, a 1987 Honda, a Buick Electra, and a Lincoln Town Car. Stickney also estimated values to a Ford Taurus that appeared on his handwritten list.

Stickney believed that failure to have the commercial zoning changed to residential zoning was the main issue that prevented him from entering into the Lease Purchase Agreement to buy the premises.

The defendants presented their case in chief. Tony Domino, Jr. ("Domino") was sworn and testified. Domino owns Domino's Salvage Company ("Domino Salvage") for the past 30 years. Domino is 63 years of age. Domino Salvage dismantles and disposes of scrap autos. Domino has entered into various towing contracts with local businesses. Domino takes salvaged or scrap cars to his business and removes fluids and other parts and then dismantles the motor vehicles. In some instances Domino uses a car crusher. Domino has never stored auto parts. Domino held "Goldstein cars" taken from the premises on December 6, 1996 for one month and then he disposed of the salvaged parts. Domino has an auto recycler license and is unaware as to

[29] See, plaintiff's Exhibit "13."

whether he must hold the car for 30 days if it is not stolen. Domino disposes of the motor vehicles after 30 days. The weight of an average U.S. car is 2,900 and a foreign car is 1,200 to 1,300 pounds. Domino is "paid by weight" for the car in scrap metal.[30]

Domino went to Goldstein's building at 518 South Heald Street on or about September 6, 1998 and removed the salvaged motor vehicles and parts and then "crushed them." Domino towed two (2) motor vehicles "at a time" took no photographs of the salvaged cars. After the 30 days Domino destroyed Stickney's salvaged motor vehicles and parts by taking them to Philadelphia for sale as scrap metal after "crushing them". Domino testified he saw 19 dismantled automobiles. He still has the 1965 Ford convertible. When Domino was requested to go to Mr. Goldstein's property he was told there would be "nothing but scrap salvage."

Domino requested a Release of Liability from Goldstein which was executed and provided by Goldstein.

The rollback truck Domino used was 16 feet long and allowed two (2) motor vehicles to be placed at a time. Domino made eight (8) trips from 518 South Heald Street to his business with approximately two (2) motor vehicles on the truck each time and believed he towed 16 cars.

Domino drew a diagram which was marked and received into evidence. Domino testified the premises at 518 South Heald Street was approximately 68 feet long and 63 feet wide and the way the cars were

[30] See, 21 Del. C. § 2504.

positioned "there was approximately 3,150 square feet space available." Domino believed there were five (5) motor vehicles "on a ledge" that was 18 feet wide and Domino believed "a total of 24 cars" could have been stored on the premises based upon the size of a normal motor vehicle. It took Domino three and one-half (3 ½) hours to remove the salvaged motor vehicles.

Domino still has in his possession a Ford convertible and a Mercedes "that broke in half" when it was being loaded on the flatbed truck. Domino received approximately $1,400 to $1,600 in "salvage money" based on the weight of the motor vehicles when he delivered them to a storage site.[31]

Domino reiterated that Goldstein had told him the salvaged motor vehicles "had been abandoned by a prior tenant." Domino informed Goldstein that he would "not take the cars without a Release of Liability" in writing which was provided. Finally, Domino believed he did not keep all the forms necessary by State because more than three (3) years had lapsed since he moved the cars.

On re-direct Domino testified "an average car is 16 feet long and 6 feet wide" and that is how he estimated the number of cars at the premises.

James E. Crane, Sr. ("Crane") testified at trial. Crane is 67 years old and moved to Delaware in 1989. Crane worked as a motorman for 20 years and knows Mr. Domino. Crane cleans Domino's shop and works in his yard and was so employed in 1996. Crane recalls the "towing job" at 518 South Heald Street. Crane observed pieces of car and a mess all over the floor and

[31] See Domino's Exhibit "2" which is the Hold Harmless Agreement with Goldstein.

the property. Crane saw lots of motor vehicles with the fronts cut off and no doors and the place was "just a mess." Crane "swept up the mess" after the salvaged motor vehicles and parts were removed and saw grease and oil "all over the floors." Crane testified he saw 18-19 motor vehicles on the premises "all torn up."

Paul Anthony Highfield ("Highfield") was sworn and testified. Highfield worked for Goldstein during 1995 and 1996. Highfield visited the premises at 518 South Heald Street and in October 1995 and February 1996. Highfield also "cleaned up the building." Highfield saw salvaged motor vehicles in the building and called Goldstein and informed him "there is a lot of cars in the building." Goldstein then came to the premises and "locked up the building". He saw a new electrical wire which was installed by Stickney. Highfield saw cars, bumpers, fenders and parts of cars and windshields in the premises. Following his conversation with Goldstein, Highfield understood that the motor vehicles would be removed "the next weekend" but "he came back and the salvaged motor vehicles were still there". At Goldstein's direction Highfield visited several auto dealers but was told you need a salvage dealer to remove the motor vehicles. He eventually spoke with Domino who agreed to take on the responsibility of removing these cars as long as the Indemnification Agreement was signed. Highfield guesses "approximately 20-25 cars" were on the premises.

Highfield testified that he had to walk on top of the cars to go through the warehouse and although he never "counted" the motor vehicles, Highfield "guessed 20 vehicles" were on the premises.

Goldstein was sworn and testified.[32] Goldstein is familiar with the building his father purchased in 1960 as 518 South Heald Street. The building has since been sold but originally was used by his father for a textile manufacturer business.

Goldstein's goal was to sell the building not lease it or enter into a landlord-tenant agreement because he did not want a "white elephant." Goldstein remembers Randall Stickney calling him and speaking with different churches to sell the premises. Goldstein also allowed Stickney to clean up the building but did not agree to pay Stickney for the clean up. At or about this time period, Stickney informed Goldstein that Stickney would like to buy the building for himself.

At this direction the lawyers drew up a Lease Purchase Agreement and Weisberg acted on Goldstein's behalf. Goldstein received at some point a large electric bill from Delmarva Power he paid $700.

Sometime in the winter of 1995 or 1996, Stickney called Goldstein and requested permission to store "a few motor vehicles" on the premises.

[32] Goldstein at trial introduced 9 exhibits into evidence. Defendant's Goldstein #1 was a copy of the parties proposed Lease Purchase Agreement. Goldstein #2 was a second amended version of the proposed Lease Purchase Agreement. Goldstein #3 was a letter dated August 19, 1994. Goldstein #4 was a Profit and Loss Statement for Stickney. Goldstein #5 was a July 31, 1995 letter from Brian Murray, Esquire to Jeffrey P. Goldstein. Goldstein #6 was a September 6, 1995 letter to Jeffrey P. Goldstein from Brian Murray, Esquire. Goldstein #7 was an October 10, 1995 letter to Jeffrey P. Goldstein from Brian Murray, Esquire. Goldstein #8 was a letter from Jeffrey P. Goldstein dated February 21, 1996 to Brian Murray, Esquire. Goldstein #9 was a letter dated March 1, 1996 to Brian Murray, Esquire from Jeffrey P. Goldstein.

Later Goldstein went with Highfield to take a look at the premises and saw a large number of salvaged motor vehicles stored on the premises and "was completely dissatisfied." Goldstein believed the premises "was a mess" and "did not know whose cars were all there." Goldstein thought the vehicles were possibly stolen. Goldstein called Stickney and "he did not receive a good response."

Goldstein testified he did agree with Stickney's testimony that if Stickney purchased the building Stickney could keep the salvaged motor vehicles on the premises. According to Goldstein, when the Lease Purchase Agreement was not consummated, Murray told Goldstein, "We'll get the cars out of there."

Goldstein testified that Brian Murray, Stickney's counsel, told him directly, "If we don't get the cars out of there, they can be moved out by Goldstein." Goldstein subsequently requested a co-defendant, Domino Salvage Co. to remove the motor vehicles. Domino agreed to perform the task as long as a hold harmless and/or indemnification agreement was signed by Goldstein.

Discussion

The Court has approved a stipulated post-trial briefing schedule. The following matters need to be decided by this Court. First, the Court must determine whether a landlord tenant relationship existed between Stickney and Goldstein. Second, the Court must determine whether all/or one of the defendants committed an act of conversion of Stickney's salvaged motor vehicles and parts. Third, the Court must determine the liability, if any, of

Goldstein, Domino and Domino Salvage Co. Fourth, the Court must determine whether Stickney had a duty and, if so, did Stickney mitigate damages. Fifth, the Court must determine the appropriate measure of damages if liability is established against any or all of the co-defendants. Finally, the Court must determine whether the Doctrine of Spoilation applies to the facts of this case.

Opinion and Order

Based upon the trial record, and post trial briefing the Court finds the commercial lease statute as set forth in Goldstein's Answering Brief, 25 Del. C. § 6102 does not apply to the facts of this case. The Court finds the previous Landlord Tenant Code adopted by the General Assembly in 1974, 58 Del. Laws, C. 472 applies. Certain sections, relevant to this proceeding, provide as follows. Twenty-five Del.C. §5102(e) define rental "agreement" as "means and includes all agreements, written, oral, which establish or modify the terms, conditions, rules, regulations or other provisions concerning the youth or occupancy of a rental unit". Twenty-five Del.C. 5102(9) defines "rental unit" "is a term which encompasses dwelling, commercial and farm units". Twenty-five Del.C. §5102(1) defines "commercial unit" "is a structure or that part of a structure which is used for purposes other than the dwelling unit or farm unit."

There is no question that Goldstein and Stickney had an oral agreement outlined above but never reduced the same to writing. The agreement required Stickney to take care of the subject premises such as contacting Licensing and Inspections, seeking a prospective tenant and

performing some maintenance. In turn the consideration was that Stickney was given permission by Goldstein orally to store "a few," namely two or three motor, vehicles on the premises.

The Court notes during the trial it is clear that the parties' relationship changed drastically, apparently without Goldstein's permission or consent during calendar years 1995 and 1996. Stickney began to store a large number of salvaged motor vehicles and parts on the premises and drastically changed the use of the subject premises. Scrutinizing the trial record, however, there is no specific agreement as to the actual intended use of the premises by Stickney. The Court notes the parties original informal agreement only called for Stickney, as a member of his church, to act as agent during negotiations for sale of the premises to be later used as a church. Stickney then undertook these maintenance duties without compensation or paying rent for storage of "a few" salvaged motor vehicles.

The Court must determine whether by a preponderance of evidence a landlord-tenant relationship existed between Stickney and Goldstein. Certainly, the formalities of such a landlord-tenant relationship did not exist. The parties never reduced a landlord-tenant agreement to writing. The parties never discussed a security deposit to be made by Stickney. Nor did the parties ever discuss a monthly rental payment by Stickney at the outset of their relationship. Goldstein never provided a written lease or copies of the Landlord-Tenant Code to Stickney. The parties never discussed which portion, if any, of the premises could be used for Stickney's storage of "a few" salvaged

motor vehicles and/or parts. Nor was there a discussion outside the initial permission by Goldstein that allowed to store "a few cars" on the premises.

In short there was no oral or written declaration of the parties intent to enter into a landlord-tenant relationship. *Doe v. Gray*, Del. Super., 7 Del. 135 (1859). Nor does there appear to be a "meeting of the minds" of the parties. The inquiry for this court after a careful review of all the facts is whether a reasonable man would, based upon the "objective manifestation of assent" and all the surrounding circumstances, conclude the parties intended to be based by contract". See, *Industrial America, Inc. v. Fulton Industries, Inc.*, Del. Super., 285 A2d 412 (1971); *Western Natural Gas Co. v. Cities Services Gas Co.*, Del. Super. 223 A2d 379 (1966) "An overt manifestation of assent, not a subjective intent controls the formation of a contract. See, *Acierno v. Worthy Bros. Pipeline Corp.*, Del. Super. 693 A2d 1066 (1997). After a careful review of the trial record, the Court finds that no landlord tenant relationship existed between Stickney and Goldstein.

I. Was There an Unlawful Conversion by Goldstein Of Stickney's Property

The law of conversion provides, inter alia, that ". . . conversion in the broad sense consists of an act of willful interference with any chattel without lawful justification, where any person entitled thereto is deprived of the possession of it". Salmond Torts, 8th Ed., 314 *Vandike v. Pennsylvania R.R. Co.,* Del. Supr., 86 A.2d 346 (1952). Even notwithstanding the Court's finding that Stickney was not a tenant under the Landlord Tenant Code as it existed in

1995 or 1996, the Court finds that Goldstein converted Stickney's property by a preponderance of the evidence. Goldstein hired Domino Salvage Co. to remove all salvaged motor vehicles from the premises and Domino Salvage Co. subsequently reduced most of the salvaged motor vehicles to scrap metal after the property was taken to Philadelphia. It is undisputed that Goldstein authorized and instructed Domino to remove the vehicles. Goldstein's authorization to Domino Salvage appeared in his August 5, 1996 letter. "Per our conversation, I am authorizing you to remove all automobiles which are currently abandoned inside of my building at 518 S. Heald Street, Wilmington, Delaware." Even in absence of the Landlord Tenant Code, it is clear that these acts by Domino Salvage Co. and Goldstein constituted a tortious interference and/or conversion of Stickney's property. The Court finds that Goldstein, Domino Salvage Co. clearly by a preponderance of evidence "willfully interfered" with Stickney's salvage auto parts and motor vehicles and without lawful justification deprived him of possession of it.[33] The Court also finds by a preponderance of the evidence that Stickney never abandoned his property.

As set forth in *International Business Machines Corp. v. Comdisco, Inc.*, 1993 Del. Super., LEXIS 183, Goldstein, J. (June 30, 1993), the law of conversion has been defined as follows:

> The modern action for tort of conversion always has been colored by its dissent from the ancient common law form of action of Trevor, which originated as a

[33] There is some oral testimony in the record that Stickney's lawyer promised to remove the property or Goldstein could remove the same. However, neither Weisberg or Murray ever confirmed this agreement in writing. The Court finds that fact was not proven by a preponderance of evidence.

> remedy against the finder of lost goods who refused to return them. Until comparatively recently, the fiction of losing in finding persisted in the pleading of the action. However, the basis of the tort was considered to be an interference with possession of a chattel, or with right to immediate possession.

See, *General Motors Corp. v. Douglass,* Ill. App., 206 3rd 881, 151 Ill. Dec. 822, 565 N.E.2d 93 (1990) (citations omitted) (citing Restatements Second of Torts, Sec. 242, Com. Sec. 222A, camt. A (1965). As set forth in *International Business Machines Corp.,* "A complaint for a conversion must allege plaintiff's right in the property and to immediate possession; a demand by plaintiff for possession" and unauthorized assumption of control or ownership by the defendant over the property of the plaintiff. *Catz v. Belmont National Bank,* Ill. Supr., 122 Ill. 2d 64, 96 Ill. Dec. 697, 491 N.E.2d 1157 (1986). "However, this old common rule does not apply where 'wherein [the] independent act of conversion' is alleged." See, *International Business Machines Corp.* at 8.

> Conversion is always an intentional exercise of dominion or control over the chattel. Mere Non-Feasence or negligence, without such an intent, is not sufficient for a conversion. If the actor has the intent to do the act exercising dominion or control, however, he is not relieved from liability by his mistaken belief that he has possession of the chattel or the right to possession or that he is privileged to act.

International Business Machines Corp., supra; Restatement Second of Torts, Sec. 223, cmt. B "The essence of conversion is a wrongful deprivation of one who has a right to immediate possession of the object unlawfully held." *Bender v. Consolidated Mink Ranch, Inc.*, Ill. App., 110 Ill. App., 3207, 65 Ill.

Dec. 801, 441 N.E.2d 1315 (1982); *International Business Machines Corp.,* supra.

It is also clear from the facts set forth in the trial record that Stickney did not consent to the removal of his salvaged motor vehicles and parts. Stickney only learned of the removal by Goldstein and Domino of his salvaged motor vehicles after a phone call to his place of business on the date the property was removed unlawfully. Absent consent, the Court finds Goldstein and or Domino converted without lawful justification, Stickney's property.[34]

The Court does not find any defenses to this conversion action. Further, no final notice was sent by Goldstein as a "cut-off date" to remove the property. Goldstein apparently without further contact with Stickney removed the motor vehicles and salvage parts.[35]

II. Are All Defendants Liable as Tortfeasors For the Unlawful Conversion of Stickney's Vehicle

It is clear that the law in Delaware that exists today is both principal and agent are liable for the torts committed by the agent. Restatement of agency, second, §§ 217(A) and 359(B). See *Clark v. Brooks,* Del. Supr., 377, A.2d 365 (1977). "An agent who doesn't act otherwise a tort if not relieved from liability by the fact he that acted at the command of the principal or on account of the principal". Restatement II, Sec. 343, "An agent is also subject to liability

[34] See *International Business Machines Corp. v. Comdisco, Inc.,* Del. Supr., 1993 WL 259102 @ 14, Goldstein, J. (June 30, 1993).
[35] The Court also finds that Stickney's interest in the premises was not a license and therefore the case law cited by Goldstein does not apply.

as he would be for his own personal consequence for the consequences and another persons conduct from his directions even if with his knowledge of the circumstances he intends to contact, or consequences . . ." *T.V. Spano Bld. v. Wilson,* Del. Supr., 584 A.2d 523 (1990).

As set forth in *White v. Gulf,* Del. Supr., 406 A.2d 48 (1979), ". . . no single rule could be laid down to determine whether a given relationship is that of [master-servant] as distinguished from an independent contractor." However, the parties intent "is a relevant sub-factor in determining the right of control." *Fischer v. Townsend's Inc.,* Del. Supr., 695 A.2d 53 (1977).

Clearly, Domino Salvage Co. was an agent for Goldstein when it removed the subject property consisting of salvaged motor vehicles and parts pursuant to Goldstein's written instructions. While Domino and Domino Salvage Co. have executed a Release and Hold a Harmless agreement, this private contract does not prohibit this Court from making the finding that Domino Salvage Corporation is equally liable as a joint tortfeasors for the unlawful and unauthorized removal of Stickney's property. The Court however, dismisses Domino individually as this Court has no legal authority to "pierce the corporate veil against a corporate officer individually, *Sonne v. Sachs*, Del. Supr. 314 A2d.104 (1973).

III. Does the Doctrine of Spoliation Apply

Based upon the trial record the Court finds by a preponderance of evidence that Domino Salvage Co. and Goldstein intentionally suppressed or destroyed "pertinent evidence," and that an inference has arisen that would be

unfavorable to all co-defendants. See *Equitable Trust Co. v. Gallagher*, Del. Supr. 77 A2d.548 (1950); *Larson v. Romeo*, MD. CT. App., 254, MD. 220, 255 A2d 387 (1969). See also *Collins V. Throckmorton*, Del. Supr., 425 A.2d 146 (1980). The doctrine of spoliation is a rule of evidence and the Court finds it applies to the instant proceeding. *Fahey-Hosey v. Capano*, Del. Supr., 1999 WL 743985 (1999).

The facts indicate that Goldstein chose the method of removal and subsequent destruction of Stickney's property. Goldstein did not store the salvaged motor vehicles and parts in a storage area for later repossession by Stickney. Goldstein took the property via Domino Salvage Co. to Philadelphia and reduced it to crushed metal and received One-Thousand Eight Hundred Dollars ($1800.00). Goldstein gave no instructions to Domino to preserve the property or store it in a safe location. Nor did Domino or Goldstein preserve any records. 25 Del.C §2505 etsq; 21 Del.C §2505(d). Domino and Goldstein collectively preserved no evidence. CoFrancesco v. Shoprite Supermarkets, Inc., Del. Super. 200 (WL 541 482, Slights, J. (April 19, 2001); Wheatley v. State, Del. Supr., 465 A2d1110 (1933).

IV. What is the Proven Measure of Damages for Stickney?

The Court has to resolve certain factual disputes as to the issue of damages. Clearly, Delaware law "does not permit recovery of damages based upon speculation or conjecture." *Henne v. Balick*, Del. Supr., 146 A.2d 394 (1950). Further, a plaintiff in a conversion action is "entitled to the benefit of reasonable inferences from established facts." *Gannett Co. v. Kanagg*, Del.

Supr., 750 A.3d 1174 (2000). The Court has already found that Goldstein and Domino Salvage Co. unlawfully converted Stickney's property. What is left for the Court to resolve is the appropriate measure of damages. Stickney did move into evidence title certificates for each motor vehicle and or salvage motor vehicle; car fax reports with transaction records and purchase documents for the motor vehicles could be located. Stickney also produced a chart of his inventory.[36] The inventory specified each motor vehicle had been stored, the cost of the vehicle, expected to be received, at sale and the expense to further repair the motor vehicle for sale.

Stickney has offered several potential methods of computing damages, which include "average sale price" and or then "average salvage amount" or the "customary demand price".

Domino and Domino Salvage Co. and Goldstein argue that Stickney should merely be given the salvage amount for the motor vehicles, which was the money Domino received from the scrap metal. The Court finds this calculation for the measure of damages incorrect. Stickney also requested $1,640 in damages for the judgment against him in Magistrate Court 13.

Several methods have been set forth in the record detailing which motor vehicles were, or were not, in existence. Domino submitted a chart into evidence setting forth what a normal public garage would yield to indicate the actual number of motor vehicles stored on the premises. Stickney has offered

[36] See plaintiff's Exhibits "10," "11" and "13."

typed list of the list of motor vehicles as well as the plaintiff's Exhibits "10," "11," and "13."

The Court finds by a preponderance of evidence after reviewing the testimony, all trial exhibits, and oral evidence in the record that damages should be resolved in Stickney's favor in the amount of Twenty-Nine Thousand Two Hundred Ten Dollars ($29,210.00). The Court bases this finding of damages on Stickney's evidence in the trial record: title certificates for each vehicle's car fax report with transaction records; purchase documents for some vehicles and Stickney's typed inventory listing each vehicle, which detailed the cost and price to be received as sale as well as expense to repair each vehicle in pertinent part. Case law provides that an award of damages for a conversion action is the value of the property at the time of conversion. See, *Addalliv v. Mazzella,* 1987 Del. Supr., LEXIS 1017, Poppiti, J. (January 29, 1987); *Blake v. Town of Delaware City,* D. Del. 441 F. Supp. 1189, 1205 (1977).

Therefore, the measure of damages for Stickney's illegally seized salvaged motor vehicles and parts is that the value of the property at the time of the conversion plus interest. *Windham, Inc. v. Wilmington Trust Co.,* Del. Supr., 59 A.2d 456, 459 (1948). The Court finds that the judgment should be set at $29,210 as compensatory damages against Goldstein and Domino for several reasons. First, Stickney Exhibit "13" is the most credible evidence of the list of inventory and/or actual damages, the premises when Domino and Goldstein illegally seized Stickney's property. The purchase price Stickney paid for vehicles 1-30 is $15,495. For vehicles 31-43, the purchase price

totaled $3,300. The value of the consignment vehicles on page 3 of Stickney's Exhibit "13" is $8,775 for a total of $27,570. When the judgment of $1,640 plus cost from the Justice of the Peace Court 13 judgment is added the total damages proven by preponderance of evidence are $29,210.

V. Should Plaintiff be Awarded Punitive Damages

Carefully scrutinizing the record as well as the evolving relationship between Goldstein and Stickney throughout the course of events in this proceeding it is clear that Stickney has set forth a bona fide claim for punitive damages.

"Punitive or exemplary damages are not allowed by way of recompense for injury, but as punishment to the tort feasor when his wrongful act was committed willfully or wantonly." *Malcolm v. Jackson,* Del. Supr., 295 A.2d 711 (August 8, 1972); *Riegal v. Aastad,* Del. Supr., 272 A.2d 715 (1970).

As set forth in *Delaware Sanitation, Inc. v. Reuter,* 1998 Del. C.C.P. LEXIS 20 (Smalls, J.) (September 18, 1998), the standard for punitive damages as follows:

> The standard which governs the award of punitive damages in Delaware is well settled. In tort actions punitive damages are appropriately imposed 'in situations where the defendant's conduct, though unintentional, has been particularly reprehensible, i.e., reckless or motivated by malice or fraud.' In actions arising ex contractu, punitive damages may be assessed if the breach of contract is characterized by willfulness or malice. In either setting, the focus is on the defendant's state of mind. <u>If the defendant's conduct reflects a conscious indifference to a foreseeable result, punitive damages may be imposed to punish such indifference and to deter others from similar conduct</u>. (Emphasis supplied)

See, also, *Jardel Co. v. Hughes,* Del. Supr., 523 A.2d 518 (1987).

Clearly, Goldstein's conduct meets the standard when he directed to Domino to remove Stickney's property, without his consent, and the property was subsequently destroyed into scrap metal after being taken to Philadelphia. Goldstein's conduct though his frustration with the failure of the parties to negotiate the Lease Purchase Agreement was consciously indifferent to the foreseeable result of the destruction of Stickney's property. An award of $10,000 punitive damages is clearly appropriate under the facts of this case.

VI. Did Stickney Have a Duty to Mitigate and/or Did He Mitigate Damages?

The facts presented at trial indicate that Stickney did not have the monies available to recoup his property when Goldstein illegally converted his salvaged motor vehicle. While Stickney had a duty to mitigate, because his property was seized illegally and Domino attempted to charge him for the simple return of his illegally converted property, Stickney testified he had no resources to pay Domino.

"The damages recoverable in an action for conversion may be reduced by the return and acceptance of the goods by the plaintiff, at least where such return and acceptance occur prior to the bringing of the action" 18 AM Jur., 2d, Conversion, §102. In addition, since these acts by Goldstein and Domino were unlawful, Stickney is not liable for the costs of seizure, towing or storage Walls v. Rees, 569, A2d at 1165. Nor could Stickney mitigate by paying these

costs for the unlawful conversion of his property because the Court finds he has worn out resources to do so.

A form of Order is attached hereto entering the Court's judgment.

IT IS SO ORDERED this 14th day of March, 2002.

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JOHN K. WELCH
ASSOCIATE JUDGE