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STATE OF MICHIGAN
IN THE SUPREME COURT

ALISA A. PESKIN-SHEPHERD, PLLC,

Plaintiff-Appellee,

Supreme Court No 162375
Court of Appeals No 348023
Oakland County Circuit Court No 16-154544-CK

-v-

NICOLE BLUME F/K/A NICOLE KNUFF

Defendant-Appellant

and SEAN BLUME,

Defendant

_____/

PLAINTIFF – APPELLEE'S

CORRECTED SUPPLEMENTAL BRIEF IN OPPOSITION TO

APPLICATION FOR LEAVE TO APPEAL

Submitted by:

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RESPONSE TO APPELLANT'S SUPPLEMENTAL INTRODUCTION

On October 22, 2021, this Court ordered supplemental briefing on Appellant's pending application for leave to appeal to address "whether: (1) an attorney's lien and/or the proceeds obtained from the sale of a property subject to an attorney's lien is a property interest capable of being converted; (2) the trial court correctly calculated the treble damages under MCL 600.2919a (1); and (3) any ethical limitations apply to bar the collection of treble damages for an attorney fee." This brief represents Plaintiff-Appellee's compliance with that Order.

Nicole Blume (formerly Nicole Knuff) ("Blume"[1] or "Appellant") posits that Alisa A. Peskin-Shepherd, PLLC ("Peskin-Shepherd") has vindictively and unethically "transformed into over seven times" the decade old attorney fee balance still unpaid by Blume to Peskin-Shepherd since her 2010 divorce. In fact, the judgment against Blume incorporates damages arising out of her liability for statutory conversion – a cause of action separate and distinct from the $51,098.68 in contractual fees owed – which by statute provides for treble damages and attorney fees. Blume does not dispute that she took $39,109.08 in proceeds from the sale of a property on which Blume gave Peskin-Shepherd a lien or that she used the entirety of the sale proceeds for her own purposes instead of satisfying the lien – rendering her subject to the "trebling" of damages under MCL 600.2919a. Rather Blume seeks to ignore the proverbial "elephant in the room" – the tortious nature of her conduct and the remedy obtained as a result – and instead masquerades the entire judgment as an exponential attorney fee recovery which it is not.

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[1] Throughout the lower court proceedings, and in all the courts' opinions, Mrs. Nicole Blume is referred to as "Nicole," in part because her husband, Sean Blume, was named as a defendant. Since Mrs. Blume is the only Applicant, the name "Blume" or "Appellant" is used throughout this Brief.
[2] 3/9/17 Judge McDonald Opinion and Order, 1/21/2022 Blume Appendix ("Blume Appx"), Tab K at 374, 38

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Appellant devotes the bulk of her supplemental discussion to an unpreserved issue outside the scope of this Court's October 22, 2021 Order (and outside the scope of her application for leave to appeal), *viz*., whether the attorney lien itself violated MRPC 1.8. The validity of the lien was litigated and upheld by Judge McDonald in the divorce case – a ruling Appellant did not appeal, and which is, therefore, *res judicata* here.[2] *Washington v Sinai Hosp of Detroit*, 478 Mich 412, 418; 733 NW2d 755 (2007).

Appellant also blames Peskin-Shepherd for not advising Blume that her multiple acts of fraud – including conversion of the lien and the sale proceeds– could subject Blume to treble tort damages. Blume asks the court to sympathize with her assertion that she was deprived of "information sufficient for her to reasonably understand the broad charging lien, as evidenced by the fact that she sold the property without paying it." (1/22/2022 Nicole Blume Supplement, p. 2) ("Blume Supplement"). The relevant facts compel the contrary conclusion.

As Blume acknowledges in her supplement (Blume Supplement p. 4), Blume had already given Peskin-Shepherd a lien in her retainer agreement on "any sum recovered by way of settlement, judgment, or otherwise as security for the payment of any fees, costs or expenses unpaid at the time of the receipt of such settlement, judgment, or other recovery."[3] The retainer agreement also states that "[t]he law firm has advised the client that she should have this retainer reviewed by an independent attorney and either client has done so or client has voluntarily chosen not to do so, after being given a reasonable opportunity to do so."[4] Thus when Blume signed the retainer agreement on September 23, 2009 – a year before she signed the 9/23/2010 consent

[2] 3/9/17 Judge McDonald Opinion and Order, 1/21/2022 Blume Appendix ("Blume Appx"), Tab K at 374, 38

[3] 9/23/2009 Retainer Agreement, Blume Appx, Tab A, p. 4. The lien language in Peskin-Shepherd's retainer agreement mirrors the formulation of a charging lien automatically imposed under Michigan common law. See footnote 43 below.

[4] (*Id.* at 7)

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judgment[5] – she had plenty of time to seek independent counsel as to Peskin-Shepherd's attorney lien.

Blume testified she reviewed an August 18, 2010 draft of the consent judgment in full**, including the attorney lien** provision and the provision advising her of her **right to seek independent counsel** prior to signing the consent judgment of divorce.[6] That draft was reviewed by Blume in August of 2010, a month before she signed the final version. Peskin Shepherd testified that she reviewed the consent judgment with Blume "paragraph by paragraph" once by telephone on August 23, 2010[7] and again "paragraph by paragraph" in person on September 22, 2010.[8] These detailed reviews of the draft judgment were referenced in Peskin-Shepherd's time records, admitted as Exhibit 3 at trial.[9]

The Escanaba Property was included as subject to Peskin-Shepherd's attorney lien in the final draft because Blume recognized that she could not afford to pay Peskin-Shepherd's attorney fee at the time of her divorce and that the Escanaba Property was the only property she could use to pay her attorney fees if "all else failed."[10] The final version of the consent judgment contained an attorney lien in favor of Peskin-Shepherd on the Escanaba Property[11] and a separate provision

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[5] 9/23/2010 Consent Judgment of Divorce, Blume Appx Tab B, p. 39
[6] 12/11/2018 Trial Transcript, Blume Appx, Tab W at 697- 698
[7] 12/10/2018 Trial Transcript, Blume Appx, Tab V at 604-605
[8] *Id.* at 613-614
[9] *Id.* at 604-605, 613-614
[10] Blume Appx at 699-700.
[11] The relevant language in the CJOD reads:

> IT IS FURTHER ORDERED that except as noted above each party shall assume and **pay his/her attorney fees and costs in this matter** and each party shall indemnify and hold the other party harmless from them. **Plaintiff's attorney, ALISA A. PESKIN-SHEPHERD, shall retain a lien on the assets awarded to Plaintiff, NICOLE M. KNUFF, including Plaintiff's interest in the Escanaba property, to insure payment of attorney fees**…. (Blume Appx, at. 32-33 emphasis added).

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where Blume acknowledged that she had "the right to seek independent legal advice by counsel prior to the execution of this Judgment of Divorce," and that "she fully understands the factual and legal provisions of this divorce and has been informed of his or her legal rights and obligations."[12]

Blume understood enough about the import of the lien to notify two (2) divorce attorneys about Peskin-Shepherd's lien days prior to the Escanaba Property sale closing: her fiancée, Sean Blume, and Loren Mannino, the attorney representing her in removing an attorney lien on title prior to the sale of the Escanaba Property.[13] Accordingly, Blume had available advice from two attorneys about the effect of Peskin-Shepherd's attorney lien before she sold the Escanaba Property. She still chose to pocket the proceeds without communicating with or paying Peskin-Shepherd.[14] Blume's personal use of proceeds subject to an attorney lien may or may not have resulted from her contacts with two attorneys days prior to the Escanaba sale– but Blume's choices can hardly be blamed on Peskin-Shepherd, who was not consulted at the time nor responsible for oversight of Blume's new attorneys.[15]

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[12] Blume Appx at 37.
[13] Blume Appx at 708-9, 712-713.
[14] Blume Appx at 719, 721-722).
[15] The trial court considered the testimony of both Peskin-Shepherd and Blume with regard to whether (1) the lien was fully disclosed, transmitted in writing to Blume and was reasonably understood by the client and (2) Blume was given a reasonable opportunity to seek the advice of independent counsel about the lien. As to the testimony of Nicole Blume, the trial court stated, "Simply put, her testimony was less than credible. Across the board, she was unconvincing, unpersuasive, and often preposterous. Unless otherwise indicated, her testimony is afforded no weight or credibility. " As to Alisa Peskin-Shepherd, the trial court stated, "Her testimony was generally credible, authentic, and forthright, and, unless otherwise indicated, is given strong weight and credibility." The trial court concluded that **Blume "was aware of the lien and its effect, and she agreed to the lien as set forth in the judgment of divorce."** (1/7/2019 Trial Court Opinion and Order, Blume Appx, Tab Y, p. 942- 943) (emphasis added). Blume has not appealed these findings by the trial court.

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Issue I: AN ATTORNEY'S LIEN AND THE PROCEEDS OBTAINED FROM THE SALE OF A PROPERTY SUBJECT TO AN ATTORNEY'S LIEN ARE BOTH "PROPERTY INTERESTS" CAPABLE OF BEING CONVERTED.

A. Both Michigan Common Law and Application of MCL 600.2919a by this Court Establish Precedent for Conversion of Intangibles

Michigan common law recognizes many forms of intangible property that are subject to conversion. In addition to the appellate decisions already cited in Peskin-Shepherd's Application Answer (pp. 26-27),[16] this Court also recognizes that corporate stock is intangible property subject to conversion.[17] More recently, this Court held that a UCC Article 9 security interest could be the subject of conversion by an auctioneer who sells the collateral even without knowledge of the lien.[18] This court, albeit in a concurring opinion, has similarly found that creditor's security lien may be subject to conversion in *Foremost Ins Co v Allstate Ins Co*, 439 Mich 378, 399-400 n. 3; 486 NW2d 600 (1992) (Brickley, J and Cavanagh, CJ, concurring) ("There is also no doubt that an intangible interest, such as the lien insured against risk of loss under the standard loss payable clause, is subject to conversion.")[19]

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[16] Peskin-Shepherd in its Answer to Application, pp. 26-27, cites intangible property "subject to conversion:" *Warren Tool Co v Stephens*on, 11 Mich App 274, 161 NW2d 133 (1968) ("A negotiable instrument may be the subject of a suit for conversion "); *Tuuk v Andersen*, 21 Mich App 1; 175 NW2d 322 (1969)(Tenant's right to lease a machine was "intangible personal property can be the subject of conversion"); and *Miracle Boot Puller Co., Ltd. v Plastray Corp,* 57 Mich App. 443; 225 NW2d 800 (1975)("the intangible right to benefit from a patent right can be converted").

[17] *Smith v Thompson*, 119 Mich 448 (1892) ("Trover lies for the conversion of shares of stock," citing *Morton v Preston*, 18 Mich. 60; *Daggett v Davis*, 53 Mich. 35, 18 N. W. Rep. 548)

[18] *Michigan Nat'l Bank v Michigan Livestock Exch*, 432 Mich 277, 439 NW2d 884 (1988), stating,"Where an auctioneer receives and takes ... property into his possession, and sells it, paying over the proceeds, less his commission, he is liable, although he has no knowledge of want of title in the party for whom he sells, and acts in good faith," citing *Kearney v Clutton,* 101 Mich. 106, 111, 59 N.W. 419 (1894).

[19] Justice Brickley cited the same cases noted by Peskin-Shepherd in its Answer to Application, pp. 26-27 – *Warren Tool Co v Stephens*on, 11 Mich App 274, 161 NW2d 133 (1968); *Tuuk v Andersen*, 21 Mich App 1; 175 NW2d 322 (1969); and *Miracle Boot Puller Co., Ltd. v Plastray Corp,* 57 Mich App. 443; 225 NW2d 800 (1975). Justice Brickley also quoted from 18 Am.Jur.,

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Again, the basic definition of "personal property" (that is the subject of conversion) is any form of property that is not real property.[20] "Personal property" thus "connotes intangibles as well as tangibles" and includes choses in action.[21] The notion that a lien or encumbrance on real property [22] is likewise personal property that may be the subject of a conversion was established by this Court over 120 years ago in *Schmittdiel v Moore*, 120 Mich 199; 79 NW 195 (1899):

> The plaintiff, as mortgagee, may maintain trover for conversion of the property by one who, as against him, has no right to dispose of the property. *Grove v Wise*, 39 Mich 161; *Wright v Starks*, 77 Mich 221, 43 NW 868.

The manner in which a mortgage lien can be destroyed by conversion was described by this Court in *Sleeper v Wilson*, 266 Mich 218 (1934). In *Sleeper*, a sheriff levied upon and sold oil drilling equipment to various buyers at an execution sale on behalf of another creditor – knowing that plaintiffs had a mortgage lien interest in the property. This Court found that the collateral was seized and sold "in total disregard of plaintiffs' mortgage lien" and the sale in parcels was "such dissemination of the mortgage property as to **materially impair, if not wholly destroy, the mortgage lien**," justifying the trial court's finding of conversion. *Id.* at 222, emphasis added. Thus, intangible personal property like Peskin-Shepherd's attorney lien on the Escanaba Property is already considered, under Michigan Supreme Court precedent, to be subject to conversion.

Conversion, §7, which proposes that "**an action for conversion lies for every species of personal property which is the subject of private ownership, whether animate or inanimate."** 18 Am.Jur., Conversion, § 7, p. 150 (emphasis added).

[20] *City of Holland v Fillmore Twp*, 363 Mich 38, 43; 108 NW2d 840 (1961) (Personal property is defined as "everything that is the subject of ownership, not coming under denomination of real estate.")

[21] *Royal Oak Twp v City of Berkley*, 309 Mich 572, 580; 16 NW2d 83 (1944).

[22] Peskin-Shepherd's Application Answer (p. 9) already cites many types of liens on real estate that this Court has held to be "personal property," and therefore subject to conversion. *Kerschensteiner v Northern Mich Land Co*, 244 Mich 403, 414; 221 N.W. 322 (1928) (mortgages); *Buhl v Kenyon*, 11 Mich 249, 251 (1863) (leasehold interest).

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Since the enactment of Michigan's conversion statute, MCL 600.2919a, this Court has ruled that an intangible property interest – Michigan's statutory interest in proceeds from the sale of apples distributed in the state – can be subject to both common law and statutory conversion in *Department of Agriculture v Appletree Marketing,* LLC, 485 Mich. 1, 779 N.W.2d 237 (2010). In *Appletree*, the Court addressed whether Michigan's Department of Agriculture's Apple Committee, could pursue conversion claims against an apple distributor, in addition to statutory claims for assessments owed, for failing to remit assessments owed to Michigan Department of Agriculture's Apple Committee, pursuant to MCL 290.651 et seq. This Court confirmed that "[a] conversion claim arises from the distributor's breach of its separate and independent duty not to exert wrongful dominion over the Committee's personal property." *Id.,* 485 Mich at 15. The personal property being converted in that case were Michigan's statutory interest in the funds held by the apple distributor as "trustee."

> Although the ACMA collection scheme is new, the obligation to maintain another's property held in trust is not. While it is true that plaintiffs' ownership of the assessments arises under the ACMA—and thus the property right that plaintiffs seek to enforce exists only due to the ACMA—the alleged wrongful conduct was actionable at common law and is distinct from the wrongful conduct addressed in the ACMA. Moreover, because an action for conversion existed at common law, this case is significantly distinct from Monroe Beverage, in which there was no prior existing common law action. (footnotes and citations omitted)

The distributor in *Appletree* was considered a "statutory trustee" of that portion of the distributors' funds that was to be paid to the State of Michigan as an "assessment." *Id*. at 16. In so ruling, this Court also affirmed that conversion "may occur when a party properly in possession of property uses it in an improper way, for an improper purpose, or by delivering it without authorization to a third party." 485 Mich at 13–14 (citations omitted). [23]

[23] Subsequently, this Court in *Aroma Wines & Equipment Co v Columbian Dist Svcs, Inc*, 497 Mich 337, 340 FN 1; 871 NW2d 136 (2015), cited *Appletree* for the proposition that '[b]y enacting

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Like the apple distributor in *Appletree*, Blume properly received funds from the Escanaba Property sale, but had a "separate and independent duty" arising under the CJOD to satisfy Peskin-Shepherd's lien. Although the proceeds she obtained were from the sale of real estate Blume owned, she received those proceeds subject to Peskin-Shepherd's interest in them.[24] Blume was entitled to use sale proceeds only after first satisfying Peskin-Shepherd's lien interest in the proceeds. Blume herself admitted at trial that she understood the lien provision to mean that Peskin-Shepherd "can retain a lien if I wasn't making my payments as agreed."[25] Blume admits that she stopped making her monthly $100 payments in April of 2013,[26] thus triggering in her own understanding that Peskin-Shepherd "retained" a lien on the Escanaba Property at the time Blume sold it.

There is no difference under Michigan law whether the intangible interest (in *Appletree* a statutory assessment, in this case an attorney lien) attaches to apples or to real estate – conversion of intangible personal property has a long history under Michigan common law of being subject

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MCL 600.2919a, the Legislature intended to create a separate statutory cause of action for conversion "in addition to any other right or remedy" a victim of conversion could obtain at common law.'

This Court in *Aroma Wines & Equipment Co v Columbian Dist Svcs, Inc*, 497 Mich 337, 349-353; 871 NW2d 136 (2015), conducted an historical review of the expansive evolution of the tort of conversion from the common law notions of "trover." The court concluded that "[f]rom this development in the common law, the scope of a common-law conversion is now well-settled in Michigan law as " 'any distinct act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with his rights therein.' " *Id.* at 351-352, quoting *Nelson & Witt v Texas Co*, 256 Mich 65, 70; 239 N.W. 289 (1931). However, since *Aroma* involved the conversion of wine bottles – not intangible property—it did not comment directly on whether intangible property could be the subject of conversion.

[24] In its Application Answer, (pp. 27-28) Peskin-Shepherd addressed Blume's misapplication of the facts in *Foremost Ins Co v Allstate Ins Co,* 439 Mich 378, 391; 486 NW2d 600 (1992) to the facts of this case for the proposition that Blume could not convert her own property. Properly understood, *Foremost* supports Peskin-Shepherd's position here that a lienholder's security interest in property can be converted – while the property owner's own interest cannot – as recognized implicitly by Justice Brickley in his concurring opinion.

[25] Blume Appx at 694

[26] *Id.* at 700

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to conversion. Judge Gleicher was mistaken in her dissent when she stated that "only the intentional interference with *physical* things – chattels or goods – could establish conversion."[27] Judge Gleicher did not examine any of the above existing precedents for conversion of intangibles – patents, leasehold interests, mortgage liens, insurance interests, rights to assessments – which are not "physical" in the least. None of these cases focused on a physical item that was interfered with justifying the finding that the intangible item was subject to conversion.

However, Judge Gleicher does suggest that this Court should "adopt a broader view of conversion" in Michigan because "intangibles are the subjects of much of the world's commerce" today. Judge Gleicher states:[28]

> Nevertheless, **I would urge our Supreme Court to adopt a broader view of conversion. When most business exchanges involved physical products, it made sense that the existence of a "chattel" was a fundamental requirement of the tort. Today, however, intangibles are the subjects of much of the world's commerce. The Second Restatement of Torts recognizes this reality, as it enlarges the tort of conversion to include intangible property rights that are merged into a document**: "One who effectively prevents the exercise of intangible [property] rights of the kind customarily merged in a document is subject to a liability similar to that for conversion, even though the document is not itself converted." Restatement Torts, 2d, § 242(2). This section of the Restatement recognizes that "an intangible property right can be united with a tangible object for conversion purposes." *Thyroff v Nationwide Mut. Ins. Co.*, 8 N.Y.3d 283, 289; 832 N.Y.S.2d 873; 864 N.E.2d 1272 (2007). Society's "growing dependence on intangibles" such as electronic data and digital information has spurred the adoption of § 242(2) by other jurisdictions. *Id.* at 291 (quotation marks and citation omitted). But § 242(2) has not been adopted by any court in Michigan.
>
> Perhaps the most interesting discussion of the conversion of intangibles involves a domain name, "sex.com," in *Kremen v Cohen*, 337 F3d 1024 (CA 9, 2003). Construing California law, the United States Court of Appeals for the Ninth Circuit proposed in *Kremen* a view of conversion expanding the tort well beyond the Restatement requirement of merger in a document, observing that conversion has been applied to: "music recordings, radio shows, customer lists, registry filings, confidential information and even domain names." *Id.* at 1033. Characterizing the strict application of a merger requirement as "vestigial," the Ninth Circuit declared: "Were it necessary to settle the issue once and for all, we would . . . hold that

[27] 11/5/2020 Court of Appeals Opinion, Blume Appx, Tab DD, p. 1142.
[28] *Id.* at 1146-1147.

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> conversion is a remedy for the conversion of every species of personal property." *Id*. (quotation marks and citation omitted). See also *Thyroff*, 8 NY3d at 292-293 ("[W]e believe that the tort of conversion must keep pace with the contemporary realities of widespread computer use. We therefore . . . hold that the type of data that Nationwide allegedly took possession of—electronic records that were stored on a computer and were indistinguishable from printed documents—is subject to a claim of conversion in New York.")

While Judge Gleicher appears to favor adoption of Restatement Torts, 2d, §242(2),[29] she also recognizes that the states of California has already dismissed the "merger" requirement as "vestigial," as has the state of New York. In any event, there is no dispute that in this case that Peskin-Shepherd's attorney lien was "merged" into a "document" – the consent divorce judgment,[30] which is both an agreement between Blume and Peskin-Shepherd – and a court order – expressly granting Peskin-Shepherd a security interest in the Escanaba Property. Still, since "intangible' property interests will continue to dominate commerce as technology advances, the idea that intangible personal property itself can be the subject of conversion should be robustly confirmed by this Court.

B. Other States Confirm that Attorney Liens are Subject to Conversion

California and Idaho have specifically affirmed that attorney liens are subject to being converted. *Plummer v Day/Eisenberg, LLP*, 184 Cal App 4th 38, 47; 108 Cal Rptr 3d 455 (2010) (where parties entered into a contract which gave plaintiff an attorney's lien on settlement proceeds, and defendant received and deposited the subject settlement funds but failed to pay plaintiff from those proceeds, summary judgment against plaintiff was improper, valid lien, if proven at trial, would support conversion claim), and *Clark v Jones Gledhill Fuhrman Gourley,*

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[29] Restatement Torts, 2d, §242(2), referenced by Judge Gleicher, states: "One who effectively prevents the exercise of intangible [property] rights of the kind customarily merged in a document is subject to a liability similar to that for conversion, even though the document is not itself converted."

[30] Blume Appx at 32-33

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PA, 163 Idaho 215, 223; 409 P3d 795 (2017) ("This Court has previously recognized that, when a party wrongfully impairs or impedes an attorney's charging lien, the attorney has a claim for conversion," citing *Hansbrough v D.W. Standard & Co.,* 49 Idaho 216, 223-226; 286 P. 923, 925-6 (1930)). Accordingly, Michigan does not stand alone in recognizing that an attorney lien is a property interest subject to conversion.

Appellee could not find any state supreme court decision finding that an attorney lien was not subject to conversion. However, the only appellate court decisions determining that a conversion action could not be maintained were based either on a particular state statute requiring the filing or recording of the attorney lien[31] or based on that state's common law requiring some adjudication of the lien prior to enforcement.[32] No such laws exist in Michigan, rendering these cases clearly distinguishable.

C. Long Standing Michigan Precedent Affirms that a Check and the Proceeds from the Sale of Property are Subject to Conversion

This Court can certainly affirm that the $39,109.08 check Blume obtained from the Escanaba sale, endorsed and deposited by her, was a conversion by Blume, supported by Michigan precedent. For all the reasons set forth in Peskin-Shepherd's Answer to Application (pp. 36-38),

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[31] See for example: *Thomas B Olson & Assoc, PA v Leffert, Jay & Polglaze, PA*, 756 NW2d 907 (Minn Ct App, 2008)(No filing of the lien and Minnesota statute requires filing of lien to perfect it.)

[32] See for example: *Kovitz Shifrin Nesbit, PC v Rossiello,* 392 Ill App 3d 1059, 1065; 331 Ill Dec 950, 955; 911 NE2d 1180, 1185 (2009)(attorney lien did not comply with common law requiring adjudication of the rights of the parties and to enforce the lien); *LaRiviere, Grubman & Payne, Ltd liability partnership v Phillips*, ___F Supp 2d___; 2010 U.S. Dist. LEXIS 45657 (D Colo, Mar. 31, 2010)(trial court did not err in dismissing plaintiff's conversion claim where the plaintiff did not reduce its attorney lien to judgment because, under Colorado case law, a lien must be reduced to judgment to constitute an enforceable property right.). See, also *Lorge v Rabl*, 314 Wis 2d 162; 2008 Wis App 141; 758 NW2d 798 (trial court did not err in holding that the plaintiff could not recover under conversion theory where the plaintiff's representation of client fell below standard of care, thus breaching contingency fee agreement; therefore plaintiff did not have enforceable property interest in subject funds).

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this Court's precedents already establish that a negotiable instrument may be subject to conversion.[33] Even a person authorized to collect the check and remit the proceeds may be sued for conversion if the funds are collected, but not remitted.[34] Likewise, proceeds from sale of real property are personal property and therefore subject to conversion.[35] The lien language in Blume's CJOD specified that Peskin-Shepherd's attorney fees were to be "insured" by a lien on the Escanaba Property.[36] The proceeds from any sale of that specific property were to be used to satisfy Peskin-Shepherd's unpaid attorney fees – nothing else.

Issue II: THE TRIAL COURT CORRECTLY CALCULATED TREBLE DAMAGES PURSUANT TO THE UNAMBIGUOUS LANGUAGE AND LEGISLATIVE INTENT OF MCL 600.2919A(1).

The trial court found that treble damages were warranted under MCL 600.2919a(1) as a consequence of Blume's fraudulent and tortious conduct.[37] This Court asks whether the treble damages were "correctly calculated." The answer is *yes*. The statutory language of MCL

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[33] *Rose v Lewis*, 10 Mich. 483 (1862) and *Epps v 4 Quarters Restoration*, 498 Mich 518, 556 n. 33; 872 NW2d 412 (2015).

[34] *Hogue v Wells*, 180 Mich 19, 24, 31; 146 NW 369 (1914).

[35] *Stewart v Young*, 247 Mich 451, 455; 226 N.W. 222 (1929), *Garras v Bekiares*, 315 Mich 141, 148-149; 23 NW2d 239 (1946) (money itself subject to conversion where there is obligation to keep intact or deliver the specific money in question, and where such money can be identified).

[36] Blume Appx at 32-33.

[37] Every appellate court in Michigan to consider the trebling issue has alluded to the legislative intent underlying MCL 600.2919a of imposing strong financial consequences as a disincentive for conduct constituting statutory conversion. *Peisner v Detroit Free Press, Inc.,* 421 Mich. 125, 143 n. 4, 364 N.W.2d 600, 609 (1984); *Shepard v Gates,* 50 Mich. 495, 498, 15 N.W. 878, 880 (1883) *Michigan Land & Iron Co. v Deer Lake Co.,* 60 Mich. 143, 146, 27 N.W. 10 (1886) . *See, also*, as noted in Peskin-Shepherd's Application Answer, p. 46, *New Properties, Inc. v George D. Newpower, Jr., Inc.*, 282 Mich App 120, 137; 762 NW2d 178 (2009); *Alken–Ziegler, Inc. v Hague*, *supra*, 283 Mich App at 104.

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600.2919a is unambiguous as to what is to be trebled: treble damages are to be calculated as "3 times the amount of **actual damages** sustained."[38] (Emphasis added.)

> This Court has already stated its role in interpreting MCL 600.2919a:
>
> "In interpreting statutory language, this Court's primary goal is to give effect to the Legislature's intent. If the Legislature has clearly expressed its intent in the language of a statute, that statute must be enforced as written, free of any "contrary judicial gloss."

Department of Agriculture v Appletree Marketing, LLC, 485 Mich. 1, 8.; 779 N.W.2d 237 (2010), citing *Morales v Auto–Owners Ins. Co. (After Remand)*, 469 Mich. 487, 490, 672 N.W.2d 849 (2003)(concluding that both MCL 600.2919a and the Agricultural Commodities Marketing Act (ACMA) MCL 290.655, both allow a claimant to pursue other statutory and common law remedies in addition to the remedies provided in these statutes). Accordingly, our Michigan Legislature decided to utilize "actual damages" as the basis for trebling damages for statutory conversion and such decision "must be enforced as written" – free of any "contrary judicial gloss." *Appletree*, 485 Mich at 8.

The identical formula for trebling "actual damages" is found in Michigan's trespass statute, MCL 600.2919, which allows for recovery of treble damages against anyone who cuts down trees, carries away stone or gravel or cuts down or carries away grass, hay or grain from "another's lands" without the owner's permission. The trespasser can be held liable for "3 times the amount of actual damages." Trebling the "actual loss" as damages, is also consistent with this Court's historical interpretation of treble damages under other Michigan statutes providing for treble damages. In *Howser v Melcher*, 40 Mich. 185, 188 (1879), this Court ruled that the sum to be

[38] As stated in Peskin-Shepherd's Application Answer, pp. 28-29, 54, "actual damages," as used in the statute, means the "actual loss a complainant suffered" as a result – in this case – of defendant's tortious conduct. *Alken-Ziegler, Inc*., *supra* at 103*; New Properties, supra* at 137

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trebled was what the fact-finder – in that case a jury – concluded was "damages." The Court stated:

> There is no provision to recover or treble anything else than "damages," whatever may enter into them. Nothing except what the jury find and report as "*damages*" is authorized to be trebled, and in trebling the damages found, the language of the verdict must control. **The court may not speculate upon the subject and seize upon expressions elsewhere to warp the legitimate legal sense of the terms of the finding for the purpose of settling what may and what may not be trebled,** and hence there is room for question whether on the face of this case the court was authorized to treat the "rent" or "interest" reported by the jury as "damages" subject to be trebled, and whether the verdict showed any thing capable of being legally trebled in making up the judgment except the $55 specifically found and reported as damages. The case does not require a decision of this point, but the circumstances suggest the propriety of mentioning it. (Emphasis added.)

Similarly, under the then-existing double damages dog bite statute §1645 (1850 P.A. 1541), this Court in *Swift v Applebone*, 23 Mich. 252, 257 (1871), found it "proper" to have the jury instructed to assess the amount of single damages, to state the same in their verdict, and to apply to the court after verdict for judgment in double the amount of damages found by the jury.

In this case, the trial court exercised its discretion to award treble damages *only* after first finding Blume liable for statutory conversion at summary disposition and then by conducting a trial on the issue of trebling.[39] After trial, the court found that Blume "purposefully and willfully" converted her debt to Peskin-Shepherd as secured by a lien on the Escanaba Property.[40] The trial court found that Blume converted the lien "with the intent – and effect – of wiping it out."

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[39] Treble damages are not automatically applied under the conversion statute – they are discretionary. *Aroma Wines & Equipment Co v Columbian Dist Svcs, Inc*, 303 Mich. App at 449, 844 N.W.2d at 732 (2013).

[40] After a 3-day bench trial, Oakland Circuit Judge Warren found as fact that Appellant committed actual and constructive fraud against Peskin-Shepherd by 1) buying a property in Rochester Hills and failing to disclose it during the divorce, 2) agreeing in her divorce judgment to grant Peskin-Shepherd a lien on Appellant's property in Escanaba – the major asset obtained by Appellant in the divorce, and then selling the Escanaba property and pocketing the proceeds, and subsequently 3) fraudulently transferring the Rochester Property to herself and her new husband to defeat Peskin-Shepherd's collection efforts.

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(1/7/2019 Trial Court Opinion and Order, Appellant's Appx Vol. Y, at p. 943). Thereafter, the trial court followed the clear formula set forth in MCL 600.2919a and the "proper course" laid out in *Swift*, by determining that the "actual damages" to Peskin-Shepherd was destruction of the $51,098.58 lien – the lien "wiped out" as a result Blume's conversion. Judge Warren assessed $51,098.68 as Peskin-Shepherd's actual damages caused by the conversion– the "identical" amount of the damages that resulted from Blume's Breach of Contract. (*Id.* at 951). Thereafter, upon entry of judgment, the trial court trebled $51,098.68 – in conformity with MCL 600.2919a. (2/25/2019 Judgment, Blume Appx at pp. 954-956).[41]

Issue III: AN AWARD OF STATUTORY TREBLE DAMAGES FOR CONVERSION OF PROPERTY SUBJECT TO A LIEN SECURING AN ATTORNEY'S FEE IS ETHICAL UNDER THE MICHIGAN RULES OF PROFESIONAL CONDUCT.

A. An Attorney's Ability to Seek Statutory Relief under MCL 600.2919a is Consistent with MRPC 1.5

Peskin-Shepherd's pursuit of a statutory conversion claim does not implicate any of the Michigan Rules of Professional Conduct ("MRPC"). MRPC 1.5, the only ethics rule governing attorney fees, provides that "[a] lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee." MPRC 1.5(a). Further, a fee is deemed to be "clearly excessive"

[41] While Appellant included the "judgment" in her Appendix, Appellant improperly failed to attach the trial court's accompanying 2/25/2019 "Order Regarding Motion" in violation of MCR 7.212(J)(1)(a), that requires Appellant to file "[t]he judgment or order(s) appealed from, **including any written opinion**, memorandum, findings of fact and conclusions of law stated on the record in conjunction with the judgment or order(s) appealed from." It is attached along with the Judgment, as Appellee's Appx, **Exhibit 6,** pp. 53-56. In granting Peskin-Shepherd's motion based on trebling damages based on the amount of the lien, the trial court stated that Blume's response:

> "…completely in accordance with the **obstruction and vexation already employed by the Defendant,** simply wants to relitigate issues the Defendant has already lost." (2/25/19 Order Regarding Motion, Appellee's Appx, **Exhibit 6**, pp. 53-56 (emphasis added).

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when "a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee." MRPC 1.5(a) (emphasis added).

1. In Accordance with MPRC 1.5 Peskin-Shepherd Only Charged and Collected Its Contractual Fees

Plaintiff-Appellee billed Blume for legal services at the contractually agreed rate of $300/hour, the hourly rate specified in the written retainer agreement. The only "fee" that Peskin-Shepherd has ever attempted to collect is the $51,098.68 fee balance owed as a result of Peskin-Shepherd's services to Blume, charged at the agreed upon rate in her divorce matter.

Plaintiff-Appellee's attorney fee claim has never changed throughout this litigation, not by a penny, a mil, or a groat.

Following conclusion of Blume's divorce proceedings and her payments on account (the last of which was made in March 2013), Blume owed Peskin-Shepherd $51,098.68. At no time, and at no point during this lawsuit, has Plaintiff-Appellee claimed, or sought to collect, an attorney fee in excess of the unpaid contractual balance due, $51,098.68, plus interest allowed by contract. Hence, Blume's citation to RI-150 is inapposite – there was no reason for Peskin-Shepherd to "reevaluate" her fee at time of collection. Peskin-Shepherd obtained stunning results for Blume, over a year of representation, and deserved to be paid every penny Blume still owed.

Blume characterizes Peskin-Shepherd's conversion claim as a "surcharge" – but Peskin-Shepherd has never sought to "surcharge" Blume – other than to collect interest at a reasonable and clearly permissible rate agreed upon pursuant to the parties' contract.[42] Blume's citation of RI-364, states that the standards articulated in MRPC 1.5(a) and (b) apply to all charges made by the attorney to the client – including fees and costs, costs must reflect actual costs incurred. It also

[42] The 7% interest rate set forth in the retainer agreement (Blume Appx at 5) comports with Michigan usury law. MCL 438.31.

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confirms that a lawyer may charge interest or late fees, and this is not unethical. This rule clearly has no bearing on whether a lawyer may also pursue tort damages against a felonious client. Similarly, Blume's citation to MCR 8.121(B) is clearly inapposite because this case does not involve a contingency fee. Finally, Blume's citation to CI-758 also fails to further her cause. It states:

> If the lawyer has a lien, the lawyer may ethically furnish a claim of lien to the insurer. But no claim of lien should be made unless the lawyer's right is clear, and then only for an amount to which the lawyer is clearly entitled.

Again, in this case, Peskin-Shepherd's "right" to the lien on the Escanaba Property "is clear" – as set forth in the CJOD.[43] Peskin-Shepherd has only sought to recover the amount of the lien she is

[43] Under Michigan common law, a charging lien is an "an equitable right to have the fees and costs due for services secured out of the judgment or recovery in a particular suit." *George v Gelman*, 201 Mich App 474, 476; 506 NW2d 583 (1993), citing *Kysor Industrial Corp v D M Liquidating Co,* 11 Mich App 438, 444; 161 NW2d 452 (1968). This "equitable right" automatically creates "a lien on a judgment, settlement, or other money recovered as a result of the attorney's services. *Id.*., citing *Doxtader v Sivertsen*, 183 Mich.App. 812, 815, 455 N.W.2d 437 (1990). Thus, a charging lien attaches automatically to any part of the "settlement," "judgment" or "other money" recovered in a divorce case. The lien language in Peskin-Shepherd's retainer agreement mirrors the formulation of a charging lien automatically imposed under Michigan common law. A charging lien on real estate, however, is not automatic – even if "the attorney has successfully prosecuted a suit to establish a client's title or recover title or possession for the client." *Id. at 478.* An attorney lien on real estate can be established in one of three alternative ways: "(1) the parties have an express agreement providing for a lien, (2) the attorney obtains a judgment for the fees and follows the proper procedure for enforcing a judgment, or (3) special equitable circumstances exist to warrant imposition of a lien." *Id.* In this case, Peskin-Shepherd's lien on the Escanaba Property was properly established by an express agreement with Blume – in the CJOD.

Michigan jurisprudence also recognizes that liens can be created in two ways: by operation of law, and by contract. *Wiltse v Schaeffer*, 327 Mich 272, 282; 42 NW2d 91 (1950). A lien is simply a security interest for money owed by one party to another, separate from the underlying cause of action. *Cheff v Haan*, 269 Mich 593, 598; 257 NW 894 (1934); *In re Approximately Forty Acres in Tallmadge Twp*, 223 Mich App 454, 465; 566 NW2d 652 (1997).

Where the client — as an inducement to his attorney to provide services on credit and to advance funds necessary to prosecute the lawsuit — agreed to grant counsel a lien on anything of value in connection with the lawsuit, the judiciary must recognize the attorney's contractual rights to a lien and enforce them, ordering specific performance if necessary. *In re Boucher's Estate*, 329 Mich 569, 571-572; 46 NW2d 569 (1951); *Gross v Housner*, 322 Mich 448, 454; 34 NW2d 38 (1948).

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clearly entitled to – $51,098.68. This language does not bar her obtaining additional damages for conversion.

In sum, Blume's claim that MRPC 1.5 provides a "significant ethical limitation" to Peskin-Shepherd's claim is without any basis. Blume has not been subjected to paying more than $51,098.68 in past due attorney fees (plus interest) based on any contractual theory; her additional liability results solely and directly, from her subsequent tortious misconduct, which is outside the scope of MRPC 1.5(a).

2. Blume's Liability for Statutory Tort Damages Arising as a Direct Consequence of her Wrongful Conduct is Separate and Distinct from Blume's Contractual Duty to Pay Attorney Fees

As this Court is well aware, in lieu of paying her $51,098.68 attorney fee debt, Blume sold the Escanaba Property to which Peskin-Shepherd's attorney's lien had been attached by virtue of the consent judgment of divorce. Blume pocketed the proceeds rather than pay off the lien. Those actions — which were felonious under MCL 750.362[44] — for purposes of Blume's resulting civil liability — fell under the ambit of MCL 600.2919a, and subjected Blume to treble damages liability for the tort of conversion. Treble damages under MCL 600.2919a for the tort of conversion does NOT represent an increase in Blume's contractual attorney fee debt. Blume's attorney fee debt is a question of contract (assumpsit), while Blume's treble damages liability arises from Blume's tortious conduct after her attorney fee liability was fixed.

Here, there can be no doubt but that the retainer agreement by its express terms reflects the parties' intentions to create an attorney's lien.

[44] MCL 750.362 provides:

> Any person to whom any money, goods or other property, which may be the subject of larceny, shall have been delivered, who shall embezzle or fraudulently convert to his own use, or shall secrete with the intent to embezzle, or fraudulently use such goods, money or other property, or any part thereof, shall be deemed by so doing to have committed the crime of larceny and shall be punished as provided in the first section of this chapter.

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This Court has long distinguished the contract liability of a debtor like Blume, which can ***only*** be enforced by an action on the contract, from tort liability arising from distinct, non-contractual, wrongful actions giving rise to tort liability. *Hart v Ludwig*, 347 Mich 559, 565-566; 79 NW2d 895 (1956). Blume's contractual liability for attorney fees exists because she violated the promises made in the retainer agreement; Blume's contractual duty to pay is unique to Blume, as Blume is the only party who contracted with Peskin-Shepherd, as summarized in *Hart*:

> Before us, however, we have not such a case. We have simply the violation of a promise to perform the agreement. The only duty, other than that voluntarily assumed in the contract to which the defendant was subject, was his duty to perform his promise in a careful and skillful manner without risk of harm to others, the violation of which is not alleged. What we are left with is defendant's failure to complete his contracted-for performance. This is not a duty **imposed by the law upon all, the violation of which gives rise to a tort action**, but a duty arising out of the intentions of the parties themselves and owed only to those specific individuals to whom the promise runs. (Emphasis added.)

Id., 347 Mich at 444. In contrast to the defendant in *Hart*, Blume's liability for conversion ***is*** imposed by law (both common law and by statute), a law which applies "to all" in the language of *Hart* — including tort-feasor clients of a victimized attorney.

The possibility of simultaneously pursuing both a statutory conversion claim and a contractual claim for failure to remit fees was specifically addressed by this Court in *Appletree Marketing, supra.* In that case, the Department of Agriculture's Michigan Apple Committee filed suit against an apple distributor, asserting violation of the Agricultural Commodities Marketing Act, MCL 290.651 *et. seq.* (ACMA) and claims for common law and statutory conversion, arising out of distributor's failure to remit assessments due under the ACMA. This Court ruled that the Apple distributor's alleged failure to remit assessments owed to Department of Agriculture's Apple Committee was actionable as conversion distinct from a claim under the ACMA, even though Committee's right to the money arose from ACMA. This Court also stated:

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> Similarly, a conversion claim can be distinct from an ACMA claim. **First, unlike an ACMA claim, a conversion claim does not arise from a distributor's mere "fail[ure] to deduct or remit any assessment due to the committee...."** Indeed, " 'refusal to deliver possession pursuant to a lawful demand is not conversion but only evidence of a conversion.' " **A conversion claim arises from the distributor's breach of its separate and independent duty not to exert wrongful dominion over the Committee's personal property.** Second, an ACMA claim arises when the distributor fails to collect or remit assessments when they are due, but a conversion claim arises whenever the distributor wrongfully exerts dominion over the Committee's property; this can occur at any time, before or after the remittance is due. Third, in an ACMA action, the Committee can recover the assessments plus costs and expenses, but in a conversion action the Committee can recover exemplary damages.[45] (Emphasis added, footnotes and citations omitted.)

This Court also concluded that –

> **Both the ACMA and MCL 600.2919a provide remedies that are in addition to other remedies at law and thus do not conflict**. Therefore, the statutes should be applied as written, and the remedy in MCL 600.2919a must be allowed in addition to the remedy provided in the ACMA.[46]

Thus, the *Appletree* Court confirmed that the distributor had a "separate and independent duty not to exert wrongful dominion over the Committee's personal property."[47]

Similarly, in this case Blume not only breached her personal contractual duties to pay Peskin-Shepherd her attorney fee debt, but Blume also had a "separate and independent duty" to Peskin-Shepherd – under common law and statute – "not to exert wrongful dominion" over Peskin-Shepherd's "personal property" – the lien Blume allowed Peskin-Shepherd "to retain" and expressly placed, pursuant to the CJOD, on the Escanaba Property. Blume has attempted to blur the distinction between Peskin-Shepherd's pursuit of her attorney fee owed by contract and the tort damages she suffered as a result of Blume's conversion of property over which Peskin-

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[45] 485 Mich. at 15-16.

[46] *Id.* at 10. .*See, also*, *Cooper v Auto Club Ins. Ass'n,* 481 Mich. 399, 441; 751 N.W.2d 443 (2008) (no-fault act, which provides the remedy for injuries arising out of ownership, maintenance, or use of a motor vehicle, does not abrogate actions arising out of the breach of other common-law duties and that the plaintiffs' fraud action was distinct from an action claiming that an insurer refused to pay no-fault benefits).

[47] *Id*. at 15.

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Shepherd held a security interest.[48] The court in *Warren Tool, supra*, eloquently highlighted the validity of pursuing tort damages for conversion as well as contract damages as follows:

> The Highway check, upon its receipt, became the focus of considerable cogitation at Stephenson Industries,—should it be deposited in the bank or should it be diverted? When it was diverted, Stephenson Industries did more than breach an ordinary agreement to pay. It deliberately destroyed the specific security which plaintiffs, pursuant to assurance from Stephenson Industries, had relied on for payment. Plaintiffs did not extend general credit to Stephenson Industries and then afterward extract a promise of security. The record so far made indicates there never would have been any performance by the plaintiffs but for the representation that the letter to the bank was more than the ordinary promise to pay, that it was, indeed, security. **To hold that Stephenson Industries merely breached a contract when it intentionally extinguished the interest in property, choate or inchoate, which it had previously purported to dedicate to plaintiffs, would be to enshrine form and to ignore substance.** (Emphasis added.) *Warren Tool*, 11 Mich App at 296.

Similarly, the court in *In re Stollman*, 404 BR 244, 263-265 (ED Mich, 2009) – a case cited in both the trial court summary disposition opinion[49] and the court of appeals opinion[50] because of facts nearly identical to this case and which, in turn, relied on Michigan caselaw in determining that an attorney lien is a property interest that can be converted – explained the difference between contract and conversion remedies as follows:

> A simple breach of contract occurred when the Debtor did not pay the Plaintiffs for their services when she was billed for those services. But the Debtor's appropriation of the 401(k) proceeds and the Investment Accounts proceeds was done for the express purpose of preventing the Plaintiffs from enforcing what the Debtor believed to be [her attorneys'] lien rights in those proceeds. Obtaining the accommodation in the December Letters and then misappropriating the proceeds are aggravating circumstances that elevate the Debtor's conduct beyond a simple breach of contract.

Note that in *Stollman*, the plaintiffs who recovered in that case on a conversion theory were, in fact, attorneys. No ethical dilemma was presented in the case.

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[48] For example, Blume states that it was "never communicated to Blume, however, that she would be charged three times the hourly rate if she sold her real property, plus attorney fees." (Blume Supplement, p. 2)

[49] Blume Appx at 508, 510-511

[50] 11/5/2020 Court of Appeals Opinion, Blume Appx, Tab DD, p. 1133

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The situation presented here is analogous to what would result if Blume, presented with a bill for the balance due by Ms. Peskin-Shepherd, responded by assaulting and injuring Peskin-Shepherd. Blume's civil liability to compensate Peskin-Shepherd for assault and battery – pain and suffering, doctor and hospital bills, lost work time, exemplary damages for intentional tort, loss of consortium, etc. – would not represent an augmentation of Blume's contractual attorney fee obligation and would not implicate MRPC 1.5(a) in any way, shape, or form.

Likewise, if Blume tendered payment of Peskin-Shepherd's fee by way of a check that was subsequently dishonored for insufficient funds – Peskin-Shepherd's entitlement to double damages under MCL 600.2952 would not be barred by any ethics rule – although the check clearly represented payment for her attorney fees. The amount of the dishonored check would be doubled under the statute. MRPC 1.5(a) would not bar such recovery. Clearly, Blume's reference to MRPC 1.5 is predicated on a misunderstanding as to what was trebled. Peskin-Shepherd's damages resulting from the tort committed by Blume were trebled – not her contractually owed attorney fee.

3. The Michigan Supreme Court Rules Allow the Doubling of Attorney Fees for Wrongful Conduct Consistent with MRPC 1.5

This Court too sees the value of dis-incentivizing prohibited conduct – in this case "vexatious proceedings" – by doubling attorney fees. This Court has promulgated MCR 7.216(C)(2) and MCR 7.316(C)(2), both of which provide for doubling attorney fees as "punitive damages" for "vexatious proceedings" in an appeal. Just like Peskin-Shepherd's treble damages were awarded as statutory damages for tortious conduct by Blume – not as an additional recovery of attorney fees – the doubling of attorney fees as a punishment for vexatious conduct has never been thought to implicate MRPC 1.5(a) in this state or its equivalent in this or other jurisdictions.

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Accordingly, the only ethical limitations in MRPC 1.5 governing the reasonableness of attorney fees apply to potentially limit the amount of the fee charged by Peskin-Shepherd – they do not limit her damages as a victim of her client's tortious actions.

4. The Unambiguous Language of the Michigan Rules of Professional Conduct Support a Finding that an Attorney is not Limited from Pursuing Legal Remedies for a Client's Tortious Conduct Against Her

When interpreting rules promulgated by the Court, such as the Rules of Professional Conduct, the Supreme Court is guided by the same principles that pertain to statutory interpretation. *Law Offices of Jeffrey Sherbow, PC v Fieger & Fieger, PC,* 507 Mich. 272, 282; 968 N.W.2d 367 (2021), citing *Haliw v Sterling Heights*, 471 Mich. 700, 704-705, 691 N.W.2d 753 (2005). The Court "seeks to discern the ordinary meaning of the language in the context of the court rule as a whole." *Id* at 282-283, citing*, TOMRA of North America, Inc. v Dep't of Treasury*, 505 Mich. 333, 339, 952 N.W.2d 384 (2020).

The best guide to the meaning of a statute, or court rule, is the actual language of the provision being considered:

> The foremost rule, and our primary task in construing a statute, is to discern and give effect to the intent of the Legislature. *Murphy v Michigan Bell Telephone Co*, 447 Mich 93, 98, 523 NW2d 310 (1994). See also *Nation v W D E Electric Co*, 454 Mich 489, 494, 563 NW2d 233 (1997). This task begins by examining the language of the statute itself. The words of a statute provide "the most reliable evidence of its intent...." *United States v Turkette*, 452 US 576, 593, 101 S Ct 2524, 69 L Ed 2d 246 (1981). If the language of the statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written. No further judicial construction is required or permitted. *Tryc v Michigan Veterans' Facilit*y, 451 Mich 129, 135, 545 NW2d 642 (1996).

Sun Valley Foods Co v Ward, 460 Mich 230, 236; 596 NW2d 119 (1999). Given the complete absence of language in MRPC 1.5 (or any other MRPC) restricting a lawyer's pursuit of legal remedies to redress any tort of which the lawyer is the victim, no such limitation can be interpolated into the MRPCs under the guise of construction.

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B. Even if Properly Raised by Blume, the Established Legitimacy of Peskin-Shepherd's Lien Against the Escanaba Property Remains Intact Under MRPC 1.8

In her supplemental response, Blume jumps from examining the Court's requested issue, *i.e.,* the ethical implications of trebling damages based on the amount of Peskin-Shepherd's attorney fee debt, to questioning the ethical validity of Peskin-Shepherd's attorney lien itself, under MRPC 1.8. (Blume Response, pp. 10-12, 14). Blume's question is not before this Court, and the legitimacy of the lien has been upheld by the lower courts and because Blume did not appeal Judge McDonald's decision confirming the validity of Peskin-Shepherd's attorney lien, nor raise the issue in her application to this Court, Blume should not be permitted to collaterally attack Judge McDonald's findings in their supplemental briefing.[51] However, even if such a collateral attack were permissible, which it is not, and even if it could be raised for the first time in supplemental briefing on appeal to the Supreme Court, which under Michigan's settled "raise it or waive it rule" it cannot, the attack is nonetheless without even arguable merit. *Morris v Baker*, 253 Mich 334, 336; 235 NW 174 (1931); *Napier v Jacobs*, 429 Mich 222; 414 NW2d 862 (1987).

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[51] Blume tried to raise the validity of the lien issue on appeal, to which the Court of Appeals responded:

> Nicole attempts to challenge the legitimacy of the lien because of the lack of a judgment or plaintiff's failure to record it, that argument **is an improper collateral attack on the divorce court's order determining that Nicole had violated the legal and valid lien on the Escanaba Property**. "It is well established in Michigan that, assuming competent jurisdiction, a party cannot use a second proceeding to attack a tribunal's decision in a previous proceeding[.]" *Workers' Compensation Agency Dir v MacDonald's Indus Prod, Inc* (On Reconsideration), 305 Mich App 460, 474; 853 NW2d 467 (2014). **If Nicole wished to challenge that determination, she was required to appeal the divorce court's order. Consequently, we cannot consider Nicole's arguments to the extent they could be construed as a collateral attack on the divorce court's decision**. *Id.*

(Blume Appx at 1134) (emphasis added)

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MRPC 1.8 does not address the amount of an attorney's fee, and so has no bearing on the third issue posited by this Court for supplemental briefing, *i.e.*, whether any "ethical limitations apply to bar the collection of **statutory** treble damages for conversion of property subject to a lien securing an attorney's fee." MRPC 1.8, even according to Blume, concerns the validity of Peskin-Shepherd's attorney's lien, which is an issue wholly outside the ambit of the questions subject to supplemental briefing, and completely outside the scope of Blume's application for leave to appeal to this Court (Appellant's Application, p. 4 Statement of Questions Presented), and not included among issues Blume presented to the Court of Appeals (see Blume's Brief on Appeal, p. 1, Statement of Questions Presented).

By its terms, MRPC 1.8(j) (1) allows an attorney to "acquire a lien granted by law to secure the lawyer's fee or expenses." RI-376, raised by Blume in her Supplement (p. 12), clearly confirms that an attorney may obtain a future lien on real property that is to be awarded to a client by court order, pursuant to the consent judgment of divorce.[52] Peskin-Shepherd's security interest in the Escanaba Property was to be acquired *after* litigation, as a part of the settlement agreement codified in the Consent Judgment of Divorce as a court order. As such, it raises no ethical issues.

CONCLUSION

Blume's supplemental brief hyperbolically accuses Peskin-Shepherd of "transforming" the attorney fee owed "seven times the balance" – when the judgment includes the contractual attorney fee balance and interest, plus treble damages and attorney fees awarded because of her liability for

[52] Similarly, Blume's assertion that Peskin-Shepherd violated MRPC 1.9 is misplaced. A lawyer's duty of loyalty to a former client obviously does not inhibit the lawyer from taking whatever legal action is available to the lawyer to collect the lawyer's contractual fees. There is certainly nothing in the Michigan Rules of Professional Conduct that limits or prohibits a lawyer from suing a former client who commits a tort against such lawyer (especially where the tort is also a crime (MCL 750.362)).

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statutory conversion. Predictably, Blume fails to recognize that, what was trebled was not Peskin-Shepherd's attorney fee, but Peskin-Shepherd's damages resulting from Blume's tortious act of conversion. Blume's brief, such as it is, per her "Index of Authorities," cites only two Court of Appeals cases (neither of which is remotely relevant to any issue in *this* case), 6 informal ethics opinions (none appearing in her Index of Authorities), three statutes (two of which are also irrelevant), 3 Rules of Professional Conduct, a court rule on contingency fees in personal injury matters (absurdly irrelevant), and two essays by Marcia Proctor. In summation, neither MRPC 1.5(a) nor any other ethical constraint has any relevance or legitimate application whatsoever to limit Blume's ***tort*** liability for conversion in violation of MCL 600.2919a.

RELIEF REQUESTED

Leave to appeal should be denied. Appellee should be awarded costs and attorney fees of this appeal in accordance with MCR 7.316(C)(1)(a) and (b).

Respectfully submitted,

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