STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

FIVE CROWNS TRUCKING LLC, a Michigan limited liability company,

Plaintiff, **Case No. 23-012986-CB**

-v- **Hon. Muriel D. Hughes**

D&M TRUCK, TIRE & TRAILER REPAIR, INC, a Michigan corporation,

Defendant.

OPINION AND ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY DISPOSITION

At a session of said Court held in the Coleman A. Young Municipal Center, Detroit, Wayne County, Michigan,
on this: 6/5/2025

PRESENT: Muriel D. Hughes
Circuit Judge

This civil matter is before the Court on a motion for partial summary disposition filed by Plaintiff Five Crowns Trucking, LLC ("Five Crowns"). For the reasons stated below, the Court grants the motion.

I. BACKGROUND

On October 6, 2023 Plaintiff Five Crowns filed a complaint against D&M Truck, Tire & Trailer Repair, Inc. ("D & M") alleging Statutory Conversion (Count I), Violation

of the Motor Vehicle Service and Repair Act, MCL 257.1301 *et. seq* (Count II), Breach of Contract (Count III), Promissory Estoppel (Count IV), Breach of Bailment (Count V), Common Law Conversion (Count VI), and Unjust Enrichment (Count VII). Discovery closed on May 17, 2024. Included in Five Crowns' pleadings are numerous exhibits comprised of photographs, affidavits, deposition testimony of D & M's owner, D & M's responses to Five Crowns' requests to admit and interrogatories, numerous emails, and numerous text messages. D & M has provided no evidentiary support for its position other than a demand letter sent from Five Crowns' counsel and three emails sent from D & M's Derek Paquin with the account aging report for Five Crowns' amounts due. The aging reports were sent to Five Crowns on January 23, 2023, February 2, 2023, and March 3, 2023.

Five Crowns is a transportation provider of transportation solutions for various industries. Five Crowns owns a fleet of over 70 vehicles. One of those vehicles is a 2019 Peterbilt Motors Model 579 Truck-Tractor (the "Vehicle"). Five Crowns purchased the vehicle, which was a used vehicle, on August 15, 2022 for approximately $72,380.

Defendant D & M provided service and repair to Five Crowns' fleet. In January 2023, Five Crowns took the Vehicle to D&M for routine maintenance service involving an aftertreatment system. An aftertreatment system is a method or device for reducing harmful exhaust emissions from internal-combustion engines. Normally, maintenance of an aftertreatment system takes roughly two weeks. After approximately six months, Five Crowns had not heard anything from D&M about the status of the maintenance service or when it would be able to retrieve the vehicle and begin using it.

On July 18, 2023, Five Crowns Corporate Director of Transportation Mike Haller

emailed D & M requesting a status update on the Vehicle. Haller received no response. A week later, on July 25, 2023, Haller went to D & M's facility where he found the Vehicle in a complete state of disrepair. That day, he emailed D & M's President and sole shareholder Jeremy O'Neil expressing his concern about the state of the Vehicle. He also asked O'Neil what repairs to the Vehicle were planned to be performed and when they would be completed. O'Neil failed to respond to the email.

According to Five Crowns, it attempted to contact D & M and D & M's owner numerous times without any response from D & M or its owner.[1] As a result, on August

---

[1] According to Five Crowns' complaint, those communications include the following:

- July 26, 2023 - Fleet Manager Brien Bell left a voicemail for and texted O'Neil, requesting an update on the Vehicle.
- July 26, 2023 - Haller also emailed requesting status of the Vehicle.
- July 27, 2023 - Bell texted O'Neil again requesting an update.
- July 28, 2023 - Bell texted O'Neil again requesting an update.
- July 31, 2023 - Bell texted O'Neil again asking for an update.
- August 1, 2023 - Bell texted O'Neil again asking for an update
- August 2, 2023 - Haller requested that the unit be prepared so it could be towed from the shop.
- August 3, 2023 - Haller followed up requesting an update.
- August 3, 2023 - Bell texted O'Neil again asking for an update.
- August 7, 2023 - Bell texted O'Neil advising that he believed that Five Crowns was current on its payments and requested a response.
- August 8, 2023 - Bell texted O'Neil again asking for an update.
- August 10, 2023 - Bell texted O'Neil again requesting an update.
- August 14, 2023 - Haller again requested via email an update on the Vehicle and advised that he wanted the Vehicle prepped enough so that it could be towed.
- August 14, 2023 - Bell texted O'Neil requesting that he respond to Haller's email.

17, 2023, Five Crowns contacted the Detroit Police, whereupon a police report was prepared. While Haller was at the Police Department, an officer called D & M and was told by someone that Five Crowns had an arrearage that needed to be paid. Haller then emailed D & M requesting that it provide information on the money it claimed to be owed so that they could settle the matter. Five Crowns told D&M that it would bring a check for the requested amount and would tow the Vehicle off D & M's lot. Five Crowns' Fleet Manager Brien Bell was sent to D & M with the check for the alleged outstanding amount. He said that, when he arrived, the Vehicle was in such a state of disrepair that it could not be safely towed from D & M's facility. Bell left with the check and without the Vehicle.

On September 29, 2023, counsel for Five Crowns sent D & M a demand letter, requesting a response by October 8, 2023. According to Five Crowns, D & M did not respond to the demand letter. Five Crowns asserts that it had no other choice but to file the instant lawsuit.

Now before the Court is Five Crowns' motion for partial summary disposition as to statutory conversion (Count I), violation of the Motor Vehicle Service and Repair Act (Count II), and common law conversion (Count VI). After hearing oral arguments on May 15, 2025, the Court ordered the parties to file supplemental briefs on the "economic loss

---

- August 15, 2023 - Bell texted Mr. O'Neil requesting an update.
- August 16, 2023 - Bell texted Mr. O'Neil requesting an update.
- August 16, 2023 - Haller followed up.

[Five Crowns' Complaint, ¶¶ 22-38] [See also, Five Crowns' Exhibits 1-B (email), 1-C (various emails), and 4-A (text messages)].

According to Five Crowns, D & M failed to respond to all of these communications. [Id]. At this point, Five Crowns made the decision to contact the Detroit Police.

doctrine." Five Crowns was to file its brief within 7 days of the hearing and D & M was to file its brief within 14 days of the hearing. Both parties have filed their supplemental briefs.

II. STANDARDS FOR DETERMINING MOTIONS FOR SUMMARY DISPOSITION

Five Crowns bases its motion on MCR 2.116(C)(10). "'A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint.'" *Marion v Grand Trunk W R Co*, 513 Mich 220; 15 NW3d 180, 184 (2024), quoting *Maiden v Rozwood*, 461 Mich. 109, 120, 597 N.W.2d 817 (1999). In reviewing a motion under MCR 2.116(C)(10), a court must consider the pleadings, admissions, affidavits, and other relevant documentary evidence submitted in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). If no genuine issue of material fact is established, the moving party is entitled to judgment as a matter of law. *Maiden, supra* at 120. "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

The moving party has the initial burden of supporting its position through documentary evidence. *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The burden then shifts to the opposing party to establish the existence of a genuine issue of material fact. *Id.* The non-moving party ". . . may not rest on the mere allegations or denials of his or her pleadings, but must, by affidavit or otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial." MCR 2.116 (G)(4). If the opposing party fails to do so, the motion for summary disposition is

properly granted. *Id.*; *Quinto, supra* at 363. Finally, a "reviewing court may not employ a standard citing the mere possibility that the claim might be supported by evidence produced at trial. A mere promise is insufficient under our court rules." *Maiden, supra* at 121.

III. DISCUSSION

A. Common Law and Statutory Conversion

In support of its motion, Five Crowns first argues that D & M committed common law conversion by refusing to return the Vehicle to Five Crowns. It further argues that D & M's only justification for not returning the Vehicle is that it needed the Vehicle as leverage to force Five Crowns to pay the alleged outstanding balance.

In response, D & M argues that it did not wrongfully exert dominion over the Vehicle when Five Crowns refused to pay its bill for services on other vehicles which were already returned and in use by Five Crowns. It also asserts that there is a question of fact as to whether it wrongfully controlled the Vehicle because Five Crowns refused to pay for repairs and did not want the Vehicle returned.

"[T]he 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." *Aroma Wines & Equip, Inc v Columbian Distribution Servs., Inc*, 497 Mich 337, 351–352; 871 NW2d 136 (2015) [Internal quotation marks, footnotes, and citation omitted]. "'Conversion,' both at common law and under statute, is defined as any distinct act of domain wrongfully exerted over another's personal property in denial of or inconsistent with the rights therein." *Magley v M & W Inc*, 325 Mich App 307; 926 NW2d 1 (2018). The court in *Aroma Wines & Equip, Inc, supra,*

quoting *Thoma v Tracy Motor Sales, Inc*, 360 Mich. 434, 438; 104 NW2d 360 (1960), quoting 1 Restatement, Torts, § 222., noted that "'the ways in which a conversion may be committed: 'A conversion may be committed by

> (a) intentionally dispossessing another of a chattel,
> (b) intentionally destroying or altering a chattel in the actor's possession,
> (c) using a chattel in the actor's possession without authority so to use it,
> (d) receiving a chattel pursuant to a sale, lease, pledge, gift or other transaction intending to acquire for himself or for another a proprietary interest in it,
> (e) disposing of a chattel by sale, lease, pledge, gift or other transaction intending to transfer a proprietary interest in it,
> (f) misdelivering a chattel, or
> (g) refusing to surrender a chattel on demand.'"
>
> [Footnotes omitted][Emphasis added].

Additionally, the court in *Magley, supra*, at 314-315, quoting *Foremost Ins Co v Allstate Ins Co*, 439 Mich 378, 391; 486 NW2d 600 (1992) explained: "'Conversion is an intentional tort in the sense that the converter's actions are willful'" The *Magley* court also stated that: "Good faith, mistake, and ignorance are not defenses to a claim of conversion." *Id.* [Citations omitted].

As to statutory conversion, MCL 600.2919a provides in pertinent part:

> (1) A person damaged as a result of either or both of the following may recover 3 times the amount of actual damages sustained, plus costs and reasonable attorney fees:
>
> (a) Another person's stealing or embezzling property or converting property to the other person's own use.
> ...
>
> (2) The remedy provided by this section is in addition to any other right or remedy the person may have at law or otherwise.
>
> MCL 600.2919a(1)(a) and (2).

Thus, unlike common law conversion, an added component in statutory conversion is that a person converting property must convert the property for his or her "own use." Case law indicates that "someone alleging conversion to the defendant's 'own use' under MCL 600.2919a(1)(a) must show that the defendant employed the converted property for some purpose personal to the defendant's interests, even if that purpose is not the object's ordinarily intended purpose." *Aroma Wines, supra* at 359. Hence, "own use" may include a use for a purpose which is not the "ordinarily intended purpose."

In the case at bar, the ordinary use or purpose of Five Crowns' truck is for transportation. D & M has made clear that it retained the truck because Five Crowns owed it money. In responses to Five Crowns' requests to admit, D & M's owner, Jeremy O'Neil answered as follows:

- REQUEST FOR ADMISSION NO. 1: Please admit that You have been in possession of the Vehicle since January 2023.

  Response: Admit.

- REQUEST FOR ADMISSION NO. 2: Please admit that You are currently in possession of the Vehicle.

  Response: Admit.
  …

- REQUEST FOR ADMISSION NO. 5: Please admit that FTC [sic] requested D&M to perform maintenance on an aftertreatment system in January 2023.

  Response: Admit.

- REQUEST FOR ADMISSION NO. 7: Please admit that prior to October 6, 2023, FCT requested return of the Vehicle.

  Response: Admit.

- REQUEST FOR ADMISSION NO. 8: Please admit that prior to October 6, 2023, You did not return possession of the Vehicle to FCT.

  Response: Admit, with the explanation that Defendant was holding the vehicle in the fall of 2023 because Plaintiff had an outstanding balance at or around that time.

- REQUEST FOR ADMISSION NO. 9: Please admit that prior to October 6, 2023, You did not return possession of the Vehicle to FCT because You allege FCT had an outstanding balance owing to You.

  Response: Admit.

  [Five Crowns' Exhibit 3].

From its own admissions, there is little doubt that D & M committed "a distinct act of dominion wrongfully exerted" over Five Crowns' Vehicle for approximately 2 years because Five Crowns had an outstanding balance owing. *Aroma Wines, supra.*

In deposition testimony, O'Neil also testified as follows:

> A. Yes, I know we had conversations before the lawsuit, yes.
>
> Q. About picking up the truck specifically?
>
> A. Yeah, because they owed money at one time, and at one time, we were holding trucks because of the money. …
>
> [Five Crowns' Exhibit 6, p. 14, ln 1-4].
>
> Q. Okay. Do you recall the vehicle looking as it does in these pictures in July of 2023?
>
> A. Yep. That's pretty much how it looks right now.
>
> Q. Okay. And the vehicle has tires on it in this photo, correct?
>
> A. It's missing tires. There's two tires missing right there, and there's some tires missing on the other side. I didn't say we took all the tires. I said we utilized some of the tires.
>
> [*Id.*, p. 15, ln 12-20].

Q. Okay. You said previously that you asked Five Crowns to pick up the truck, correct?

A. Derek asked Five Crowns to pick up the truck.

Q. Okay. So Derek asked. Did you ever ask Five Crowns to pick up the truck?

A. I want to say -- I'm not a hundred percent positive -- that I had a conversation on the phone and said, "Look, you can come pick it up as soon as that balance is paid. Get with Derek."

[*Id.*, p. 22, ln 17-25].

Q. Do you understand that by this document, you admitted Five Crowns had previously asked for the truck back?

A. Yes. And I just also said to you, I believe that I -- they called me, and I told them that as soon as they pay their bill, they could get their vehicle back. They have to get with Derek. I just said that a few sentences -- a few minutes ago to you.

[*Id.*, p. 24, ln 17-23].

Q. Do you keep a log of which parts you take off of a truck and put onto another one?

A. Nope.

Q. Do you have a record anywhere?

A. Nope.

[*Id.*, p. 33, ln 21-25].

O'Neil also said that he does not respond to emails or texts. He repeatedly referred to Derek Paquin as the person responsible for accounts payable and said that he really did not know anything about anything related to the accounts of his company.

Thus, O'Neil essentially said that D & M retained the Vehicle because Five Crowns allegedly owed money to D & M and wanted payment. He claimed ignorance

related to anything involving money owed to the business and claimed ignorance of any communications in the form of emails or text messages. [*Id.*, p. 39, ln 1-10].

Pursuant to *Aroma Wines, supra,* O'Neil admitted that it intentionally kept the Vehicle, altered the Vehicle, received the Vehicle to acquire a proprietary interest, and refused to surrender it on demand. *Id.*, referring to (a), (b), (c), and (g). Thus, Five Crowns has established the necessary factors to determine that D & M committed conversion. As to statutory conversion, D & M retained the Vehicle for its own use, which was to pressure Five Crowns into paying an alleged past due amount.

Aroma Wines states that it is sufficient to allege that retaining chattel for the purpose of using it as leverage to establish that a defendant converted property for its own use. *Id.* at 449; MCL 600.2919a(1)(a). As *Aroma Wines* held, D & M "employed the converted property for some purpose personal to [its] interests, even if that purpose is not the object's ordinarily intended purpose." *Id.* at 359. Here, that personal purpose was to get Five Crowns to pay an overdue amount. Therefore, there is no genuine issue of material fact that D & M converted the Vehicle and there is no genuine issue of material fact that it did so for its "own use."

In addition, although not binding on this Court under MCR 7.215(C)(1), the Court finds persuasive the reasoning in *Hard Luck Distributors, LLC v Temperance Distilling Co*, unpublished per curiam opinion of the Court of Appeals, decided on May 21, 2015 (Docket No. 319392); 2015 WL 2448516.

In *Hard Luck Distributors*, the defendant Temperance Distilling Co, a warehouse facility, refused to return Hard Luck's property until Hard Luck paid an invoice, (to which

it objected), and agree to sign a new contract with Temperance. The *Hard Luck Distributors* court held:

> The evidence in this case supports the conclusion that Temperance converted Hard Luck's inventory to its own use by refusing to transfer the inventory to another licensed warehouse in an attempt to leverage the payment of excessive warehousing storage fees and to "strong arm" Hard Luck into signing a new agreement.
>
> *Id.* at *5.

Like the case at bar, Temperance converted the property to force payment from Hard Luck. Here, D & M retained the Vehicle to "strong arm" Five Crowns into making a payment on its alleged overdue amount. When it attempted to do so, Five Crowns found the Vehicle in disrepair to the extent that it could not be safely towed.

While D & M contends that it was given permission to swap parts from one vehicle to another, it has presented no evidences of this. In his deposition, O'Neil stated that he had no record of this or kept a log regarding which vehicle had parts swapped from it to another vehicle. Nor are swapped parts recorded on billing invoices. [Five Crowns' Exhibit 6, p. 33, ln 21-25, p. 34, ln 1-4]. "A party may not leave it to this Court to search for a factual basis to sustain or reject its position." *Great Lakes Div of Nat Steel Corp v City of Ecorse*, 227 Mich App 379, 424; 576 NW2d 667 (1998). Again, there is no genuine issue of material fact that D & M converted the Vehicle and there is no genuine issue of material fact that it did so for its "own use."

D & M also argues that the conversion claims are barred by the "economic loss doctrine." As indicated above, the Court had ordered the parties to file supplemental briefs on the "economic loss doctrine."

The "economic loss doctrine" is a judicially created limitation on tort actions that seek to recover economic damages resulting from commercial transactions. The basic premise of the doctrine is that economic losses that relate to commercial transactions are not recoverable in tort. *Quest Diagnostics, Inc v MCI WorldCom, Inc*, 254 Mich App 372, 376; 656 NW2d 858 (2002). The "economic loss doctrine" provides that where buyer's expectations in sale are frustrated because product is not working properly, buyer's remedy is in contract alone, since buyer's losses are only economic. *Neibarger v Universal Cooperatives, Inc*, 439 Mich 512, 520; 486 NW2d 612 (1992). An action in tort may not be maintained where a contractual agreement exists, unless a duty, separate and distinct from the contractual obligation, is established. *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41; 649 NW2d 783 (2002).

In its brief, Five Crowns argues that the "economic loss doctrine" is inapplicable to service contracts and, thus, not applicable in the instant case. In response, D & M argues that there is a genuine issue of material fact as to whether the parties' contract was for goods or services. D & M contends that "the facts tend to indicate that Plaintiff sought far Defendant to acquire and then install a specific vehicle exhaust part on the subject vehicle i.e. a contract for goods." However, D & M presents no evidence showing when and what parts were supplied for its maintenance service of the Vehicle or other vehicles.

Black's Law Dictionary defines a "service contract" as "[a] contract to perform a service; esp., a written agreement to provide maintenance or repairs on a consumer product for a specified term." CONTRACT, Black's Law Dictionary (12th ed. 2024). Although parts may be supplied as part of the Vehicle's maintenance, in the Court's view,

the essence of the parties' contract is for service. There is no doubt that the contract was for repair and maintenance service of Five Crown's fleet of trucks.

Here, D & M was to perform maintenance to the Vehicle's aftertreatment system. Hence, the performance of the contract was not for the sale of goods. Not only is there no question of fact that the contract at issue here was a service contract, but D & M provides no authority for its assertion nor any evidence to support the assertion.

D & M also contends that, even if the Court finds that the parties' contract was one for service, the Court must conduct an analysis of whether Five Crowns has alleged a duty that is "separate and distinct" from the contractual obligations. In determining whether a separate and distinct duty independent of the contract exists, the operative question is whether the defendant owed the plaintiff any legal duty that would support a cause of action in tort, including those duties that are imposed by law. *Loweke v Ann Arbor Ceiling & Partition Co*, 489 Mich 157, 171; 809 NW2d 553 (2011) the *Loweke* court stated:

> As this Court has historically recognized, a separate and distinct duty to support a cause of action in tort can arise by statute, ... or by a number of preexisting tort principles, including duties imposed because of a special relationship between the parties, ...
>
> *Id.* at 169-170 [Citations omitted] [Emphasis added].

Here, there are two statutes that impose duties separate and distinct from any contractual obligations on Defendant, which include statutory conversion, MCL 600.2919a, and the MVSRA, MCL 257.1301 *et. seq*. The MVSRA will be discussed in more detail below. MCL 600.2919a(1)(a) does impose a separate and distinct duty on a person to not steal, embezzle, or convert property to the person's own use.

Furthermore, in *Higgins v Lauritzen* 209 Mich App 266, 269; 530 NW2d 171 (1995), the court explained that "an injury caused by a service would not arise out of a 'transaction in goods' and therefore would not be governed by Article 2 of the UCC." "[W]here there is no genuine issue of material fact in dispute regarding the provisions of the contract, a court may decide the issue as a matter of law." *Id.* at 270. The parties do not dispute that the provisions of their agreement and that the agreement is for repair services to Five Crowns' vehicles. Hence, there is no genuine issue of material fact that D & M provides services to Five Crowns. See also *Quest Diagnostics, Inc*, *supra* at 380 ("This Court has declined to apply the economic-loss doctrine where the claim emanates from a contract for services."). Therefore, the "economic loss doctrine" does not bar Five Crowns' conversion claims.

D & M provides little or no legal or evidentiary support for its position. A party may not merely announce his or her position and leave it to the Court to discover and rationalize the basis for his or her claims, nor may he or she give issues cursory treatment with little or no citation of supporting authority. *Movie Mania Metro, Inc v GZ DVD's Inc*, 306 Mich App 594; 857 NW2d 677 (2014). See also *People v Matuszak*, 263 Mich App 42, 59; 687 NW2d 342 (2004). (A defendant may not merely announce his position and leave it to the Court to discover and rationalize the basis for his claims, nor may he give issues only cursory treatment with little or no citation of supporting authority. Such cursory treatment constitutes abandonment of the issue.).

Nevertheless, there is no genuine issue of material fact that the parties' agreement is for services and not for a contract for the sale of goods under the UCC, and that the "economic loss doctrine" does not bar Five Crowns' conversion claims. *Higgins, supra.*

There is also no genuine issue of material fact that D & M's duties to Five Crowns are separate and distinct from its contractual obligations because they derive from MCL 600.2919a. Accordingly, the Court grants Five Crowns' motion as to the common law conversion (Count I) and statutory conversion (Count VI) claims.

D & M also asserts that Five Crowns has "unclean hands" because it did not pay its outstanding bill. D & M contends that Five Crowns "converted to its own use the money Defendant earned on its past due invoices by withholding it as a means to secure repairs on its Vehicle." In response, Five Crowns argues that D & M has not provided any factual basis to conclude that the Five Crowns acted in bad faith, fraud, or a lack of morality, which is a requirement to demonstrate "unclean hands." The Court agrees.

"The unclean-hands doctrine is 'a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, *however improper may have been the behavior of the opposing party*.'" *New Products Corporation v Harbor Shores BHBT Land, LLC, et al,* 331 Mich App 614, 627; 953 NW2d 476 (2019), quoting *Rose v Nat'l Auction Group*, 466 Mich 453, 463; 646 NW2d 455 (2002) [Italics in original]. "Any willful act that transgresses equitable standards of conduct is sufficient to allow a court to deny a party equitable relief." *Id.* [Citation omitted].

In the instant case, D & M has not presented any evidence to contradict Five Crowns' allegations that D & M retained the Vehicle for the purpose of forcing Five Crowns to pay its allegedly overdue invoice. D & M also fails to show how Five Crowns acted in bad faith. See *Attorney Gen v Ankersen*, 148 Mich App 524, 545; 385 NW2d 658 (1986) ("There is simply insufficient evidence on the record showing bad faith or lack of morality

on the part of the DNR which would justify invoking the doctrine of unclean hands to protect the integrity of the court.").

In the Court's view, Five Crowns acted in good faith when it attempted to tender the alleged amount, but found the Vehicle in a state of disrepair such that it could not be moved from D & M's facility in a safe manner. Therefore, D & M's argument that Five Crowns has come to Court with unclean hands is without merit.

B. The MVSRA

Five Crowns next argues that D & M violated the provisions of the MVSRA. In response, D & M contends that it did not charge for or perform unauthorized or unnecessary repair of the Vehicle. It further argues that Five Crowns "refused to receive the Vehicle or pay for repairs or towing at all points in time after September 2023."

"The purposes of the MVSRA include regulating the practice of servicing and repairing motor vehicles and proscribing unfair and deceptive practices." *Anaya v Betten Chevrolet, Inc*, 330 Mich App 210, 217; 946 NW2d 560 (2019).

MCL 257.1307a provides, in relevant part:

> A motor vehicle repair facility that is subject to this act, or a person that is an owner or operator of a motor vehicle repair facility that is subject to this act, shall not, directly or through an agent or employee, do any of the following:
>
> ***
>
> (e) Fail to perform promised repairs within the period of time agreed, or within a reasonable time, unless circumstances beyond the control of the facility prevent the timely performance of the repairs and the facility did not have reason to know of those circumstances at the time the contract was made.
>
> MCL 257.1307a(e) [Emphasis added].

Although D & M argues that the delay in returning the Vehicle was due to the unavailability of parts, O'Neil testified that the parts shortage resolved approximately 6 months to a year prior to his deposition, which occurred on June 21, 2024. [Five Crowns Exhibit 6, p. 33, ln 1]. D & M contends that the problem was due to having 30 of Five Crowns' trucks dropped off around the same time. It believes that a jury should decide and that a jury might disagree that it engaged in an unfair or deceptive method or practice.

The issue is not whether it was unfair or deceptive. Rather, the issue is whether D & M failed "to perform promised repairs within the period of time agreed, or within a reasonable time." O'Neil testified that the aftertreatment system maintenance service normally takes about two weeks to perform. [*Id.*, p. 12, ln 13-14]. He also said that D & M was able to perform the aftertreatment system maintenance on the other 30 trucks from Five Crowns between "anywhere from three to eleven months, depending on what the problem was" because the parts for the maintenance were on backorder for as long as six months to a year. [*Id.*, p. 13, ln 1-2].

While D & M maintains that there is a genuine issue of material fact that it violated the MVSRA, it provides neither factual support nor any authority that withholding a vehicle for two years because it was owed money was not unreasonable or willful. "[M]ere conclusory statements is insufficient to support a motion for summary disposition." *Kozak v City of Lincoln Park*, 499 Mich 465, 468; 885 NW2d 443 (2016) [Footnote omitted]. See also *Rose v Nat'l Auction Group, Inc,* 466 Mich 453, 470; 646 NW2d 455 (2002) (stating that conclusory statements are not enough to create a genuine issue of material fact).

D & M also presents no evidence to support the assertion that it was given permission to swap parts. Instead, O'Neil refers to other individuals who have not testified or provided an affidavit. Despite the fact that D & M may have regularly swapped parts, there is no evidence that Five Crowns agreed to have parts swapped from on vehicle to another. Therefore, D & M failed to satisfy its burden to establish the existence of a genuine issue of material fact. *Quinto, supra;* MCR 2.116 (G)(4). As the nonmoving party, D & M may not rely on mere allegations or denials in pleadings, but must go beyond pleadings to set forth specific facts showing that genuine issue of material fact exists. *Quinto, supra* at 362. There is no genuine issue of material fact that D & M failed to perform the aftertreatment system maintenance for at least two years, which is not a reasonable period of time, and willfully withheld the Vehicle. Accordingly, Five Crowns is entitled to judgment as a matter of law. MCR 2.116(C)(10).

C. Damages

Five Crowns' last argument is that there is no factual dispute as to Five Crowns' damages. Conversely, D & M asserts that the claimed damages are factually disputed. It also contends that Five Crowns is equitably estopped from recovering damages because it refused the return of its Vehicle. Again, D & M offers only legal conclusions without factual support. "[U]nsupported statements of legal conclusions are insufficient to state a cause of action." *Kyocera Corp v Hemlock Semiconductor, LLC*, 313 Mich App 437, 445; 886 NW2d 445 (2015) [Citation omitted].

Not only is there no factual basis for D & M's assertions, but they are also disingenuous. As indicated above, the uncontradicted evidence shows that Five Crowns

attempted on numerous occasions to obtain status updates without success and attempted to pay its bill, but was unable to retrieve the Vehicle due its state of disrepair.

"The general rule for the measure of damages for conversion is the value of the converted property at the time of the conversion." *Ehman v Libralter Plastics, Inc*, 207 Mich App 43, 45; 523 NW2d 639 (1994) [Citation omitted], "Damages in a conversion case include interest from the date of conversion." *Id*. "If property is eventually returned after a period of wrongful detention, the owner may nevertheless be entitled to damages, including damages for the reasonable value of the property's use during the period of detention." *Magley, supra* at 317. "[D]amages that are speculative or based on conjecture are not recoverable." *Chelsea Inv Group LLC v Chelsea*, 288 Mich App 239, 255; 792 NW2d 781 (2010) [Citation omitted]. "However, it is not necessary that damages be determined with mathematical certainty; rather, it is sufficient if a reasonable basis for computation exists." *Id.*

Here, Five Crowns presents evidence by way of an affidavit by Michael Haller, Five Crowns' Corporate Director of Transportation, that the Vehicle was purchased on August 15, 2022 for $72,380. [Five Crowns' Exhibit 1, ¶ 5]. O'Neil's testimony also indicates that the value of the Vehicle is about the same as when it was purchased. He stated the following:

> Q, Is the truck worth the same amount of money as it was when it was dropped off to your shop in January of 2023?
>
> A. Except -- Yeah. Yes.
>
> Q, Even though it's missing a hood?
>
> A. The hood is here for it.

> Q, No, I'm not talking about if you put the hood on, I'm saying right now, as it's parked in your shop, is it worth the same amount of money?
>
> A. Yes.
>
> [Five Crowns Exhibit 6, p. 53, ln 17-25].

Hence, the value of the Vehicle is $72,380, which is uncontradicted.

As to lost revenue, Michael Haller also stated in his affidavit that: "On average, provision of transportation services by Five Crowns yields Five Crowns approximately $10,000 of revenue per vehicle each month" [Five Crowns' Exhibit 1, ¶ 26]. He further stated that "it has been 24 months since Five Crowns sent the Vehicle in for repairs. Thus, I estimate we have lost a total of $240,000 in revenue because D&M stole the Vehicle." [*Id.*, ¶ 27]. D & M has offered no evidence to contradict Haller's assessment regarding revenue lost as a result of the Vehicle being out of commission.[2] Therefore, there is no genuine issue of material fact that Five Crowns' actual damages are a total of $312,380.00.

---

[2] O'Neil also testified:

> Q. Why was it so important to you and Five Crowns to have as many of their trucks on the road as possible?
>
> A. Because that's how they make their money. That's what their business is, to haul automotive parts.
>
> Q. So if a truck was out of commission, Five Crowns can't make money, correct?
>
> A. Five Crowns can't haul the parts, yeah.
>
> Q. So they can't make as much money as they normally would?
>
> A. That's why I kept 30 of their trucks rolling. Yes.
>
> [Five Crowns' Exhibit 6, p. 54, ln 14-22].

Therefore, O'Neil agreed that it is important to keep Five Crowns' trucks on the road to generate revenue.

As explained above, a court "may" order treble damages for violation of MCL 600.2919a. The court in *Jackson v Bulk AG Innovations, LLC*, 342 Mich App 19, 27–28; 993 NW2d 11 (2022), quoting *Aroma Wines, supra* at 449 explained:

> "And in any event, the trial court was entrusted with the discretion to treble—or not treble—the damages under MCL 600.2919a(1), which states that plaintiffs harmed by conversion "may recover 3 times the amount of action damages sustained...." As we have explained in discussing this language from MCL 600.2919a, '[t]he term 'may' is permissive and indicates discretionary activity."
>
> [Emphasis added].

Therefore, the Court has discretion on whether to award treble damages for statutory conversion. See also *Hoffenblum v Hoffenblum*, 308 Mich App 102, 117; 863 NW2d 352 (2014)(An award of treble damages is within a court's discretion.).

Under the MVSRA, a plaintiff may be awarded double damages. MCL 257.1336 provides:

> A facility that violates this act is liable as provided in this act, to a person that suffers damage or injury as a result of that violation, in an amount equal to the damages plus reasonable attorney fees and costs. If the damage or injury to the person occurs as the result of a willful and flagrant violation of this act, the person shall recover double the damages plus reasonable attorney fees and costs from the facility.
>
> [Emphasis added].

In the Court's view, like its conduct regarding conversion, D & M caused injury as a result of its "willful and flagrant violation" of the MVSRA by failing to perform the requested maintenance within a reasonable period of time and willfully retaining the Vehicle as leverage for payment of alleged past due invoices. Therefore, rather than

awarding treble damages for statutory conversion, the Court will award to Five Crowns double the actual damages pursuant to MCL 257.1336.

Finally, the Court also notes that Five Crowns is entitled to attorney fees and costs pursuant to both MCL 600.2919a and MCL 257.1336. As such, Five Crowns shall submit a separate motion for attorney fees and costs for the Court to consider at a later date.

IV. CONCLUSION

There is no genuine issue of material fact that D & M converted the Vehicle and there is no genuine issue of material fact that it did so for its "own use."

There is also no genuine issue of material fact that the parties' agreement is for services and not for a contract for the sale of goods under the UCC, and that the "economic loss doctrine" does not bar Five Crowns' conversion claims. *Higgins, supra.* There is no genuine issue of material fact that D & M's duties to Five Crowns are separate and distinct from its contractual obligations because they derive from MCL 600.2919a.

D & M has not presented any evidence to contradict Five Crowns' allegations that D & M retained the Vehicle for the purpose of forcing Five Crowns to pay its allegedly overdue invoice. D & M also fails to show how Five Crowns acted in bad faith.

As to the violation of the MVSRA, there is no genuine issue of material fact that D & M failed to perform the aftertreatment system maintenance for at least two years, which is not a reasonable period of time, and willfully withheld the Vehicle. Accordingly, Five Crowns is entitled to judgment as a matter of law. MCR 2.116(C)(10).

There is no genuine issue of material fact that Five Crowns' actual damages are a total of $312,380.00. For all reasons above, the Court grants Five Crowns' motion for

summary disposition as to its claims for common law conversion, statutory conversion, and violation of the MVSRA. Accordingly, the Court will award to Five Crowns $624,760.00, which is double the actual damages pursuant to MCL 257.1336. The Court also awards to Five Crowns attorney fees and costs to be considered at a later date.

For the reasons stated in the foregoing Opinion,

IT IS ORDERED that the motion for partial summary disposition filed by Plaintiff Five Crowns Trucking, LLC is hereby **GRANTED;**

IT IS FURTHER ORDERED that the Court awards to Plaintiff damages in the amount of $624,760.00 plus interest to be paid by Defendant D&M Truck, Tire & Trailer Repair, Inc;

IT IS FURTHER ORDERED that the Court awards to Plaintiff attorney fees and costs to be considered at a later date;

IT IS FURTHER ORDERED that the remainder of Plaintiff's claims in its complaint are **DISMISSED AS MOOT;**

IT IS FURTHER ORDERED that this **RESOLVES** the last pending claim and **CLOSES** the case.

IT IS SO ORDERED.

/s/ Muriel D. Hughes
June 5, 2025

DATED:

Circuit Judge