

IN THE SUPREME COURT OF OHIO

ROBERT GREER,	:	Case No. 2014-2198
Appellee,	:	
vs.	:	On Appeal from the
GERALD BENJAMIN BRUCE	:	Hamilton County Court of Appeals, First
	:	Appellate District
and	:	Court of Appeals Case No. C-140121
EARL BRUCE,	:	
Appellants.	:	

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MEMORANDUM IN OPPOSITION TO JURISDICTION  
OF APPELLEE, ROBERT GREER

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**EXPLANATION OF WHY THIS CASE IS OF NO PUBLIC OR GREAT GENERAL  
INTEREST, AND DOES NOT INVOLVE ANY  
CONSTITUTIONAL QUESTION**

This is a case between two private parties, involving well-settled principles of personal and real property law. There are no constitutional issues involved at all.

The appellants Earl and Gerald Benjamin Bruce owned a parcel of unzoned commercial property in Whitewater Township, Hamilton County, Ohio. They orally leased the commercial property to Robert Greer. Mr. Greer is in the industrial demolition and equipment salvage business. Mr. Greer wanted to use the property as a “laydown yard” to store items of industrial machinery and equipment that he had salvaged from various demolition jobs he had performed. His intent was to eventually sell the salvaged machinery and equipment, for which there is a ready market.

The oral lease between the parties for this commercial property did not give the Bruces any right of self-help eviction. Accordingly, they were required to employ judicial process under the forcible entry and detainer statute in order to remove Mr. Greer and his machinery and equipment from the property. But instead, they simply, and without warning, locked him out of the property. Then, to make matters worse, they proceeded to have Mr. Greer’s valuable machinery and equipment loaded onto trucks and hauled off for sale as scrap metal. They did this even though Mr. Greer stood outside the property gates repeatedly telling the workers hired by the Bruces that the machinery and equipment belonged to him, that he wanted it back, and that they had no right to take it from him.

Even if the Bruces had employed proper judicial process to evict Mr. Greer from the property, they had no right to simply steal Mr. Greer’s machinery and equipment. Upon executing a writ of eviction they might have set his machinery and equipment off of the property and allowed Mr. Greer to retrieve it. They might have removed it for safekeeping and storage elsewhere, and

allowed Mr. Greer to come get it. But they cannot simply haul it off over Mr. Greer's vehement and repeated objections for sale as scrap, as if it were their own. That, however, is exactly what they did.

The well-settled principles of law involved in this case are these:

(1) Landlords in commercial lease agreements must employ judicial process to evict their commercial tenants, unless the lease specifically allows a self-help eviction;

(2) Landlords are not allowed to seize their tenants' personal property and treat it as their own, and when they do so over their tenants' objections, they are liable to the tenants for conversion; and

(3) Landlords who intentionally and maliciously convert tenants' property are liable to the tenants in punitive damages.

These well-settled principles of law are not really open to question or dispute, and are not outmoded or in need of change or further clarification by this Court. This is simply a dispute among private parties that has been correctly decided by the lower Hamilton County Courts under these well-settled principles of law.

While this case is certainly important to the parties involved, that is where its significance ends. There is no basis for this Court to assume jurisdiction in this case.

## **STATEMENT OF THE CASE**

### **A. PROCEDURAL POSTURE**

This matter came before Magistrate Michael Bachman for trial on July 8-10, 2013 upon the Plaintiff-Appellee Robert Greer's claims for wrongful eviction and conversion, and upon the Defendants-Appellants Earl Bruce and Gerald Benjamin Bruce's counterclaims for trespass and damage to real property. (T.d. 66 at 1). On November 5, 2013, the Magistrate issued a decision in

Greer's favor upon all issues tried. (T.d. 66). The Magistrate awarded Greer \$303,591.20 in compensatory damages upon his claim for conversion, and an equal amount in punitive damages, jointly and severally against the Bruces, for a total damage award of \$607,182.40. (T.d. 66).

The Bruces objected to the Magistrate's decision (T.d. 70), and on February 19, 2014, the Trial Judge entered final judgment overruling the Bruces' objections and adopting the Magistrate's Decision as its own. (T.d. 82-83). The Bruces filed their timely notice of appeal from this final judgment entry. (T.d. 88).

On November 5, 2014, the Hamilton County Court of Appeals, First Appellate District, affirmed the Trial Court's judgment. The Bruces now ask this Court to assume jurisdiction over their appeal.

## **B. STATEMENT OF FACTS**

Robert Greer is in the business of salvaging industrial machinery and scrap for resale. (T.p. Vol. II, p. 8). Earl Bruce owned property located at 10901 Stephens Road, in Cincinnati, Ohio (hereinafter referred to as "the Bruce Property"). Bruce had formerly used the property as an auto salvage yard. (T.p. Vol. II, pp. 5-10, 20). In 2008, Greer and Earl Bruce entered into an oral lease for the property. (*Id.*). The oral lease agreement allowed Greer to use the Bruce Property as a "laydown yard" on which to store his salvaged machinery and scrap. In exchange, Greer agreed to improve the Bruce Property by clearing the property of saleable scrap metal, dismantling and removing old truck trailers, and leveling the property with clean fill. (*Id.*). Greer scrapped the equipment and metal that was there prior to his going onto the property, marketed it, and split the proceeds with Earl Bruce. (T.p. Vol. II, p. 9).

To level the property, Earl Bruce himself had people haul in fill and construction debris, and Bruce would charge them a dumping fee. (T.p. Vol. II, p. 37). Greer also brought in 600 tons of fire

brick from one of his demolition jobs to use as fill. (T.p. Vol. II, pp. 37-38). Greer would then grade and level the fill to solidify and enlarge the useable area of the property as part of his end of the lease agreement. (T.p. Vol. II, pp. 36-37, 41).

In 2009, Earl Bruce leased an adjoining property from Whitewater Township (hereinafter “the Township Property”). Greer then entered into a written sublease with Earl Bruce for the Township Property, (T.p. Vol II, pp. 55-56), and began using the Township Property for a laydown yard for storage of his salvaged machinery and scrap metal, too. (T.p. Vol. II, pp. 12, 26). Greer also cut up and scrapped a number of truck trailers that Earl Bruce had stored on the Township Property, marketed the scrap and split the proceeds from that with Earl Bruce. (T.p. Vol. II, pp. 12-13).

In 2010, Earl Bruce transferred the Bruce Property to his son, Benjamin Bruce by quitclaim deed. At that time, Greer was still openly using the both pieces of property as laydown yards. (T.p. Vol. II, pp. 53-55). Both Earl and Benjamin Bruce were well aware that Greer was occupying the property for use in his industrial equipment salvage and scrap business. (T.p. Vol. II, pp. 11-12, 20, 40, 64, ). Earl Bruce had even provided Greer with an access key to the gate to enter and exit the property. (T.p. Vol. II, pp. 52-52).

During the course of Greer’s occupancy and use of both properties, Whitewater Township notified Earl Bruce to clean up the Township Property, but not the Bruce Property. (T.p. Vol. II, 47-48, Vol. 247-248). Ultimately, Greer cleared his machinery and scrap from the Township Property to the satisfaction of the Township. (*Id.*).

Meanwhile, however, on June 16, 2011, the Bruces blocked Greer’s access to the Bruce Property. (T.p. Vol. II, pp. 49-52). Earl Bruce relayed by telephone that Greer had to remove his machinery and equipment from the property, and that Greer had until Monday, June 20, 2011 in

which to do so. (T.p. Vol. II, pp. 49-53). Greer was ready, willing and able to remove all his valuable salvaged equipment and scrap metal in that time period. (*Id.*). But instead of allowing Greer that opportunity, the Bruces locked Greer out of the property on June 17, 2011, three days prematurely. (*Id.*). They hired Robert Writesel (hereinafter "Writesel") under a written contract signed by both Bruces to remove Greer's machinery and scrap metal from the Bruce Property, and to haul it away for sale to various scrap yards. Over Greer's objections, Writesel and a crew of workers continued to remove Greer's property and take it to scrap yards for profit for about a week. (T.p. Vol. II, pp. 92- 95).

Greer did everything he could to stop the Bruce's agents, Writesel and his crew, from taking his valuable property. He called the police. (T.p. Vol. II, pp. 100, 104, 107). They told him to go to court. (T.p. Vol. II, p. 101). He filed a pro se action seeking a restraining order on June 17, 2011, (T.d. 2-3), but the Court denied his motion for TRO. He appeared in Court again on June 22, 2011, for a preliminary injunction hearing, but by then the valuable property and equipment had been largely hauled away and sold by Writesel and his crew. The Court denied the injunction. (T.p. 3-4). Significantly, though, and contrary to the Bruces' present suggestions, at no time during that hearing did the Court grant the Bruces permission to convert Greer's property. (*Id.*).

And by that time, the Bruces had already spent five days, from June 17 to June 22, hauling Greer's property away for sale, and most of it, certainly the valuable items, were already gone. The Bruces could not possibly have relied upon any statement by the Magistrate during the June 22 hearing as permission or authorization to convert Greer's property on June 17, 18, 19, 20, and 21.

And throughout the period of time that Writesel and his crew were loading up and hauling his property and equipment away, Greer and his son stood outside the locked gates, objecting to the

theft of his property, and photographing Writesel and his crew as they busily set about converting it all for removal and sale. (T.p. Vol. II, pp. 97-100, Pltf's Exhs. 10A-RR). Writesel's response to Greer's objections was to flip Greer the middle finger. (T.p. Vol. II, pp. 173-74; Pltf's Exh. 11).

Just about a month before the Bruces unlawfully converted and sold Greer's equipment and scrap metal, in mid-May, 2011, Greer had engaged the services of Robert Taylor and Richard Wyatt Sampson of B&W Enterprises and River Valley Engineering to photograph, inspect and operate, appraise, advertise, and sell the machinery and equipment. (T.p. Vol. II, pp. 64-65, 121-123, 129-139). Mr. Taylor, in particular, is actively engaged in the business of buying and selling used industrial equipment of the sort owned by Greer. The salvaged machinery and equipment included large diesel industrial generators, soundproof and climate-controlled generator housings, blower motors, ventilation fans, water pumps, electrical control panels, aluminum trailers, a 1,000-gallon vault fuel tank, and tons of valuable metal scrap. (T.p. Vol. II, pp. 42-43, 59-91, 95). Mr. Taylor appraised the equipment, and Greer estimated the value of his saleable metal, at a total combined value of \$303,591.20. (T.p. Vol. II, pp. 139-159).

#### **ARGUMENT IN OPPOSITION TO APPELLANTS' PROPOSITIONS OF LAW**

##### **Appellants' Proposition of Law No. I: A litigant has the right to rely on and act in accordance with the oral pronouncements, or dicta, of a judicial officer.**

The Appellee has no opinion one way or the other as to whether the Appellants' first proposition of law may be correct, for the simple reason is that it has no application to the actual facts of this case.

First of all, the Magistrate never gave the Bruces permission to convert Greer's machinery and equipment at any time during the June 22, 2011 hearing. The hearing transcript does not support

the Bruces' contention that the Magistrate did so. (See, T.p., pp. 1-4). And the Court of Appeals correctly held that the Court only speaks through its journal entries, citing *Hooten v. State Auto Ins. Co.*, 1<sup>st</sup> Dist. Hamilton County C-010576, 2004-Ohio-451. Under this correct statement of law, the Magistrate's oral statements, whatever they were, cannot serve as a substitute for a journal entry, for example, granting a writ of attachment of personal property.

A more fundamental flaw in the Bruces' argument, however, is that they had already converted most of the valuable items of Greer's property before the June 22, 2011 hearing was even held. They were busily hauling his property away on June 17, 18, 19, 20, 21 and into June 22 before the preliminary injunction hearing even commenced. The Bruces could not possibly have relied upon the Magistrate's later statements on June 22, whatever they were, as either permission or justification for their unlawful acts of conversion committed on June 17, 18, 19, 20, or 21.

Because the Magistrate never gave the Bruces permission to convert Greer's property, and because they could not possibly have relied upon any after-the-fact statements by the Magistrate in committing their earlier acts of conversion, the Bruces' first proposition of law has no application to the facts of this case.

**Appellants' Proposition of Law No. II: A holdover tenant or a tenant by sufferance, who has been notified to leave the premises, may be treated as a trespasser, and self-help repossession is available to a commercial property owner with respect to a trespasser.**

The Appellants' second proposition of law also misses the point. The point of this case is that under *no* circumstance are landlords or property owners allowed to simply seize holdover tenants' personal property as their own. Even where self-help eviction is allowed, that does not mean landlords get to help themselves to their tenants' personal possessions. When landlords do

that, as the Bruces did here, they are liable to the tenants in conversion.

Under Ohio law, a commercial landlord cannot employ a self-help eviction unless the lease contains a specific provision allowing a self-help eviction. *In Re: 1345 Main Partners, LTD.*, 215 B.R. 536, 541, (Bankr.S.D.Ohio 1997). Where the lease does not allow for a self-help eviction, the commercial landlord must use the judicial process for eviction provided in R.C. Chapter 1923, the Forcible Entry and Detainer Statute. *Maggiore v. Kovach*, 101 Ohio St.3d 184, 2004-Ohio-722, 803 N.E.2d 790. That statute requires, first, the giving of a three-day notice to vacate the premises, followed by suit for eviction, service of process, hearing on the merits, and the issuance of a writ of eviction before the landlord can set the tenant out.

The parties here never discussed self-help eviction, let alone specifically permitted it in their oral agreement. Because there was no such provision in the oral lease between the Bruces and Greer, the Bruces were not allowed to “self-help” evict Greer from the premises. They were required to initiate judicial proceedings under R.C. Chapter 1923.

*Northfield Park Associates v. Northeast Ohio Harness, et al.*, 36 Ohio App. 3d 14, 521 N.E.2d 466 (8<sup>th</sup> Dist. 1987) is of no help to the Bruces, and lends no support to their argument. The court in *Northfield Park Associates* affirmed that self-help evictions are allowed in commercial leases only when the parties to the lease have specifically agreed to and provided for that remedy in the lease agreement. Greer testified, and the Bruces conceded, that in this case there was no agreement or discussion that the Bruces would be allowed to use self-help eviction.

And even if the lease did allow for a self-help eviction, that would still not have entitled the Bruces to simply steal Greer’s property over his vehement objections, and sell it. Even following a valid self-help eviction, a landlord may still be held liable for injury to the tenant’s personal

property. *Craig Wrecking Co. v. S.G. Loewendick & Sons, Inc.*, 38 Ohio App.3d 79, 1987 Ohio App. LEXIS 10628 (10<sup>th</sup> Dist. 1987). Nothing in the law allows the Bruces to simply steal or convert Greer's valuable personal property, even assuming they were allowed to employ self-help to evict him.

The Bruces are also incorrect in alleging Greer was a trespasser. The Magistrate correctly found there to be some agreement between Greer and Earl Bruce for Greer's use of the Bruce Property. Mr. Greer testified that there was an oral lease agreement. All parties agreed, and the testimony and evidence showed, that Greer had been openly using the property as a laydown yard since 2008. Aerial photos showed Greer's continued possession and occupation of the premises over the time period of his claimed oral lease. Earl Bruce even testified that he had provided Greer with a key to the premises. Greer's use and occupancy of the property carried over and continued after Earl Bruce transferred the property to his son, Benjamin Bruce. And the testimony was undisputed that the defendants were fully aware of Greer's use and occupation of the property extending over a period of years, and that the defendants never contacted the authorities to report Greer as a trespasser. The Magistrate's decision that "the evidence was clear that some type of oral agreement was reached between Plaintiff and Earl Bruce allowing Plaintiff to use the Property" was thus amply supported by the evidence. (T.d. 66 at 4). There is no credible evidence to support the Defendants' claim that Greer was a mere "squatter" or trespasser.

Regardless of whether Greer was a tenant or a trespasser, the Bruces had an obligation to use the proper legal procedures in order to remove Greer and his belongings from the Bruce Property. When there is no remedy under the landlord tenant statutes, the proper remedy for recovery of real property in wrongful possession of another is an action of ejectment under R.C. 5303.03. *Todd v.*

*Sailing*, 12<sup>th</sup> Dist. No. CA89-03-022, 1990 Ohio App. LEXIS 1559, \*9 (April 23, 1990). The Magistrate's conclusion in this regard is a correct statement of the law. Either an action in forcible entry and detainer under R.C. 1923, or an action in ejectment under R.C. 5303 was necessary in order for the defendants to remove Greer and his belongings from the Bruce Property. (T.d. 66 at 3 and fn 1-5). Whether an action for eviction or an action of ejectment was the proper remedy, there was a proper legal process for the Bruces to take in order to remove Greer and his belongings from the Property. The Bruces bypassed the legal judicial proceedings available to and required of them. And neither judicial proceeding, even if they had invoked either of them, would have allowed the Bruces to simply steal or convert Greer's personal property, as they did.

And now, the Bruces appear to raise and directly argue for the first time the affirmative defense that Greer had abandoned his valuable machinery and equipment, citing *Durben v. Malek*, 2014-Ohio-2611. The Bruces have never directly made this argument at any stage of the case below. But even had they made it, it would be to no avail, because there is absolutely no evidence in the record to support it.

The court in *Durben* held that in order for abandonment of personal property to provide a defense to a claim of conversion, there must be affirmative proof (1) of the personal property owner's intent to relinquish all right, title, claim and possession with the intention of not reclaiming it or resuming its ownership, possession, or enjoyment, (2) coupled with acts or omissions implementing the intent. *Durben*, at \*P28, \*P30.

In *Durben*, the landlord evicted her tenants, and gave the tenants two weeks to remove their belongings. The tenants removed some of their belongings, but left behind many others, including “[a]nimal feces and bottles of what appeared to be urine . . . broken and discarded items of furniture,

other household items and miscellaneous trash items . . .scattered throughout the house.” *Durben*, at \*P59. The tenants apparently made no effort to retrieve these remaining items. There evidence in *Durben* thus supported the trial court’s conclusion in that case that the tenants had abandoned these items of property.

The facts in this case stand in stark contrast to the facts in *Durben*. In this case, there was no proof that Greer ever intended to abandon his property, and all the evidence was to the contrary. Greer’s property consisted of valuable machinery and equipment that he was in the process of valuing and marketing for resale in the ordinary course of his business. When the Bruces first tried to lock him out of the property on June 16, the police were called, and an agreement was reached for Greer to remove his property by the following Monday, June 20. But when Greer returned to the property with his trucks and loaders to begin removing his machinery and equipment on the morning of June 17, the Bruces had prematurely locked the gates, barring him from the premises, and their hired hands were already at work removing the most valuable items of Greer’s property. They continued to remove Greer’s property over his protests over the course of the next five days before the preliminary injunction hearing on June 22.

Meanwhile, Greer did everything he possibly could under the circumstances to stop the Bruces’s hired hands from hauling his machinery and equipment away, from objecting in person, to calling the police, to filing suit in a futile effort to get an injunction. There is simply no evidence in this case that Greer intended to abandon his valuable machinery and equipment, or committed any act or omission implementing such an intent.

**Appellants’ Proposition of Law No. III: In the absence of actual malice, an award of punitive damages is inappropriate and should be reversed.**

The Bruces' third proposition of law is generally correct, but there is ample evidence in this case of actual malice as that term is legally defined in Ohio. There is nothing about the award of punitive damages in this case that should warrant this Court's review.

To be awarded punitive damages, a Plaintiff must show actual malice. *Eysoldt v. ProScan Imaging*, 194 Ohio App.3d 630, 2011 Ohio 2359 (1st Dist. 2011). Actual malice necessary for an award of punitive damages is (1) that state of mind under which a person's conduct is characterized by hatred, ill-will or a spirit of revenge, or (2) a conscious disregard of the rights and safety of other persons that has a great probability of causing substantial harm. *Id.*; Ohio Rev. Code § 2315.21(C)(1).

This second test regarding a "conscious disregard for the rights and safety of other persons" is applied in business settings and in conversion cases. *Eysoldt* at \*\*P47; *Blair v. McDonagh*, 177 Ohio App.3d 262, 2008 Ohio 3698, 894 N.E.2d 377 (1st Dist.)(punitive damages for conscious disregard of rights in business setting); *R&S Dist., Inc. v. Hartge Smith Nonwovens, LLC*, 1st Dist. No. C-090100, 2010 Ohio 3992, ¶ 43 (punitive damages for conscious disregard of rights in conversion case). And where a principal expressly or impliedly ratifies the actionable conduct of an agent, as the Bruces did here, the principal may be held liable for both compensatory and punitive damages. *Groner v. deLevie*, 2001 Ohio App. LEXIS 1928 (10th Dist. 2001).

In the present case, the evidence that the Bruces and their agent Writesel displayed a conscious disregard for Greer's property rights is clear and convincing. They deliberately locked him out of the property prematurely on June 17, even though the day before they had agreed to allow him until the following Monday, June 20, to remove his property. And when they removed his property and sold it for profit, they took only the valuable, saleable items. The items with no scrap

value remained on the property even up to the time of the trial, two years after they purportedly tried only to “clean the place up.” They weren’t cleaning the place up—they were cleaning Greer out. And nothing expresses ill-will better than the middle finger—the photo admitted into evidence of Writesel displaying his middle finger to Greer while Greer stood outside the locked gate objecting to their removal of his personal property.

And it was not, as the Bruces suggest, the middle finger that justifies the award of punitive damages. It is the Bruces conscious, calculating disregard of Greer’s property rights that warrants the imposition of punitive damages. If this case of conversion does not warrant the imposition of punitive damages, then none other will. Punitive damages are not only warranted here, they are imperative to protect the rights of personal property owners in both commercial and residential leases throughout Ohio.

The Magistrate’s Decision to award punitive damages is well-supported by the facts and the law in this case. The Bruces’ third proposition of law does not raise any new or important issues that require this Court’s review.

### **CONCLUSION**

This case does not involve any new, unsettled, outmoded, or conflicting issues of law, or any matters of public or great general interest. This is simply a private dispute that has been correctly decided by the lower courts under long-standing, well-settled principles of law. And there are no constitutional questions in this case at all.

For all of the foregoing reasons, this Court should decline to accept jurisdiction of this appeal.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing memorandum in opposition to jurisdiction has been served by ordinary U.S. mail, postage prepaid, upon the following counsel of record, this 17<sup>th</sup> day of January, 2015:

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