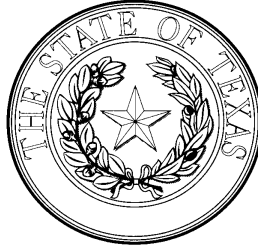


Opinion issued March 29, 2018.



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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NO. 01-17-00022-CV

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**VIOLET ROSE HOLDINGS, LTD., Appellant**

**V.**

**SPINNING STAR ENERGY, LLC, Appellee**

**and**

**SPINNING STAR ENERGY, LLC, Appellant**

**V.**

**TRANSPROJECT, LLC D/B/A TRANSGROUP WORLDWIDE  
LOGISTICS, Appellee**

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**On Appeal from the 269th District Court  
Harris County, Texas  
Trial Court Case No. 2014-25698**

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## **MEMORANDUM OPINION**

Spinning Star Energy, LLC is appealing the amount of damages awarded to it for its conversion claim against TransProject, LLC d/b/a Transgroup Worldwide Logistics. In a single issue, Spinning Star argues that the trial court erred by applying the wrong measure of damages to its conversion claim and refusing to award Spinning Star the diminished value of the converted property in addition to the property itself. We modify the judgment and affirm as modified.

### **Background**

Spinning Star hired TransProject to receive, handle, and warehouse twelve wind turbine generators that Spinning Star had purchased from a Chinese manufacturer. When Spinning Star began falling behind in its storage fee payments, TransProject contracted with another company to sell the turbines through an online auction held in December 2013. Violet Rose Holdings, Ltd. purchased the turbines for \$1,140,000.00 at the auction. Spinning Star did not learn about the auction's conclusion until January 20, 2014.

Spinning Star sued TransProject for conversion, wrongful foreclosure, and a declaratory judgment regarding the title and lien status of the turbines. Because the amount of Spinning Star's damages award for its conversion claim is the only issue in this case, we will limit our discussion to facts relevant to that claim.

After a bench trial in August 2016, the trial court found in favor of Spinning Star on its conversion claim and awarded possession of the turbines to Spinning Star as damages for its claim, as Spinning Star had requested.

In its Findings of Fact and Conclusions of Law, the trial court found, among other things, that the turbines had a fair market value of \$18,760,000.00 at the time of the conversion and that the turbines' fair market value had diminished by \$3,460,000.00 since that time. Although Spinning Star had also asked the court to award it the turbines' diminution in fair market value as additional damages for its conversion claim, the trial court concluded that Spinning Star could not recover any money damages for the fair market value of the turbines because it had opted to recover possession of the turbines. The trial court also concluded that although Spinning Star could recover consequential loss-of-use damages for the period it was deprived of possession of the turbines, Spinning Star had not established that it had any such damages.<sup>1</sup>

The final judgment awarded Spinning Star the turbines as damages for its conversion claim against TransProject, but not the diminution-in-value damages that Spinning Star had requested. This appeal followed.<sup>2</sup>

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<sup>1</sup> Spinning Star did not request loss-of-use damages and is not challenging the trial court's decision to not award it any such damages on appeal.

<sup>2</sup> Violet Rose, who had intervened in the case, also filed a notice of appeal from the trial court's final judgment. This Court entered an interlocutory order on June 27,

## Damages for a Conversion Claim

The sole issue in this appeal is whether the trial court applied the proper measure of damages to Spinning Star’s conversion claim and correctly refused to award the turbines’ \$3,460,000.00 diminished fair market value as damages against TransProject.

### A. Standard of Review and Applicable Law

Whether the trial court applied the proper measure of damages is a question of law, which we review de novo. *Saulsberry v. Ross*, 485 S.W.3d 35, 51 (Tex. App.—Houston [14th Dist.] 2015, pet. denied); *see also R.J. Suarez Enters. Inc. v. PNYX L.P.*, 380 S.W.3d 238, 245 (Tex. App.—Dallas 2012, no pet.).

“Compensation is the chief purpose of damages awards in tort cases.” *J & D Towing, LLC v. Am. Alternative Ins. Corp.*, 478 S.W.3d 649, 655 (Tex. 2016). Such awards are not intended to be financial windfalls for either party and cannot overcompensate or undercompensate the plaintiff for its injury. *See J & D Towing*, 478 S.W.3d at 655 (stating reasonable and proper compensation for tort claims “must be neither meager nor excessive”); *see also Wiese v. Pro Am Servs., Inc.*, 317 S.W.3d 857, 862 (Tex. App.—Houston [14th Dist.] 2010, no pet.) (noting that neither plaintiff nor defendant should be unjustly enriched by damages award for conversion

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2017 granting Violet Rose’s motion to dismiss and dismissing its appeal. The order will become final when a judgment issued in this cause number.

claim). Instead, tort damages awards must return the plaintiff to the position she would have been in absent the defendant's tortious conduct. *See J & D Towing*, 478 S.W.3d at 655.

Generally, the measure of damages for the tort of conversion is the fair market value of the property at the time and place of the conversion. *United Mobile Networks, L.P. v. Deaton*, 939 S.W.2d 146, 147–48 (Tex. 1997). A plaintiff that establishes conversion is entitled to either: (1) damages for the converted property's fair market value at the time and place of conversion, or (2) return of the converted property and damages for its lost use. *R.J. Suarez Enters.*, 380 S.W.3d at 242; *Wiese*, 317 S.W.3d at 862. Regardless of its election of remedies, the damages award must still comport with the general principles governing damages awards in tort cases. *See generally J & D Towing*, 478 S.W.3d at 655 (stating that tort damages awards are “instrument[s] of corrective justice, an effort to put the plaintiff in his or her rightful position”); *R.J. Suarez Enters.*, 380 S.W.3d at 243 (stating that if plaintiff's decision to receive property overcompensates plaintiff, court should limit recovery and award property's fair market value at time of conversion). This is consistent with the overarching principle that tort damages are intended to fully compensate a plaintiff for its loss by returning the plaintiff to the position she would have been in, but for the defendant's tortious conduct. *See J & D Towing*, 478 S.W.3d at 655.

A plaintiff's decision to recover its converted property as damages for its conversion claim does not deprive it of its right to additional monetary damages necessary to fully compensate it for its injury. *See generally id.* (stating tort damages awards must return plaintiff to position she would have been in absent defendant's tortious act). Therefore, a plaintiff who elects to regain possession of the converted property may also be entitled to recover additional monetary damages equal to the diminution in the fair market value of the property from the time of the conversion until the time the possession is restored. *Garcia*, 649 S.W.2d at 314; *Field v. Munster*, 11 Tex. Civ. App. 341, 349, 32 S.W. 417, 421 (1895), *opinion adopted and writ refused*, 89 Tex. 102, 33 S.W. 852 (1896) (holding plaintiff who regains possession of converted property could recover as damages for "whatever amount, if any, the property may have depreciated in value while it was withheld from the plaintiff").

This rule has been consistently followed by Texas courts over time. In a case citing *Field* as authority, the Waco Court of Civil Appeals held that "in a suit for conversion, the measure of damages is the loss which the party has suffered by reason of the property having been taken away from him and, if by any method he thereafter obtains possession thereof, his measure of damages is, not its total value, but the depreciation in its value while it was withheld from him, plus the expense and cost which he incurred in getting said property." *McAllister v. Grice*, 286 S.W.

1001, 1002 (Tex. Civ. App.—Waco 1926, no writ). *Taiwan Shrimp Farm Village Ass’n, Inc. v. U.S.A. Shrimp Farm Development, Inc.*, concerned pumps that had been converted and subsequently recovered in a damaged state by the original owner. 915 S.W.2d 61, 65 (Tex. App.—Corpus Christi 1996, writ denied). The Court upheld an award for diminution of value with the measure of damages being the difference between the value of the recovered pumps and their value at the time of conversion. *See id.* at 71.

## **B. Analysis**

In this case, the trial court found that the converted turbines had a fair market value of \$18,760,000.00, which is the proper measure of damages for a conversion claim. *See United Mobile Networks*, 939 S.W.2d at 147–48. The total damages that the trial court awarded to Spinning Star as damages for its conversion claim, however, was only \$15,300,000.00—the fair market value of the turbines at the time Spinning Star regained possession of its converted property, as determined by the trial court.<sup>3</sup> As a result of the trial court’s conclusion that Spinning Star was not entitled to receive diminution-in-value damages because it had elected to regain possession of the property, the measure of damages applied by the trial court undercompensated Spinning Star by \$3,460,000.00. Spinning Star was entitled to

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<sup>3</sup> \$15,300,000.00 is the difference between the turbines’ fair market value at the time of conversion (\$18,760,000.00) and the amount the turbines’ fair market value had diminished since that time (\$3,460,000.00).

recover the diminution in the turbines' fair market value as additional damages in order to fully compensate it for its injury. Accordingly, we sustain Spinning Star's sole issue, and we modify the judgment and award Spinning Star the undisputed amount of the diminution in the fair market value of the turbines from the time of conversion until Spinning Star regained possession of the converted property.

### **Conclusion**

We modify the trial court's judgment and affirm as modified.

Russell Lloyd  
Justice

Panel consists of Justices Keyes, Brown, and Lloyd.