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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

BRETT VORIS,

Plaintiff and Appellant,

v.

GREG LAMPERT,

Defendant and Respondent.

B265747

(Los Angeles County
Super. Ct. No. BC408562)

APPEAL from a judgment and order of the Superior Court of Los Angeles County, Michael L. Stern, Judge. Reversed in part and remanded with directions and affirmed in part.

Anderson Yeh, Edward M. Anderson and Regina Yeh for Plaintiff and Appellant.

Paul Kujawsky for Defendant and Respondent.

Plaintiff and appellant Brett Voris (Voris) appeals a judgment entered following the grant of a motion for judgment on the pleadings brought by defendant and respondent Greg Lampert (Lampert). Voris also appeals a postjudgment order awarding attorney fees to Lampert.

The essential issue presented is whether Voris's causes of action for conversion of wages and conversion of stock were well pled.

We conclude unpaid wages do not give rise to a cause of action for conversion. However, Voris's claims for conversion of stock are well pled. Therefore, we reverse the judgment on the pleadings with respect to Voris's stock conversion claims. We also reverse the attorney fee award because Lampert is not the prevailing party at this juncture.

FACTUAL AND PROCEDURAL BACKGROUND¹

1. Earlier proceedings.

This case arises out of the business relationship between Voris and defendants Lampert and Ryan Bristol (Bristol) (not a party to this appeal). In November 2005, Voris joined with Bristol and Lampert to form Premier Ten Thirty One Capital (PropPoint), a real estate investment company. Voris helped PropPoint with marketing and advertising and was promised an ownership share in the company as compensation for his services. Voris eventually began receiving a salary of \$3,000 per month from PropPoint. Voris alleged similar involvement in two other

¹ This summary is based in part on this court's prior opinion in *Voris v. Lampert* (May 22, 2014, B234116) [nonpub. opn.] (*Voris I*).

entities, Liquiddium Capital Partners, LLC (Liquiddium) and Sportfolio, Inc. (Sportfolio).

In the fall of 2006, Voris discovered alleged financial improprieties by Bristol and Lampert, including commingling of the funds of PropPoint, Liquiddium, Sportfolio and other companies for the individual defendants' personal benefit, and use of company funds to pay individual defendants' personal expenses. Voris also alleged that Bristol and Lampert failed to observe corporate formalities such as keeping minutes of board meetings and notifying shareholders of meetings.

Upon learning of the alleged financial improprieties, Voris confronted Bristol and Lampert, who then retaliated against Voris by criticizing his work performance and accusing him of stealing money from the company. Voris ultimately was terminated in January 2007.

Voris filed the operative first amended complaint on July 7, 2009, alleging 24 causes of action, based on these and other alleged improprieties. All 24 causes of action were asserted against Lampert, in addition to other defendants.

On September 22, 2009, the trial court sustained Lampert's demurrers to Voris's 8th through 11th and 21st through 24th causes of action with leave to amend. Voris did not amend his pleadings. Thus, following the sustaining of the demurrers, the surviving causes of action against Lampert were Voris's 1st through 7th and 12th through 20th causes of action.

On April 19, 2011, Lampert obtained summary judgment on the ground that no triable issue of fact existed as to Voris's alter ego allegations against him. Voris appealed.²

² As for the remaining defendants, Voris proceeded to trial against Bristol, Sportfolio and Liquiddium, the action against

In *Voris I*, this court reversed in part and affirmed in part. We concluded Voris failed to raise a triable issue with respect to his alter ego allegations against Lampert, because in resisting summary judgment, Voris filed an opposing separate statement that failed to specify the evidence on which he would rely to establish alter ego liability. However, we also concluded the viability of Voris's causes of action for conversion did not depend on Lampert's alter ego liability, because Lampert could be held individually liable for acts of conversion, without regard to whether the corporate veil should be pierced. Therefore, we reversed the judgment in favor of Lampert with respect to the 14th through 20th causes of action, and otherwise affirmed.

2. *Proceedings on remand.*

On remand, Lampert filed a motion for judgment on the pleadings on Voris's stock conversion claims (14th, 15th, 17th, 18th and 19th causes of action), on the ground that Voris had failed to state a claim for conversion. Lampert contended that Voris had failed to allege that he was deprived of his ownership interests, there was no allegation by Voris that Lampert had declared his shares forfeited, and "[a]t most Mr. Voris alleges he was deprived of some of the benefits of ownership." According to Lampert, Voris alleged "he was not issued share certificates, but he fails to allege facts even tending to show that he suffered any harm from not having them."

PropPoint having been stayed due to its bankruptcy. Bristol successfully moved for nonsuit. On October 19, 2011, Voris obtained a judgment following jury trial, which determined that Liquididium and Sportfolio were liable for the conversion of his ownership interests in the amounts of \$55,599.32 and \$52,631.58, respectively.

Lampert filed a separate motion for judgment on the pleadings with respect to the 16th and 20th causes of action, on the ground that “California law does not recognize a cause of action for conversion of money or wages due under a contract.”

Voris also filed a motion seeking a pretrial determination as to “whether and to what extent the October 19, 2011 Judgment in this action has res judicata and collateral estoppel effect on the parties.” Voris’s motion also sought an order enabling him to present his case against suspended corporation PropPoint to the jury without opposition. Voris argued that if he were to establish PropPoint’s liability for conversion, Lampert would have the opportunity to present his evidence and argument that he was not personally liable for PropPoint’s conversion.

On January 15, 2015, the motions came on for hearing.

The trial court granted Lampert’s motions for judgment on the pleadings with respect to Voris’s stock conversion and wage conversion claims, as requested.

The trial court then denied Voris’s motion, which (1) sought a determination as to whether and to what extent collateral estoppel or res judicata applied to Voris’s claims against Lampert based on Voris’s October 2011 judgment against Sportfolio and Liquiddium, and (2) an order enabling Voris to present his case against PropPoint without opposition. The trial court reasoned Voris’s motion was moot because “Lampert, based on these rulings, is out of the case.”

Voris proceeded to a bench trial against PropPoint and was awarded damages of \$171,951.02 plus \$126,795.84 in prejudgment interest.

On May 21, 2015, the trial court entered judgment in favor of Lampert and against Voris, and in favor of Voris against PropPoint.

On July 28, 2015, Voris filed a timely notice of appeal from the judgment in favor of Lampert, notice of entry having been served on May 29, 2015.

On August 25, 2015, the trial court granted Lampert's motion for reasonable attorney fees pursuant to the Liquiddium operating agreement, and awarded Lampert \$125,100 in fees and \$2,385.50 in costs.

On August 28, 2015, the trial court granted Voris's motion for an award of attorney fees against PropPoint pursuant to Labor Code section 218.5, finding that Voris was the prevailing party in a claim for nonpayment of wages and was entitled to \$35,274.88 in fees and \$20,246.54 in costs.

On October 9, 2015, Voris filed a second notice of appeal, specifying the August 25, 2015 order awarding attorney fees and costs to Lampert.

CONTENTIONS

Voris contends: it is law of the case, based on *Voris I*, that Lampert may be held personally liable for conversion; the trial court erred in granting Lampert's motion for judgment on the pleadings on his wage conversion claims and his stock conversion claims; the trial court erred in refusing to allow Voris to present evidence and argument as to the impact of res judicata and collateral estoppel on Voris's claims against Lampert; and if the judgment on the pleadings is reversed, the award of attorney fees to Lampert should also be reversed.

DISCUSSION

1. *Prior decision in Voris I is not law of the case with respect to the viability of Voris's conversion claims.*

Voris contends this court in *Voris I* clearly held that his conversion claims against Lampert are not dependent on alter ego liability, and therefore Lampert is now barred from asserting that Voris must prove alter ego liability to prevail on his conversion claims against Lampert. Voris asserts it is law of the case that Lampert may be held personally liable for conversion.

The law of the case doctrine states that when, in deciding an appeal, an appellate court states in its opinion a principle or rule of law necessary to the decision, that principle or rule becomes the law of the case and must be adhered to throughout its subsequent progress, both in the lower court and upon subsequent appeal. (*Kowis v. Howard* (1992) 3 Cal.4th 888, 892–893.)

The issue before this court in *Voris I* was whether Lampert was entitled to summary judgment with respect to Voris's alter ego allegations against him. We concluded that Lampert was entitled to summary adjudication on Voris's alter ego claims because Voris failed to specify evidence supporting his alter ego allegations. However, with respect to the 14th through 20th causes of action, we noted that as an officer or director of the corporate entities, Lampert could be held individually liable for intentional torts, without regard to whether the corporate veil should be pierced. (*Voris I, supra*, slip opn., p. 11.)

However, *Voris I* did not determine whether unpaid wages or withheld shares of stock could be the basis of a cause of action for conversion, and therefore is not law of the case on those issues. We now examine those questions.

2. Trial court properly granted Lampert’s motion for judgment on the pleadings on Voris’s claim for conversion of wages because unpaid wages do not give rise to a cause of action for conversion.

a. General principles.

“ ‘ ‘Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion claim are: (1) the plaintiff’s ownership or right to possession of the property; (2) the defendant’s conversion by a wrongful act or disposition of property rights; and (3) damages’ ” (*Welco Electronics, Inc. v. Mora* (2014) 223 Cal.App.4th 202, 208.)” (*Lee v. Hanley* (2015) 61 Cal.4th 1225, 1240.)

Under California law, “[m]oney cannot be the subject of a cause of action for conversion unless there is a specific, identifiable sum involved, such as where an agent accepts a sum of money to be paid to another and fails to make the payment. [Citation.]’ . . . *Fischer v. Machado* (1996) 50 Cal.App.4th 1069, 1072–1074 [sales agent liable for conversion of proceeds from consignment sale of farm products]; *Software Design & Application, Ltd. v. Hoefler & Arnett, Inc.* (1996) 49 Cal.App.4th 472, 485 [‘money cannot be the subject of a conversion action unless a specific sum capable of identification is involved.’].) A ‘generalized claim for money [is] not actionable as conversion.’ (*Vu v. California Commerce Club, Inc.* (1997) 58 Cal.App.4th 229, 235; 5 Witkin, Summary of Cal. Law (10th ed. 2005), Torts, § 703, pp. 1026–1027.)” (*PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP* (2007) 150 Cal.App.4th 384, 395 (*PCO*).)

The tort of conversion “is derived from the common law action of trover. The gravamen of the tort is the defendant’s

hostile act of dominion or control over a specific chattel to which the plaintiff has the right of immediate possession. (See generally, Rest.2d Torts, § 222A, com. a, p. 431; 1 Dobbs, *The Law of Torts* (2001), § 59, pp. 121–122.) That is why money can only be treated as specific property subject to being converted when it is ‘identified as a specific thing.’ (*Baxter v. King* (1927) 81 Cal.App. 192, 194 [‘It is true that sometimes money can be treated as specific property, and where identified can form the basis of an action for conversion and might also be the subject of an action for the specific recovery of personal property’].)” (*PCO, supra*, 150 Cal.App.4th at p. 395.)

The “California Supreme Court [has] stated, ‘While it is true that money cannot be the subject of an action for conversion unless a specific sum capable of identification is involved [citation], it is not necessary that each coin or bill be earmarked.’ (*Haigler v. Donnelly* [(1941)] 8 Cal.2d [674,] 681.) This statement appears to be in conformity with the modern view of the law. As one authority wrote: ‘Identifiable, specific coins or bills are subject to conversion if they are identifiable as the particular coins or bills taken from the plaintiff. The old idea that money could be converted only if it was in a “bag” now seems obsolete. Today, it might be plausible to say that when the defendant commits an affirmative act and physically takes control of particular paper monies he is guilty of conversion, even if the particular bills or coins cannot be identified. Certainly the plaintiff is entitled to recover on some theory, even if not on the basis of conversion.’ (1 Dobbs, *The Law of Torts, supra*, § 63, pp. 132–133, fns. omitted.)” (*PCO, supra*, 150 Cal.App.4th at p. 396.)

California cases “permitting an action for conversion of money typically involve those who have misappropriated, commingled, or misapplied specific funds held for the benefit of others. (See, e.g., *Haigler v. Donnelly, supra*, 18 Cal.2d at p. 681 [real estate broker[, while acting as agent for lessors, retained funds received from lessee]]; *Fischer v. Machado, supra*, 50 Cal.App.4th at pp. 1072–1074 [sales agent for consigned farm products]; *Weiss v. Marcus* (1975) 51 Cal.App.3d 590, 599 [attorney’s claim for \$6,750 fee from proceeds of settlement subject to lien]; *Watson v. Stockton Morris Plan Co.* (1939) 34 Cal.App.2d 393, 403 [savings and loan issued duplicate passbook and delivered funds to third party].) In each of these cases, the amount of money converted was readily ascertainable.” (*PCO, supra*, 150 Cal.App.4th at p. 396, italics added.)

In contrast, “actions for the conversion of money have not been permitted when the amount of money involved is not a definite sum. (*Vu v. California Commerce Club, Inc., supra*, 58 Cal.App.4th at p. 235; *Software Design & Application, Ltd. v. Hoefler & Arnett, Inc., supra*, 49 Cal.App.4th at p. 485 [no conversion where money was allegedly misappropriated ‘over time, in various sums, without any indication that it was held in trust for’ plaintiff]; For example, in *Vu v. California Commerce Club, Inc., supra*, 58 Cal.App.4th 229, the court affirmed a [defense] summary judgment on a conversion claim [brought by] two gamblers who lost ‘approximately \$1.4 million’ and ‘approximately \$120,000,’ respectively, at a specific card club during specified periods of time, due to alleged cheating. (*Id.* at pp. 231–232.) The [*Vu*] court held, ‘neither by pleading nor responsive proof did plaintiffs identify any specific, identifiable sums that the club took from them. That rendered the

generalized claim for money not actionable as conversion.’ (*Id.* at p. 235.)” (*PCO, supra*, 150 Cal.App.4th at pp. 396–397.)³

b. *Applying the law to Voris’s factual allegations, no cause of action is stated for conversion of unpaid wages.*

Voris pled that at the time he was terminated, PropPoint and Sportfolio owed him \$91,000 and \$66,000 in wages, respectively, he had a possessory right to those monies, he demanded his wages, and Lampert intentionally prevented him from receiving his earnings.

Guided by the authorities set forth above, we conclude the claim for conversion of unpaid wages is not well pled because “the simple failure to pay money owed does not constitute conversion. A cause of action for conversion of money can be stated only where a defendant interferes with the plaintiff’s *possessory interest* in a specific, identifiable sum, such as when a trustee or agent misappropriates the money entrusted to him.” (*Kim v. Westmoore Partners, Inc.* (2011) 201 Cal.App.4th 267, 284.) We recognize Voris duly pled the specific sums that he allegedly was owed.

³ In *PCO*, the trial court granted summary adjudication against plaintiffs on their conversion claim on the ground that they failed to identify a definite sum of money received by the defendant law firm. (*PCO, supra*, 150 Cal.App.4th at p. 395.) Although plaintiffs pled a conversion of 10 duffel bags, each containing \$500,000, at the summary judgment stage, plaintiffs failed to present evidence of a definite, identifiable sum of money, and the evidence of the sum involved “reflect[ed] amounts varying by millions of dollars.” (*Id.* at p. 397.) Due to plaintiffs’ inability to identify a specific sum, summary adjudication on the conversion claim was proper. (*Ibid.*)

Nonetheless, Lampert, as a corporate officer or director, was not a trustee or agent *entrusted* with Voris's earnings. Although an employer is obligated to pay an employee the wages that the employee has earned, it does not follow that an employer is entrusted with an employee's earnings. Nor does it follow that an employer's failure to pay bargained-for wages to an employee is a misappropriation of funds which is actionable as conversion. Under the current state of California law, the alleged failure to pay Voris the sums that he earned while in the employ of Sportfolio and PropPoint does not give rise to a cause of action against Lampert for conversion.

We are also guided by our Supreme Court's decision in *Moore v. Regents of University of California* (1990) 51 Cal.3d 120 (*Moore*). In that case, the court was similarly presented with a proposed extension of the tort of conversion to an entirely new context. There, the plaintiff sought to impose conversion liability for defendants' unauthorized use of his cells in medical research. (*Id.* at pp. 134–135.) *Moore* “recognized that, when the proposed application of a very general theory of liability in a new context raises important policy concerns, it is especially important to face those concerns and address them openly.” (*Id.* at p. 135.) *Moore* concluded “[t]here are three reasons why it is inappropriate to impose liability for conversion based upon the allegations of [plaintiff's] complaint. First, a fair balancing of the relevant policy considerations counsels against extending the tort. Second, problems in this area are better suited to legislative resolution. Third, the tort of conversion is not necessary to protect patients' rights. For these reasons, we conclude that the use of excised human cells in medical research does not amount to a conversion.” (*Id.* at pp. 142–143.) We recognize that *Moore*

involved the alleged conversion of a patient's biological material, not money. Notwithstanding the difference in factual context, *Moore's* cautioning against extending tort liability for conversion is instructive.

Turning to whether, as the dissent argues, an action for conversion should lie to recover unpaid wages, we make the observation that Labor Code section 201 requires an employer to promptly pay the wages of a discharged employee, and the statutory scheme authorizes a penalty for the employer's noncompliance. (*Id.* at § 203.) Indeed, Voris's complaint included causes of action for unpaid wages under the applicable Labor Code provisions. However, if Voris's approach were credited, any claimed wage and hour violation would give rise to tort liability for conversion as well as the potential for punitive damages. At this juncture, given the adequacy of the statutory remedies, we reject Voris's attempt to extend tort liability in this area.

c. Authorities cited by Voris do not support his contention that unpaid wages are recoverable in an action for conversion.

The parties agree that no California appellate decision has specifically held that a cause of action lies for conversion of unpaid wages. Voris concedes "[t]here appears to be no controlling California authority directly ruling on the viability of a conversion claim for unpaid wages." However, Voris asserts there is California authority "suggesting such a conversion claim would lie." We address Voris's cited authorities seriatim and conclude they do not support his theory.

Voris cites *Loehr v. Ventura County Community College Dist.* (1983) 147 Cal.App.3d 1071 (*Loehr*), which states that "[e]arned but unpaid salaries or wages are vested property rights." (*Id.* at p. 1080.) However, the issue in *Loehr* was

whether the plaintiff was required to file a timely claim pursuant to the Tort Claims Act (Gov. Code, § 900 et seq.), or whether his action fell within statutory “exceptions to filings involving claims by public employees for salaries, wages and expenses (Gov. Code, § 905, subd. (c)) and claims for benefits under retirement or pension systems (Gov. Code, § 905, subd. (f)).” (*Loehr, supra*, at p. 1080.) Despite its generalized statement that earned but unpaid wages constitute property rights, *Loehr* does not stand for the proposition that earned but unpaid wages are recoverable in an action for conversion.

Next, Voris relies on *Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal.4th 163 (*Cortez*), involving the unfair competition law (UCL). *Cortez* held that “orders for payment of wages unlawfully withheld from an employee are . . . a restitutionary remedy authorized by [Business and Professions Code] section 17203.” (*Cortez, supra*, at p. 177.) Thus, *Cortez* determined that unlawfully withheld wages are recoverable in a restitutionary order pursuant to the UCL. *Cortez* is not support for the proposition that unpaid wages are recoverable in a cause of action for conversion.

Voris then cites *Department of Industrial Relations v. UI Video Stores, Inc.* (1997) 55 Cal.App.4th 1084 (*Department*) for the principle that a conversion cause of action may be maintained against an employer to recover illegally withheld wages. There, the Division of Labor Standards Enforcement (DLSE) negotiated a settlement with Blockbuster for reimbursement of funds paid by employees for uniforms in contravention of California law. (*Id.* at p. 1088.) Rather than comply with the settlement agreement, which required Blockbuster to deliver the checks directly to the DLSE, Blockbuster mailed the checks directly to

the employees and then retained the checks that were returned as undeliverable, refusing to turn them over to the DLSE and instead retaining the funds. (*Ibid.*) The *Department* court found that the DLSE had properly alleged a claim for conversion based on Blockbuster’s retention of the undeliverable checks. (*Id.* at pp. 1095–1096.) Voris’s reliance on *Department* is misplaced because that case involved the conversion of settlement checks, not wages.

Finally, Voris cites *Lu v. Hawaiian Gardens Casino, Inc.* (2010) 50 Cal.4th 592 (*Lu*), which examined whether Labor Code section 351, barring employers from taking any gratuity patrons leave for their employees, provides employees a private right of action. (*Id.* at pp. 594–595.) After concluding the statute does not provide a private cause of action, *Lu* added that its holding “does not necessarily foreclose the availability of other remedies. To the extent that an employee may be entitled to certain misappropriated gratuities, we see no apparent reason why other remedies, such as a common law action for conversion, may not be available under appropriate circumstances.” (*Id.* at pp. 603–604.) However, *Lu*’s suggestion that an employer’s misappropriation of gratuities left by patrons for its employees may be recoverable in an action for conversion does not lead to the conclusion that unpaid wages may be the subject of a conversion action by the employee against the employer.

In sum, notwithstanding the plethora of wage and hour litigation, California case law has not extended the tort of conversion to cover a claim by an employee against an employer for unpaid wages. Further, given the state of the law, Voris is

incapable of amending his pleading to state a cause of action for conversion of unpaid wages.⁴

3. *Trial court erred in granting Lampert’s motion for judgment on the pleadings on Voris’s stock conversion claims.*

Voris pled, inter alia: He invested \$27,000 in PropPoint in exchange for a 5.45 percent ownership interest and had a possessory right to a share certificate reflecting his ownership, but Lampert denied him access to his share certificate and all rights conferred on him by virtue of his ownership interest (14th cause of action). Voris also was promised a 10 percent ownership interest in PropPoint in exchange for services he performed for

⁴ Voris also relies, inter alia, on certain federal district court decisions for the proposition that unpaid wages are recoverable in an action against the employer for conversion. For example, *Sims v. AT&T Mobility Services LLC* (E.D.Cal.2013) 955 F.Supp.2d 1110 opined that “if the issue were presented to the California Supreme Court, it would approve a conversion action for unpaid wages.” (*Id.* at p. 1120.) However, other district courts have reached a contrary conclusion on the viability of a conversion claim for unpaid wages. (See, e.g., *In re Wal-Mart Stores, Inc. Wage and Hour Lit.* (N.D.Cal. 2007) 505 F.Supp.2d 609, 618–619 [claim for unpaid wages under the Labor Code cannot form the basis for a claim of conversion given the existence of the Labor Code’s detailed remedial scheme for violation of its provisions].) In any event, “with the exception of the decisions of the United States Supreme Court, the decisions of federal courts are not binding on the courts of this state even with respect to federal issues. [Citations.]” (*Conrad v. Bank of America* (1996) 45 Cal.App.4th 133, 150.) Because the issue of the viability of a conversion claim for unpaid wages is purely a question of state law, we are not guided by the district courts on this issue.

PropPoint, but Lampert intentionally prevented him from having access to his share certificate (15th cause of action). Also, Lampert accepted \$3,000 from Voris in exchange for an ownership interest in Liquiddium, but Lampert intentionally prevented him from having access to his share certificate (17th cause of action). In addition, Lampert promised Voris a six percent ownership interest in Liquiddium in exchange for services he performed and his prior \$3,000 investment, but Lampert denied him access to his share certificate (18th cause of action). Lastly, Lampert promised Voris a seven percent ownership interest in Sportfolio in exchange for services he rendered on Sportfolio's behalf, but Lampert denied him access to his share certificates and rights associated with ownership (19th cause of action).

Lampert moved for judgment on the pleadings on the above causes of action, relying primarily on *Haro v. Ibarra* (2009) 180 Cal.App.4th 823 (*Haro*.) There, the court found: “The [second amended complaint] contains allegations sufficient to state a cause of action for conversion: [plaintiffs] owned AHP shares and [defendants] engaged in a scheme to deprive [plaintiffs] of their shares, [defendants] wrongfully declared [plaintiffs'] shares to be forfeited, with ‘no legal or factual basis for said forfeiture,’ although [plaintiffs] were warned that their shares would be forfeited if they did not pay the assessment, other shareholders who did not pay the assessment did not have their shares forfeited, and [plaintiffs] were harmed by the wrongful forfeiture ‘in an amount equal to the fair market value of the AHP shares at the time [d]efendants wrongfully exercised dominion over said shares.’” (*Id.* at p. 835.)

The trial court granted Lampert's motion for judgment on the pleadings, persuaded by the argument that Voris's allegations did not rise to the level of what was pled in *Haro*. We disagree. We do not read *Haro* as a bar to Voris's stock conversion claims.

Haro itself recognizes: "It is the uniform rule of law that shares of stock in a company are subject to an action in conversion. [Citations.]' (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 122.)" (*Haro, supra*, 180 Cal.App.4th at p. 835.) Further, as already discussed, the gravamen of the tort of conversion is the defendant's hostile act of dominion or control over a specific chattel to which the plaintiff has the right of immediate possession. (*PCO, supra*, 150 Cal.App.4th at p. 395.) We conclude Lampert's alleged retention of Voris's share certificates is actionable as a conversion.

Lampert emphasizes that in *Haro*, an aggrieved shareholder's shares were declared *forfeited*, and there was also an allegation in *Haro* of disparate treatment in that other shareholders who did not pay an assessment did not have their shares forfeited. (*Haro, supra*, 180 Cal.App.4th at p. 835.) However, *Haro* does not stand for the proposition that such circumstances are essential to a claim of conversion. *Haro* recognizes that " " "it is only necessary to show an assumption of control or ownership over the property.' " " " (*Ibid.*) Voris's allegations that he had a possessory right to his share certificates, and that Lampert "intentionally prevented" him from having access to his share certificates, are sufficient to state a claim for conversion of stock.

Finally, Lampert asserts judgment on the pleadings on the stock conversion claim was proper because he is protected by the

business judgment rule, which establishes a presumption that directors' decisions are based on sound business judgment and prohibits courts from interfering in business decisions made by the directors in good faith and in the absence of a conflict of interest. (*Berg & Berg Enterprises, LLC v. Boyle* (2009) 178 Cal.App.4th 1020, 1045 (*Berg*)). However, the argument is unpersuasive. *Berg* states the failure to sufficiently plead facts to rebut the business judgment rule may be raised on demurrer to a cause of action against a director for *breach of fiduciary duty*. (*Id.* at p. 1046.) *Berg* does not stand for the proposition that a cause of action for conversion must plead facts to rebut the business judgment rule.

We conclude the trial court erred in granting judgment on the pleadings on Voris's causes of action against Lampert for conversion of his share certificates.

4. *Voris's pretrial motion to determine the impact of his October 19, 2011 judgment against Sportfolio and Liquiddium on his claims against Lampert is no longer moot; trial court also should address the impact on Lampert of Voris's judgment against PropPoint.*

As indicated, the October 19, 2011 judgment determined that Liquiddium and Sportfolio were liable for the conversion of Voris's ownership interests in the amounts of \$55,599.32 and \$52,631.58, respectively.

In a pretrial motion filed December 22, 2014, Voris requested that the trial court conduct a bench trial to determine whether and to what extent res judicata and collateral estoppel apply to his causes of action against Lampert. After granting Lampert's motions for judgment on the pleadings in their entirety, the trial court ruled that Voris's motion to determine

whether res judicata or collateral estoppel applied to Voris's claims against Lampert was moot because "Lampert, based on these rulings, is out of the case."

However, our reversal of the order granting judgment on the pleadings on Voris's stock conversion claims means the issue of the impact of the October 2011 judgment on Voris's stock conversion claims against Lampert is not moot. On remand, the trial court should address Voris's motion requesting adjudication of the issue of whether, and to what extent, the October 2011 judgment had any res judicata or collateral estoppel effect on Voris's claims against Lampert.

Voris's pretrial motion also requested that in the first phase of the jury trial, he be permitted to present his case against PropPoint without opposition (given PropPoint's status as a suspended corporation), and that if he "does establish liability in PropPoint for conversion, Mr. Lampert can then proceed to present his evidence and argument that he is not personally liable for the PropPoint conversions." The trial court also denied this aspect of Voris's motion as moot. Thereafter, Voris's action against PropPoint proceeded to trial, and Voris was awarded damages against PropPoint in the amount of \$171,951.02 plus prejudgment interest of \$126,795.84.

Voris contends that on remand he should also be given the opportunity to present evidence and argument regarding the collateral estoppel effect, if any, of the May 2015 judgment against PropPoint. The argument is meritorious. In view of our reinstatement of Voris's stock conversion claims against Lampert, the issue of collateral estoppel with respect to the judgment against PropPoint also is not moot.

We express no opinion as to whether collateral estoppel or res judicata apply to Voris's claims against Lampert. We merely hold the issue is not moot and should be addressed on remand.

5. Because the litigation against Lampert is ongoing, the postjudgment award of attorney fees and costs to Lampert must be reversed.

Based on the May 21, 2015 judgment, the trial court deemed Lampert the prevailing party. On August 25, 2015, the trial court awarded Lampert \$125,100 in attorney fees against Voris pursuant to the Liquiddium operating agreement, as well as costs.

The reversal of the judgment on the pleadings on Voris's stock conversion claims means that Lampert is not the prevailing party at this juncture. Therefore, the August 25, 2015 order awarding attorney fees and costs to Lampert must be reversed.

DISPOSITION

The judgment on the pleadings is reversed with respect to Voris's causes of action against Lampert for conversion of stock and is otherwise affirmed. In determining Lampert's liability for conversion of Voris's shares, the trial court shall also determine whether collateral estoppel or res judicata apply to Voris's claims against Lampert based on Voris's judgments against Liquiddium, Sportfolio and PropPoint. The August 25, 2015 postjudgment order awarding \$125,100 in attorney fees and \$2,385.50 in costs to Lampert is also reversed. Voris shall recover his costs on appeal.

**NOT TO BE PUBLISHED IN THE OFFICIAL
REPORTS**

EDMON, P. J.

I concur:

ALDRICH, J.

LAVIN, J., Concurring and Dissenting.

I agree with the majority's analysis of Brett Voris's claims for conversion of stock and concur in its holding that the trial court erred in granting Greg Lampert's motion for judgment on the pleadings as to those causes of action. I also agree that the award of attorneys' fees must be reversed and, on remand, the court should determine whether collateral estoppel or res judicata apply to Voris's claims. I respectfully disagree, however, with the majority's conclusion that Voris has not adequately pled claims for conversion of unpaid wages.

Conversion is "the wrongful exercise of dominion over the property of another." (*Oakdale Village Group v. Fong* (1996) 43 Cal.App.4th 539, 543.) To state a claim for conversion, a plaintiff must allege that (1) he had ownership or the right to possess the property at issue at the time of the conversion; (2) the defendant converted the property by wrongful act, including preventing the plaintiff from having access to it; and (3) the plaintiff suffered damages as a result of defendant's conduct. (*Id.* at pp. 543–544; CACI No. 2100.) "Money cannot be the subject of a cause of action for conversion unless there is a specific, identifiable sum involved[.]" (*PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP* (2007) 150 Cal.App.4th 384, 395 (*PCO*)). While a specific sum must be capable of identification, the law does not, as acknowledged by the majority, require a plaintiff to identify the physical coins or notes allegedly converted. (*Haigler v. Donnelly* (1941) 18 Cal.2d 674, 681.)

Here, Voris alleges Lampert intentionally prevented him from receiving \$91,000 from Premier Ten Thirty One Capital (PropPoint) and \$66,000 from Sportfolio, Inc. (Sportfolio) in

past-due wages, Voris had an immediate possessory right to those monies, and Lampert's actions were a substantial factor in causing Voris harm. According to Voris, Lampert held substantial ownership interests in, and controlled, PropPoint and Sportfolio. Voris also alleges that Lampert intended to take advantage of Voris's willingness to defer his salary to induce him to work hard so that the value of PropPoint and Sportfolio would increase and, presumably, make Lampert's investments in both companies more valuable. Voris has, in my view, adequately pled claims against Lampert for conversion of Voris's unpaid wages from PropPoint and Sportfolio.

Although the majority concedes that Voris pled the specific sums that he was allegedly owed, it contends that his wage claims must fail because Lampert was not entrusted with Voris's earnings. A conversion claim, however, does not require that a specific lump sum of money be entrusted to the defendant; the plaintiff must merely prove a specific, identifiable sum of money that was interfered with, and Voris has alleged just that. (See CACI No. 2100; *Welco Electronics, Inc. v. Mora* (2014) 223 Cal.App.4th 202, 216 ["There is no requirement that the money have been held in trust—only that it be misappropriated"]; cf. *PCO, supra*, 150 Cal.App.4th at p. 396 [noting only that "California cases permitting an action for conversion of money *typically* involve those who have misappropriated, commingled, or misapplied specific funds held for the benefit of others," italics added].) Regardless, although Voris's complaint does not expressly state Lampert was entrusted with Voris's wages, the allegations, broadly read (as they should be on a motion for judgment on the pleadings), are sufficient to show Lampert controlled the monies owed to or earmarked for

Voris by the two corporate entities that employed him, and benefitted from the non-payment of Voris's wages.

Ultimately, the majority rejects Voris's "attempt to extend tort liability in this area" because it fears that "any claimed wage and hour violation would give rise to tort liability for conversion as well as the potential for punitive damages." (Maj. Opn., at p. 13.) The majority's parade of horrors is unpersuasive for at least three reasons.

First, with respect to punitive damages, liability is limited by statute and well-settled case law. (Civ. Code, § 3294 [requiring proof by clear and convincing evidence of malice, oppression or fraud]; *Simon v. San Paolo U.S. Holding Co., Inc.* (2005) 35 Cal.4th 1159, 1179–1180 [recognizing due process concerns arising from excessive punitive damages awards, citing *BMW of North America v. Gore* (1996) 517 U.S. 559, 575].) Accordingly, if a corporate officer performs his duties conscientiously, and without malice, oppression or fraud, he has nothing to fear. Further, liability of individual employees is also inherently limited: Labor Code section 2802 requires an employer to defend or indemnify an employee who is sued by third persons for conduct in the course and scope of his employment. (See *Jacobus v. Krambo Corp.* (2000) 78 Cal.App.4th 1096, 1100 ["The statute requires the employer not only to pay any judgment entered against the employee for conduct arising out of his employment but also to defend an employee *who is sued* for such conduct," italics added].) That is, an employee responsible for interfering with the payment of accrued wages to a third party will be protected against personal liability if the employee was acting at the direction of the employer.

Second, liability for conversion is also limited. In my view, the case by case consideration of such factors as the foreseeability of the injury and the nexus between the defendant's conduct and the plaintiff's injury, together with ordinary principles of tort law, "are fully adequate to limit recovery without the drastic consequence of an absolute rule which bars recovery in all such cases." (*J'Aire Corp. v. Gregory* (1979) 24 Cal.3d 799, 808.)

Third, any burden on the part of employers arising from *potential* tort liability for conversion is outweighed by the average worker's need for the prompt and complete payment of his accrued wage claim. California courts have long recognized that wage and hour laws concern not only the health and welfare of the workers themselves, but also the public health and general welfare. (See, e.g., *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1148–1149 [discharge of employee to avoid paying commissions, vacation pay, and other amounts he had earned violated a fundamental public policy of this state].) Furthermore, the Legislature's decision to criminalize certain employer violations of the overtime and minimum wage laws (Lab. Code, § 1199), including the failure to pay earned wages, reflects a determination that such conduct affects a broad public interest. Put another way, "because of the economic position of the average worker and, in particular, his dependence on wages for the necessities of life for himself and his family," wages are not ordinary debts. (*In re Trombley* (1948) 31 Cal.2d 801, 809.) As such, an employer who knows that wages are due and has the ability to pay them, but still refuses to do so, intentionally acts in a manner that should lead to tort liability.

I also note, as a general matter, that the tort of conversion has expanded well beyond its original boundaries. For example,

in holding that a misappropriation of a net operating loss without compensation constitutes conversion, a prior panel of this court recognized “that the common law of conversion, which developed initially as a remedy for the dispossession or other loss of chattel [citation], may be inappropriate for some modern intangible personal property, the unauthorized use of which can take many forms. In some circumstances, newer economic torts have developed that may better take into account the nature and uses of intangible property, the interests at stake, and the appropriate measure of damages. On the other hand, if the law of conversion can be adapted to particular types of intangible property and will not displace other, more suitable law, it may be appropriate to do so.” (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 124.)

To be sure, the California Supreme Court has not expressly determined whether a plaintiff can maintain a common law claim for conversion of wages. In *Lu v. Hawaiian Gardens Casino, Inc.* (2010) 50 Cal.4th 592, 604 (*Lu*), however, the Court suggested that employees whose tips had been pooled and redistributed, in violation of a Labor Code provision that did not give rise to a private right of action, could allege a common law claim for conversion. Similarly, in *Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal.4th 163, 178 (*Cortez*), the Court explained that the plaintiffs in that case could recover their earned overtime wages as restitution because they had a vested interest in their earned wages. The Court reached this result because “equity regards that which ought to have been done [citation], and thus recognizes equitable conversion.” (*Ibid.*) Based on *Lu* and *Cortez*, I would hold that employees have a vested property interest in their earned wages, that failure to

pay them is a legal wrong that interferes with this property interest, and that an action for conversion may therefore be brought to recover unpaid wages.

In sum, the operative pleading adequately sets forth causes of action for conversion of wages against Lampert. I would reverse the trial court's judgment in its entirety and remand the matter for further proceedings.

LAVIN, J.