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**No. 131446**

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**In the**  
**Supreme Court of Illinois**

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Z's IT CONSULTING SERVICES, INC., and  
GEORGE ZABRAN,

*Plaintiffs-Counter Defendants-Appellees,*

vs.

HUNT LAW GROUP LLC,

*Defendant-Counter Plaintiff-Appellant.*

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On Leave to Appeal from the Appellate Court of Illinois,  
Third Judicial District, No. 3-23-0333.  
There Heard On Appeal from the Circuit Court of the Eighteenth Judicial Circuit,  
DuPage County, Illinois, No. 14 L 1050.  
The Honorable Timothy J. McJoynt, Judge Presiding.

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**BRIEF OF DEFENDANT-COUNTER PLAINTIFF-  
APPELLANT HUNT LAW GROUP LLC**

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## NATURE OF THE CASE

Z'S IT Consulting Services and its owner George Zabran sued The Hunt Law Group, seeking payment for computer maintenance services they provided. Hunt counterclaimed for conversion, alleging that Z's IT Consulting had possession of Hunt's computer passwords and other electronic system information but refused to release them. Hunt alleged that caused computer system downtime and required Hunt to retain consultants to enable them to access their systems.

The trial court dismissed Hunt's counterclaim pursuant to Section 2-615, finding that the electronic information at issue was not subject to conversion because it was intangible property.

The appellate court affirmed, in three opinions. A24. The lead opinion concluded that passwords constitute intangible property and are therefore not subject to conversion. Op. at ¶ 23. The concurring opinion concluded that misappropriation of passwords ought to support a conversion claim because there is no meaningful difference between a tangible key and a digital password, but reasoned it was this court's prerogative to expand that law. Op. at ¶ 31. The dissent reasoned that a password is a digital key, no different than a physical key, and thus subject to conversion, and that intangible property is in any event subject to an action for conversion. Op. at ¶ 35.

The question raised on the pleadings is whether computer passwords and electronic information are subject to actions for conversion.

### **ISSUE PRESENTED FOR REVIEW**

The issue presented for review is whether computer passwords and electronic information are subject to actions for conversion.

### **STATEMENT OF JURISDICTION**

The court dismissed Hunt Law Group's counterclaim on June 23, 2023. C2288; App. at A1. It included findings pursuant to Supreme Court Rule 304(a). Hunt Law Group appealed. C2291; App. at A2.

The appellate court issued its Rule 23 order on August 23, 2024. No petition for rehearing was filed. The court granted a motion to publish and issued an opinion on December 31, 2024. App. at A24. Hunt Law Group filed this petition for leave to appeal within 35 days of that decision. The court granted that petition and has jurisdiction pursuant to Rule 315.

## STATEMENT OF FACTS

The Hunt Law Group appealed from an order dismissing its counterclaim for conversion pursuant to Section 2-615. The facts are taken from its counterclaim. C2213; App. at A3.

The Hunt firm retained Z's IT Consulting Services, owned by George Zabran, to create a domain name, set up servers and an email system, and provide IT support for the law office's computer system. C2214; A4. The system included document creation and access, telephones, email access, and internet access. C2214; A4. Hunt's counterclaim identified the system components. C2214; A4.

Zabran created passwords and access codes for the systems. C2215, C2217; A5, A7. Those passwords and access codes were integral to the firm's operation. C2214; A4. They were proprietary information, owned by the firm and kept confidential. C2215; A5. Z's IT Consulting was aware that the law firm was not knowledgeable about IT issues. C2214; A4.

When Z's IT set up the firm's computer system, the firm asked Zabran to provide the passwords and access codes, but he declined. C2216; A6. Zabran said he could be trusted with that information and would not withhold it. C2216; A6. That business arrangement continued in place, with Zabran creating passwords and access codes for new equipment. C2217; A7.

A dispute arose in 2020. C2218; A8. The firm requested all its passwords and access codes. Z's IT refused. C2218; A8.

Because Z's IT withheld the firm's passwords, the firm suffered scanner failures, inability to access email and domain registration for ENAM.com and GoDaddy.com, and inability to access its phone systems. C2218; A8. Hunt's counterclaim alleged that Z's IT and Zabran wrongfully continued to withhold information. That withholding required the firm to retain an IT service to remedy the system. C2219; A9. Hunt sought return of the disputed information including the passwords, and damages. The firm alleged the access information was property subject to conversion.

Z's IT moved to dismiss pursuant to Section 2-615 for failure to state a cause of action. C2232 (v3). It argued Hunt suffered no more than a temporary delay or interference with intangible property, and that it did not exercise control over that property. Z's IT also contended intangible property was not subject to conversion. C2239.

Hunt responded. C2244. The firm recited the elements of conversion and described how the counterclaim satisfied each element. It argued that damages for conversion were available even if the property was not an ordinary object of commerce and not susceptible to the general measure of damages. C2253 (v3). Z's IT replied. C2279.

### **Court's dismissal pursuant to Section 2-615**

The trial court acknowledged Z's contention that intangible property cannot be the subject of an action for conversion unless it is merged into a tangible document. R148. It agreed the counterclaim was obviously an action

for conversion. R153. The court said whether Hunt's inability to access password and code words was permanent or just temporary, one element of an action for conversion, was a question for a jury. R155.

The court identified the main issue as whether the firm's passwords and access codes were tangible assets. R156; A22. It believed the counterclaim could not survive the motion to dismiss if the passwords did not meet that criterion. A22. The court found such information was intangible and granted the motion to dismiss. It included findings under Supreme Court Rule 304(a). R156-57; A22-23; C2288 (v3); App. at A1 (order).

### **The appellate court opinion**

The lead opinion (A24) correctly described Hunt's claims: (1) passwords and access codes are tangible and therefore subject to an action for conversion; and (2) in light of changing business practices, the law of conversion should evolve to cover digital data. Op. at ¶ 12. It also acknowledged that in *Stathis*, the appellate court recognized a cause of action for conversion of intangible assets. Op. at ¶ 19; *Stathis v. Geldermann, Inc.*, 295 Ill. App. 3d 844, 856 (1998), *leave to appeal den.*, 179 Ill.2d 620. It further acknowledged conflicting decisions on this topic, as courts nationally addressed whether they should recognize actions for conversion of digital data. Op. at ¶¶ 14, 15.

The lead justice relied on this court's statement in *In re Thebus*, 108 Ill. 2d 255, 256, 483 N.E.2d 1258, 1259 (1985) that conversion applies only if the property is an identifiable object of property and is tangible or "connected with



something tangible.” Op. at ¶ 18. This justice concluded that the access codes at issue were not tangible because they were not capable of being touched or seen, or of “being possessed or realized.” Op. at ¶ 20.

Relying on the Restatement, the lead opinion went on to say that Z’s IT did not prevent Hunt from exercising intangible rights customarily merged into a document, using currency as an example. Op. at ¶ 21. Courts had recognized that conversion applies to intangible rights if they merged into a document. But the lead opinion also acknowledged that *Kremen*, a federal case, disputed whether the Restatement limited conversion to tangible property. *Kremen v. Cohen*, 337 F.3d 1024, 1034 (9th Cir. 2003). *Kremen* said California did not follow “the Restatement’s strict requirement that some document must actually represent the owner’s intangible property right. Rather, California courts routinely applied conversion to intangibles . . .” *Id.* at 1033. *Kremen* reasoned that the Restatement thus included intangible documents within its definition of property subject to conversion.

The lead opinion also acknowledged a line of cases that extended conversion “to other intangible property prevalent in the Information Age.” Op. at ¶ 22. But it refused to go down that path because the author believed “the passwords and access codes are disconnected from the information on Hunt’s IT servers . . .” Op. at ¶ 22.

The lead opinion candidly acknowledged that “[w]hether the bar on intangible property recovery for conversion claims is a limitation that is

appropriate in light of the proliferation of intangible rights in the modern technological age is a worthwhile consideration.” Op. at ¶ 23. It nonetheless concluded that “[w]hether intangible property rights warrant the creation of a new framework of tort or if the protections against the tort itself should be expanded within this jurisdiction are questions better addressed by our legislature and supreme court, respectively.” Op. at ¶ 32.

The concurring justice concluded that misappropriation of passwords ought to support a conversion claim. It reached that conclusion because there is no meaningful difference between a tangible physical key and a digital password — both allow access to property. But that justice said it was this court’s prerogative to reevaluate that question. Op. at ¶ 30.

The dissent reasoned that the IT provider would unquestionably be liable for conversion if it had withheld a physical key, and said “[a] password is simply a digital key.” It therefore concluded that withholding such electronic information is subject to conversion. Op. at ¶ 35. The dissent also embraced foreign cases that removed any requirement of a merger (addressed in the lead opinion) and took “the next logical step in finding that intangible property can be converted without any caveats.” Op. at ¶ 34.

## ARGUMENT

*Passwords and similar codes allow access to and operation of computers and other electronic devices. They are no different than physical keys and are therefore subject to an action for conversion. Even if they are deemed intangible property, they should be subject to recovery under conversion.*

### Standard of Review

The court dismissed Hunt’s counterclaim pursuant to Section 2-615; such orders are subject to *de novo* review. *Doe v. Burke Wise Morrissey & Kaveny, LLC*, 2023 IL 129097, ¶ 20, 234 N.E.3d 124, 129. Whether electronic access codes are subject to an action for conversion presents a question of law, and questions of law are reviewed *de novo*. *Lanphier v. Gilster-Mary Lee Corp.*, 327 Ill. App. 3d 801, 802, 765 N.E.2d 493, 494 (2002); *Gonnella Baking Co. v. Clara's Pasta di Casa, Ltd.*, 337 Ill. App. 3d 385, 388, 786 N.E.2d 1058, 1061 (2003).

### Summary of argument

Like everyone, Hunt Law Group uses passwords to access their computers and other electronic systems. Passwords serve as electronic keys. Engineers could technically have designed computers that used physical keys to trigger access, as we do with houses and cars, but they chose passwords. Passwords are functionally equivalent to physical keys. The concurring and dissenting opinions both agreed they serve the same function as physical keys. And they are as “real” as physical keys in the sense that they have “objective

independent existence.”<sup>1</sup> Indeed, IT personnel would be surprised to hear that the legal community does not regard passwords and similar electronic data as being “real.”

To access a system, the user must have access to the appropriate password from a monitor or a printed record, just as someone seeking to enter a secured room must have the key appropriate for the lock. The functional equivalence between the physical and the electronic is readily seen in digital door locks, where the person seeking access to a building enters a digital password into an electronic lock to open it.

That equivalence was stressed in *Kremen v. Cohen*, 337 F.3d 1024, 1033–34 (9th Cir. 2003), where the court concluded that a domain name is subject to conversion. It reasoned this way, ending with a dramatic but on-point analogy:

“We agree that the DNS (the domain system) is a document (or perhaps more accurately a collection of documents). That it is stored in electronic form rather than on ink and paper is immaterial. *See, e.g., Thrifty-Tel*, 54 Cal.Rptr.2d 468 (recognizing conversion of information recorded on floppy disk); *A & M Records*, 142 Cal.Rptr. 390 (same for audio record); *Lone Ranger Television*, 740 F.2d at 725 (same for magnetic tape). It would be a curious jurisprudence that turned on the existence of a paper document rather than an electronic one. Torching a company's file room would then be conversion while hacking into its mainframe and deleting its data would not.” (First ellipsis added.)

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<sup>1</sup> <https://www.merriam-webster.com/dictionary/real>, defining real (last viewed 4/15/25).

Hunt’s point is that regardless of whether passwords are characterized as tangible or intangible, they serve the same purpose as physical keys and their use leads to the same outcome. They are as tangible as physical keys, and that provides a basis for finding that they are subject to conversion. Alternatively, the court could recognize them as a functional equivalent of physical keys, and find them subject to conversion for that reason. Or, to move the law on conversion into the modern era, the court could confirm *Stathis’s* finding that conversion applies equally to both tangible and intangible property. *Stathis v. Geldermann, Inc.*, 295 Ill. App. 3d 844, 856, 692 N.E.2d 798, 807 (1998).

More than one hundred and fifty years ago, this court presciently foresaw the need to adapt this area of law to real world developments, and electronic information management is surely such a development. *Sturges v. Keith*, 57 Ill. 451, 462 (1870). There, after the court looked at whether stock qualified as a tangible asset (a stock certificate itself was then deemed not to have intrinsic value and thus considered intangible<sup>2</sup>), it said if there had once been a foundation for making a distinction between stock and more traditional tangible physical assets, “the changes of time and commerce have long since worn it away.” *Sturges’s* assessment still rings true today when it comes to electronic information generally.

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<sup>2</sup> *Welco Elecs., Inc. v. Mora*, 166 Cal. Rptr. 3d 877, 882–83 (2014).

*Hunt pled the prerequisites for conversion.*

When Z's IT Consulting refused to return the law firm's computer passwords and other access information, Hunt sued for conversion.<sup>3</sup> Its counterclaim met the requirements for an action for conversion because it alleged: (1) that Z's exercised unauthorized and wrongful control over Hunt's personal property; (2) that Hunt had a right to the property; (3) that Hunt had a right to immediate possession of the property; and (4) that Hunt made an unsuccessful demand for its possession.

Hunt thus satisfied the four prerequisites for conversion. *Wei Quan v. Arcotech Uniexpat, Inc.*, 2018 IL App (1st) 180227, ¶ 12, 122 N.E.3d 767, 771–72. A party claiming conversion must establish (1) a right to the property, (2) an absolute and unconditional right to its immediate possession, (3) a demand for possession, and (4) that the defendant wrongfully and without authorization assumed control over the property. *Cirrincione v. Johnson*, 184 Ill. 2d 109, 114, 703 N.E.2d 67, 70 (1998). The specifics were that Hunt alleged its IT service provider had sole possession of the passwords and access codes required to operate its computer and other electronic systems, and wrongfully withheld access to them. C2218-19 (v3).

There is no issue about whether the counterclaim sufficiently alleged conversion. The trial court only questioned whether electronic information like passwords was subject to conversion. The trial court ruled it was not because

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<sup>3</sup> Z's sued for payment for work done, and Hunt counterclaimed for conversion.

it wrongly concluded that electronic information is not tangible and thus not subject to conversion. A22-23.

***The question in the appellate court was whether electronic codes are subject to conversion; two justices agreed they were.***

On appeal, both the concurring justice and the dissenting justice agreed electronic information, like passwords, is subject to conversion. And both agreed with *Stathis v. Geldermann, Inc.*, 295 Ill. App. 3d 844, 856, 692 N.E.2d 798, 807 (1998) that the general rule is that parties can recover for conversion of intangible assets. *Stathis* cited *Conant v. Karris*, 165 Ill.App.3d 783, 792, 520 N.E.2d 757, 763 (1987). *Conant* recognized a cause of action for conversion where a client gave his broker confidential information which the broker then released to competitors. Because the release destroyed confidentiality, the client/owner was deprived of the benefit of the information and could sue for conversion.

The only difference between the concurring justice and the dissent was that the concurring justice thought recognizing conversion would constitute a change in existing law, requiring this court's intervention.

***The majority of courts addressing the scope of conversion have found that electronic data is subject to conversion.***

*Stathis* of course is on point. It recognized that intangible assets are subject to an action for conversion. *Stathis v. Geldermann, Inc.*, 295 Ill. App. 3d 844, 856, 692 N.E.2d 798, 807 (1998), *pet. for leave den.* 179 Ill.2d 620 (1998).

Although surprisingly few other courts have directly addressed this question, those that have either support Hunt's contention that passwords are analogous to physical keys and subject to the same rule or justify a more straightforward finding that electronic information generally is subject to conversion.

*a) Kirkland*

In *Kirkland v. Feddersen*, 2023 VI SUPER 25U, ¶¶ 12-13 (V.I. Super. May 18, 2023), the court recognized an action for conversion where a party changed the locks to the premises. That is a court of general jurisdiction, but the opinion is instructive because the situation there was so closely analogous to the hypothetical posited by the concurring and dissenting justices here, addressing a situation where access to a firm's office was with a key. If the person possessing the only key refused to surrender it to the firm, that person would surely be subject to an action for conversion.

The point is that password and access codes serve the same purpose as keys – the fact they are digital rather than physical should make no legal difference. When Z's IT Consulting denied Hunt its passwords and access codes, it denied Hunt access to the systems for which those passwords and access codes were designed. Because passwords and physical keys both serve the same purpose, there is no reason to treat one form of access differently from another form that accomplishes the same task. Passwords and access codes



are not in some kind of linguistic limbo where they enable access but are not deemed sufficiently physical to meet the requirements for conversion.

All that supports Hunt's claim for conversion because denying a person access to that person's property is a classic form of conversion, and that is what the trial court had before it. Conversion is any unauthorized act that deprives a person of their property permanently or for an indefinite amount of time. *Wei Quan v. Arcotech Uniexpat, Inc.*, 2018 IL App (1st) 180227, ¶ 12, 122 N.E.3d 767, 771–72. The essence of an action for conversion is the wrongful deprivation of property from the person entitled to possession, which is just what Z's IT Consulting did here. *Farns Associates Inc. v. Sternback*, 77 Ill. App. 3d 249, 252, 395 N.E.2d 1103, 1106 (1979).

*b) Cotto*

The court's analysis in *Cotto Law Group, LLC v. Benevidez*, 362 Ga. App. 850, 850, 870 S.E.2d 472, 474 (2022), is also instructive because the conduct at issue there mirrors the conduct of Z's IT Consulting. Neither the parties nor the court questioned whether conversion was appropriate. That law firm sued its associate lawyer for conversion after she resigned and blocked the firm's access to her firm's e-mail account, to the firm's fax line, and to client files kept online in a Dropbox account. She changed the passwords for the Dropbox account and her e-mail account, refused to respond to requests for those credentials, and changed the contact information for the firm's fax line.

That produced the same effect as did Z's IT Consulting's refusal to return the passwords to Hunt, and the outcome here should logically be the same.

*c) Conant*

The situation in *Conant v. Karris*, 165 Ill. App. 3d 783, 792, 520 N.E.2d 757, 763 (1987), cited above, further illustrates it should be irrelevant whether information to which access has been denied is digital or physical. The defendant there disclosed confidential information to a third party that the defendant had received in a computer printout from his client. The disclosure obviously destroyed the information's confidentiality, and that court therefore recognized an action for conversion.

The case involved a computer printout rather than a password, but Hunt's point is that a fair reading of the *Conant* opinion shows the court would have recognized conversion even if the defendant had obtained the confidential information from a thumb drive where it was digitally stored, or if the owner had emailed it to the defendant in an electronic form. Whether the defendant got the information on paper or by electronic means would logically be irrelevant.

*d) HCW Retirement*

Another trial court, in North Carolina, squarely addressed the question of whether access to a database constitutes tangible property subject to an action for conversion. Its reasoning is instructive and persuasive. *HCW Ret.*

*& Fin. Services, LLC v. HCW Employee Ben. Services, LLC*, 10 CVS 1447, 2015 WL 4238193, at \*21–22 (N.C. Super. July 14, 2015).

Like this case, the party defending the conversion claim argued that electronic data and computer software were intangible property and therefore not subject to conversion. The court noted that federal district courts there had come down both ways on the question (at that earlier date), but the court said there was no basis for concluding that cutting off access to a computer system did not support an action for conversion. *Id.* at \*21.

The court reasoned that if the same information had been printed in a hard copy form, an action for conversion would clearly apply against anyone who denied access to it by physically removing the paper. *Id.* at \*22. The court was influenced by the fact that electronic storage is the preferred method for storing information “in this modern age.” That was eight years ago, a distant era in terms of electronic technology.

*e) Welco*

The court in *Welco Elecs., Inc. v. Mora*, 223 Cal. App. 4th 202, 212–13, 166 Cal. Rptr. 3d 877, 885–86 (2014), allowed recovery under conversion in an analogous situation. It found the defendant accountant's use of plaintiff's credit card on the defendant's credit card terminal to improperly transfer specific sums of money to the defendant's account constituted conversion, rejecting the defendant's contrary contention. *Id.* at 882. In doing so, the court

relied on a case where conversion was deemed a viable remedy after that defendant wrongfully converted the plaintiff's private payment information.

*Welco's* most important contribution to this discussion is its historical review of conversion. It emphasized that authorities have recognized the evolution of the doctrine of conversion, including applying conversion where intangible assets are represented by documents. Conversion was ultimately applied to what were essentially financial or economic tort cases, rather than physical interference cases. *Id.* The right represented by the document, although intangible, was nonetheless deemed subject to conversion. *Id.*

*Welco* pointed out that the Restatement of Torts Second cautioned that the process of extending the law of conversion had not been terminated, but was evolving. “[N]othing that is said in this Section (of the Restatement) is intended to indicate that in a proper case liability for intentional interference with some other kind of intangible rights may not be found. There is no reason why we should be encumbered with the incrustations of ancient lore associated with the tort of conversion.” *Id.* (cleaned up). That reasoning applies with equal force here. It justifies finding that electronic information is subject to conversion.

### *f) Thrifty-Tel*

Another California reviewing court was asked to decide whether an “intangible computer access code”, not reduced to paper, could be the subject of an action for conversion. *Thrifty-Tel, Inc. v. Bezenek*, 46 Cal. App. 4th 1559,

1565–66, 54 Cal. Rptr. 2d 468, 472–73 (1996). Not surprisingly, at that relatively early date in terms of electronic and computer technology, it was a question of first impression. It did not reach that question because it affirmed the verdict for the party whose information was withheld on an alternative theory. Its relevance is its conclusion that the label attached to a cause of action is irrelevant. Hunt’s point is that the court confirmed a right to recover damages in this circumstance, regardless of the label put on the claim.

The bottom line is that the format of the information at issue does not determine whether its owner has a right to its possession, and it is the right to possession that lies at the core of an action for conversion, not whether it is tangible.

***The cases relied on in the appellate court  
by Z’s IT Consulting are inapposite.***

Z’s IT Consulting primarily relied on three cases in the appellate court: *In re Thebus*, 108 Ill. 2d 255, 256, 483 N.E.2d 1258, 1259 (1985); *Bilut v. Nw. Univ.*, 296 Ill. App. 3d 42, 45–46, 692 N.E.2d 1327, 1330 (1998); and *Janes v. First Fed. Sav. & Loan Ass’n of Berwyn*, 57 Ill. 2d 398, 414, 312 N.E.2d 605, 613 (1974), and will presumably cite them here. And of course, the lead author relied on *Thebus*. The distinction common to all of them is that none of them addressed a situation where someone withheld another person’s access to that second person’s electronic equipment, e.g., computers, phones, faxes. The cases addressed only common conversion scenarios.

*Thebus* was not a commercial case or even a typical conversion case. It involved an attorney disciplinary proceeding, with the attorney proceeding *pro se* in this court. The ARDC charged the lawyer with conversion, claiming he withheld money from his employees for taxes but did not pay the IRS. The lawyer contended he simply failed to file the proper tax return and pay the taxes. Neither the Hearing Board nor the Review Board found conversion, but rather found it was a case of a simple failure to file a tax return. *Id.* at 258-59. From that, the court concluded those bodies rejected conversion.

The court went on to say it had addressed disciplinary cases involving conversion of client funds by attorneys, emphasizing that “conversion” may have a specialized meaning in that context. That alone makes *Thebus’s* application here even more problematical. *Id.* at 259.

In a discussion of the technical elements conversion involving money, the court there explained that “[m]oney may be the subject of conversion, but it must be capable of being described as a specific chattel, although it is not necessary for purposes of identification that money should be specifically earmarked. However, an action for the conversion of funds may not be maintained to satisfy a mere obligation to pay money.” *Id.* at 260. Under those specific facts, the employees had no interest in the money that the lawyer withheld from their pay, so there was no conversion.<sup>4</sup> *Id.* at 263. The lawyer

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<sup>4</sup> A later case allowed money to be the target of a conversion action because, unlike the funds *In re Thebus*, the defendant bank did not convert some of its own assets. Rather, the action targeted specific amount transferred to the

owed a debt to the government, not to his employees. The court rejected conversion, although it sanctioned the lawyer for a separate reason. *Id.* at 627.

The holding in *Thebus* was actually a step in the broader development of this tort, as noted in *Bill Marek's The Competitive Edge, Inc. v. Mickelson Group, Inc.*, 346 Ill. App. 3d 996, 1003, 806 N.E.2d 280, 285 (2004). *Marek* pointed out that under *Thebus*, it was “no longer necessary that money be specifically earmarked in order to sustain an action for conversion.”

*Thebus* thus did not address anything like the issue here, nor did the responding attorney have occasion to raise the arguments Hunt makes. As noted, the court did say the property alleged to have been converted had to be identifiable. *Id.* at 260. That is Hunt’s point, or at least part of his point. The passwords were by definition readily identifiable, and indeed singular. The very nature of passwords is their uniqueness.

*Bilut* involved a professor’s claim of plagiarism or conversion. After citing the general rule of conversion, the court ruled that ideas standing alone are not subject to conversion, but that ideas reduced to writing are subject to conversion. *Id.* at 52. The plaintiff lost only because the statute of limitations had expired. *Id.* at 52. *Bilut* does not support Z’s defense. It actually supports Hunt’s claim because passwords and codes can similarly be reduced to writing and transmitted.

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bank from an outside source, so the funds were identifiable. *Roderick Dev. Inv. Co., Inc. v. Cmty. Bank of Edgewater*, 282 Ill. App. 3d 1052, 1059 (1996).

Finally, *Janes* involved a complex question arising after a financier (Irving Federal) kept a property title insurance discount required by a title company. The sellers claimed the financier owed that money to them. In analyzing and rejecting conversion, the court pointed out that there was no relationship between the sellers and the financier. *Janes*, 57 Ill. 2d at 414. And the statute under which they sued did not apply. The case has nothing to do with the facts or the issue here.

The lead opinion here addressed both *Thebus* and *Bilut*. Op. at ¶ 19. That part of the decision said successive opinions including *Bilut* “have attempted to clarify *Thebus*’s holding by explaining that a conversion action over intangible property will only lie when such property is merged or connected with something tangible.” *Z’s IT Consulting Services, Inc. v. Hunt Law Group, LLC*, 2024 IL App (3d) 230333, ¶ 19. But this court did not paint a bright line in *Thebus* about when conversion applied, contrary to that insinuation in the opinion in this case. The broader question about what “things” are subject to conversion remains open.

***The court can find that conversion applies by applying the merger rule, but the better option is declare that intangible property is subject to conversion.***

The court can find the property at issue is subject to conversion by applying the doctrine of merger, addressed in the lead opinion. Merger has been used as a totem to give concrete substance to something lacking a physical dimension, expanding the reach of conversion in order to prevent a party from



being deprived of a remedy. Printing something is deemed to make that something sufficiently tangible to satisfy even the old notion of what is appropriate for conversion, as *Bilut* addressed. A password meets that criterion because it is transmitted by printing it or writing it, or otherwise giving it some dimension, so the computer operator can see it and use it.

But the better rule is to simply confirm what *Stathis* held – conversion applies to intangible matters. The lead opinion described it as “dismantling the intangible bar.” Op. at ¶ 15. That opinion acknowledged California does not follow the Restatement's requirement that some document must actually represent the owner's intangible interest, Hunt’s point here. Rather, that state’s courts routinely apply conversion to intangible interests, and no one has shown any adverse effect. *Kremen v. Cohen*, 337 F.3d 1024, 1033 (9th Cir. 2003) (summarizing California law). Even more instructive is the Ninth Circuit’s emphatic statement there, albeit in *dicta*, that “[w]here it necessary to settle the issue once and for all, we would \* \* \* hold that conversion is a remedy for the conversion of every species of personal property.” *Id.* (cleaned up).

If this court adopts that broader rule about the scope of conversion, that will remove the hurdle of defining what intangible means in the electronic world and move conversion law into the 21<sup>st</sup> century.

## CONCLUSION

The bottom line is that “[t]he essence of an action for conversion is the wrongful deprivation of property from the person entitled to possession.” *Farns Associates Inc. v. Sternback*, 77 Ill. App. 3d 249, 252 (1979). That is what is at issue, and the court should find that the nature of the property does not limit that cause of action. Whether you can physically hold something should not determine whether it is subject to an action for conversion.

For the reasons stated, Defendant/Counter-Plaintiff-Appellant Hunt Law Group requests that the order and judgment be reversed and that the matter be remanded for further appropriate proceedings. In the alternative, Hunt requests such other and further relief as may be deemed appropriate.

Respectfully submitted,

/s/ ***Michael W. Rathsack***

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**CERTIFICATE OF COMPLIANCE**

Under penalties as provided by law, pursuant to Section 1-109 of the Code of Civil Procedure, I certify that this document conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 5,334 words.

/s/ ***Michael W. Rathsack***

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## **APPENDIX**

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STATE OF ILLINOIS

UNITED STATES OF AMERICA

COUNTY OF DU PAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

ZS IT CONSULTING SERVICES  
INC ET AL.

Plaintiff

-VS-

HUNT LAW GROUP LLC THE ET  
AL.

Defendant

2020L001396  
CASE NUMBER**FILED**

23 Jun 28 PM 01: 13

*Candice Adams*CLERK OF THE  
18TH JUDICIAL CIRCUIT  
DUPAGE COUNTY, ILLINOIS**ACTION ORDER**

This matter having come before the Court, the Court having jurisdiction and being fully advised in the premises:

**IT IS HEREBY ORDERED** as follows:

The case is continued to 09/18/2023 in 2008 at 09:00 AM for STATUS - FOR VIDEO CALL.

This matter coming before the Court on Motion of Plaintiff/Counter-defendant to Dismiss, pursuant to Section 2-615 of the Illinois Code of Civil Procedure, the Third Amended Counterclaim of Defendant/Counter-plaintiff, The Hunt Law Group, LLC, due notice having been given, the matter having been fully briefed, and the Court being fully advised in the premises, it is hereby ordered that:

1. Plaintiff/Counter-defendant's motion is granted;
2. The third amended counterclaim of Defendant/Counter-plaintiff, The Hunt Law Group, LLC, dismissed with prejudice for the reasons stated in Court;
3. The Court further finds – pursuant to ISCR 304(a) – that no just reason exists to delay enforcement of or appeal from this order;
4. This matter is set for status hearing on 9:00 a.m. on September 18, 2023 in Room 2008.

Submitted by: BRIAN HUNT

Attorney Firm: HUNT LAW GROUP

DuPage Attorney Number: 198268

Attorney for: HUNT LAW GROUP LLC THE

10 S. LASALLE STREET, SUITE 1450

CHICAGO, IL, 60603

312-384-2300

Email: jnolan@hunt-lawgroup.com

☐ PRO SE

File/Date: 06/28/2023

JUDGE TIMOTHY J MCJOYNT

Validation ID : DP-06282023-0113-40521

Date: 06/28/2023

**APPEAL TO THE APPELLATE COURT OF ILLINOIS,  
THIRD JUDICIAL DISTRICT**

**FROM THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT,  
DU PAGE COUNTY, ILLINOIS**

---

Zs IT CONSULTING SERVICES, INC., and	)	
GEORGE ZABRAN,	)	
	)	No. 2020 L 001396
Plaintiffs-Counter Defendants-Appellees,	)	
	)	
vs.	)	
	)	
HUNT LAW GROUP LLC,	)	Hon. Timothy J. McJoynt,
	)	Judge Presiding.
Defendant-Counter Plaintiff-Appellant.	)	Judgment: 6-28-23
	)	Notice of appeal: 7-19-23

---

**NOTICE OF APPEAL  
PURSUANT TO RULE 304(a)**

Defendant-Counter Plaintiff-Appellant Hunt Law Group, LLC, by its attorney Michael W. Rath sack, hereby appeals to the Appellate Court of Illinois for the Third Judicial District from the order and judgment entered on June 23, 2023, a copy of which is attached. The order contains findings pursuant to Supreme Court Rule 304(a).

Defendant-Counter Plaintiff-Appellant requests that the order and judgment be reversed and that the matter be remanded for further appropriate proceedings. In the alternative, Defendant-Appellant requests such other and further relief as may be deemed appropriate.

31060

198268

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
DUPAGE COUNTY, WHEATON, ILLINOIS

Candice Adams  
e-filed in the 18th Judicial Circuit Court  
DuPage County  
ENVELOPE: 21700034  
2020L001396  
FILEDATE: 3/2/2023 2:44 PM  
Date Submitted: 3/2/2023 2:44 PM  
Date Accepted: 3/3/2023 11:54 AM  
BW

Z'S IT CONSULTING SERVICES, INC., )

Plaintiff, )

v. )

Case No. 2020 L 001396

THE HUNT LAW GROUP, LLC, )

Defendant. )

THE HUNT LAW GROUP, LLC, )

Counter-plaintiff, )

v. )

GEORGE ZABRAN, Z'S IT )

CONSULTING SERVICES, INC., )

Counter-defendants. )

**THIRD AMENDED COUNTERCLAIM**

Counter-plaintiff, THE HUNT LAW GROUP, LLC ("THLG"), by its attorneys, The Hunt Law Group, LLC, complains against George Zabran individually and, in the alternative against Z's IT Consulting Services, Inc., in law and in equity, without prejudice to its other pleadings, as follows:

**COUNT I**

**George Zabran**

1. When THLG was formed in April of 2005, Mr. Hunt was introduced to George Zabran as a potential information technology ("IT") consultant.



2. At that time, THLG began a relationship with Mr. Zabran as its IT consultant, and Mr. Zabran was solely responsible for such items as: creating a domain name; setting up the servers; laying the foundation for an email system; and all other hardware and software necessities associated with IT support for a litigation law firm practice (The THLG IT System).

3. The THLG IT System which Mr. Zabran created for THLG included: document creation and access; telephones; email access; and internet access. All of those systems are integral to the performance of a law firm and to THLG.

4. Mr. Zabran was aware at the time he began his relationship with THLG that neither Mr. Hunt nor anyone else at THLG was knowledgeable or sophisticated regarding IT issues.

5. In April of 2005 and thereafter, Mr. Zabran was aware that a substantial imbalance existed regarding IT knowledge between himself on the one hand, as an experienced IT consultant, and Mr. Hunt and THLG, on the other hand.

6. At that time -- at the request of Mr. Hunt -- Mr. Zabran went about setting up the THLG IT System, including some or all of the following hardware and software:

- a) Cisco ISA 570
- b) Cisco 2960 Switch 1
- c) Cisco 2960 Switch 2
- d) Cisco 2960 Switch 3
- e) Cisco UC 560
- f) APC 3000
- g) HP ProLiant DL 380p Gen8 (host server 1)
- h) HP ProLiant DL 380p Gen8 (host server 2)

- i) Office 365
- j) VMWARE
- k) ATT/Cogent Internet
- l) Quickbooks
- m) Tabs
- n) Netdocs
- o) Papercut Copy
- p) Outlook
- q) Website Design
- r) GoDaddy account
- s) Domain Portal
- t) Fusemail

In connection with creating the THLG IT System, for THLG, Mr. Zabran necessarily was involved with and created passwords and access codes for the hardware and software which he assembled.

7. These passwords and access codes were and are sensitive, confidential and proprietary information to THLG for which THLG was the exclusive owner.

8. Upon information and belief -- although unknown to Mr. Hunt at that time -- Mr. Zabran also made himself the owner of the GoDaddy account used to support THLG's website.

9. Upon information and belief -- although unknown to Mr. Hunt at the time -- Mr. Zabran also made himself a "reseller" of the fusemail software which THLG used. That is, Mr. Zabran profited from -- but did not disclose -- to THLG his relationship with the seller of fusemail.

10. Such confidential information was in the form of tangible property as received by Mr. Zabran.

11. Such confidential information was also in the form of intangible property as received by Mr. Zabran which was itself susceptible to conversion under Illinois law.

12. In the alternative, confidential information received or created by Mr. Zabran was converted from intangible property to tangible property.

13. At all times, all such confidential information was the property of The Hunt Law Group, LLC to which The Hunt Law Group, LLC had an absolute and unconditional right to immediate possession.

14. Mr. Zabran set up the THLG IT System at the request of Mr. Hunt and was paid in full for those services.

15. In 2005 and the first quarter of 2006, Mr. Hunt -- aware that George Zabran was creating and had created passwords and access codes for the THLG IT System which were integral to the operations of THLG -- specifically asked Mr. Zabran for those passwords and access codes.

16. At the time Mr. Hunt requested the passwords and access codes for THLG in 2005 and 2006, Mr. Zabran declined to provide them.

17. Rather than provide the passwords and access codes -- which were and are the property of THLG -- Mr. Zabran assured Mr. Hunt that he would never withhold such information.

18. Furthermore, Mr. Zabran specifically represented that he could be trusted with the passwords and access codes of THLG and that no reputable IT consultant would ever withhold such information from the owner.

19. Mr. Zabran continued to provide IT services to THLG -- and acquired and created passwords and access codes for the THLG IT System for additional hardware and software which also were not provided to THLG.

20. Beginning in approximately 2014, Mr. Zabran's performance began to decline. The computers did not work as well as they had. Disruptions would occur to which Mr. Zabran was sluggish to respond. Professional and administrative staff complained to Mr. Hunt of Mr. Zabran's performance, his non-responsiveness and his deflection of responsibility for matters considered to be in his bailiwick. In 2014 and 2015, Mr. Zabran's performance continued to decline.

21. In 2015 or 2016, Mr. Zabran advised Mr. Hunt for the first time of his divorce and its impact on Mr. Zabran.

22. In late 2016, Mr. Hunt became concerned both about the performance of Mr. Zabran and his monthly pricing, which Mr. Hunt perceived to be excessive. In response to those concerns, Mr. Hunt sought and obtained a bid from another vendor for the IT services THLG required.

23. In April of 2017, Mr. Hunt forwarded to Mr. Zabran the competitor's proposal.

24. In May or June of 2017, Mr. Hunt did have a conversation with Mr. Zabran during which they discussed both price and some deficiencies in Mr. Zabran's performance.

25. As a result of that conversation, Mr. Zabran agreed to reduce his regular monthly rate -- which substantially exceeded the proposed competitor's rate -- and for which Mr. Zabran assured Mr. Hunt that future work was included.

26. Thereafter, Mr. Zabran did invoice and THLG did regularly pay for work at the agreed-upon monthly rate.

27. The relationship approached a breaking point in June and July of 2020 when Mr. Zabran submitted invoice numbers 2691, 2697 and 2700 for work which Mr. Zabran had previously represented to Mr. Hunt was included within the regular monthly payments THLG had made to Mr. Zabran for the last several years.

28. In August of 2020, Christine Hilbert of THLG requested of Mr. Zabran all passwords and access codes for the entirety of the THLG hardware and software system. Mr. Zabran refused that request.

29. The relationship reached a breaking point when Mr. Zabran incorrectly complained to numerous THLG employees that THLG was not timely paying its bills.

30. In October of 2020, Mr. Hunt requested of Mr. Zabran the immediate return of all passwords and access codes for the entirety of the THLG hardware and software system.

31. Thereafter, Mr. Zabran refused to provide that information.

32. On October 24, 2020, Mr. Hunt discharged Mr. Zabran as a service provider to THLG.

33. Upon information and belief, Mr. Zabran deleted sensitive information from THLG's servers on at least one occasion on October 24, 2020.

34. The disruptions resulting from Mr. Zabran's wrongful withholding of THLG's confidential and proprietary information included: scanner failures; inability to access email filters; inability to access domain registration for ENAM.com and GoDaddy.com; and inability to access PBX GUI (phones) system.

35. On October 28, 2020, via correspondence from counsel, Mr. Zabran provided four pages of password and access code data for the THLG IT System. See Exhibit A.

36. However, the information provided by Mr. Zabran was materially incomplete.

37. On November 11, 2020, again via correspondence from counsel, Mr. Zabran provided additional data regarding access codes and passwords for the THLG IT system.

38. George Zabran wrongfully and without authorization assumed control, dominion and ownership over the confidential information to the detriment of The Hunt Law Group, LLC.

39. In late October and November of 2020, THLG suffered software interruptions, specifically including inability to scan documents, inability to send and receive email from clients and inability to use telephone conference lines due to excessive static and required the retention of an IT consultant to resolve issues created solely by George Zabran's wrongful refusal to return the requested information. Specifically, THLG was forced to have an IT consultant remedy the THLG IT system which required the expenditure of additional time estimated at approximately thirty hours and at a cost of approximately \$6,300.

40. The software interruptions specifically including inability to scan documents, inability to send and receive email from clients and inability to use telephone conference lines due to excessive static were the result of Mr. Zabran's wrongful conduct including his wrongful refusals to provide the requested information and his failure to provide materially complete information on October 28, 2020.

WHEREFORE, The Hunt Law Group, LLC, seeks recovery from George Zabran for all damages available in equity and at law, including amounts incurred as the result of his wrongful conduct as set forth above, and for such other relief as this Court deems just and appropriate.

## **COUNT II**

### **Z's IT Consulting Services, Inc.**

**These allegations are made in the alternative as Mr. Zabran has asserted in this case that his work was performed under Z's IT Consulting Services, Inc.**

41. When THLG was formed in April of 2005, Mr. Hunt was introduced to George Zabran as a potential information technology ("IT") consultant.

42. At that time, THLG began a relationship with Mr. Zabran as its IT consultant, and Mr. Zabran was solely responsible for such items as: creating a domain name; setting up the servers; laying the foundation for an email system; and all other hardware and software necessities associated with IT support for a litigation law firm practice (The THLG IT System).

43. The THLG IT System which Mr. Zabran created for THLG included: document creation and access; telephones; email access; and internet access. All of those systems are integral to the performance of a law firm and to THLG.

44. Mr. Zabran was aware at the time he began his relationship with THLG that neither Mr. Hunt nor anyone else at THLG was knowledgeable or sophisticated regarding IT issues.

45. In April of 2005 and thereafter, Mr. Zabran was aware that a substantial imbalance existed regarding IT knowledge between himself on the one hand, as an experienced IT consultant, and Mr. Hunt and THLG, on the other hand.

46. At that time -- at the request of Mr. Hunt -- Mr. Zabran went about setting up the THLG IT System, including some or all of the following hardware and software:

- a) Cisco ISA 570
- b) Cisco 2960 Switch 1
- c) Cisco 2960 Switch 2

- d) Cisco 2960 Switch 3
- e) Cisco UC 560
- f) APC 3000
- g) HP ProLiant DL 380p Gen8 (host server 1)
- h) HP ProLiant DL 380p Gen8 (host server 2)
- i) Office 365
- j) VMWARE
- k) ATT/Cogent Internet
- l) Quickbooks
- m) Tabs
- n) Netdocs
- o) Papercut Copy
- p) Outlook
- q) Website Design
- r) GoDaddy account
- s) Domain Portal
- t) Fusemail

In connection with creating the THLG IT System, for THLG, Mr. Zabran necessarily was involved with and created passwords and access codes for the hardware and software which he assembled.

47. These passwords and access codes were and are sensitive, confidential and proprietary information to THLG for which THLG was the exclusive owner.



48. Upon information and belief -- although unknown to Mr. Hunt at that time -- Mr. Zabran also made himself the owner of the GoDaddy account used to support THLG's website.

49. Upon information and belief -- although unknown to Mr. Hunt at the time -- Mr. Zabran also made himself a "reseller" of the fusemail software which THLG used. That is, Mr. Zabran profited from -- but did not disclose -- to THLG his relationship with the seller of fusemail.

50. Such confidential information was in the form of tangible property as received by Mr. Zabran.

51. Such confidential information was also in the form of intangible property as received by Mr. Zabran which was itself susceptible to conversion under Illinois law.

52. In the alternative, confidential information received or created by Mr. Zabran was converted from intangible property to tangible property.

53. At all times, all such confidential information was the property of The Hunt Law Group, LLC to which The Hunt Law Group, LLC had an absolute and unconditional right to immediate possession.

54. Mr. Zabran set up the THLG IT System at the request of Mr. Hunt and was paid in full for those services.

55. In 2005 and the first quarter of 2006, Mr. Hunt -- aware that George Zabran was creating and had created passwords and access codes for the THLG IT System which were integral to the operations of THLG -- specifically asked Mr. Zabran for those passwords and access codes.

56. At the time Mr. Hunt requested the passwords and access codes for THLG in 2005 and 2006, Mr. Zabran declined to provide them.

57. Rather than provide the passwords and access codes -- which were and are the property of THLG -- Mr. Zabran assured Mr. Hunt that he would never withhold such information.

58. Furthermore, Mr. Zabran specifically represented that he could be trusted with the passwords and access codes of THLG and that no reputable IT consultant would ever withhold such information from the owner.

59. Mr. Zabran continued to provide IT services to THLG -- and acquired and created passwords and access codes for the THLG IT System for additional hardware and software which also were not provided to THLG.

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62. In late 2016, Mr. Hunt became concerned both about the performance of Mr. Zabran and his monthly pricing, which Mr. Hunt perceived to be excessive. In response to those concerns, Mr. Hunt sought and obtained a bid from another vendor for the IT services THLG required.

63. In April of 2017, Mr. Hunt forwarded to Mr. Zabran the competitor's proposal.

64. In May or June of 2017, Mr. Hunt did have a conversation with Mr. Zabran during which they discussed both price and some deficiencies in Mr. Zabran's performance.

65. As a result of that conversation, Mr. Zabran agreed to reduce his regular monthly rate -- which substantially exceeded the proposed competitor's rate -- and for which Mr. Zabran assured Mr. Hunt that future work was included.

66. Thereafter, Mr. Zabran did invoice and THLG did regularly pay for work at the agreed-upon monthly rate.

67. The relationship approached a breaking point in June and July of 2020 when Mr. Zabran submitted invoice numbers 2691, 2697 and 2700 for work which Mr. Zabran had previously represented to Mr. Hunt was included within the regular monthly payments THLG had made to Mr. Zabran for the last several years.

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80. The software interruptions specifically including inability to scan documents, inability to send and receive email from clients and inability to use telephone conference lines due to excessive static were the result of Mr. Zabran's wrongful conduct including his wrongful refusals to provide the requested information and his failure to provide materially complete information on October 28, 2020.

WHEREFORE, The Hunt Law Group, LLC, seeks recovery from Z's IT Consulting Services, Inc. for all damages available in equity and at law, including amounts incurred as the result of George Zabran's wrongful conduct as set forth above, and for such other relief as this Court deems just and appropriate.

Respectfully Submitted,

THE HUNT LAW GROUP, LLC



By: \_\_\_\_\_

Brian J. Hunt

Brian J. Hunt  
THE HUNT LAW GROUP, LLC  
Attorneys for Defendant  
10 S. LaSalle Street, Suite 1450  
Chicago, Illinois 60603  
(312) 384-2300  
[bhunt@hunt-lawgroup.com](mailto:bhunt@hunt-lawgroup.com)

#### VERIFICATION

I have read the foregoing, and to the best of my knowledge, information, and belief formed after reasonably inquiry, it is well grounded in fact and is warranted by law or a good faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.



\_\_\_\_\_  
Brian J. Hunt



Purchased from re-SearchLLC

A-17

<u>Username</u>	<u>Password</u>	<u>Description</u>
admin		Cisco
administrator		ilo, advocent
administrator		Cisco ISA570
administrator		domain admin acct
administrator@vsphere.local		Vmware
OS ROOT Appliance		Vmware
root		VM Root Acct
info		info email
za2esync		add-to-exchange
manage		HP
admin		PaperCut
admin		nas-02, 03, 04
no username		trend micro
hlgsupport		support
support		office email notification
veeam		veeam acct
ndmail		Net Documents sync
apc		apc
inolan@hunt-lawgroup.com		netdoc admin
lkrawchuk@hunt-lawgroup.com		netdocs admin
no username		tabs admin
admin		quickbook admin

main servers  
switches

need replacement  
need replacement

C 2227 V3

131446





thru cdw  
christine email- documents  
christine email- documents  
thru online  
yearly inv sent HLG\*

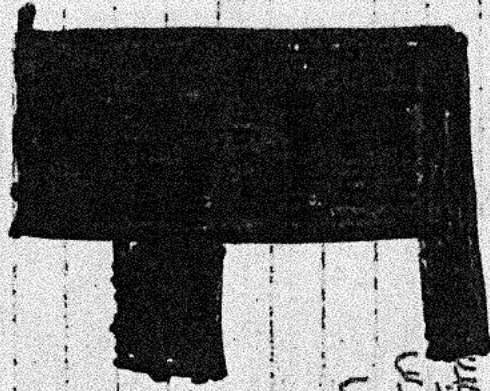
trend micro  
net documents  
congent fiber  
quickbooks  
tabs



Purchased from re: SearchIL



hlgttemp  
crios  
jthompson



lkrawchuk Dell - win 10  
chogan Dell - win 10  
ciddle No longer With Firm  
jbeaupre Dell - win 10  
dmeehan Dell - win 10  
tgeppert No longer With Firm  
nruble No longer With Firm  
bfederick No longer With Firm



qb pass: Hlg#2020  
chilbert No longer With Firm  
tabs pass: Hlg#2020



jsanchez  
mowen

Win10 -HP Eliteone 800 G3

C 2229 V3



bhunt	Home PC-win10
bhunt	Work PC-win10
info	Catch all General Mailbox
brianhunt	used to send email by Sec
marten	

Purchased from re:SearchLL

C 2230 V3

s/ *Michael W. Rathsack*

Michael W. Rathsack  
Attorney for Defendant-Appellant  
Hunt Law Group  
P.O. Box 1399  
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312-726-5433  
ARDC #2289229  
Du Page Attorney #69410  
[mrathsack@rathsack.net](mailto:mrathsack@rathsack.net)

1 its Third-Amended Counterclaim, can be addressed in  
2 the form of impeachment at trial, I think. There  
3 certainly appears that -- it certainly does appear  
4 that the defendant's answer to discovery provided  
5 before this Third-Amended Counterclaim was even filed  
6 may have conflicts in what was disclosed and what  
7 Defendant claims in the third-amended pleading. But  
8 that's for another day.

9 And I said before, discovery misuse is a  
10 possibility based on this allegation in the motion to  
11 dismiss. But again, that's not before me today.

12 Also, the somewhat quick turnover of the  
13 passwords and the -- from the plaintiff to the  
14 defendant in 2020 with what seems to be a two-week  
15 delay, the jury must decide whether or not that  
16 defeats a conversion claim or not.

17 This leaves the final issue. Were the  
18 passwords and codes a tangible asset? If not,  
19 conversion cannot survive the motion to dismiss. So  
20 far, I see no support for a claim that these matters  
21 in the suit are tangible items.

22 There is a case out there dealing with  
23 stock. This isn't stock.

24 The conversion law is clear on its face as

—LILI B. CINTA, CSR #084-002979, Official Court Reporter—



1 to this issue. The stolen items must be tangible.  
2 So far, Count II has failed to plead or provide any  
3 case law to show the assets in dispute are tangible.  
4 Same with Count I.

5 In the Third-Amended Counterclaim,  
6 Defendant said, in essence, the assets were tangible  
7 and intangible. They can't be both, can they?

8 On this basis, I -- on this basis alone, I  
9 again grant the 2-615 motion to dismiss because these  
10 assets claimed to be removed are intangible assets.

11 I will -- I don't think there is anything  
12 else that can be pled here. So I am going to make  
13 this ruling with prejudice.

14 Mr. Carbon, your position on the 304?

15 MR. CARBON: My position on what, your Honor?

16 THE COURT: 304.

17 MR. CARBON: I don't have a position, your  
18 Honor.

19 THE COURT: All right. Add the language,  
20 Mr. Hunt.

21 Are you going to do the order with your  
22 language? Or do you want Mr. Carbon to do the order?

23 MR. HUNT: I will do the order, Judge.

24 THE COURT: All right. Do we need a future

—LILI B. CINTA, CSR #084-002979, Official Court Reporter—



KeyCite Yellow Flag - Negative Treatment

Appeal Allowed by Z's IT Consulting Services, Inc. v. Hunt Law Group, LLC, Ill., March 26, 2025

2024 IL App (3d) 230333

Appellate Court of Illinois, Third District.

Z'S IT CONSULTING SERVICES, INC. and George  
Zabran, Plaintiffs and Counterdefendants-Appellees,

v.

HUNT LAW GROUP, LLC, Defendant and Counterplaintiff-Appellant.

Appeal No. 3-23-0333

|

Opinion Filed December 31, 2024

**Synopsis**

**Background:** Information technology (IT) company brought action against law firm for breach of contract and law firm counterclaimed for conversion, alleging that company's consultant withheld passwords and access codes needed to access the firm's IT systems. The Circuit Court, DuPage County, Timothy J. McJoynt, J., granted company's motion to strike and dismiss counterclaim. Law firm appealed.

**Holdings:** The Appellate Court, Albrecht, J., held that:

passwords and access codes for law firm's IT system were not tangible personal property, and thus tangible-property requirement for firm's conversion claim was not satisfied, and

firm failed to allege that IT consultant converted a type of document into which intangible rights were capable of merger or prevented the exercise of law firm's intangible rights that were customarily merged into a document, as would provide basis for conversion claim.

Affirmed.

Anderson, J., specially concurred, with opinion.

Holdridge, J., dissented, with opinion.

Appeal from the Circuit Court of the 18th Judicial Circuit, Du Page County, Illinois, Circuit No. 20-L-1396, Honorable Timothy J. McJoynt, Judge, Presiding.

**Attorneys and Law Firms**

Michael W. Rathsack, of Park Ridge, for appellant.

Lawrence A. Stein, of Lawrence A. Stein LLC, of Wheaton, for appellees.

**OPINION**

JUSTICE ALBRECHT delivered the judgment of the court, with opinion.

\*1 ¶ 1 This appeal concerns a counterclaim for conversion, stemming from a breach of contract lawsuit, and requires analysis of a gateway distinction that normally, in Illinois, intangible property cannot support a cognizable civil conversion claim. The Hunt Law Group, LLC (Hunt), filed a counterclaim alleging conversion against Z's IT Consulting Services, Inc. (Z's), and George Zabran for the withholding of passwords and access codes necessary to gain entry to Hunt's IT system. The circuit court dismissed Hunt's third amended counterclaim because the converted assets were intangible and, in the court's view, could not support a conversion action in Illinois. In its appeal, Hunt contends that (1) the passwords and access codes are real and tangible and, alternatively, (2) that conversion law has expanded to encompass the type of property at issue. We affirm.

**¶ 2 I. BACKGROUND**

¶ 3 On December 2, 2020, Z's filed a complaint against Hunt, sounding in breach of contract. According to the pleading, Z's provided Hunt with monthly information technology maintenance and support beginning in 2005 and supplied technical upgrades to the firm on an as needed basis. The lawsuit concerned Hunt's alleged failure and refusal to pay for certain IT upgrades Z's furnished the firm in 2020.

¶ 4 On February 26, 2021, Hunt filed an answer to Z's complaint and counterclaimed for conversion. Z's moved to dismiss the counterclaim, which was granted without prejudice on June 8, 2021. On July 6, 2021, Hunt replied its claim against Z's in an amended counterclaim for conversion and, the next day, separately filed a third-party complaint against Zabran, Z's principal, which alleged he converted information from Hunt in his individual capacity. Soon after, Z's filed a verified amended complaint adding Zabran as a party plaintiff. The circuit court subsequently granted both Z's and Zabran's respective motions to dismiss Hunt's first amended counterclaim without prejudice. Plaintiffs then successfully moved to dismiss Hunt's second amended counterclaim against them.

¶ 5 Thereafter, Hunt filed its third amended counterclaim for conversion on March 2, 2023. Count I alleged that when the law firm formed in 2005, it retained Zabran as an IT consultant. Zabran was responsible for creating the IT infrastructure for the firm, including its domain name creation, server setup, and e-mail system foundation. Zabran supplied the hardware and software necessary to support Hunt's IT system and protected the computer system with passwords and access codes. Hunt claimed that Zabran withheld the passwords and access codes in 2005 and 2006, despite its request for the same.

¶ 6 A billing dispute for services ensued. After a deterioration of the working relationship between Hunt and Zabran, Hunt's employees allegedly requested the passwords and access codes from Zabran in 2020, to no avail. Hunt discharged Zabran on October 24, 2020. The counterclaim further alleged that “[u]pon information and belief” Zabran “deleted sensitive information from” Hunt's servers on that date. It claimed that the passwords and access codes were taken in tangible and intangible form or, alternatively, that Zabran converted the information “from intangible property to tangible property.” Zabran sent a piecemeal list of the passwords and access codes to Hunt's counsel on October 28, 2020, and “provided additional data regarding the access codes and passwords” on November 11, 2020.

\*2 ¶ 7 The counterclaim alleged that, as a result of this delay, the firm endured scanner failures and the inability to access its e-mail filters, domain registration, and phone systems necessitating the retention of a new IT consultant at the cost of approximately \$6300. Count II alleged the same allegations against Z's, asserting that Zabran was acting at its direction.

¶ 8 On April 28, 2023, plaintiffs brought a motion to strike and dismiss Hunt's third amended counterclaim. Plaintiffs' motion attacked the legal sufficiency of Hunt's counterclaim, based on deficiencies in the pleading pursuant to section 2-615 of the Code of Civil Procedure, but also asserted that the alleged converted information is intangible and therefore cannot support a conversion action.

¶ 9 On June 28, 2023, after briefing, the court heard argument concerning plaintiffs' motion to strike and dismiss. When deciding the motion, the court focused on the requirement that the passwords and access codes constitute tangible assets, as is required for a claim of conversion in Illinois. Upon reflection, the court held that "the assets claimed to be removed are intangible assets" and granted plaintiffs' motion to strike and dismiss with prejudice in a contemporaneous written order.

¶ 10 Hunt now appeals.

## ¶ 11 II. ANALYSIS

¶ 12 On appeal, Hunt provides two arguments. First, it contends that passwords and access codes are real and tangible and therefore its counterclaim for conversion lies. It further argues that the format of the information at issue should not be outcome determinative, as it bears little relation to whether its owner has a right to possess it. Second, Hunt claims that modern business and financial practices have changed so dramatically that the law of conversion should evolve to include digital data, including the passwords and access codes at issue here. Z's and Zabran respond that the passwords and access codes are nonactionable for a conversion claim under Illinois law, and in the alternative, other pleading defects warrant the counterclaim's dismissal.

¶ 13 We review a circuit court's ruling on a motion to dismiss under a *de novo* standard of review. *Bouton v. Bailie*, 2014 IL App (3d) 130406, ¶ 7, 386 Ill.Dec. 371, 20 N.E.3d 533. Conversion is defined as "an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel." Restatement (Second) of Torts § 222A (1965). "The essence of an action for conversion is the wrongful deprivation of property from the person entitled to possession." *In re Thebus*, 108 Ill. 2d 255, 260, 91 Ill.Dec. 623, 483 N.E.2d 1258 (1985) (quoting *Farns Associates Inc. v. Sternback*, 77 Ill. App. 3d 249, 252, 32 Ill.Dec. 722, 395 N.E.2d 1103 (1979)). To state a claim for civil conversion, a plaintiff "must establish that (1) he has a right to the property; (2) he has an absolute and unconditional right to the immediate possession of the property; (3) he made a demand for possession; and (4) the defendant wrongfully and without authorization assumed control, dominion, or ownership over the property." *Cirincione v. Johnson*, 184 Ill. 2d 109, 114, 234 Ill.Dec. 455, 703 N.E.2d 67 (1998).

¶ 14 For the tort of conversion to lie, the property at issue must be the type subject to a colorable conversion claim. See *Janes v. First Federal Savings & Loan Ass'n of Berwyn*, 11 Ill. App. 3d 631, 637, 297 N.E.2d 255 (1973), *rev'd in part on other grounds*, 57 Ill. 2d 398, 312 N.E.2d 605 (1974). Over time, the definition of the type of property necessary to state a cognizable claim for conversion has both transformed and diverged among jurisdictions. As the Restatement provides, "the modern action of conversion has undergone a slow process of extension," beyond the narrow limitations of trover's "fiction" that prevented recovery of "any property which could not be lost and found." Restatement (Second) of Torts § 242 cmt. d (1965). Although the type of property subject to conversion has generally expanded, jurisdictions have not yet arrived at a consensus. Jurisdictions continue to vary greatly on which, if any, intangible property rights are actionable. See Val D. Ricks, *The Conversion of Intangible Property: Bursting the Ancient Trover Bottle with New Wine*, 1991 B.Y.U. L. Rev. 1681, 1711-12 (1991); see also Courtney W. Franks, *Analyzing the Urge to Merge: Conversion of Intangible Property and the Merger Doctrine in the Wake of Kremen v. Cohen*, 42 Hous. L. Rev. 489, 501 (2005).

\*3 ¶ 15 Some states abide by the tort's historical limitation and only permit conversion claims over tangible personal property.<sup>1</sup> Conversely, Hunt directs our attention to other states that have greatly expanded the tort's bounds by dismantling the intangible property bar. Such is the case in California, which recognizes conversion claims as actionable, even for "the unauthorized taking of an intangible property interest not merged with or reflected in tangible property [*sic*]." *Welco Electronics, Inc. v. Mora*,

223 Cal.App.4th 202, 166 Cal. Rptr. 3d 877, 883 (2014). The California Supreme Court, one decision explained, “rejected the common law rule that only a tangible property interest can be unlawfully converted.” *Fremont Indemnity Co. v. Fremont General Corp.*, 148 Cal.App.4th 97, 55 Cal. Rptr. 3d 621, 642 (2007) (referring to *Payne v. Elliot*, 54 Cal. 339 (1880)); see *Kremen v. Cohen*, 337 F.3d 1024, 1033 (9th Cir. 2003) (commenting that “[California] courts routinely apply the tort [of conversion] to intangibles without inquiring whether they are merged in a document”).

<sup>1</sup> For example, neither Oklahoma nor Tennessee recognizes intangible property as convertible. In Oklahoma, the “general rule \*\*\* is that only *tangible personal property* may be converted.” (Emphasis in original.) *Shebester v. Triple Crown Insurers*, 1992 OK 20, ¶ 14, 826 P.2d 603; *American Biomedical Group, Inc. v. Techtrol, Inc.*, 2016 OK 55, ¶ 13, 374 P.3d 820. But see *Capps v. Vasey Bros.*, 1910 OK 172, ¶ 2, 101 P. 1043, 23 Okla. 554, 101 P. 1043 (ruling plaintiffs’ action for conversion over promissory note survived general demurrer). According to the Supreme Court of Tennessee, “Tennessee law does not recognize claims for conversion of intangible property rights.” *Family Trust Services LLC v. Green Wise Homes LLC*, 693 S.W.3d 284, 307 (Tenn. 2024). This is not to say that intangible rights are wholly unprotected from tort in these jurisdictions. For example, as the Restatement contemplates, Oklahoma protects the intangible right of business information under a distinct tort. Compare *American Biomedical Group, Inc.*, 2016 OK 55, ¶ 13, 374 P.3d 820 (“Oklahoma has recognized the tort of misappropriation of business information, an intangible”), with Restatement (Second) of Torts § 242 cmt. f (1965) (explaining that “nothing that is said in this Section is intended to indicate that in a proper case liability for intentional interference with some other kind of intangible rights may not be found”).

¶ 16 A number of jurisdictions abide by the Restatement of Torts, which outlines the following test to balance intangible property with the tort of conversion:

“(1) Where there is conversion of a document in which intangible rights are merged, the damages include the value of such rights.

(2) One who effectively prevents the exercise of intangible rights of the kind customarily merged in a document is subject to a liability similar to that for conversion, even though the document is not itself converted.” Restatement (Second) of Torts § 242 (1965).

¶ 17 The Restatement identifies typical documents where intangible rights are merged, including “promissory notes, bonds, bills of exchange, share certificates, and warehouse receipts, whether negotiable or non-negotiable,” though this list is not all-inclusive. *Id.* cmt. b; Franks, *supra*, at 493. For instance, “some courts” permit conversion claims “where the converted document is not in itself a symbol of the rights in question, but is merely essential to their protection and enforcement, as in the case of account books and receipts” and the property subject to conversion is “evidently undergoing a process of expansion, the ultimate limits of which cannot as yet be determined.” Restatement (Second) of Torts § 242 cmt. b (1965).

¶ 18 Illinois’s civil conversion jurisprudence is consistent with the Restatement, and we presently adhere to its merger limitation. See, e.g., *Film & Tape Works, Inc. v. Junetwenty Films, Inc.*, 368 Ill. App. 3d 462, 475, 305 Ill.Dec. 807, 856 N.E.2d 612 (2006) (“[I]ntangible property rights cannot be the subject of conversion unless they are merged into a tangible document over which the alleged tortfeasor exercised dominion or ownership.” (citing Restatement (Second) of Torts § 242 (1965))). The leading Illinois Supreme Court case on civil conversion, *In re Thebus*, explained that “‘[i]t is ordinarily held \*\*\* that an action for conversion lies only for personal property which is tangible, or at least represented by or connected with something tangible.’” *Thebus*, 108 Ill. 2d at 260, 91 Ill.Dec. 623, 483 N.E.2d 1258 (quoting 18 Am. Jur. 2d *Conversion* § 9 (1965)). The *Thebus* court further clarified that the nature of the property at issue “is required to be an identifiable object of property of which the plaintiff was wrongfully deprived.” *Id.*

\*4 ¶ 19 Subsequently, a pronouncement by the First District in *Stathis v. Geldermann, Inc.*, 295 Ill. App. 3d 844, 856, 229 Ill.Dec. 809, 692 N.E.2d 798 (1998), that “parties may recover for conversion of intangible assets” created some discordance with courts’ construction of *Thebus* and muddled what property is actionable under a civil conversion claim in Illinois. In support of this proposition, *Stathis* cited *Conant v. Karris*, a case where a real estate developer stated a valid cause of action for conversion against his broker after the broker shared a copy of the developer’s confidential information with his brother, who then outbid the developer for a commercial property. 165 Ill. App. 3d 783, 785, 792, 117 Ill.Dec. 406, 520 N.E.2d 757 (1987)



(ruling complaint's allegation that confidential information on a computer printout taken and shared by developer's real estate broker sufficiently stated a cause of action for conversion). Notably, the intangible property deemed sufficient to lie in *Conant* was confidential information reduced—or “merged”—into a computer printout, a tangible document. *Id.* at 792, 117 Ill.Dec. 406, 520 N.E.2d 757. In any event, successive appellate opinions have attempted to clarify *Thebus*'s holding by explaining that a conversion action over intangible property will only lie when such property is merged or connected with something tangible. See *Film & Tape Works, Inc.*, 368 Ill. App. 3d at 475, 305 Ill.Dec. 807, 856 N.E.2d 612; see also *Bilut v. Northwestern University*, 296 Ill. App. 3d 42, 52, 230 Ill.Dec. 161, 692 N.E.2d 1327 (1998) (explaining that a student's action for conversion against faculty member for plagiarism of ideas from her research could lie where printed copy of the research constituted tangible property).

¶ 20 With this background, we turn to Hunt's appeal. Its conversion claim may be simply phrased: whether Zabran's refusal to surrender the passwords and access codes upon Hunt's employees' demands arose to tortious conduct. Hunt's characterization of the passwords and access codes as tangible is not a colorable one. Tangible is defined as “[h]aving or possessing physical form; corporeal” or “[c]apable of being touched and seen; perceptible to the touch; capable of being possessed or realized.” Black's Law Dictionary (12th ed. 2024).<sup>2</sup> We are similarly unpersuaded by Hunt's position, taken in its reply brief, that the passwords and access codes were “presumably” reduced to writing. The counterclaim appended a four-page list of passwords and access codes that Zabran purportedly tendered to Hunt on October 28, 2020. Per the pleading, however, the list was provided days after Zabran's discharge but years after Hunt's employees requested the information. It remains unclear whether this list is the exclusive support for Hunt's conversion claim. The counterclaim does not identify in what form Zabran initially converted and withheld the passwords and access codes beyond the conclusory allegations that “[s]uch confidential information” was in both tangible and intangible forms. See *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429-30, 305 Ill.Dec. 897, 856 N.E.2d 1048 (2006) (explaining that plaintiff's burden in a fact-pleading jurisdiction, such as Illinois, is to “allege facts sufficient to bring a claim within a legally recognized cause of action [citation], not simply conclusions [citation]”).

<sup>2</sup> Black's Law's third definition of the word “tangible,” “[c]apable of being understood by the mind,” is not germane to our discussion. See Black's Law Dictionary (12th ed. 2024).

¶ 21 Above all, Hunt fails to allege that plaintiffs converted a document in which intangible rights were merged or that plaintiffs prevented the exercise of Hunt's intangible rights that are customarily merged into a document. See Restatement (Second) of Torts § 242 (1965). As mentioned, the Restatement recognizes several documents where intangible rights are capable of merger, such as “promissory notes, bonds, bills of exchange, share certificates, and warehouse receipts, whether negotiable or non-negotiable.” *Id.* cmt. b. The commonality between these documents, one Illinois court noted, is “the fact that they are tangible documents containing intangible rights which are easily convertible into tangible assets, not dissimilar to currency.” *Film & Tape Works, Inc.*, 368 Ill. App. 3d at 475-76, 305 Ill.Dec. 807, 856 N.E.2d 612. But see *Kremen*, 337 F.3d at 1034 n.11 (disputing the requirement that intangibles must be incorporated into a tangible document for the merger doctrine to apply, as the Restatement only identifies “document” and not a *tangible* document). The passwords and access codes grant entry to Hunt's IT system. Therefore, at issue is personal property (the passwords and access codes) and a property right (the unfettered access to one's IT system), neither of which are tangible nor represented by or connected with something tangible. See *Thebus*, 108 Ill. 2d at 260, 91 Ill.Dec. 623, 483 N.E.2d 1258. As such, Hunt fails to state a valid claim for conversion under Illinois law.

\*5 ¶ 22 A significant period of time has elapsed since our supreme court last substantively discussed the confines of civil conversion.<sup>3</sup> See *Thebus*, 108 Ill. 2d at 259-60, 91 Ill.Dec. 623, 483 N.E.2d 1258. Even before *Thebus*, other jurisdictions began tailoring the tort for the modern age. See *National Surety Corp. v. Applied Systems, Inc.*, 418 So. 2d 847, 849 (Ala. 1982) (holding that, in certain circumstances, a “computer program \*\*\* can be the subject of conversion”). A line of more recent cases extended the tort to other intangible property prevalent in the Information Age, including source code (*Superior Edge, Inc. v. Monsanto Co.*, 44 F. Supp. 3d 890, 910 (D. Minn. 2014) (applying Missouri law)), domain names (*Kremen*, 337 F.3d at 1033-34 (applying California law)), and electronically stored records (*Thyoff v. Nationwide Mutual Insurance Co.*, 8 N.Y.3d 283, 832 N.Y.S.2d 873, 864 N.E.2d 1272, 1278 (2007)). While these cases offer compelling reasons to thoughtfully review the tort's historical constraints, the property in this matter does not warrant divergence. Here, the passwords and access codes are disconnected from the information on Hunt's IT servers, which include the e-mail filters, domain registration, and

phone systems from which Hunt was allegedly deprived access. While passwords and access codes are required to access Hunt's IT systems, they bear no relation to any actionable intangible rights. Passwords and access codes do not reflect the protected interests stored within Hunt's IT system, as distinguished from research ideas reduced to written form (*Bilut*, 296 Ill. App. 3d at 52, 230 Ill.Dec. 161, 692 N.E.2d 1327), confidential bidding information reflected in a computer printout (*Conant*, 165 Ill. App. 3d at 786, 117 Ill.Dec. 406, 520 N.E.2d 757), or even hard drives containing a collection of business and personal information (*Thyroff*, 832 N.Y.S.2d 873, 864 N.E.2d at 1273). Any intangible rights within Hunt's IT system are not “merged” into any “document” Zabran is alleged to have converted. Assuming *arguendo* that Zabran converted an actionable document with the passwords and access codes, it is not a document in which Hunt's intangible rights were merged, and Zabran did not prevent the “exercise of intangible rights of the kind customarily merged in a document.” Therefore, Hunt's claim fails. Restatement (Second) of Torts § 242 (1965).

3 In 2013, our supreme court stated “at common law, not all types of property are subject to being converted” indicating some limitations remain in Illinois over the type of property actionable for a civil conversion claim. *In re Karavidas*, 2013 IL 115767, ¶ 65, 376 Ill.Dec. 413, 999 N.E.2d 296. That case, a review of an attorney disciplinary action, was decided on breach of fiduciary duty grounds making the court's comments on conversion *dicta*. *Id.* ¶ 66.

¶ 23 In essence, Hunt requests that this court note extra-jurisdictional developments, divorce itself from prior Illinois case law, and expand the type of property that is subject to a conversion claim in this jurisdiction. Whether the bar on intangible property recovery for conversion claims is a limitation that is appropriate in light of the proliferation of intangible rights in the modern technological age is a worthwhile consideration. For years, this issue has been the topic of scholarly discourse. See, e.g., Prosser & Keeton on the Law of Torts, § 15 (W. Page Keeton *et al.* eds., 5th ed. 1984) (“There is perhaps no very valid and essential reason why there might not be conversion of \*\*\* ‘any species of personal property which is the subject of private ownership.’”). Whether intangible property rights warrant the creation of a new framework of tort or if the protections against the tort itself should be expanded within this jurisdiction are questions better addressed by our legislature and supreme court, respectively. See *id.* (advocating for the fashioning of other remedies to protect against the mistreatment of intangible values). But see Restatement (Second) of Torts § 242 cmt. e (1965) (stating there is “very little practical importance whether the tort is called conversion, or a similar tort with another name” as “[i]n either case the recovery is for the full value of the intangible right so appropriated”). Because we affirm the circuit court's dismissal of the counterclaim for failure to state a cognizable conversion claim, we need not address plaintiffs' assertion that the counterclaim possessed additional pleading defects.

¶ 24 III. CONCLUSION

¶ 25 The judgment of the circuit court of Du Page County is affirmed.

¶ 26 Affirmed.

Justice Anderson concurred in the judgment and opinion.

Justice Anderson also specially concurred, with opinion.

Justice Holdridge dissented, with opinion.

¶ 27 JUSTICE ANDERSON, specially concurring:

¶ 28 I agree with the dissent's conclusion that the misappropriation of passwords and access codes ought to support a conversion claim. There is no meaningful difference here between a tangible key and digital passcode. However, I do not agree that Illinois law recognizes such a claim, and I do not believe it is within our province to recognize one under these circumstances.

**Z's IT Consulting Services, Inc. v. Hunt Law Group, LLC, --- N.E.3d ---- (2024)**

2024 IL App (3d) 230333

\*6 ¶ 29 To be sure, the legal community has struggled to adapt traditional concepts to a digital world, and this issue represents part of that struggle. See, e.g., *Ogbolumani v. Young*, 2015 IL App (1st) 141930-U, ¶ 33, 2015 WL 1284064 (finding that digital files contained on a USB drive are “not tangible personal property” that could support a conversion claim).<sup>4</sup>

4 I acknowledge that *Ogbolumani* is a Rule 23 decision that predates the changes to circumstances in which Rule 23 cases may be cited. However, the former prohibition on the use of Rule 23 dispositions applied, under its plain terms, to *parties* and not courts. *Byrne v. Hayes Beer Distributing Co.*, 2018 IL App (1st) 172612, ¶ 22, 428 Ill.Dec. 492, 122 N.E.3d 753.

¶ 30 However, our analysis is made in the context of the Illinois Supreme Court's ruling in *Thebus*, 108 Ill. 2d at 260, 91 Ill.Dec. 623, 483 N.E.2d 1258. In that case, the court quoted, with approval, the conversion chapter of the American Jurisprudence treatise, for the proposition that: “It is ordinarily held \*\*\* that an action for conversion lies only for personal property which is tangible, or at least represented by or connected with something tangible \*\*\*.” 18 Am. Jur. 2d *Conversion* § 9 (1965).

¶ 31 Given the limitations on conversion claims that were recognized in *Thebus*, I believe it is our supreme court's prerogative, and not ours, to further open the umbrella of claims that fall under the tort of conversion.

¶ 32 JUSTICE HOLDRIDGE, dissenting:

¶ 33 I respectfully dissent from the majority's holding in this case. As the majority has pointed out, Illinois has precedent for finding that parties may recover for conversion of intangible assets, and the boundaries for finding when intangible assets are capable of merger with something tangible have been stretched since *Thebus*. *Supra* ¶¶ 17-19.

¶ 34 Other jurisdictions, however, have removed the merger requirement and taken the next logical step in finding that intangible property can be converted without any caveats. *Supra* ¶¶ 15, 22. Such previously listed cases include *National Surety Corp. v. Applied Systems, Inc.*, 418 So. 2d 847 (Ala. 1982), *Superior Edge, Inc. v. Monsanto Co.*, 44 F. Supp. 3d 890 (D. Minn. 2014), and *Kremen v. Cohen*, 337 F.3d 1024 (9th Cir. 2003), and I find that they are analogous to the present case and better decided.

¶ 35 If this case involved physical keys instead of passwords that prevented Hunt from accessing its data, Z's withholding of the keys would unquestionably be conversion. The same could be found if there had been computer printouts of the passwords withheld by Z's. A password is simply a digital key. Merely because the password in the present case lacks a tangible element, it should not prevent what would otherwise be clear conversion.

**All Citations**

--- N.E.3d ----, 2024 IL App (3d) 230333, 2024 WL 5251574

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THIRD JUDICIAL DISTRICT  
FROM THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
DUPAGE COUNTY, ILLINOIS

ZS IT CONSULTING SERVICES INC

Plaintiff/Petitioner

Reviewing Court No: 3-23-0333

Circuit Court/Agency No: 2020L001396

v.

Trial Judge/Hearing Officer: TIMOTHY J MCJOYNT

HUNT LAW GROUP LLC THE

Defendant/Respondent

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APPEAL TO THE APPELLATE COURT OF ILLINOIS  
THIRD JUDICIAL DISTRICT  
FROM THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
DUPAGE COUNTY, ILLINOIS

ZS IT CONSULTING SERVICES INC

Plaintiff/Petitioner

Reviewing Court No: 3-23-0333

Circuit Court/Agency No: 2020L001396

v.

Trial Judge/Hearing Officer: TIMOTHY J MCJOYNT

HUNT LAW GROUP LLC THE

Defendant/Respondent

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APPELLATE COURT 3RD DISTRICT

# NOTICE OF FILING and PROOF OF SERVICE

In the Supreme Court of Illinois

Z's IT CONSULTING SERVICES, INC., et al.,	)	
	)	
<i>Plaintiffs-Counter Defendants-Appellees,</i>	)	
	)	
v.	)	No. 131446
	)	
HUNT LAW GROUP LLC,	)	
	)	
<i>Defendant-Counter Plaintiff-Appellant.</i>	)	

The undersigned, being first duly sworn, deposes and states that on April 30, 2025, the Brief of Defendant-Counter Plaintiff-Appellant was electronically filed and served upon the Clerk of the above court. On April 30, 2025, service of the Brief will be accomplished electronically through the filing manager, Odyssey EfileIL to the following counsel of record:

Steven C. Carbon  
scarbon@kclattorneys.com

Lawrence A. Stein  
Lawrence A. Stein LLC  
larry@larrysteintrials.com

Within five days of acceptance by the Court, the undersigned states that 13 paper copies of the Brief bearing the court's file-stamp will be sent to the above court.

/s/ Michael W. Rath sack  
Michael W. Rath sack

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Michael W. Rath sack  
Michael W. Rath sack