

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

U.S. DIAMOND & GOLD, INC., et al.,	:	CASE NO. 3:06-cv-371
		Judge: Thomas M. Rose
Plaintiffs,	:	
v.	:	
JULIUS KLEIN DIAMONDS LLC, et al.,	:	PLAINTIFFS’ NOTICE OF
		STATUTORY ELECTION OF
Defendants.	:	DAMAGES PURSUANT TO R.C.
		§2307.61
		AND
	:	NOTICE OF PROPOSED JUDGMENT
	:	ENTRY

Plaintiffs, U.S. Diamond & Gold Jewelers, Inc. d/b/a Stafford Jewelers (“Stafford Jewelers”) and John M. Stafford (“John Stafford”) (collectively “Plaintiffs”), hereby give notice of their statutory election of remedies for Plaintiffs’ claim of Civil Liability for Criminal Acts pursuant to O.R.C. §2307.61, and submit a proposed judgment entry reflecting the jury verdict in the above-captioned matter.

The jury unanimously found for Plaintiffs on each of their three causes of action and, in following the instructions of the Court, awarded Plaintiffs damages under each individual claim. The amounts awarded by the jury are not duplicative. They are: for Unjust Enrichment: \$8,400; for Conversion: \$1,700,000 plus attorneys’ fees; and for Civil Liability for a Criminal Act: \$2,300,000.¹

¹ For a more thorough recitation of the Court’s instructions and the jury’s interrogatory answers, as well as applicable law, Plaintiffs incorporate by reference their Memorandum Contra JKD’s Motion for a New Trial, filed December 12, 2008, Doc. #215. The jury complied with the Court’s instructions by intentionally awarding different amounts under each of Plaintiffs’ claims to fully compensate the Plaintiffs for their loss.

Under the civil liability for criminal act statute, Plaintiffs are permitted to elect to recover liquidated damages equal to three times the value of the property at the time it was the subject of a theft offense, irrespective of whether the property is recovered by way of replevin or otherwise, is destroyed or otherwise damaged, is modified or altered, or is resalable at its full market price. R.C. §2307.61(A)(1)(b)(ii).² The statute further defines the value of the property as the “retail value of any property that is offered for sale by a mercantile establishment”. R.C. §2307.61 (H)(2)(a).

The jury unanimously concluded that JKD was liable for the theft of the Pink Diamond and awarded \$2,300,000 for that claim. The \$2,300,000 amount, when added to the \$1,700,000 awarded for Plaintiffs’ conversion claim, represents the full value (\$4,000,000) of the Pink Diamond at the time it was sent to JKD. John Stafford, the owner of the Pink Diamond, testified to the potential \$4,000,000 value of the Pink Diamond without objection by JKD at trial.³ Following the specific instructions of the Court not to duplicate any damages awarded, the jury allocated the \$4,000,000 value over two causes of action. Because the jury also followed the instructions in the interrogatories and inserted the value of \$2,300,000 on the appropriate line on the damages interrogatory for civil liability for criminal act,⁴ for purposes of R.C. §2307.61, the amount of \$2,300,000 is the “retail” value of the Pink Diamond. Accordingly, pursuant to R.C. §2307.61, Plaintiffs’ give notice of their election of liquidated damages equal to three times the jury’s damages award in Interrogatory No. 7, for an award of \$6,900,000 as compensation for Plaintiffs’ claim for Civil Liability for Criminal Acts.

² See also, *X-Technology, Inc. v. MJ Technologies*, Cuyahoga Cty. Case No. 80126, 2002 Ohio 2259 (8th Dist.).

³ As noted in Plaintiffs’ Memorandum Contra JKD’s Motion for a New Trial, there is substantial evidence in the record from Mr. Stafford and two other witnesses as to the value of the Pink Diamond. See Doc. #215, pp. 9-10.

⁴ The parties failed to ask the Court for an additional interrogatory to permit the jury to add those values together.

Finally, attached to this Notice is a proposed Judgment Entry reflecting the jury's award of \$8,400 for Plaintiffs' Unjust Enrichment claim; \$1,700,000 for Plaintiffs' Conversion claim, plus attorneys' fees; \$6,900,000 for Plaintiffs' statutory election of liquidated damages for the Civil Liability for Criminal Acts; Post-Judgment Interest pursuant to 28 U.S.C. §1932(a); and costs pursuant to Federal Rules of Civil Procedure 54(d).⁵ Plaintiffs' further retain the right to file a Motion for Pre-Judgment Interest pursuant to O.R.C. 1343.03(C).

Respectfully submitted,

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⁵ Attached as Exhibit A.

CERTIFICATE OF SERVICE

I certify that true copies of the foregoing document were filed and served on counsel of record electronically through the Court's CM/ECF system on December 19, 2008 and also served by e-mail on:

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