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Intentional Interference with Economic Relations: A Narrow, but Powerful Tort



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At common law, a party can sue another for intentionally interfering with their economic relations. Also known as the tort of “unlawful” means, this cause of action allows the plaintiff to bring an action against the defendant where the defendant intended to injure the plaintiff’s economic interests.

In recent years, Canadian Courts have narrowed the scope of the tort of intentional interference. As set out below, the Supreme Court of Canada’s 2014 decision in *A.I. Enterprises v. Bram Enterprises*, 2014 SCC 12 (“*A.I. Enterprises*”) limited the circumstances in which a defendant can be held liable for interfering with the plaintiff’s economic relations.

A recent decision of the Ontario Court of Appeal has affirmed the reasoning of *A.I. Enterprises*.

In *Grand Financial Management Inc. v. Solemnio Transportation Inc.*, 2016 ONCA 175, per Blair J.A. (“*Grand Financial*”), the Court made two important findings about the tort

of intentional interference with economic relations: (i) first, the tort is narrow in scope. Specifically, the requirement that the defendant use “unlawful means” to achieve its end will be interpreted narrowly by the courts; and (ii) second, if the defendant’s liability can be proven, the Court may award damages “at large” to compensate the plaintiff.

What is the Tort of Intentional Interference with Economic Relations?

The tort of intentional interference with economic relations is a commercial tort. It establishes a “parasitic” form of liability where three parties are involved: that is, it allows a plaintiff to sue a defendant for economic loss resulting from the defendant’s unlawful act against a third party.

The tort has three requirements: (i) the defendant must have intended to injure the plaintiff’s economic interests; (ii) the interference must have been by illegal or unlawful means; and (iii) the plaintiff must

have suffered economic harm or loss as a result.

Each of these three elements were met in the Court of Appeal's decision in *Grand Financial*.

The Facts of Grand Financial

Grand Financial involved a "factoring agreement". This is a contract in which a party assigns its accounts receivable to a financing party, known as the "factor". In exchange for the assignment of the accounts receivable, the assignor receives immediate payment for its accounts at a discount. In turn, the factor collects the accounts from the third party who was responsible for payment. The factor therefore assumes significant risk that the payment of the account by the third party may be delayed or may never be made at all.

Grand Financial provided factoring services to the transportation industry. Arnold Bros Transport Ltd. ("Arnold Bros.") was a trucking company that subcontracted its freight delivery duties to Solemnio Transportation Inc. ("Solemnio"). This arrangement created accounts receivable in favour of Solemnio for its services. For a brief period, these accounts receivable were assigned to "Grand Financial" pursuant to an agreement between Solemnio and Grand Financial (the "Solemnio Contract" and the "Solemnio Receivables").

As part of the Solemnio Agreement, Solemnio granted a security interest in the undertakings of its business

to Grand Financial. The security interest was registered under the *Personal Property Securities Act*, R.S.O. 1990, c.P.10 (the "PPSA Security")

Solemnio then subcontracted the Arnold Bros. work to another company, Wild Lions Inc. ("Wild Lions"), which created accounts receivable owing by Solemnio to Wild Lions (the "Wild Lions Contract" and the "Wild Lions Receivables"). The Wild Lions Receivables were also assigned to Grand Financial under the Wild Lions Agreement.

For a short period of time after it signed the Solemnio Agreement, Solemnio sent its invoices to Grand Financial to be processed. However, once Solemnio realized that it was losing money in its agreement with Grand Financial, Solemnio decided to revert back to its original arrangement with Arnold Bros., whereby: Arnold Bros. would subcontract its delivery obligations to Solemnio; Solemnio would further subcontract this work to Wild Lions; Wild Lions would invoice Solemnio for its services; Solemnio would apply a mark-up; Solemnio would invoice Arnold Bros. for the work done; and Arnold Bros. would then pay Solemnio on a "quick pay" basis.

Accordingly, the Solemnio Agreement with Grand Financial had been terminated only weeks after it was formed.

Upon learning of the termination of the Solemnio Agreement, the principal of Grand Financial reacted

angrily. Although the Solemnio Agreement was terminated, he acted on Solemnio's PPSA Security and improperly seized the amount of \$35,000 from Solemnio's RBC account. He further threatened to put Solemnio out of business. He also contacted Arnold Bros. and stated that "someone was going to pay the money he was owed" and he "didn't care who". He further threatened to "go after" Arnold Bros.' customers.

As a result of this conduct, Arnold Bros. ended its business relationship with Solemnio. Arnold also interrupted deliveries that were in process and directed that Solemnio's trucks were to be stopped such that Arnold Bros. would complete the trucks' deliveries.

Solemnio sought damages against Grand Financial for intentional interference with economic relations. The trial judge found Grand Financial liable and awarded Solemnio \$175,000 in damages at large. The Court of Appeal affirmed this part of the trial judge's ruling. In so doing, the Court of Appeal held that the plaintiff established the necessary elements of the narrow tort of interference with economic relations, though it affirmed that the tort was narrow in scope.

What Constitutes "Unlawful Means"?

The Court of Appeal upheld the trial judge's ruling that the plaintiff had met the first and third elements of intentional interference with

economic relations. That is, Solemnio established that: (i) the actions of Grand Financial were intended to harm Solemnio's business interests; and (ii) Solemnio suffered economic harm as a result of Grand Financial's conduct, i.e. \$35,000 was improperly taken from Solemnio's RBC account by Grand Financial. Grand Financial also caused the termination of the relationship between Solemnio and Arnold Bros.

The chief issue on appeal was whether Solemnio established the second element of the tort, i.e. whether Grand Financial's interference with Solemnio's economic relations was done by "unlawful or illegal means".

Grand Financial argued that the trial judge erred in finding that it employed unlawful means. The Court of Appeal rejected Grand Financial's position and upheld the trial judge's ruling.

The Court began by citing the Supreme Court of Canada's decision in *A.I. Enterprises* regarding the "core" of the tort of intentional interference with economic relations:

...While the elements of the tort have been described in a number of ways, its core captures the intentional infliction of economic injury on C (the plaintiff) by A (the defendant's use of unlawful means against B (the third party).

In other words, in order for a party's behavior to amount to "unlawful

means", the conduct would have to be "actionable by the third party or would have been actionable if the third party had suffered loss as a result of it".

Accordingly, Grand Financial argued that the exercise of its PPSA Security at RBC would not have been actionable by RBC or Arnold Bros. as Grand Financial had provided RBC and Arnold Bros. with the security documentation and claimed it was entitled to the funds owing by Arnold Bros. to Solemnio.

However, the Court held that RBC or Arnold Bros. would have had a claim against Grand Financial for negligent misrepresentation, if either party had actually suffered a loss. Grand Financial claimed to recover on what it knew to be an "ineffective security instrument". Grand Financial represented to the bank that the security instrument was enforceable, when it clearly was not and the relationship between Grand Financial and Solemnio was at an end. Simply put, Grand Financial's representation to the bank was untrue. Thus, if the bank had suffered a loss, it would have been able to claim against Grand Financial for its misrepresentation.

Moreover, the Court held that if Arnold Bros. had suffered a loss as a result of Grand Financial's conduct, it would have been able to claim against Grand Financial for the tort of intimidation. This was based on the unlawful threats of Grand Financial's principal, who alleged

he would "go after" Arnold Bros.' clients. This threat led to Arnold Bros' terminating its longstanding relationship with Solemnio. It also left Solemnio's trucks stranded in various locations.

Accordingly, the evidence established that Solemnio had proven the "unlawful means" aspect of the tort of intentional interference with economic relations. Grand Financial's conduct would have been actionable by RBC or Arnold Bros. had either party suffered a loss. Despite these findings on the evidence, the Court of Appeal in Grand Financial emphasized that the tort of unlawful interference was narrow in scope and that this "three-party" paradigm had to be met in order to satisfy the elements of the tort.

Can Damages for Intentional Interference Be Awarded "At Large"?

The Court of Appeal also upheld the trial judge's ruling that Grand Financial was liable to Solemnio for \$175,000 in damages, which were awarded "at large". As compared to actual pecuniary damages that reflect the actual amount of the plaintiff's loss, "at large" damages are not capable of being precisely measured and are, in the Court's words, a matter of the court's "impression".

In this case, even though Solemnio was unable to prove the quantum of its actual losses, the Court

could award an amount of general damages “at large” for the intentional interference with economic relations.

The Court held that damages at large could be awarded in cases of intentional torts. It further held that damages at large could be held to compensate a corporate plaintiff for injury to the company’s reputation and associated economic losses. Generally, “at large” damages are awarded to compensate for loss of reputation, injured feelings, and bad conduct. They can also be used to “condemn flagrant abuses of the legal process”. They are intended to compensate for losses that cannot be easily quantified. They are a

matter of discretion for the trial judge.

The Court of Appeal held that damages at large were justified in this case. Solemnio lost a major client, Arnold Bros., as a result of Grand Financial’s conduct. Although it was unclear how the trial judge arrived at a quantum of \$175,000, the Court of Appeal held that the trial judge made no error in so doing.

Conclusion

The decision in *Grand Financial* confirms that the tort of intentional interference with economic relations remains narrow in scope. Having said that, where it can be shown

that a third party could pursue an action against the defendant for the defendant’s conduct, the “unlawful means” aspect of the tort is satisfied. The Courts appear to be motivated by the equities—where the Court believes a wrong has been committed by the defendant, it will do its utmost to find a potential cause of action as between the third party and the defendant had the third party suffered an actual loss.

Moreover, where it is clear that the plaintiff has suffered a loss as a result of the defendant’s conduct, but that loss cannot be easily quantified, the Courts will not hesitate to use their discretion to award damages “at large” to compensate the plaintiff.

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