

The Canadian Abridgment eDigests -- Torts

2022-10
March 07, 2022

TOR.IV.1.a.vii

Subject Title: Torts

Classification Number: IV.1.a.vii

Conversion -- Availability -- Against particular party -- Miscellaneous

Lessee -- Plaintiff leased nine trucks to corporate defendant ISEES which was owned by individual defendant J -- Plaintiff alleged that ISEES had stopped making payments on six trucks in August 2017 and had failed to return them -- Plaintiff sued for outstanding balances owed and for conversion of its trucks -- Plaintiff obtained judgment against ISEES for amounts due under leases but parallel claim against J was dismissed -- Trial judge ruled that ISEES was in breach of disputed lease agreements by failing to make monthly payments and failing to return trucks as required by agreements -- Trial judge also ruled that ISEES was also liable to plaintiff for tort of conversion but that J was not -- Plaintiff appealed dismissal of parallel claim and costs; defendants cross-appealed -- Appeal allowed; cross-appeal dismissed -- Issue between parties was matter of debt arising from breach of contract while breach of contract could sometimes make breaching party liable in tort, contract took primacy -- Transaction was debt transaction in substance and remedies should prima facie be in contract and debt -- Conversion could not be made out where alleged tortfeasor was holding or dealing with property with consent of owner -- Leases for trucks, under which defendants had consent of their owner to possess them, had expired and plaintiff had since treated them as month-to-month leases -- Defendants had continuing consent to possess trucks on month-to-month basis -- Plaintiff acknowledged at trial that its threat to report trucks stolen was improper, again conceding that defendant at least had colour of right of possession -- Merely breaching leases was not "unlawful act" for purpose of tort of conversion as mere failure to make rental payments did not terminate lawful possession -- Defendants had done nothing with respect to trucks other than to be in default of their payments obligations which was result of their misunderstanding of their rights under those leases -- Failure to make payments did not render continuing possession of vehicles unlawful for purposes of conversion even though it might entitle plaintiff to number of other remedies -- Mere possession of trucks after expiry of leases itself did not make out sufficient "wrongful act" to constitute conversion -- Trial judge erred in finding that conduct which constituted conversion was same conduct which constituted breach of contract.

Driving Force Inc v. I Spy-Eagle Eyes Safety Inc ([2022](#)), [2022 ABCA 25](#), [2022 CarswellAlta 189](#), Frans Slatter J.A., Frederica Schutz J.A., Jack Watson J.A. (Alta. C.A.) [Alberta]

TOR.IV.1.c

Subject Title: Torts

Classification Number: IV.1.c

Conversion -- Availability -- Joint conversion

Plaintiff leased nine trucks to corporate defendant ISEES which was owned by individual defendant J -- Plaintiff alleged that ISEES had stopped making payments on six trucks in August 2017 and had failed to return them -- Plaintiff sued for outstanding balances owed and for conversion of its trucks -- Plaintiff obtained judgment against ISEES for amounts due under leases but parallel claim against J was dismissed -- Trial judge ruled that ISEES was in breach of disputed lease agreements by failing to make monthly payments and failing to return trucks as required by agreements -- Trial judge also ruled that ISEES was also liable to plaintiff for tort of conversion but that J was not -- Plaintiff appealed dismissal of parallel claim and costs; defendants cross-appealed -- Appeal allowed; cross-appeal dismissed -- Issue between parties was matter of debt arising from breach of contract while breach of contract could sometimes make breaching party liable in tort, contract took primacy -- Truck leases were primarily method of financing and private ordering of parties should be respected -- Transaction was debt transaction in substance and remedies should prima facie be in contract and debt -- If rental payments were not made, or trucks were not returned, parties intended that remedy would be for breach of contract -- Foundation of parties' relationship in contract meant that defendant was lawfully entitled to possession of trucks at commencement of leases, and recovery of them by plaintiff was matter of contractual right -- Defendant did not acquire possession of trucks illegally and their possession was subject to obligation to return them end of contract but that did not mean that their possession after that point was tortious -- There was no covenant or contract of guaranty or indemnity -- J was not party to six disputed leases and did not provide personal guarantee -- Corporate defendant was separate legal person -- Expectation in commercial dealings is that personal liability of shareholder or director of corporation would be engaged by written guarantee -- Attempt to find defendant ISEES collaterally liable in conversion, was to support claim against J -- Secured lender should not be able to engage personal liability of directors and shareholders of corporate borrower simply by suing for tortious conversion of collateral rather than in contract or debt.

Driving Force Inc v. I Spy-Eagle Eyes Safety Inc ([2022](#)), [2022 ABCA 25](#), [2022 CarswellAlta 189](#), Frans Slatter J.A., Frederica Schutz J.A., Jack Watson J.A. (Alta. C.A.) [Alberta]

TOR.XI.1.c

Subject Title: Torts

Classification Number: XI.1.c

Interference with economic relations -- Elements -- Use of unlawful means

Plaintiff was franchise company, with individual defendants being principals of company -- Company claimed individuals intentionally deceived third-party corporation, as to nature of franchise opportunities -- Company claimed these actions constituted civil fraud, and interference with economic relations -- Company brought action in tort against defendants, seeking damages -- Action allowed; company awarded damages in amount of \$34,575,000 -- Company established that there was valid business relationship, with expectation of further business with corporation -- Defendants made false statements to corporation, on balance of probabilities -- These statements led to corporation's refusal to expand scope of its business with company -- Tort of interference with economic interests was made out.

Ultracuts v. Magicuts ([2021](#)), [2021 CarswellMan 741](#), [2021 MBQB 250](#), Saull J. (Man. Q.B.) [Manitoba]

TOR.XIV

Subject Title: Torts**Classification Number: XIV****Misfeasance in public office**

In 2020, federal government promulgated regulations that resulted in certain restricted and non-restricted firearms, or any named or unnamed variation or modification thereof, becoming prohibited -- When Royal Canadian Mounted Police (RCMP) assessed certain firearms distributed by plaintiff firearms distributor as prohibited, plaintiff brought application for judicial review -- When plaintiffs, distributor and its founder, determined they would continue distributing those firearms on basis they had not been specifically listed in regulations, merely added to reference document produced by police, Office of Chief Firearms Officer (CFO) advised that would constitute failure to comply and enforcement action would be taken -- Plaintiffs discontinued application for judicial review and commenced action against two members of RCMP and two members of CFO, and against federal Crown on basis of vicarious liability, for damages for misfeasance in public office -- They took position RCMP and CFO members had exceeded their authority by redesignating subject firearms as prohibited or by demanding plaintiffs cease their distribution -- They also claimed additional or alternative damages for de facto expropriation, interference with economic relations, breach of duty of care and breach of various rights under Charter of Rights and Freedoms -- Defendants brought motion for order striking claims -- Motion granted in part -- In order to succeed, claimant alleging misfeasance in public office was required to establish that public official had engaged in deliberate and unlawful conduct in his or her capacity as public official and been aware that conduct was unlawful and likely to harm claimant -- Without making any determination as to merits, plaintiffs' allegations personal defendants had no authority to redesignate firearms, had done so unlawfully and then acted on those unlawful designations to demand compliance, knowing they were not authoritative and would cause financial injury to plaintiffs, were enough to conclude plaintiffs should be given opportunity to establish each element -- Same could not be said of additional or alternative claims -- Statement of claim did not plead sufficient facts to establish or to identify elements of intentional interference with economic relations, de facto expropriation, negligence or breaches of Charter.

Magnum Machine Ltd. (Alberta Tactical Rifle Supply) v. Canada ([2021](#)), [2021 CarswellNat 4845](#), [2021 CarswellNat 4844](#), [2021 CF 1112](#), [2021 FC 1112](#), Jocelyne Gagné A.C.J. (F.C.) [Federal]

TOR.XV.1.a

Subject Title: Torts**Classification Number: XV.1.a****Negligence -- Duty and standard of care -- Duty of care**

Plaintiffs were parents of son who exhibited series of medical concerns shortly after he was born (eldest child) -- Eldest child was eventually seen by defendant doctor JP, and following his assessment, doctor JP made diagnosis of global developmental delay and recommended referral to treatment centre for services in speech and language therapy, as well as occupational therapy -- Plaintiff mother gave birth to another son who began to

experience medical and developmental problems that were similar to but in some areas more severe than, those experienced by eldest child -- Younger child was diagnosed with Fragile X Syndrome, and subsequently, eldest child was also diagnosed with Fragile X Syndrome -- Doctor JP brought motion to strike statement of claim -- Motion dismissed -- It was not plain and obvious that parent's action against doctor JP had no prospect of success -- Facts as pleaded established prima facie duty of care owed by doctor JP to parents -- Doctor JP could have reasonably foreseen that woman of childbearing age with young child with developmental delay issues and expressed concerns about possible genetic cause of issues would also be concerned about impact of any genetic explanation on decision to have additional children -- There was sufficient proximity between parties that it would not be unjust or unfair to impose duty of care on doctor JP.

Bonenfant v. Ponesse (2021), 2021 CarswellOnt 19983, 2021 ONSC 8544, Graeme Mew J. (Ont. S.C.J.); additional reasons at (2022), 2022 CarswellOnt 2097, 2022 ONSC 1187, Graeme Mew J. (Ont. S.C.J.) [Ontario]

TOR.XVII.4

Subject Title: Torts

Classification Number: XVII.4

Privacy -- Invasion of privacy

Publication is not violation of privacy if matter published is of public interest, and matters in article were of public interest.

Durkin v. Marlan (2022), 2022 BCSC 193, 2022 CarswellBC 296, Thompson J. (B.C. S.C.) [British Columbia]

TOR.XXI.3.a

Subject Title: Torts

Classification Number: XXI.3.a

Trespass -- Trespass to person -- Assault and battery

Appellant sisters were successful on appeal, in overturning judgment dismissing action in tort against aunt and Crown.

Paddy-Cannon v. Canada (Attorney General) (2022), 2022 ONCA 110, 2022 CarswellOnt 1370, P. Lauwers J.A., S. Coroza J.A., Sossin J.A. (Ont. C.A.); reversing *Paddy-Cannon et al v. Attorney General of Canada et al* (2019), 2019 CarswellOnt 16290, 2019 ONSC 5665, Corkery J. (Ont. S.C.J.) [Ontario]

TOR.XXI.3.a

Subject Title: Torts

Classification Number: XXI.3.a**Trespass -- Trespass to person -- Assault and battery**

Plaintiff purchased and moved into single-family home in subdivision in 2001 -- At same time, defendant purchased and moved into home next door -- Shortly after moving in as neighbours, needless feud developed between plaintiff and defendant, which resulted in development of toxic relationship -- Toxic relationship deteriorated over years that parties lived beside each other and ultimately led to physical altercation on March 30, 2010 -- Each party claimed altercation was started by other party -- On March 16, 2012, plaintiff brought action against defendant for damages for assault, battery, aggravated assault, intentional infliction of harm, nervous shock and mental distress, and punitive and aggravated damages -- Action dismissed -- Inconsistencies in evidence raised serious concerns about credibility and reliability of plaintiff's evidence -- Plaintiff presented himself as innocent victim who was unjustly targeted by neighbour -- Circumstances of incident on March 30, 2010 led to conclusion that plaintiff was attempting to move garbage onto defendant's property just prior to altercation -- Video evidence showed verbal abuse by both parties and undermined plaintiff's representation as innocent victim -- On balance of probabilities, fight on March 30, 2010 occurred with plaintiff as aggressor -- Plaintiff started the altercation by hitting defendant with stick and defendant initially protected himself with arms and hands -- Defendant then grabbed plaintiff in headlock, both fell to ground and both were trying to punch each other until defendant was able to get on top of plaintiff and pinned his arms -- Defendant established self defence as complete defence to plaintiff's claim -- All claims were dismissed.

Grech v. Scherrer (2021), 2021 CarswellOnt 14033, 2021 ONSC 6740, M. McKelvey J. (Ont. S.C.J.) [Ontario]

TOR.XXIII.7.a

Subject Title: Torts**Classification Number: XXIII.7.a****Practice and procedure -- Strategic Lawsuits Against Public Participation [SLAPP] -- Dismissal of action**

Plaintiff commenced action pleading defamation and privacy torts in respect of article written by defendant journalist regarding hotel -- Defendants applied for dismissal order relying on provisions of Protection of Public Participation Act, on basis that article was expression relating to matter of public interest and that plaintiff had not established statutory conditions permitting proceeding to continue -- Application granted -- There was substantial public interest in protecting expression in circumstances which outweighed modest seriousness of harm suffered by article's publication -- Defamation plea had substantial merit and claims based on invasion of privacy did not -- Publication is not violation of privacy if matter published is of public interest, and matters in article were of public interest -- Novel false-light privacy tort pleaded by plaintiff was unlikely to succeed as plaintiff failed to show key requirements of tort -- Although article portrayed plaintiff as thief, but plaintiff did not have real prospect of success in proving that publication of article placed him in false light -- After trial, plaintiff had been found to have "effectively stole" comfortable retirement from another individual and that plaintiff had been deceitful and dishonest in all of his dealings with that individual -- Plaintiff had no prospect of showing that any defendants acted with knowledge or reckless disregard -- Responsible journalism defence to defamation plea had real prospect of success.

Durkin v. Marlan ([2022](#)), [2022 BCSC 193](#), [2022 CarswellBC 296](#), Thompson J. (B.C. S.C.) [British Columbia]

THOMSON REUTERS
WESTLAW CANADA