

Ontario Court of Appeal upholds liability for tort of intentional interference with economic relations

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The Ontario Court of Appeal has now emphasized that the tort of intentional interference with economic relations has narrow applicability, but does occur. In its March 2, 2016 decision in *Grand Financial Management Inc. v. Solemio Transportation Inc.*, the Court considered a case in which one party (Grand Financial) threatened to put another (Solemio) out of business. Grand Financial also sought to disrupt Solemio's business by influencing the actions of a third party (Arnold Bros.) and illegitimately seizing security interests held by another third party (RBC).

The decision also raised several [issues of appellate practice](#).

Background

The decision resolves a dispute in the trucking industry. Grand Financial, a factoring company, reacted angrily after Solemio, a trucking company, terminated its agreement with Grand Financial. Grand Financial sued Solemio, and the trial judge awarded Grand Financial \$200,000. This was overturned on appeal because Grand Financial had not, in its pleading, relied upon the contract that the trial judge held was the basis of the obligation to pay the \$200,000.

After Solemio terminated the contract, Grand Financial acted on security it held pursuant to the *Personal Property Security Act* (PPSA) and seized \$35,000 from Solemio's account at RBC. Grand Financial's principal (Mr. Rakhnayev) threatened to put Solemio out of business. He told Arnold Bros. (another trucking company that did business with Solemio) that "someone was going to pay the money he was owed – he 'didn't care who' – and that he would 'go after' the customers of Arnold Bros." In response, Arnold Bros. stopped doing business with Solemio immediately, even interrupting deliveries in process. Solemio used these facts as the basis for its counterclaim for intentional interference with economic relations. The trial judge awarded Solemio \$175,000 on this counterclaim.

Intentional interference with economic relations is established

The tort of intentional interference with economic relations has three elements:

1. The defendant must have intended to injure the plaintiff's economic interests.
2. The interference must have been by illegal or unlawful means.
3. The plaintiff must have suffered economic harm or loss as a result.

Though emphasizing that this tort will rarely be established, Justice Blair, on behalf of a

unanimous Court of Appeal, held that Solemio had met its burden in this case.

First, the trial judge found that the actions of Grand Financial, exemplified by Mr. Rakhnaye's threats to Arnold Bros., were directly intended both to harm Solemio in its business interests and to enrich itself.

The second element of the test was the main battleground on appeal. Justice Blair agreed with Grand Financial that *A.I. Enterprises Ltd. v. Bram Enterprises Ltd.*, a 2014 Supreme Court of Canada decision, established that "the tort should be kept within narrow bounds" and should be viewed "as one of narrow scope." Specifically, the tort "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)." As such, the "unlawful activity" within the second element of the test must be actionable by the third party. (See our earlier [Update](#) for more information.)

Illegality was present in this case as Grand Financial acted unlawfully towards both RBC and Arnold Bros.:

- RBC had a claim for, at the very least, negligent misrepresentation. Grand Financial represented to RBC that the PPSA security was enforceable. It was reasonably foreseeable that the bank would rely on this representation and such reliance would, in the circumstances, have been reasonable. The representation was untrue and misleading, and Grand Financial was at best negligent in making it. If RBC had suffered loss as a result, the reliance would have been detrimental to it.
- Arnold Bros. was threatened by Mr. Rakhnaye. This threat led directly to the demise of Arnold Bros.'s relationship with Solemio. Had Arnold Bros. suffered a loss as a result, the loss would have been actionable by it, either through misrepresentation grounds or the tort of intimidation.

Third, the economic harm that Solemio suffered was obvious – \$35,000 was improperly taken from its RBC bank account and its important business relationship with Arnold Bros. was destroyed.

Award of damages at large permitted and entitlement to deference

Both Solemio and Grand Financial argued that the trial judge had erred in his approach to calculating "damages at large" for the tort. Solemio argued that they should have been higher than the \$175,000 awarded, while Grand Financial submitted that they should have been nil or, in the alternative, \$35,000 (the amount seized).

Noting that damages at large cannot be quantified with precision, Justice Blair did not accept these arguments. The trial judge had considered the purposes of damages at large, including compensation for loss of reputation and injured feelings, the bad and good conduct of the parties, the need for punishment and the opportunity to condemn flagrant abuses of the legal process. At the end of the day, deference was owed to the trial judge:

[89] ... damages at large are "a matter of impression" and are not something that can be precisely measured. It is difficult for an appellate court to say that the assessment is plainly erroneous in such circumstances: [...]. While I may not have arrived at the amount of

\$175,000, I cannot say that the trial judge erred in principle in doing so. He properly took into account all of the relevant factors in arriving at his conclusion.

Conclusion

The tort of intentional interference with economic relations is difficult to prove, but as *Grand Financial* exemplifies, difficult is not the same as impossible. This case is a cautionary tale for businesses and a reminder that courts will not permit one party to illegally interfere with the affairs of a third party.