

CASE NOTE:

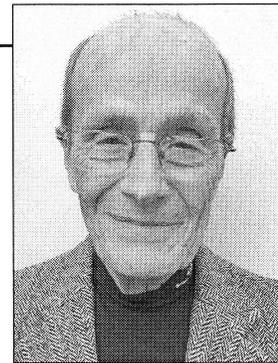
Freight Held Hostage: A Different Perspective on the Troublesome Issue Which Bubbles Along in the Shipping Business

Bullet Express, Inc. v. New Way Logistics, Inc. 70 NE 3d 251,410 Ill. Dec. 434, (2016)

add → Affirmed on Appeal Dec 30, 2016. 2016 IL App (1st) 160651

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In most cases involving freight held hostage, the broker/ shipper/ freight forwarder asserts that the carrier which has refused to deliver the freight, is liable for "conversion." Conversion is a form of civil theft, meaning the carrier is wrongfully exercising dominion, and control over the freight without legal justification. The *Bullet Express* case is unique in that the shipper asserted another legal theory of liability, namely, "tortious interference with prospective economic advantage" and won. Here's what happened:

BULLET EXPRESS, INC.,
Plaintiff-Appellee, v.
NEW WAY LOGISTICS, INC.,
Defendant-Appellant

(Tom Stankiewicz, Defendant).
70 NE 3d 251,410 Ill. Dec. 434, (2016)

The trial court's finding was based on defendant's conduct in picking up and refusing to deliver two cargo loads that the plaintiff had hired defendant to deliver, which defendant did in an attempt to force plaintiff to pay defendant funds that plaintiff allegedly owed defendant for previous deliveries. Defendant appealed from the trial court's finding, as well as the trial court's imposition of punitive damages. Illinois Court of appeals affirmed decision of the trial court.

Summary of Facts

On January 17, 2014, plaintiff filed

a complaint against defendant and Tom Stankiewicz,¹ defendant's principal, alleging that plaintiff was an Illinois corporation that "operated as an expedited long haul carrier utilizing independent contractors such as defendant to deliver goods. Under plaintiff's business model, plaintiff provided express and emergency transportation services of small, pallet-sized shipments or smaller for its customers that required immediate pick-up and delivery." On November 12, 2013, plaintiff and defendant entered into a lease agreement whereby defendant agreed to lease four vans to plaintiff and to provide drivers to transport shipments as dispatched by plaintiff.

On January 3, 2014, plaintiff received an emergency request from Bronco Freight Systems (Bronco) to transport a shipment from South Elgin, Illinois, to Eufaula, Alabama, "with the express direction that the pallet be delivered at the destination on January 4, 2014 by 8:00 a.m. without fail." After receiving this request, plaintiff assigned the shipment to defendant for delivery via one of the vans leased to plaintiff. On the same day, defendant's driver picked up the shipment in South Elgin, Illinois.

Also, on January 3, 2014, plaintiff received a request from Landstar Express America, Inc. (Landstar), to transport a shipment from Michigan City, Indiana, to Minneapolis, Minnesota, "for immediate delivery." After receiving this request,

plaintiff assigned the shipment to defendant for delivery via one of the vans leased to plaintiff. On the same day, defendant's driver picked up the shipment in Michigan City, Indiana. However, "after picking up the Landstar Shipment and the Bronco Shipment, defendant refused to deliver the shipments as directed by plaintiff and, instead, took the Landstar Shipment and the Bronco Shipment hostage by keeping the two shipments at the parking lot outside defendant's location in Niles, Illinois." Stankiewicz, defendant's principal, claimed the reason for keeping the shipments on January 4, 2014, when he contacted plaintiff "and demanded that plaintiff pay over \$25,550.00 for services performed under the lease agreement despite the fact that defendant had only performed \$19,019.81 of services and despite the fact that its payments were not yet due under the Agreement." The complaint alleges that the past November, plaintiff had received a "Notice of Assignment," which directed it to forward all payments due to defendant to a bill factoring company. Plaintiff had forwarded two payments to the factoring company but was later informed that

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TLA Feature Articles and Case Notes

the factoring company had "misplaced the payments," meaning that plaintiff had not received credit. Plaintiff "informed defendant that it was ready, willing, and able to replace the checks but, instead, Defendants commandeered the two shipments."

On January 4, 2014, plaintiff informed defendant that the two shipments had a value of \$78,000 and \$200,000, respectively, "and that they needed to be delivered immediately or plaintiff would lose Landstar and Bronco as customers." However, "despite defendant's actual knowledge that its decision to hold the two expedited shipments subjected plaintiff to substantial liability and the likely loss of its customers Bronco and Landstar, defendant persisted in its intentional decision to hold the Bronco Shipment and the Landstar Shipment hostage." The complaint alleges that the two shipments remained on defendant's vans as of the date of the filing of the complaint.

The complaint alleges five counts against defendant and Stankiewicz, its principal, including counts for replevin, breach of contract, a temporary restraining order, and conversion. Interestingly, only the count asserting, tortious interference with a prospective economic advantage, was at issue on appeal.

The complaint alleged that: as of January 3, 2014, plaintiff "had enjoyed a continuous business relationship with Landstar for over seven years and had developed personal relationships with several representatives of Landstar."; Similarly, as of January 3, 2014, plaintiff "had enjoyed a continuous business relationship with Bronco and had developed personal relationships with several representatives of Bronco.; that plaintiff "reasonably expected to continue a valid business relationship with Bronco and with Landstar,."; and that defendant and Stankiewicz were aware of plaintiff's reasonable expectancy of continuing the relationships with the two companies. Nevertheless, "defendant and Tom Stankiewicz purposefully interfered with plaintiff's legitimate expectancy to continue its valid business relationships with Bronco and with Landstar by intentionally and without legal or contractual justification holding the Landstar Shipment

result, "plaintiff asserted that it has and will continue to suffer damages resulting from defendant's and Tom Stankiewicz's wrongful actions." Plaintiff asserted compensatory damages in excess of \$50,000, punitive damages, and attorney fees and costs.

On January 21, 2014, defendant filed an answer and counterclaim, in which defendant admitted to being assigned the two shipments and picking them up. Defendant further admitted "that defendant initially declined to deliver the shipments because of plaintiff's breach of contract" Defendant also admitted "that on January 3, 2014 Krzysztoy , Stojkowski demanded payment of those amounts due, that plaintiff promised that it would make the payments, and that plaintiff has not made the payments due in breach of the parties' contract." Defendant denied that plaintiff informed it of plaintiff's relationships with Bronco and Landstar and that it would likely lose those customers as a result of defendant's actions. Defendant also denied that the shipments remained on its vans.

Trial Court Order

On September 30, 2015, the trial court entered judgment in favor of plaintiff and against defendant on plaintiff's complaint in the amount of \$64,141.58, consisting of \$45,141.58 in lost profit damages and \$22,000 in punitive damages. The court entered judgment in favor of defendant and against plaintiff on defendant's counterclaim in the amount of \$28,922.16, consisting of \$26,597.60 in unpaid invoices and \$2,324.56 in prejudgment interest. After subtracting the two numbers, the court entered a net judgment in favor of plaintiff and against defendant in the amount of \$38,219.42.

Following thorough analysis of the evidence, the court found defendant liable for breach of contract, conversion, and tortious interference with a prospective economic advantage. With respect to the count of tortious interference, the court found that: plaintiff demonstrated that it had a reasonable expectation of entering into future contracts for shipment with Landstar even though it had no underlying contractual relationship with Landstar; plaintiff's wit-

enjoyed a prosperous six-year relationship with Landstar and was retained to transport Landstar shipments on a regular basis; plaintiff had introduced evidence that plaintiff handled over 100 loads for Landstar over the two-year period prior to January 2014 and that "the fact that the Plaintiff and Landstar did not have a formal contract doesn't void a cause of action. All that is required is that the Plaintiff establish a reasonable expectancy of entering into a valid business relationship, which the Plaintiff has done."

The court found that: defendant knew of plaintiff's expectancy, finding that "a defendant need not have knowledge of the specific details of a plaintiff's respective business relation, and Illinois courts have held it to be sufficient where a defendant had a general knowledge of the plaintiff's business relationships and not knowledge of specific customers or the nature of the relationship."; defendant admitted that it knew that shipments were time-critical and that delivering a shipment late could result in significant problems; Stankiewicz testified that he learned that one of the loads belonged to Landstar on January 3, when he spoke with Ilibasis; that Stojkowski "knew it was Landstar by January 3 at the latest, and that was underscored by the fact that he actually had telephone conversations with Landstar's agent."

The court also found that plaintiff had established by a preponderance of the evidence that defendant intentionally interfered with plaintiff's relationship with Landstar. By January 4, 2014 the Defendant threatened to contact the customer for whom the shipments were to be made to let them know why Defendant was refusing to deliver them. Stojkowski subsequently did just that, telling Landstar through its Agent, that Defendant was refusing to deliver the shipment because it hadn't been paid."

The trial court found defendant liable for tortious interference with a prospective economic advantage. "In order 'to prevail on a claim for tortious interference with a prospective economic advantage, a plaintiff must prove: (1) his reasonable expectation of entering into a valid business relationship; (2) the defendant's knowledge

interference by the defendant that prevents the plaintiff's legitimate expectancy from ripening into a valid business relationship; and (4) damages to the plaintiff resulting from such interference.

The take away here is that, in addition to a "conversion claim," awareness and proof of the 4 factors I establishing tortious interference may help recover losses incurred from lost business in a hostage freight situation. Note that Plaintiffs (shipper) notified the

carrier immediately of the real risk of loss of business if the freight was not delivered on time and that before the incident, it (shipper) had a long-term beneficial relationship with its customers. 

Endnote

- 1 Need reference. Set up as a link to Westlaw but unable to open without account.

Here's different perspective on the troublesome "Freight Held Hostage" issue which bubbles along in the shipping business.

In most cases involving freight held hostage, the broker/ shipper/ freight forwarder asserts that the carrier which has refused to deliver the freight, is liable for "conversion". Conversion is a form of civil theft, meaning the carrier is wrongfully exercising dominion, and control over the freight without legal justification. The Bullet Express case is unique in that the shipper asserted another legal theory of liability, namely, "tortious interference with prospective economic advantage" and won. Here's what happened:

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(This case has been edited by Ron Usem Esq for readers convenience.)