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EMPLOYEE CONSPIRACY AND CONVERSION NOT DISCHARGED BY BANKRUPTCY

Richards Buell Sutton Employment Newsletter

Cruise Connections Canada v. Szeto, 2015 BCCA 363

In this case, Szeto, a cruise ship booking agent who had worked for several years for Cruise Connections Canada (“CCC”), a travel agency, tried by assigning himself into bankruptcy to avoid a judgment debt. The judgment was declared jointly and severally against him and several of his co-workers for torts of civil conspiracy and conversion arising from their actions in covertly downloading for their own use client lists of CCC, wrongfully transferring existing bookings and associated commissions to themselves and falsifying computer records of CCC to cover their tracks. These defendants then set up their own business to use CCC’s client list for marketing purposes, and the revenue from transferred commissions belonging to CCC, to finance their start-up.

CCC argued in the bankruptcy that the judgment debt could not be discharged by and in fact would survive bankruptcy because of s.178(1)(e) of the *Bankruptcy and Insolvency Act* which states:

178 (1) An order of discharge does not release the bankrupt from

(e) any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation...

Normally, a judgment debt based on obtaining property by false pretences or fraudulent misrepresentation is specifically stated as such in the legal action leading to the judgment. That was not the case here. The liability was instead based on torts of civil conspiracy and conversion. However, CCC argued that in the lengthy Reasons for Judgment that followed the trial there were various findings of fact through which the judgment could be characterized as falling within s. 178(1)(e) and therefore be declared as a debt that survives bankruptcy.

It was evident from the Reasons that the booking agents schemed together to download from CCC’s computer client lists and booking records by using a false password they had obtained by promising benefits to a co-worker. They then made false entries in the computer records to cover up the disappearance of bookings (such as by saying the customer cancelled the booking through illness). The booking agents also



investigated and implemented various covert ways to transfer bookings and commissions to their new business, including preparing, signing and sending to cruise ship companies false booking transfer forms on letterhead taken from CCC's office.

The Supreme Court Decision

CCC was rebuffed by the Supreme Court which pointed out that Szeto's co-defendants had performed the more deceitful acts found to have been committed that led to property being wrongfully obtained. It noted that while Szeto also committed various acts of deceit (such as forging booking transfer forms on CCC letterhead) the deceitful things he was found to have done were unsuccessful in "obtaining property" and therefore he escaped the application of s.178(1)(e).

The Appeal Court Decision

At the B.C. Court of Appeal, CCC argued that Szeto et al., found to have committed the tort of conspiracy, were all responsible for all the acts of all of the conspirators. All the conspirators were willing and knowing participants in the overall scheme, including all the deceitful acts performed by each individual; therefore Szeto should be held responsible for the deceit in which all the conspirators had agreed to participate. The conspiracy was "drenched in deceit, misrepresentation and the setting up of false pretenses" and it is irrelevant to s.178(1)(e) who performed each action that was integral to the common scheme. A close analysis, however, of the law of civil conspiracy concluded that a conspirator cannot be held vicariously liable for what another person does, even a co-conspirator, but only for having participated in and contributed to the conspiracy.

The booking agents, however, were found jointly and severally liable for torts of both conspiracy and conversion. Tortfeasors who act in unison to perform wrongful acts are joint tortfeasors and deceitful conduct engaged in by one can be ascribed to the others. The Court of Appeal decided s.178 applied to Szeto because he and his fellow booking agents were joint tortfeasors and there was ample evidence of deceitful conduct emanating from the group to apply to Szeto himself and therefore to his judgment debt.

Significance to Employers

While this is a bankruptcy case, it has considerable relevance to employers, particularly those with "modern" businesses operating primarily through computer programs and records that are relatively easy to misappropriate. CCC had built up extensive records over many years, on which its business depended, of prospective clients for marketing purposes. Despite various methods used to prevent unauthorized access to CCC's database, the booking agents were able to find a way surreptitiously to obtain the records and walk



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away with a ready-made business to exploit for their own benefit. It became clear during the legal action leading to the judgment that court orders were ineffective in forcing the defendants to divest themselves completely of the records they took; as each attempt was made, the defendants simply made and concealed further backup copies. The defendants, including Szeto, continue to work CCC's client list to this day. However, while the other defendants stepped up and paid CCC their proportionate share of the judgment debt, Szeto's plan was to pay nothing but instead go through bankruptcy and shed his liability without paying a price. If CCC had been unsuccessful at the Court of Appeal, he would have gotten away with this and would be happily milking CCC's client list for revenue for many more years without legal consequences.

