

1-1-2013

## Summary of Dynamic Transit Co. v. Trans Pac. Ventures, Inc., 128 Nev. Adv. Op. 69

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*Nevada Law Journal*

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### Recommended Citation

Rigdon, David H., "Summary of Dynamic Transit Co. v. Trans Pac. Ventures, Inc., 128 Nev. Adv. Op. 69" (2013). *Nevada Supreme Court Summaries*. Paper 128.

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## TORTS – CARMACK AMENDMENT PREEMPTION OF STATE-LAW CLAIMS

### **Summary**

Appeal and cross-appeal from a District Court bench trial judgment in favor of Plaintiffs', Trans Pacific Ventures and Trevor Small (hereinafter "Small"), state-law claims for conversion and fraud, and awarding Small a total of \$52,500 in compensatory damages and \$300,000 in punitive damages. Defendants, Dynamic Transit Company and Knight's Company/Auto Transporters (hereinafter "Knights"), appeal contending that the District Court erred in denying their motion to dismiss pursuant to N.R.C.P. 12(b)(5) since the Carmack Amendment preempts each of Small's state law claims. Alternatively, Knights argues that even if the Carmack Amendment does not apply, there is insufficient evidence to support the District Court's judgment and that the District Court erred in its calculation of compensatory damages. Small filed a cross-appeal arguing that the District Court erred in granting Knights post-trial leave to amend its answer and assert the Carmack Amendment as an affirmative defense.

### **Disposition/Outcome**

The Court affirmed the District Court's judgment in favor of Small and dismissed Small's cross-appeal. The Court held that the Carmack Amendment's federal liability limitation for interstate carriers does not apply in cases of true conversion and that sufficient evidence supports the District Court's findings and award of damages. With respect to the cross-appeal, the Court found that because Small prevailed in the action below, he was not aggrieved by the District Court's judgment, and the Court therefore lacks jurisdiction over the cross-appeal.

### **Factual and Procedural History**

In June 2007, Respondent/Plaintiff Trevor Small purchased a luxury sport's car from Desert Audi in Henderson, Nevada, for a total purchase price of \$67,253.25. Small contracted with Nex-Day Auto Transport, Inc. to deliver the vehicle from the dealership to Washington, with instructions that the vehicle be transported in an enclosed carrier. Next-Day advertised the job for bids from sub-contractors on an industry website. A dispatcher from Knights called Nex-Day and offered to transport the vehicle. Knights had performed such services for Nex-Day in the past and Nex-Day owed Knights \$9,650 for past-due invoices not associated with the Small contract. Nex-Day faxed a work order to Knights, which required Knights to agree to Nex-Days terms in writing and return a signed copy to Nex-day before accepting delivery of the vehicle.

Instead of signing and returning the work order, the Knights dispatcher altered the terms of the agreement to include a pay on delivery clause and provide transport in an unenclosed carrier. The dispatcher then generated a bill of lading and arranged for a truck to pick up the vehicle. Since Nex-Day never received a signed copy of the work order from Knights, they faxed to Knights a cancellation and proceeded to solicit other carriers. The following day, before Nex-Day had concluded an agreement with another carrier, Knights driver arrived at Desert

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<sup>1</sup> By David H. Rigdon, Junior Staffer.

Audi, loaded Small's vehicle onto an unenclosed carrier, and departed with it despite a Desert Audi representative informing the driver that Knights was not authorized to transport the vehicle. Once Knights had the vehicle in their possession, they transported it to Washington but demanded Nex-Day tender payment for its unrelated past-due invoices before it would proceed with final delivery.<sup>2</sup> When Nex-Day refused to do so, Knights refused to deliver the vehicle and it was ultimately transported to a storage facility in Missouri.

Small brought an action against Knights alleging various state-law claims, including conversion and fraud. In its answer Knights denied any wrongdoing and asserted a number of affirmative defenses, none of which included an argument that the state law claims were preempted by the Carmack Amendment. Nearly a year and a half after filing its answer, Knights filed a motion to dismiss under N.R.C.P. 12(b)(5) on the basis of Carmack Amendment Preemption. The District Court concluded that the Carmack Amendment was inapplicable and denied the motion to dismiss. Following a bench trial, the District Court granted judgment in favor of Small on his state law claims of conversion and fraud and awarded Small \$52,500 in compensatory damages (the \$67,253.25 purchase price plus \$25,000 for loss-of-use, offset by a \$40,000 partial pre-trial settlement) and \$300,000 in punitive damages.

## **Discussion**

Justice Parraguirre wrote the opinion, with Justices Douglas and Gibbons concurring.

### **The Carmack Amendment**

The Carmack Amendment to the Interstate Commerce Act limits interstate carrier liability to "the actual loss or injury" to goods that occurs during interstate transit.<sup>3</sup> Accordingly, certain compensatory and punitive damages are not available. The Carmack Amendment's preemptive scope "supersedes all the regulations and policies of a particular state."<sup>4</sup>

In considering the case, the Court looked for guidance from two Ninth Circuit Court of Appeals opinions. In *Hall v. North American Van Lines, Inc.*, 476 F.3d 683 (2007), the Ninth Circuit concluded that Carmack Amendment preemption "applies equally to fraud and conversion claims arising from a carriers misrepresentations as to the conditions of delivery or failure to carry out delivery."<sup>5</sup> However, in *Glickfeld v. Howard Van Lines*, 213 F.2d 723 (1954), the Ninth Circuit held that "when there has been a true conversion, i.e., where the carrier has appropriated the property for its own use or gain, it would be against public policy to permit the carrier to limit its liability and thus to profit from its own misconduct."<sup>6</sup>

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<sup>2</sup> When Small called Knight to locate his vehicle he was told by the dispatcher that "I have your vehicle, yes. You're not getting it back until Nex-Day pays us what money is owed for past jobs." 128 Nev. Adv. Op. 69 at 8.

<sup>3</sup> 49 U.S.C. § 14706(a)(1) (2006); *New York, N.H. & H.R. Co. v. Nothnagle*, 346 U.S. 128, 131 (1953).

<sup>4</sup> *Adams Express Co. v. Croninger*, 226 U.S. 491, 505 (1913).

<sup>5</sup> *Hall v. North Am. Van Lines, Inc.*, 476 F.3d 683, 689 (9th Cir. 2007) (citing *Ga., Fla., & Ala. Ry. v. Blish Co.*, 241 U.S. 190, 197 (1916)).

<sup>6</sup> *Glickfeld v. Howard Van Lines*, 213 F.2d 723, 727 (9th Cir. 1954). *See also* *Tran Enters., LLC v. DHL Exp. (USA), Inc.*, 627 F.3d 104, 1009 (5th Cir. 2010) ("[W]here a carrier has intentionally converted for its own purposes the property of a shipper, traditional true conversion claims should be allowed to proceed.").

Applying the Ninth Circuit's Carmack Amendment analysis to the facts of this case, the Court held that the District Court properly concluded that Knights actions constituted a "true conversion" in which Knight asserted an act of dominion over Small's vehicle for its own gain. Thus, the Carmack Amendment is inapplicable.<sup>7</sup>

#### Whether sufficient evidence existed to support the District Court's judgment.

Under Nevada law conversion is defined as "a distinct act of dominion wrongfully exerted over personal property in denial of, or inconsistent with, title or rights therein or in derogation, exclusion or defiance of such rights."<sup>8</sup> Liability for a claim of conversion is predicated upon "an act of general intent, which does not require wrongful intent and is not excused by care, good faith, or lack of knowledge."<sup>9</sup>

The Court held that the record, including testimony from various witnesses that Knight lacked authority to transport the vehicle, provided substantial support for the District Court's judgment in Small's favor. Additionally, the Court found that a reasonable mind could accept that Knights had engaged in conversion by consciously seizing the vehicle without authority in order to use it as leverage to obtain money from Nex-day.

#### The District Court's damages award.

Knights argued that the District Court erred in calculating compensatory damages by failing to offset its \$40,000 pre-trial payment to Small, resulting in an excessive amount of punitive damages.

Where a defendant keeps possession of property he has converted, the injured party should receive full compensation based on actual loss.<sup>10</sup> Broad discretion is given to a District Court in calculating an award of damages, and such award will not be reversed absent an abuse of discretion.<sup>11</sup>

The Court found that the record demonstrates that Knights' pretrial payment was properly applied and that the District Court's award of compensatory damages was supported by substantial evidence.<sup>12</sup> Thus, the Court held it unnecessary to review the punitive damages award as it remains within the statutory limit.<sup>13</sup>

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<sup>7</sup> The Court acknowledges that the case law exempting true conversion from Carmack Amendment preemption does not provide an exception for state-law fraud claims. However, because the District Court's finding of conversion, standing alone, warranted the compensatory and punitive damages award, they need not reverse the District Court's judgment. 128 Nev. Adv. Op. 69 at note 3.

<sup>8</sup> *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 328, 130 P.3d 1280, 1287 (2006).

<sup>9</sup> *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 606, 5 P.3d 1043, 1048 (2000).

<sup>10</sup> *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980), overruled on other grounds by *Evans*, 116 Nev. At 608, 5 P.3d at 1050-51.

<sup>11</sup> *Asphalt Prods. v. All Star Ready Mix*, 111 Nev. 799, 802, 898 P.2d 699, 701 (1995).

<sup>12</sup> Knights raised three additional challenges to the District Court's compensatory damages award which the Court finds were not properly preserved for appeal. 128 Nev. Adv. Op. 69 at note 4.

<sup>13</sup> N.R.S. 42.005(1)(b).

## **Conclusion**

While the Carmack Amendment preempts state-law and limits the liability of interstate carriers regarding claims for loss of property during transport, where the carrier's actions constitute a true conversion of the property of another for its own use or gain, the Amendment is inapplicable. In addition, the Court found there was sufficient evidence supporting the District Court's judgment and award of compensatory and punitive damages.