

Plaintiffs unable to establish terms of contract and entitlement to funds paid to trucking company

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Business relationships between different parties are generally governed by contracts. To be enforceable, a contract must have certainty of terms that are agreed to by the contracting parties. If the parties have fundamentally different views of key terms to a contract, a court will conclude that there was no “meeting of the minds” between them and the alleged contract will be held unenforceable.

In *Corridor Transport Inc. v. Lentini*, 2023 ONSC 1120 (not available on CanLII), the court, after a 9-day trial, found that a purported joint venture business arrangement between the parties did not entitle the plaintiffs to funds that had been received for the transport of goods by the defendant trucking company, LTI, because there was no such agreement.

The directing mind of the plaintiffs, H, had wanted to get into the business of delivering steel by railcar. As part of H's business idea, he required the assistance of a trucking company that had experience hauling steel by road. H identified LTI for his road hauling needs and accordingly made it a proposal to do business together.

The sole director of LTI was the individual defendant, V Jr. However, V Jr. was not actively involved in the trucking business. Rather, his father, V Sr. and his mother, E, operated LTI.

In establishing the joint business venture, H met with V Sr., but he had no dealings with V Jr., who was a full-time employee at a grocery chain.

H incorporated the plaintiff, Corridor Transport Inc. (“CTI”) and created and registered the plaintiff limited partnership, with CTI as its sole general partner. Further, H opened a bank account for CTI under the name “LTI Logistics Group” so that cheques made payable to LTI could be deposited into that account.

LTI moved its equipment to premises from which CTI operated and from May 2010 to April 2011 cheques made payable to LTI were deposited into the LTI Logistics Group bank account. Those cheques were received by V Jr. at his home address and were given to E, who deposited them into the account.

However, the joint business venture soured. H and E got into a dispute about whether a truck that had been involved in an accident was properly insured. Further, H complained to V Jr. about business operations and cash flow.

In May 2011, V Sr. learned that he had no authority over the LTI Logistics Group bank account. Shortly thereafter, the bank did not permit E to deposit anymore cheques made payable to LTI into that bank account. LTI had nearly \$150,000 in cheques, which it then deposited into its own bank account.

The plaintiffs claimed to be entitled to this money on the grounds that the defendants had breached their contract with the plaintiffs and that the funds had been wrongfully converted. The plaintiffs also alleged that V Jr. had breached his fiduciary obligations to the plaintiffs. V Jr. had been listed as a director of CTI without his knowledge or consent.

The main issues before the court were whether there was an enforceable contract between the parties and whether the defendants had converted funds alleged to belong to the partnership.

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As stated in *Bawitko Investments Ltd. v. Kernels Popcorn Ltd.*, 1991 CanLII 2734 (ON CA), for a contract to be enforceable, the parties must have reached an agreement on all essential terms of the contract. This is measured on an objective standard. If there is no such agreement, a contract will fail.

The plaintiffs argued that there was a binding and enforceable contract and, among other things, relied on a Memorandum of Understanding (“MOU”). H executed the contract, but neither V Sr., E, nor V Jr. signed it. Indeed, there was no signature line in the MOU for V Jr.

The MOU also stated that CTI and LTI would be separate and distinct from one another.

Although H testified that when LTI moved its equipment to CTI's premises the arrangement with LTI became more “ad hoc”, he admitted that LTI continued to do business for its previous customers.

V Jr. testified that he had not agreed to be a director of CTI because he was working full-time elsewhere and was raising a young family. He also was not involved in any way whatsoever with the day-to-day operations of CTI.

Meanwhile, E testified that she was under the belief that the LTI Logistics Group bank account was a joint account and that H had agreed to factor the LTI receivables through this account. There was evidence that V Sr. and E sold their receivables in the past to a factoring company.

In the result, the court found that there was no enforceable contract between the parties because there was no meeting of the minds on key contractual terms. V Jr. had signed no written consent to be a director of CTI as required under section 119(9) of the *Ontario Business Corporations Act*, and the only evidence that LTI's funds belonged to CTI was E's practice of collecting LTI's cheques from her son, which he had received at his house, and depositing the cheques into the LTI Group bank account.

Since there was no enforceable contract, there was no conversion. As determined in *Boma Manufacturing Ltd. v. Canadian Imperial Bank of Commerce*, 1996 CanLII 149 (SCC) conversion is a strict liability tort that is established when one party wrongfully interferes with the property owned by another. However, because there was no contract, the court found that the plaintiffs had no ownership interest in the LTI receivables, so nothing of theirs was converted.

Lastly, the court dismissed the plaintiffs' allegation that V Jr. had alleged breach fiduciary duties owing to them.

A fiduciary duty will be found to exist where:

- (a) the fiduciary has scope for the exercise of some discretion or power;
- (b) the fiduciary can unilaterally exercise that power or discretion to affect the beneficiary's legal or practical interests; and
- (c) the beneficiary is peculiarly vulnerable to or at the mercy of the fiduciary holding the discretionary power.

In this case, the plaintiffs were also required to prove that V Jr. had undertaken to act in their best interests, that they were vulnerable to V Jr.'s conduct and V Jr.'s exercise of discretion or control negatively impact their legal or practical interest because V Jr. was, at most, only an *ad hoc* fiduciary. The court did not accept that V Jr. was a director of CTI or a partner in the limited partnership.

The plaintiffs were unable to meet their evidentiary burden. H was the more sophisticated party, and held all of the power and control over CTI. H completed all of the incorporating documents and retained control over the bank account.

The plaintiffs' action was entirely dismissed against the defendants. A PDF version is available for download [here](#).

Representation by Gardiner Roberts LLP

The defendants V Jr. and LTI were represented by Rob Winterstein, a partner in the Dispute Resolution Group at Gardiner Roberts LLP. Rob was assisted by Michael Lauricella, a student-at-law at the firm.

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