

EDVA Judge Dismisses Negligence and Bailment Claims for Damage to Property Stored in Warehouse

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Parties involved in contract disputes often desire to avoid contractual limitations on recovery, fostering creative attempts to transform breach of contract claims into tort or other noncontractual causes of action. Such efforts face numerous hurdles, and the recent decision by U.S. District Judge Mark Davis in , Civil Action No. 4:23CV153, 2024 U.S. Dist. LEXIS 83430 (E.D. May 7, 2024), illustrates the difficulty in squeezing the square peg of a breach of contract claim into the round hole of tort or bailment.

Background

In *Lotte*, the plaintiff, Lotte, contracted with a shipper, R.E. Smith, to transport large capacity cell lithium-ion batteries from a Virginia port to a Canadian buyer. Smith, in turn, contracted with a logistics company and a bonded warehouse to transload, store and deliver the batteries. The warehouse Smith chose, however, was allegedly dilapidated, allowing the batteries to suffer damage from water, temperature and humidity, rendering them worthless.

Lotte sued Smith for breach of contract, negligence and breach of bailment duties. Lotte also asserted negligence and breach of bailment against the owner of the warehouse, G Street. Lotte also sued two logistics companies that Smith hired to arrange for transport of the batteries, but those defendants failed to respond and were held in default.

Smith filed an answer to Lotte's breach of contract claim, but both Smith and G Street moved to dismiss the negligence and bailment claims. The court granted the motions to dismiss, ultimately leaving Lotte only with its contract claim against Smith.

Preemption of Claims Against Carrier/Broker

Smith moved to dismiss on the grounds that Lotte's negligence and bailment claims were expressly preempted by the Interstate Commerce Commission Termination Act (ICCTA), 49 U.S.C. § 14501, as well as the Carmack Amendment to the Interstate Commerce Act of 1887 (Carmack Amendment), 49 U.S.C. 14706.

The ICCTA contains a broad preemption clause, 49 U.S.C. § 14501(c)(1), barring noncontractual state-law claims against both motor carriers and brokers who transport goods in interstate commerce unless the claim has only a

“tenuous, remote, or peripheral” connection to prices, routes or service. Likewise, the Carmack Amendment completely preempts state law claims for damages to goods caused by an interstate carrier.

Carmack Preemption

Addressing Carmack preemption first, the court noted that the Fourth Circuit had suggested, in *dicta*, that Carmack preemption did not apply to claims against brokers. Citing this authority, Lotte argued that its claims involved Smith’s activities as a “broker” not as a “carrier,” and so Carmack preemption did not apply. The court refused to resolve whether Smith was properly classified as a “carrier” or a “broker” at this stage of the litigation. Rather, the court held that Carmack preemption applied to any noncontractual claims against Smith in its capacity as a carrier and assumed without deciding that Carmack preemption did not apply to claims against Smith as a broker.

ICCTA Preemption

Having held that Carmack preemption applied to the negligence and bailment claims to the extent Smith acted as a carrier, the court turned to whether the ICCTA preempted claims against Smith as a broker. Lotte argued that the ICCTA preemption did not apply because its claims had only a “tenuous, remote, or peripheral” connection to the “price, route or service” of a broker.

The court disagreed, based on the plain text of the ICCTA’s preemption clause and a recent case from the Seventh Circuit, *Ye v. GlobalTranz Enterprises, Inc.*, 74 F.4th 453, 360 (7th Cir. 2023). In *Ye*, the Seventh Circuit held that a negligent hiring claim against a broker was preempted because it struck at the core of the broker’s services by challenging the adequacy of the care taken in hiring.

The court noted that several district courts in the Fourth Circuit had held, contrary to *Ye*, that the ICCTA did not preempt negligent hiring claims against brokers. Those cases, however, involved personal injury claims from auto accidents, which the court reasoned, had only a “tenuous, remote, or peripheral” connection to the price, route or service of a broker. The reasoning in those cases, the court held, did not apply to Lotte’s claims that Smith failed to exercise reasonable care in its selection of the warehouse and carrier. Lotte’s claims went to the core of the services a broker supplied and so were sufficiently related to Smith’s services as a broker to trigger preemption.

Lotte also argued that the ICCTA’s “safety exception” to preemption applied. The safety exception excludes from preemption, among other things, state law claims related to motor vehicles or related to the hazardous nature of cargo. The court quickly dismissed this argument, citing decisions from the Seventh and Ninth Circuits holding that the motor vehicle language in the safety exception applied only to claims arising out of motor vehicle accidents. Likewise, the safety exception’s references to the hazardous nature of cargo only exempted from preemption regulations of cargo because of its hazardous nature, which did not apply to Lotte’s property damage claims.

Finally, Lotte argued that the ICCTA’s preemption clause did not apply to its bailment claim against Smith because that claim was based in contract, not tort. Judge Davis noted, though, that while a bailment claim could be based on tort duties or on the breach of a bailment contract, Lotte had alleged only that Smith had violated a duty of due care and had not referenced any contract provision relating to bailment.

Regardless, even assuming that Lotte’s bailment claim was contract-based, it was still preempted. While courts

have recognized that the ICCTA does not preempt claims based on duties undertaken by contract, that exception did not extend to claims that rely on state common law duties. Lotte did not allege the breach of any contract term or any private, contractually created duty separate from duties created by state common law.

Claims Against the Warehouse Owner

G Street owned the warehouse where Lotte's batteries were stored, but was not responsible for storing or transporting the batteries. Under Virginia law, a bailment claim requires exclusive possession of the plaintiff's property, which G Street never had. Since G Street never exercised legal or physical control or exclusive possession of Lotte's property, it could not be subject to a claim for breach of bailment.

Lotte asserted a negligence claim against G Street based on a theory of premises liability, alleging that G Street had breached its duty to Lotte as a business invitee. Lotte made no allegations based on G Street's conduct. The court pointed out that Virginia law imposes a duty of care on a landowner only in favor of people who enter its land. Business invitee status does not extend to personal property, such as the batteries stored in G Street's warehouse. For that reason, Judge Davis rejected Lotte's attempt to shoehorn its relationship with G Street into a premises liability claim.

Where a plaintiff, such as Lotte, had not set foot onto a premises or suffered any personal injury, the landowner owed no business invitee-based duty. Thus, the court dismissed Lotte's negligence claim without prejudice but left the door open for Lotte to amend to assert an alternative basis for a negligence-based duty owed by G Street to Lotte.

Takeaways

It's not clear why Lotte felt it necessary to assert negligence and bailment claims in addition to its breach of contract claim against Smith. It may be that the parties' contract contains limitations on the recovery of damages or the grounds for liability that limited Lotte's chances for recovery in contract. The key lesson from Judge Davis' decision in *Lotte* is that courts are inclined to be skeptical of tort or other noncontractual claims for the breach of duties that arise primarily from a contractual relationship. Even at the motion to dismiss stage, it is difficult for a contracting party to use creative pleading to avoid the natural judicial reluctance to allow a plaintiff to transform contractual duties into tort claims.

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