SUPREME COURT OF COLORADO

Vanderbeek v. Vernon Corp.

50 P.3d 866 (Colo. 2002) · No. No. 00SC960 · Decided June 17, 2002

SUMMARY

The Colorado Supreme Court addresses the appropriate standard for consequential damages arising from wrongful attachment, an economic tort. It holds that recoverable damages must be the natural and probable result of the tortious act, proximately caused, and reasonably ascertainable. The court affirms an award for the increased cost of acquiring 95,000 shares of stock but denies speculative lost profits on 105,000 shares that were not purchased.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Justice Rice; Justice Bender
JURISDICTION	Colorado
DECIDED	June 17, 2002
DOCKET	No. 00SC960
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioners sought damages in the Boulder County District Court for the wrongful prejudgment attachment of Respondent's funds. The trial court awarded only interest, the Colorado Court of Appeals reversed in part and awarded the increased acquisition cost for stock but denied lost profits, and the Colorado Supreme Court granted certiorari to determine the proper standard for consequential damages in an economic tort action.
STANDARD OF REVIEW	The court reviewed the legal standard governing consequential damages de novo and determined proximate cause as a matter of law because the undisputed evidence permitted only one reasonable inference. Whether damages were reasonably ascertainable was assessed under the reasonable-certainty requirement.
PRECEDENTIAL VALUE	Published, precedential decision of the Colorado Supreme Court issued en banc.
PARTIES	Robert R. Vanderbeek, William C. Bacon, Dorothy Severson, as co-trustees on behalf of the James W. Vanderbeek Generation-Skipping

Transfer Trust v. Vernon Corporation

TOPICS

damages · consequential damages · torts · remedies · civil procedure

PRACTICE AREAS

Torts · Damages · Civil procedure · Commercial litigation

QUESTIONS PRESENTED

1. What standard governs recovery of consequential damages arising from wrongful attachment and other economic torts?
2. Whether the wrongful attachment proximately caused the increased price Respondent paid for 95,000 Osicom shares and Respondent's inability to purchase an additional 105,000 shares.
3. Whether the increased acquisition cost and claimed lost profits were reasonably ascertainable and therefore recoverable.

HOLDINGS

1. Consequential damages arising from an economic tort are recoverable when they are the natural and probable result of the injury sustained by virtue of the tortious act, are proximately caused by that act, and are reasonably ascertainable. The more restrictive Hadley v. Baxendale contract standard does not govern when the breached duty arises independently of a contract.
2. The wrongful attachment proximately caused both the increased price Respondent paid to acquire 95,000 shares of Osicom stock and Respondent's inability to purchase an additional 105,000 shares.
3. The additional amount Respondent paid to acquire 95,000 Osicom shares was reasonably ascertainable and recoverable as consequential damages.
4. Respondent could not recover claimed lost profits on the 105,000 Osicom shares it did not purchase because the amount of those profits was not reasonably ascertainable.

KEY QUOTATIONS

> *“Accordingly, we hold that the appropriate measure of the damages a victim of wrongful attachment may recover is such damage as is "the natural and probable result of the injury sustained by virtue of the tortious act."”* (872)

> *“As is the case in other tort actions, the recovery of these damages is limited by the requirements that such damages be proximately caused by the tortious act, and that they be reasonably ascertainable.”* (872)

> *“We hold that consequential damages are recoverable in torts of economic interference, such as the wrongful attachment here.”* (876)

FACTUAL BACKGROUND

Petitioners obtained a prejudgment writ of attachment against funds expected to be deposited into Respondent's bank account, causing the bank to freeze approximately $1,023,370. Respondent had earmarked $450,000 of those funds to purchase 200,000 shares of Osicom stock, but the attachment prevented the purchase until the writ was dissolved approximately one month later. Because the stock price rose substantially, Respondent purchased only 95,000 shares at an increased cost and claimed additional damages for lost profits on the 105,000 shares it could no longer purchase.

PROCEDURAL HISTORY

Petitioners obtained an ex parte prejudgment writ of attachment that froze approximately $1 million in Respondent's bank account. The trial court later dismissed the underlying action for lack of subject-matter jurisdiction and dissolved the writ, but denied Respondent's claimed consequential damages beyond interest. The court of appeals reversed in part, awarding the increased cost of stock purchased after the attachment but denying lost profits on stock Respondent did not purchase. The Supreme Court affirmed the court of appeals' judgment and remanded for recalculation of damages consistent with its opinion.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The case was remanded to the court of appeals to return it to the trial court for recalculation of Respondent's damages consistent with the opinion, including the recoverable increased acquisition cost and excluding the speculative lost profits.

CASES CITED

- Colorado Kenworth Corp. v. Whitworth, 144 Colo. 541, 357 P.2d 626 (1960)
- Hadley v. Baxendale, 9 Ex. 341, 156 Eng. Rep. 145 (1854)
- Town of Alma v. Azco Construction, Inc., 10 P.3d 1256 (Colo. 2000)
- Stensvad v. Towe, 232 Mont. 378, 759 P.2d 138 (1988)
- Thompson v. Tartler, 166 Colo. 247, 443 P.2d 365 (1968)
- McNeill v. Allen, 35 Colo. App. 317, 534 P.2d 813 (1975)
- Pioneer Construction Co. v. Richardson, 176 Colo. 254, 490 P.2d 71 (1971)
- Lyons v. Nasby, 770 P.2d 1250 (Colo. 1989)
- Samuelson v. Douthirt, 187 Colo. 155, 529 P.2d 631 (1974)
- Ekberg v. Greene, 196 Colo. 494, 588 P.2d 375 (1978)
- Walcott v. Total Petroleum, Inc., 964 P.2d 609 (Colo. App. 1998)
- Cope v. Vermeer Sales & Service of Colorado, 650 P.2d 1307 (Colo. App. 1982)
- Nora v. Safeco Insurance Co., 99 Idaho 60, 577 P.2d 347 (1978)
- Peterson v. Colorado Potato Flake & Manufacturing Co., 164 Colo. 304, 435 P.2d 237 (1967)

- Hornblower v. Lazere, 301 Minn. 462, 222 N.W.2d 799 (1974)
- Lee v. Durango Music, 144 Colo. 270, 355 P.2d 1083 (1960)
- Milheim v. Baxter, 46 Colo. 155, 103 P. 376 (1909)
- Vanderbeek v. Vernon Corp., 25 P.3d 1244 (Colo. App. 2001)
- Boyle v. Poor, 62 Colo. 337, 163 P. 967 (1916)
- Crowley v. Hardman Bros., 122 Colo. 489, 223 P.2d 1045 (1950)
- Worchester v. State Farm Mutual Automobile Insurance Co., 172 Colo. 352, 473 P.2d 711 (1970)
- Gurley v. Tomkins, 17 Colo. 437, 30 P. 344 (1892)
- Tekai Corp. v. Transamerica Title Insurance Co., 39 Colo. App. 528, 571 P.2d 321 (1977)
- Great West Mining Co. v. Woodmas of Alston Mining Co., 12 Colo. 46, 20 P. 771 (1888)
- J.P. Meyer Trucking & Construction, Inc. v. Colorado School Districts Self Insurance Pool, 18 P.3d 198 (Colo. 2001)
- Watson v. Fenney, 800 P.2d 1373 (Colo. App. 1990)
- Knudson v. Frost, 51 Colo. 340, 117 P. 157 (1911)