

United States Court of Appeals District of
Columbia Circuit

Drew PEARSON and Jack Anderson,
Appellants,
v.
Thomas J. DODD, Appellee.

Feb. 24, 1969

Before **WRIGHT**, **TAMM** and **ROBINSON**,
Circuit Judges.

J. SKELLY WRIGHT, Circuit Judge:

This case arises out of the exposure of the alleged misdeeds of Senator Thomas Dodd of Connecticut by newspaper columnists Drew Pearson and Jack Anderson. The District Court has granted partial summary judgment to Senator Dodd, appellee here, finding liability on a theory of conversion. The court's judgment [is] before us on . . . appeal. [We] reverse its grant of summary judgment for conversion.

The undisputed facts in the case were stated by the District Court as follows:

* * * On several occasions in June and July, 1965, two former employees of the plaintiff, at times with the assistance of two members of the plaintiff's staff, entered the plaintiff's office without authority and unbeknownst to him, removed numerous documents from his files, made copies of them, replaced the originals, and turned over the copies to the defendant Anderson, who was aware of the manner in which the copies had been obtained. The defendants Pearson and Anderson thereafter published articles containing information gleaned from these documents [which Dodd alleges injured his reputation and invaded his privacy].

I

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II

The District Court ruled that appellants' receipt and subsequent use of photocopies of documents which appellants knew had been removed from appellee's files without authorization established appellants' liability for conversion. We conclude that appellants are not guilty of conversion on the facts shown.

Dean Prosser has remarked that 'conversion is the forgotten tort.' That it is not entirely forgotten is attested by the case before us. History has largely defined its contours, contours which we should now follow except where they derive from clearly obsolete practices or abandoned theories.

Conversion is the substantive tort theory which underlay the ancient common law form of action for trover. A plaintiff in trover alleged that he had lost a chattel which he rightfully possessed,²³ and that the defendant had found it and converted it to his own use. With time, the allegations of losing and finding became fictional, leaving the question of whether the defendant had 'converted' the property the only operative one.

The most distinctive feature of conversion is its measure of damages, which is the value of the goods converted. The theory is that the 'converting' defendant has in some way treated the goods as if they were his own, so that the plaintiff can properly ask the court to decree a

²³ A threshold question, not briefed by either party and hence not decided by us, is the nature of the property right held by appellee in the contents of the files in his Senate office. Those files, themselves paid for by the United States, are maintained in an office owned by the United States, by employees of the United States. They are meant to contribute to the work of appellee as an officer of the United States. The question thus is not entirely free from doubt whether appellee has title to the contents of the files or has a right of exclusive possession of those contents, or is . . . even a mere custodian of those contents.

forced sale of the property from the rightful possessor to the converter.

Because of this stringent measure of damages, it has long been recognized that not every wrongful interference with the personal property of another is a conversion. Where the intermeddling falls short of the complete or very substantial deprivation of possessory rights in the property, the tort committed is not conversion, but the lesser wrong of trespass to chattels.

The Second Restatement of Torts has marked the distinction by defining conversion as:

* * * An intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel. [Restatement (Second) of Torts § 222A(1)].

Less serious interferences fall under the Restatement's definition of trespass. [*Id.* § 217]

The difference is more than a semantic one. The measure of damages in trespass is not the whole value of the property interfered with, but rather the actual diminution in its value caused by the interference. More important for this case, a judgment for conversion can be obtained with only nominal damages, whereas liability for trespass to chattels exists only on a showing of actual damage to the property interfered with. Here the District Court granted partial summary judgment on the issue of liability alone, while conceding that possibly no more than nominal damages might be awarded on subsequent trial. Partial summary judgment for liability could not have been granted on a theory of trespass to chattels without an undisputed showing of actual damages to the property in question.

It is clear that on the agreed facts appellants committed no conversion of the physical documents taken from appellee's files. Those documents were removed from the files a night, photocopied, and returned to the files undamaged before office operations resumed in the morning. Insofar as the documents' value to appellee resided in their usefulness as records of

the business of his office, appellee was clearly not substantially deprived of his use of them.

This of course is not an end of the matter. It has long been recognized that documents often have value above and beyond that springing from their physical possession. They may embody information or ideas whose economic value depends in part or in whole upon being kept secret. The question then arises whether the information taken by means of copying appellee's office files is of the type which the law of conversion protects. The general rule has been that ideas or information are not subject to legal protection,³⁴ but the law has developed exceptions to this rule. Where information is gathered and arranged at some cost and sold as a commodity on the market, it is properly protected as property. Where ideas are formulated with labor and inventive genius, as in the case of scientific researches, they are protected. Where they constitute instruments of fair and effective commercial competition, those who develop them may gather their fruits under the protection of the law.

The question here is not whether appellee had a right to keep his files from prying eyes, but whether the information taken from those files falls under the protection of the law of property, enforceable by a suit for conversion. In our view, it does not. The information included the contents of letters to appellee from supplicants, and office records of other kinds, the nature of which is not fully revealed by the record. Insofar as we can tell, none of it amounts to literary property, to scientific invention, or to secret plans formulated by appellee for the conduct of commerce. Nor does it appear to be information held in any way for sale by appellee, analogous to the fresh news copy produced by a wire service.

³⁴ . . . The traditional rule has been that conversion will lie only for the taking of tangible property, or rights embodied in a tangible token necessary for the enforcement of those rights. This overly restrictive rule has recently been relaxed in favor of the reasonable proposition that any intangible generally protected as personal property may be the subject matter of a suit for conversion.

Appellee complains, not of the misappropriation of property bought or created by him, but of the exposure of information either (1) injurious to his reputation or (2) revelatory of matters which he believes he has a right to keep to himself. Injuries of this type are redressed at law by suit for libel and invasion of privacy respectively, where defendants' liability for those torts can be established under the limitations created by common law and by the Constitution.

Because no conversion of the physical contents of appellee's files took place, and because the information copied from the documents in those files has not been shown to be property subject to protection by suit for conversion, the District Court's ruling that appellants are [liable for] conversion must be reversed.

So ordered.