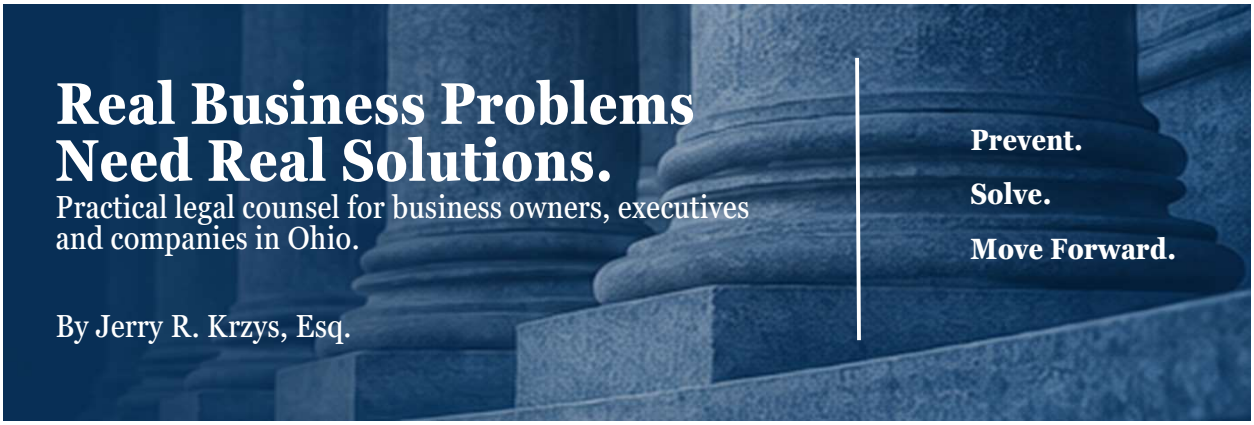
KRZYS LAW, LLC
Business Counsel for Real Problems

Phone: (330) 831-0554
Email: Jerry@BusinessLawOH.com
Website: www.BusinessLawOH.com



When a Dispute Is a Contract Case Even Though the Complaint Calls It Something Else

A supplier and its customer have a contract. The relationship works for years. Then performance problems develop. The customer stops paying. The parties disagree about what the contract requires, try to work things out, and eventually the supplier exercises rights involving equipment it owns but has placed at the customer's facility.

That sounds like a contract dispute. But when litigation begins, the complaint may use very different words: conversion. Trespass to chattels. Tortious interference with another contract. The requested damages may also look very different from the remedies the parties negotiated when they made their deal.

That is essentially what happened in a recent Ohio appellate case involving Airgas USA, LLC and one of its commercial customers. The case is useful to Ohio businesses not because every contract dispute can be reduced to breach of contract, and not because a contract gives a party license to commit a tort. It does neither. The lesson is more precise: when the duty allegedly violated exists because of the parties' contract, a plaintiff ordinarily cannot transform the same dispute into a tort case simply by changing the label on the claim.

The First District Court of Appeals made that point in DSWDWK, LLC v. Airgas USA, LLC, 1st Dist. No. C-250580, 2026-Ohio-3092. The decision also offers practical lessons for suppliers, contractors, equipment lessors, service companies, and other businesses that leave their property at a customer's premises, continue performing while a dispute is developing, or rely on contractual limitations of remedies when the relationship finally breaks down.

1. What Happened Between Airgas and Its Customer

DSWDWK, LLC, which did business as Impact, operated a commercial beverage-bottling business. It entered into a product sales agreement with Airgas under which Airgas supplied the gas Impact used to carbonate beverages. Impact agreed to purchase its commercial gas exclusively from Airgas. A rider established an estimated monthly volume of 10,000 to 12,000 pounds, and Airgas also rented Impact a six-ton storage tank for $600 per month.

The contract did more than identify the product and price. It allocated rights concerning the tank. Impact was required to make the tank available to Airgas for servicing. The agreement stated that

Impact had no ownership interest in it. It also addressed Airgas's right to remove the tank after expiration or termination of the agreement.

The relationship deteriorated in 2022. Impact contended that Airgas had failed to supply enough gas and claimed credits for production losses. Impact then stopped paying Airgas's invoices. The evidence later showed that Impact had not paid any Airgas invoice after April 22, 2022, although Airgas continued making substantial deliveries for a period of time. Impact also began obtaining gas from another supplier.

The parties tried to resolve their disagreements. Airgas proposed a settlement that included a credit and termination of the relationship, while allowing Impact additional time to use the Airgas tank as it transitioned to another supplier. The negotiations failed. Airgas later padlocked its tank and ultimately removed it from Impact's property. At that point, what had begun as a supply-and-payment dispute became litigation with considerably higher stakes.

2. The Complaint Did Not Look Like an Ordinary Contract Case

Impact did not merely sue Airgas for breach of the product sales agreement. It asserted three intentional tort claims arising from Airgas's treatment of the tank: conversion, trespass to chattels, and tortious interference with Impact's contract with its largest customer.

The distinction mattered. The agreement itself sharply limited Impact's remedy if Airgas failed to deliver product. Section 15 provided that Impact's exclusive remedy for an unexcused failure to deliver was essentially the additional cost of obtaining substitute product. It did not provide for Impact to recover lost profits from its customer relationships.

The tort claims potentially offered a route around that limitation. The trial court accepted them. After a bench trial, it awarded Impact approximately $1.93 million for losses associated with its customer contract and another $262,817 for production disruption when the tank was locked. The trial court also rejected Airgas's breach-of-contract counterclaim. Airgas appealed and the First District reversed.

3. The Question Is Not What the Claim Is Called. It Is Where the Duty Comes From.

Ohio's economic-loss rule is intended, in the words of the Supreme Court of Ohio, to prevent the "tortification of contract law." Motorists Mut. Ins. Co. v. Ironics, Inc., 168 Ohio St.3d 467, 2022-Ohio-841, ¶ 28. The basic principle is that purely economic losses resulting from the breach of contractually created duties ordinarily belong in contract, not tort. See also Corporex Dev. & Constr. Mgt., Inc. v. Shook, Inc., 106 Ohio St.3d 412, 2005-Ohio-5409, ¶ 6.

Airgas was significant because Impact's claims were intentional torts. It is sometimes said that the economic-loss rule does not apply to intentional torts because intentional torts involve duties independent of contract.

The First District rejected treating that statement as an automatic exception. Relying on its recent decision in Vandemark v. Reder, 1st Dist. No. C-250029, 2026-Ohio-50, ¶ 43-44 , the court focused instead on the source of the alleged duty: Did the defendant owe a legal duty to the plaintiff, and was that duty created or governed by the parties' contract? The court also drew on decisions including Plus Mgt. Servs., Inc. v. Liberty Healthcare Corp., 2nd Dist. No. 29858, 2024-Ohio-3127, ¶ 26, KSMAC Holdings, Ltd. v. Ice Zone Realty, Ltd., 7th Dist. No. 21 MA 0001, 2022-Ohio-1456, ¶ 55, 56, and Lyon Revocable Trust v. Berry, 3rd Dist. No. 8-26-02, 2026-Ohio-2369, ¶ 35, which refused to permit conversion or similar tort theories to duplicate disputes whose operative duties came from contracts.

That is a useful way for a business to think about a complaint. The caption may say "conversion." The count may say "tortious interference." The allegations may use words such as intentional, wrongful, malicious, or unauthorized. None of those labels answers the central question.

Ask instead: **What duty does the plaintiff say was violated, and would that duty exist between these parties if the contract did not exist?** If the alleged right and duty exist only because the parties made a contract, there is a strong reason to examine whether the tort claim is really a contract claim in different clothing.

4. The Tank Claims Show Why the Source of the Right Matters

Impact's conversion and trespass-to-chattels claims depended on its asserted right to possess and use Airgas's tank. But Impact did not own the tank. Its right to possess it came from the parties' agreement.

The agreement specified the rental arrangement, required Impact to provide Airgas access for servicing, disclaimed any ownership interest by Impact, and addressed removal of the tank. In other words, the contract did not merely exist in the background. It created and defined the very possessory relationship on which the tort claims depended. The First District therefore concluded that there was "no other way to view these claims but as contractual." Airgas USA, LLC, 2026-Ohio-3092, ¶ 53.

That does not mean ownership of equipment always defeats a conversion or trespass claim. Nor does it mean a supplier may enter a customer's property or disable equipment whenever it chooses. The contract, other applicable law, and the particular conduct still matter. Airgas is narrower: where the customer's claimed right to possess the equipment and the supplier's corresponding obligations are themselves products of the contract, the dispute over those rights is contractual unless an independent legal duty supplies a separate basis for tort liability.

For businesses that place equipment at another company's location, that distinction makes the drafting important long before a dispute occurs.

5. Equipment at a Customer or Job Site: Write the Exit Before You Need It

Suppliers and contractors routinely place valuable property on someone else's premises: tanks, dumpsters, lifts, scaffolding, temporary power equipment, compressors, vending equipment, tooling, leased machinery, storage containers, telecommunications equipment, point-of-sale equipment, and specialized systems used to perform a service.

When the relationship is healthy, ownership and removal rights can seem obvious. They become much less obvious after invoices go unpaid, work stops, a replacement supplier arrives, or the customer insists that removing the equipment will interrupt operations.

A well-drafted agreement should therefore answer the practical questions that will matter at the end of the relationship: Who owns the equipment? What possessory rights does the customer have? Who may access it and when? What happens after nonpayment or another default? May service or use be suspended? When may the equipment be disabled or removed? Is notice required? Is there a cure period? Does the supplier have a continuing right of entry? What obligations survive termination? Who bears removal, restoration, or demobilization costs?

Airgas illustrates why those provisions are more than boilerplate. The contract became the legal framework through which the court analyzed the parties' rights to the tank. Clear language can

therefore do two jobs at once: establish the parties' operational rights before litigation and help define the legal character of the dispute if litigation occurs.

6. Contractual Remedy Limitation Cannot Necessarily Be Avoided by Pleading a Tort

The tortious-interference claim presented an even clearer example of the stakes. Impact argued that Airgas's conduct involving the tank interfered with its ability to perform its contract with its own customer. The claimed loss was substantial. But the alleged duty to leave the tank available to Impact still came from the Airgas contract.

The First District put the point directly: the alleged intentional interference "amounted to nothing more than Airgas's alleged breach of the parties' tank rental agreement." Airgas USA, LLC, 2026-Ohio-3092, ¶ 67.

Impact emphasized that the lost profits it sought were not recoverable under the contractual remedy limitation. That did not save the tort claim. The court reasoned that the possibility of a larger recovery under tort law is not a reason to disregard the parties' negotiated allocation of remedies. If Impact wanted lost profits available for a breach, the court explained, the place to obtain that right was in the contract. Airgas USA, LLC, 2026-Ohio-3092, ¶ 68.

That point has consequences well beyond this particular supply agreement. Commercial contracts routinely limit consequential damages, exclude lost profits, cap liability, prescribe exclusive remedies, limit warranties, or establish specific procedures after default. Those provisions are part of the economic bargain. A party ordinarily should not be able to obtain through a duplicative tort theory the damages it agreed not to recover for the same contractual wrong.

The converse is equally important. A limitation-of-liability clause is not a universal shield. A genuinely independent tort, a statutory duty, fraud occurring outside the contractual performance dispute, personal injury, property damage beyond the contractual subject matter, or other facts may present a different analysis. The discipline is to identify the actual source of the duty and the actual injury rather than assume that either "contract" or "intentional tort" automatically controls.

7. Continuing to Perform After the Other Side Breaches Does Not Necessarily Give Up the Claim

Airgas also addresses a recurring business problem: what happens when one side breaches, but the other side keeps performing because immediately terminating the relationship would make a bad situation worse?

Impact stopped paying Airgas. Airgas nevertheless continued supplying gas for a period of time while the parties attempted to address their disputes. The trial court concluded that Airgas had waived Impact's breaches by continuing to perform.

The First District rejected that conclusion. The court explained that, under the principles it found applicable under both Ohio and Delaware law, a nonbreaching party may continue the contract and still seek damages for a partial breach. Airgas USA, LLC, 2026-Ohio-3092, ¶ 74; See also Meyer v. Chieffo, 193 Ohio App.3d 51, 2011-Ohio-1670, ¶ 32 (10th Dist.); Burke & Assoc. v. Koinonia Homes, Inc., 135 Ohio App.3d 683, 687 (8th Dist. 1999). Continuing performance may prevent the nonbreaching party from treating the breach as having discharged its own performance obligations, but it does not automatically erase the right to recover damages already caused by the breach.

That is commercially important. Businesses often have good reasons not to terminate immediately. A supplier may want to preserve a long-standing customer relationship. A contractor may need to finish critical work. A manufacturer may be trying to avoid shutting down a customer's production line. The parties may be negotiating a cure, payment plan, credit, change order, or orderly transition.

But **continuing to perform should be deliberate. A business should document the default, reserve its rights, comply with any contractual notice and cure provisions, and avoid communications that suggest the default has been forgiven if that is not the intent**. The Airgas decision protected the claim on the facts before it, but careful contract administration is considerably cheaper than litigating waiver after the fact.

8. For Contractors and Suppliers, the Contract Should Anticipate the Dispute

The practical lesson from Airgas is not simply "plead economic loss." The better lesson starts years earlier, when the contract is negotiated and then administered.

A supplier or contractor should know what the agreement says about ownership, access, payment, suspension, cure, termination, removal of equipment, exclusivity, force majeure, limitations of liability, consequential damages, and exclusive remedies. Those provisions should work together. A right to own equipment is less useful if the agreement is silent about access to retrieve it. A suspension right may create operational risk if notice requirements are unclear. A limitation of damages may be undermined by inconsistent language elsewhere in the agreement.

The same discipline matters after trouble begins. If a customer stops paying, the supplier should not improvise from memory. Review the agreement. Determine whether notice is required. Identify cure periods. Decide whether continued performance is a business accommodation or a legal election. State reservations of rights where appropriate. Preserve the communications showing why the company acted. If company-owned property is at the customer's site, confirm the contractual and legal basis for accessing, disabling, or removing it before taking action.

For the customer, the exercise is the mirror image. Understand what property on the premises actually belongs to the supplier, what happens if the supply relationship ends, whether critical operations depend on equipment the customer does not own, and what remedies remain available if the supplier fails to perform.

These are not litigation questions only. They are continuity-of-operations questions.

9. The Pleading Label Is the Beginning of the Analysis, Not the End

A complaint can make an ordinary commercial dispute sound very different from the disagreement the business experienced in real time. That is the nature of litigation. Lawyers identify legal theories, and the names of those theories can carry consequences for damages, defenses, insurance, discovery, and settlement leverage.

Airgas is a reminder to get underneath those labels. If the plaintiff says property was converted, ask where the plaintiff's right to possess that property came from. If the plaintiff alleges interference with another business relationship, ask what duty the defendant allegedly violated to cause that interference. If the claimed damages exceed what the contract allows, ask whether the tort theory depends on an independent duty or merely repackages the contractual breach in an effort to obtain a different remedy.

Sometimes the answer will reveal a genuine tort. Sometimes it will reveal both contract and tort claims. But sometimes, as in Airgas, the complaint may use the vocabulary of intentional torts while the legal dispute remains fundamentally about the rights and duties the parties created for themselves by contract.

That distinction can be worth millions of dollars.

10. The Bottom Line

Commercial contracts do more than establish price and performance obligations. They allocate risk, define property and access rights, establish remedies, and determine what happens when the relationship deteriorates.

In Airgas, the customer characterized the supplier's conduct as conversion, trespass to chattels, and tortious interference and obtained a multimillion-dollar trial judgment. The appellate court looked past the labels to the source of the asserted duties. Because those duties concerning the tank arose from the parties' agreement rather than an independent source of law, the tort claims were barred. The court also held that Airgas did not surrender its contract claim merely because it continued performing while trying to preserve the relationship.

For business owners, contractors, and suppliers, the useful question is therefore not merely, "What does the complaint call the claim?" The better questions are: "What duty was actually breached, where did that duty come from, and what did the parties agree would happen if the deal went wrong?"

If your business routinely leaves equipment at customer or job sites, or if a contract or payment dispute is developing, addressing the parties' rights early can prevent a manageable business problem from becoming expensive litigation.

This article is for general informational purposes only and does not constitute legal advice. The application of the economic-loss rule, contract remedies, waiver principles, and other legal doctrines depends on the particular facts, contract language, claims, and governing law. Consult qualified legal counsel regarding a specific situation.