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MALICIOUS PROCUREMENT OF BREACH OF CONTRACT

It is the intent of this note, first, to trace the development of the tort of inducing breach of contract in England and America, in general, and in Pennsylvania, in particular; second, to set forth the requirements which are necessary to sustain a cause of action; third, to list the possible remedies available to the plaintiff.

The remedy against one who induced breach of contract was first recognized in the now famous case of *Lumley v. Gye*.¹ Miss Wagner, under contract to sing in Lumley's theatre, was induced by the defendant to breach her contract. It was shown that the defendant had procured this breach with a malicious intent to injure the plaintiff. A divided court held that the action could be sustained and found the defendant guilty of a tort in persuading Miss Wagner to breach her contract with the plaintiff. This revolutionary extension of the law was at first received by the ultra-conservative courts of England with great hesitancy;² but twenty-eight years later, in *Bowen v. Hall*,³ the doctrine was restated. Both of these cases, however, limited recovery to cases involving contracts for personal services, and it was not until the case of *Temperton v. Russell*,⁴ in 1893, that the principle was extended to include contracts other than those for personal services. From these embryonic cases the doctrine developed gradually to include practically any contract.⁵

In America, the development was very similar to that in England—reluctance, at first, followed by almost general approval. A few jurisdictions have refused to extend the principle beyond the scope of contracts for personal services.⁶ It is submitted that, because of the celerity with which this phase of the law has developed, even these states will recognize the principle in the broad view in which it is now almost universally accepted.

The cases in Pennsylvania are typical of the development elsewhere. The first case in Pennsylvania predicated on the theory was *Benford v. Samner*,⁷ decided in 1861. While recovery was denied, the principle was recognized. In this case it was held that a creditor who knowingly received money which his debtor had promised to another creditor was not liable for inducing the debtor to breach his agreement with the other creditor. In discussing the agreement between the defendant creditor and the debtor, the court, speaking through Justice Strong, said (at page 18):

¹ 2 El. & Bl. 216 (1853).

² Pollock, *Law of Torts*, 8th edition, page 328; 2 H. L. R. (1888) 19.

³ 6 Q. B. D. 333 (1881).

⁴ 1 Q. B. 715 (1893).

⁵ *Jasperson v. Dominion Tobacco Co.*, 92 L. J. P. C. 190 (1923).

⁶ *Kline v. Eubanks*, 109 La. 241, 33 So. 211 (1902); *Swain v. Johnson*, 151 N. C. 93, 65 SE 619 (1909); *Boulter Brothers v. Macauley*, 91 Ky. 135, 15 SW 60 (1891); *Glencoe Land & Gravel Co. v. Hudson Bros. Commission Company*, 138 Mo. 439, 40 SW 93 (1897).

⁷ 40 Pa. 9 (1861).

"Yet a combination with the other defendants for such a purpose was not illegal, unless it was in fraud of the rights of Samner, and C. Benford was not responsible at all unless the confederacy was to deprive the plaintiff of his property."

In *Norcross v. Otis Bros. and Company*,⁸ in 1893, it was held that the mere giving of a notice by a third person to a debtor not to pay his creditor a sum of money due him under a contract was not sufficient to maintain an action for damages to recover the loss which the plaintiff had sustained as a result of his having to bring a suit against the debtor to recover the amount due under the contract. The court thus held, even though it was shown that the notice had been given maliciously and vexatiously. These two cases show that while the Pennsylvania courts recognized the doctrine of *Lumley v. Gye*, they were reluctant to permit any extension. Did not the defendant in the *Norcross* case by giving the notice with full knowledge of the existing contract maliciously procure the debtor to breach his contract to the injury of the plaintiff?

In *Sweeney v. Smith*⁹, a Pennsylvania federal court case decided in 1909, the defendant purchased bonds from the Bay Shore Terminal Company, a Virginia corporation, through a committee which had been vested with plenary power to act. Defendant had knowledge of a prior agreement of sale which the committee had made with the plaintiff. The plaintiff sought recovery in equity from the defendant on the theory that the defendant had induced the committee to break its contract with the plaintiff. The defendant demurred to the bill. The court in sustaining the demurrer held that the mere knowledge of the plaintiff's contract with the committee was not sufficient to render the defendant liable. Judge McPherson said (at page 387):

"Before he [defendant] can be called to account, some legal ground of liability must appear; he must participate in the breach before he can be held to blame; and the mere knowledge that the promisor intends to break the contract with the first promisee is not wrongful in itself, and does not disable the second promisee from making the subsequent contract. To be blameworthy he must take some active step to bring about the breach. At the least, he must induce or persuade the promisor to abandon an earlier agreement . . ."

In *Caskie v. Philadelphia Rapid Transit Company*¹⁰ (1936), the plaintiff had a contract of employment with the International Railway Company on which services had been performed. The defendant fraudulently conspired with the plaintiff's employer (it represented to the employer that the defendant and not the plaintiff was entitled to the compensation for the services) to deny the plain-

⁸152 Pa. 481 (1893).

⁹167 Fed. 385, Aff'd. 171 Fed. 645, 96 CCA 91, Certiorari denied, 30 SC 400, 215 US 600 (1909).

¹⁰321 Pa. 157 (1936).

tiff's claim. The employer paid the defendant the amount of \$40,000 for services rendered. In sustaining the plaintiff's claim, the court quoted from *Temperton v. Russell*¹¹ as follows (at page 159):

"A contract confers certain rights on the person with whom it is made, and not only binds the parties to it by the obligation entered into, but also imposes on all the world the duty of respecting that obligation."

The court also quoted with approval the statement of Justice Brewer in *Angle v. Chicago, St. Paul, Minneapolis and Omaha Railway Company*¹²:

"It has been repeatedly held that, if one maliciously interferes in a contract between two parties, and induces one of them to break that contract to the injury of the other, the party injured can maintain an action against the wrongdoer."

In *Klauder v. Cregar, et al.*¹³ (1937), the court held that an insurance company who, through its agent, had maliciously induced a widow to break her contract with the plaintiff (in which contract the plaintiff had been given a power of attorney to prosecute the claim of the widow against the defendant) was liable. The court quoting from *Hornstein v. Podwitz*¹⁴ said (at page 8):

"One who, having knowledge of an existing valid contract between others, *intentionally, knowingly, and without reasonable justification or excuse* [italics added], induces one of the parties to the contract to breach it to the damage of the other party, is liable in an action to recover the damages suffered. The action is predicated on the intentional interference without justification with contractual rights, with knowledge thereof. Such interference constitutes a legal wrong, and, if damages result therefrom, a valid cause of action exists."

In *Wabl v. Strous*¹⁵ (1942), a case very similar in facts to the *Klauder* case, an opposite result was reached. The court distinguished the cases as follows (at page 406):

"Inasmuch as defendant company, unlike the insurance company in the *Klauder* case, did not advise his clients not to pay him, nor represent that they would be under no obligation to do so if they themselves effected a settlement, no breach of the plaintiff's contract was induced by the company . . ."

In *Dorrington et al. v. Manning et al.*,¹⁶ decided in 1939, there was a very significant application of the principle. In this case the plaintiffs had been employees of a bus company and were refused membership in the defendants' union which had organized all of the bus operators. The defendants threatened

¹¹ Q. B. 715 (1893).

¹² 151 US 1 (1893), at page 13.

¹³ 327 Pa. 1 (1937).

¹⁴ 254 NY 443, 173 NE 674 (1930).

¹⁵ 344 Pa. 402 (1942).

¹⁶ 135 Pa. Super. 194 (1939).

the bus company officials with a strike if they did not discharge the plaintiffs. The bus company, thus coerced, discharged the plaintiffs. The plaintiffs brought suit against the union on the theory that it had maliciously induced the bus officials to discharge them. The court sustained the plaintiff's argument. Said Justice Baldrige (at page 200):

" . . . the defendants' conduct in coercing the employer to discharge the plaintiffs, who were arbitrarily refused admission to the association, constituted a *malicious* and *wilful* [italics added] interference with the plaintiffs' contract of employment and a conspiracy to do an unlawful act."

This was the first case in Pennsylvania which extended this doctrine to include breaches of contracts caused by inducements from labor unions. In view of the many present labor difficulties it is very possible that more cases of this kind may result. Another interesting thing noted in this case is the form of relief which the court granted. The plaintiffs brought a bill in equity praying that the defendants be enjoined from further interference with their contracts and also asked damages which had resulted from past interference. The court granted both. This was the first case in which the court granted an injunction restraining a defendant from malicious interference with contracted rights. The court in granting the injunctive relief, however, placed emphasis on the nature of the contract rather than on the fact of the malicious interference. It was said (at page 201), "The right to work . . . constitutes a property right, the continued interference with which equity will enjoin where the legal remedy is inadequate." Would the court enjoin malicious interference with any contract?

*Eddyside Company v. Seibel et al.*¹⁷ (1940) is another case brought against a labor union. In this case the employer sought damages, in trespass, for losses sustained by him as a result of the defendant's maliciously inducing the employees to breach their contract of employment. Recovery was allowed. The court (at page 181) quoted approvingly from *Sorenson v. Chevrolet Motor Company*¹⁸:

"When one has knowledge of the contract rights of another, his wrongful inducement of a breach thereof is a wilful destruction of the property of another . . ."

The latest case in Pennsylvania on inducing breach of contract is that of *Ramondo et Ux v. Pure Oil Company*¹⁹, decided in 1946. Plaintiffs, husband and wife, leased a gasoline station to the defendant. The latter appointed the husband to operate the station as its agent. Some time later, while the lease with the defendant was still effective, the plaintiffs leased the station to X (this lease was, in effect, an assignment of the husband's agency with the defendant). The defendant later renewed its lease with the plaintiffs but at the time of such

¹⁷142 Pa. Super. 174 (1940).

¹⁸171 Minn. 260, 214 NW 754 (1927).

¹⁹159 Pa. Super. 217 (1946).

renewal had full knowledge of the plaintiffs' lease with X. Subsequently, the defendant induced X to break his lease with the plaintiffs. Plaintiffs brought an action to recover the loss sustained as a result of this breach. The court allowed recovery and cited approvingly the leading Pennsylvania cases mentioned above.

In applying this principle of tort law, there are three important considerations:

- A. What are the requisites which must be satisfied to maintain the action?
- B. What type of contract does the doctrine contemplate?
- C. What are the remedies available to the plaintiff?

A. What are the requisites which must be satisfied to maintain the action?

To maintain the action the plaintiff must show:

- 1. That there was a contract;
- 2. That the contract was breached and resulted in injury to him;
- 3. That the defendant induced and procured the breach
 - a. knowingly,
 - b. maliciously,
 - c. without reasonable cause or justification.

The problems here are two: (1) What is meant by malicious? (2) What is a reasonable cause or justification? Legal malice, as here used, does not mean actual malice or ill will. A New York case, *Campbell v. Gates*,²⁰ cited approvingly in practically all of the Pennsylvania cases, gives a very adequate definition of malice, as here used:

"Maliciousness does not necessarily mean actual malice or ill will but the intentional doing of a wrongful act without legal or social justification."

As to what is legal justification there is no fixed, definite rule to follow. In almost every case the question to be answered is: Is the actor's conduct justified by the circumstances? In determining the problem of justification, the following considerations from the Restatement of Torts, Section 767, should prove very helpful:

- 1. The nature of the actor's conduct;
- 2. The nature of the expectancy with which his conduct interferes;
- 3. The relations between the parties;
- 4. The interest sought to be advanced by the actor;

²⁰236 NY 457, 141 NE 914 (1923).

5. The social interest in protecting the expectancy on the one hand and the actor's freedom of action on the other hand.

B. What type of contract does the doctrine contemplate?

As observed in the cases cited above, the scope of the doctrine was limited in the beginning, but has expanded quite rapidly until it may now be announced that it applies to any contract which is in force and effect and which is not completely void as being in restraint of trade or opposed to public policy. It even has been held applicable to voidable contracts. In *Cumberland Glass Company v. DeWitt*²¹ it was held that the fact that a contract was not enforceable because violative of the statute of frauds was no defense to an action for tortious interference causing a breach of said contract. In *Aalfco Company, Incorporated v. Kinney, et al.*,²² it was held that the mere fact that a contract was unenforceable because of uncertainty was not sufficient to bar an action for maliciously inducing a breach of it. In *Moran v. Dunphy*,²³ Chief Justice Holmes (at page 487) made it clear that a contract unenforceable because of lack of mutuality could give rise to an action for inducing breach thereof, when he said:

"We apprehend that there is no longer any difficulty in recognizing that a right to be protected from malicious interference may be incident to a right arising out of a contract, although a contract, so far as performance is concerned, imposes a duty only on the promisor."

C. What are the remedies available to the plaintiff?

There are two definite remedies available to the plaintiff, and there are two other possible remedies. The definite remedies are: (1) Trespass for damages; (2) Assumpsit for money had and received—this was the action used by the plaintiff in the *Caskie* case cited above. The other possible remedies are: (3) Injunction, as was allowed the plaintiff in the *Dorrington* case; (4) Bill in Equity to recover the benefits received by the defendant on the theory that he is a trustee *ex maleficio*.²⁴ When the plaintiff seeks to use the equity remedies he must, of course, show that the legal remedy is inadequate and that a property right is being violated. The most usual remedy is the action of Trespass.

Inducing breach of contract has had a remarkable growth in less than a century. It is submitted that the expansion will continue and will extend to other phases of breach of contract, for example, negligent breach of contract,²⁵ and will even be extended to include cases where there is no contract but where there is a malicious inducement of another to refuse to contract.²⁶

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²¹120 Md. 381, 87 A. 927 (1913).

²²105 N. J. L. 345, 144 A. 715 (1929).

²³177 Mass. 485, 59 NE 125 (1901).

²⁴This remedy is set forth in the dicta in *Caskie vs. Philadelphia Rapid Transit Company*, 321 Pa. 157 (1936).

²⁵For an interesting article on negligent breach of contract see 45 Dick. LR (1941) 211.

²⁶For a discussion of this extension see 88 Univ. of Pa. LR (1940) 754.