Michigan Law Review

Volume 45 | Issue 5

1947

CORPORATIONS-TORTS-LIABILITY OF A CORPORATE OFFICER FOR INDUCING CORPORATION TO BREACH ITS CONTRACT

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CORPORATIONS—TORTS—LIABILITY OF A CORPORATE OFFICER FOR INDUCING CORPORATION TO BREACH ITS CONTRACT—Defendant corporation elected to redeem its outstanding preferred stock at a price of $65 a share including accumulated dividends. When plaintiff tendered its certificates of the preferred stock for transfer to the corporation, the company refused to accept the certificates or to pay for them at their redemption price. Plaintiff alleged that defendant Vincent, president of defendant corporation and owner of most of its common stock, conspired with and induced the company to break its stock redemption contract with plaintiff after plaintiff's refusal to agree to share with Vincent 50 per cent of any profits that might accrue from redemption of the stock, in order to secure for himself a share of the benefits resulting from the breach. In a suit for breach of contract against the defendant corporation, and against defendant corporate officer for inducing and conspiring with the company to break its contract with plaintiff, *held*, no cause of action was stated against the officer, for as an agent of the corporation he was clothed with the same privileges as the company, which was immune from tort liability for inducing the breach of its own contract. *J. E. Brulatour, Inc. v. Wilmer & Vincent Corp.*, (N.Y. S. Ct. 1946) 63 N.Y.S. (2d) 54.

A corporate officer's liability in a tort action for inducing a breach of contract [1] between the corporation and a third party has been considered in but few American cases and there is little uniformity in the decisions. The New York courts, ostensibly following the English view,[2] have, with almost identical reasoning in recent cases,[3] given an absolute privilege to the officer upon the agency relationship. This result has been variously based upon the officer's being the alter ego of his principal,[4] upon a holding that the plaintiff's remedy in a contract action against the principal is adequate,[5] and upon the desirability of protecting the discharge of fiduciary obligations by freeing the corporate officer from possible liability.[6] In New York the scope of this unqualified privilege would seem to be co-extensive with the scope of the officer's activity as the agent

[1] For a discussion of the tort, see PROSSER, TORTS, § 104 (1941), and Sayre, "Inducing Breach of Contract," 36 HARV L. REV. 663 (1923).

[2] Said v. Butt, [1920] 3 K.B. 497; G. Scammell & Nephew, Ltd. v. Hurley, [1929] 1 K.B. 419.

[3] Lukach v. Blair, 108 Misc. 20, 178 N.Y.S. 8 (1919), affirmed, Lukach v. Reigart, 192 App. Div. 957, 182 N.Y.S. 935 (1919); Hicks v. Haight, 171 Misc. 151, 11 N.Y.S. (2d) 912 (1939); Greyhound Corp. v. Commercial Casualty Ins. Co., 259 App. Div. 317, 19 N.Y.S. (2d) 239 (1940), noted in 89 UNIV. PA. L. REV. 250 (1940), and 54 HARV. L. REV. 131 (1940).

[4] Principal case at 57; Greyhound Corp. v. Commercial Casualty Ins. Co., 259 App. Div. 317, 19 N.Y.S. (2d) 239 (1940).

[5] Hicks v. Haight, 171 Misc. 151, 11 N.Y.S. (2d) 912 (1939).

[6] Lukach v. Blair, 108 Misc. 20, 178 N.Y.S. 8 (1919), affirmed, Lukach v. Reigart, 192 App. Div. 957, 182 N.Y.S. 935 (1919); Hicks v. Haight, 171 Misc. 151, 11 N.Y.S. (2d) 912 (1939).

of the corporation.[7] In other jurisdictions an opposite result has been reached by judicial reasoning which has either considered and rejected any special privilege,[8] or has simply ignored it.[9] When the possibility of a privilege has been denied, the denial has usually been placed on the ground that a corporate officer stands on no more favored footing than a stranger who intentionally procures a breach of the corporation's contract, and the agency relationship itself affords no defense.[10] Between these poles of judicial decisions—an absolute privilege and a complete absence of any privilege—lies a middle ground of authority which recognizes a conditional or qualified privilege in the officer of the corporation, which may be lost if it is used for wrongful ends or by wrongful means. The basis of this qualified privilege is a policy of allowing the agent to protect the interests of his principal, its stockholders and creditors, by discharging his corporate duties unhampered by the fear of personal tort liability which would normally attach to a stranger who induced the breach of a disadvantageous contract.[11] Such a conditional privilege is, or should be, granted to anyone charged with responsibility for the welfare of another, such as a parent, a teacher, or an employer.[12] Courts which grant this qualified privilege to an officer of a corporation hold that the privilege is lost if the agent acts fraudulently,[13] or acts malevolently from a personal desire for gain at the expense of the plaintiff,[14] or uses coercion to induce his principal to breach a contract.[15] By holding, in effect, that the defendant officer is immune from any liability, even though his purpose in causing the breach of the corporation's contract was plaintiff's refusal

[7] Morris v. Blume, (N.Y. S. Ct. 1945) 55 N.Y.S. (2d) 196, affirmed, 269 App. Div. 832, 56 N.Y.S. (2d) 414 (1945), where the court enjoined defendant, president of a corporation, from interfering with an employee's contract with the corporation on the ground that defendant was acting outside the scope of his authority because under the plaintiff's contract the board of directors had sole power to terminate the employment agreement.

[8] Sidney Blumenthal & Co. v. United States, (C.C.A. 2d, 1929) 30 F. (2d) 247; McGurk v. Cronenwett, 199 Mass. 457, 85 N.E. 576 (1908).

[9] Elsbach v. Mulligan, (Cal. App. 1943) 136 P. (2d) 651 (1943); Carpenter v. Williams, 41 Ga. App. 685, 154 S.E. 298 (1930); Jones v. Stanly, 76 N.C. 355 (1877).

[10] See note 8, supra.

[11] Lee v. Fisk, 222 Mass. 418, 108 N.E. 833 (1915); Caverno v. Fellows, (Mass. 1938) 15 N.E. (2d) 483; Morgan v. Andrews, 107 Mich. 33, 64 N.W. 869 (1895).

That motive is important in determining the privilege, since it discloses the relative interests involved, see HARPER, TORTS, § 232 (1933). See Carpenter, "Interference With Contractual Relations," 41 HARV. L. REV. 728 (1928), for a discussion of the general privilege for inducing a breach of contract.

[12] 4 TORTS RESTATEMENT, § 770 (1939), where it is stated that the privilege is lost if the actor uses improper means or does not act to protect the other's welfare.

A clear example of this privilege is that which attaches to a relative who justifiably causes a breach of a marriage contract. Lukas v. Tarpilauskas, 266 Mass. 498, 165 N.E. 513 (1929).

[13] Lee v. Fisk, 222 Mass. 418, 108 N.E. 833 (1915); Morgan v. Andrews, 107 Mich. 33, 64 N.W. 869 (1895).

[14] Caverno v. Fellows, (Mass. 1938) 15 N.E. (2d) 483; Morgan v. Andrews, 107 Mich. 33, 64 N.W. 869 (1895).

[15] Boyson v. Thorn, 98 Cal. 578, 33 P. 492 (1893), (dictum).

to share with him the expected profits from the contract and a desire to reap a personal gain from the breach, the decision in the principal case is a striking illustration of the lengths to which a court may be carried in its application of the absolute privilege doctrine.[16] To free the agent completely from tort liability because under the peculiar circumstances the principal is usually liable in an action in contract rather than in tort [17] would seem to be illogical. And of course an agent who commits a tort does not usually escape liability by showing that he acted within the scope of his authority.[18] It is submitted that in the principal case an application of the theory of a qualified privilege would have produced a more commendable result. Although remaining free to protect the legitimate interests of the corporation, the officer would have been held accountable for tortious conduct where neither the purpose nor the effect was to advance the welfare of his principal.

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[16] It is doubtful if the language in Said v. Butt, [1920] 3 K.B. 497, which has been heavily relied on by New York cases in granting the absolute privilege, justifies the decision in the instant case, for the English court limited its statement of the privilege to a "servant acting bona fide." Cf. BALLANTINE, CORPORATION, § 119 (1946).

[17] That one who breaches his contract may be liable in both contract and tort actions, see 18 CORN. L. Q. 84 (1932), and cases cited.

In Sorenson v. Chevrolet Motor Co., 171 Minn. 260, 214 N.W. 754 (1927), and in Luke v. DuPree, 158 Ga. 590, 124 S.E. 13(1924), defendants, who were parties to the contract, were held liable for conspiring to break the contract.

[18] 1 MECHEM, LAW OF AGENCY, 2d ed., § 1452 (1914); AGENCY RESTATEMENT, § 343 (1933).