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Interference With Contracts Terminable At Will - Clarke Langrall, Incorporated v. Shamrock Savings & Loan Association, Inc.

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Interference With Contracts Terminable At Will

Clarke Langrall, Incorporated v.
Shamrock Savings & Loan Association, Inc.[1]

Plaintiff insurance agent contracted with one Thompson to insure the latter's home. Thompson then applied to defendant for a mortgage loan in his home. He was told by defendant that his present insurance policy was unacceptable and that he should insure through another insurer, of which an officer of defendant company was agent. His contract with plaintiff contained a provision for cancellation at any time at the request of the insured. Thompson exercised his option to terminate and entered into a similar contract with defendant. Plaintiff thereupon brought this action against defendant for wrongfully inducing Thompson to break contractual relations with plaintiff. In finding for defendant, Chief Judge Rhynhart of the People's Court of Baltimore City held that defendant did not cause a breach of contract, but merely induced Thompson to exercise his contractual right to cancel the policy with plaintiff.

[1] Daily Record, October 19, 1962 (Md. 1962).

Chief Judge Rhynhart also stated that defendant was entitled to seek his own advantage at the expense of plaintiff since (1) the economic pressure exerted on Thompson was inconsequential in that Thompson could have gone elsewhere for a mortgage, and (2) the provision giving defendant the right to select an insurance agent was a reasonable business practice.

The tort of inducing breach of contract is of relatively modern origin.[2] It developed in England in 1853 from the landmark case of *Lumley v. Gye*,[3] where a divided court held that an action lay against a person who maliciously caused the breach of a valid and binding contract for personal services. Although this doctrine was initially greeted with some caution, it was reaffirmed in 1881,[4] and in 1893, in *Temperton v. Russell*,[5] it was extended to contracts other than those for personal services. By 1905 the tort achieved its present status when the House of Lords, in *South Wales Miners' Federation v. Glamorgan Coal Co.*,[6] held that a cause of action would lie even in the absence of malicious intent.

In Maryland, as in most of the United States, the tort of inducing breach of contract gained rapid acceptance.[7] It first appeared in Maryland in *Lucke v. Clothing Cutters' & Trim. Assembly No. 7507, K. of L.*,[8] where the court stated that an action by an employee lay against a third party who maliciously procured termination of an arrangement between employer and employee, even though the employee was a skilled tradesman and not a servant. Five years later, in dictum in *Gore v. Condon*,[9] the court stated, "The right to maintain the action can also be sustained, upon the doctrine that a man who induces one of two parties to a contract to break it, intending thereby to injure

[2] Its statutory origin lies in the Statute of Labourers, 1349, 23 Edw. III, which made actionable the enticing away of the servants of another. For a complete review of this early history, see PROSSER, TORTS § 106, at 722-25 (2d ed. 1955); and Sayre, *Inducing Breach of Contracts*, 36 Harv. L. Rev. 663 (1923).

[3] 2 El. & Bl. 216, 118 Eng. Rep. 749 (Ex. 1853).

[4] Bowen v. Hall, [1881] 6 Q.B.D. 333. The court strictly construed Lumley v. Gye in holding that, if persuasion were used for the purpose of injuring plaintiff or benefiting defendant at plaintiff's expense, such conduct would be deemed malicious.

[5] 1 Q.B. 715 (1893).

[6] A.C. 239 (1905).

[7] PROSSER, *op. cit. supra*, note 2 at 724. This tort has never been recognized in Louisiana. Robert Heard Hale v. Gaiennie, 102 So. 2d 324 (La. App. Div. 1958). In Kentucky, the requirement is that only conduct which is unlawful *per se* is actionable. Chambers v. Probst, 145 Ky. 381, 140 S.W. 572 (1911).

[8] 77 Md. 396, 26 A. 505 (1893).

[9] 87 Md. 368, 376, 39 A. 1042 (1898). See also Appendix to Gore v. Gordon, 87 Md. 739, for discussion of the development of this tort.

the other or to obtain a benefit for himself, does the other an actionable wrong." The leading Maryland case in this area was decided in 1908, in *Knickerbocker Co. v. Gardiner Co.*,[10] where the court held that one who induces another to breach a contract by wrongful or unlawful means is liable if injury results. The court stated that a fine balance must be struck between encouraging lawful competition and preserving the efficacy of contractual relations. This approach is still cited with approval in Maryland.[11]

According to Section 766 of the Restatement of Torts:

> "[O]ne who, without privilege to do so, induces or otherwise purposely causes a third person not to
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> (a) perform a contract with another, or
>
> (b) enter into or continue a business relation with another is liable to the other for the harm caused thereby."[12]

This section is interpreted in the Comments[13] to mean, in (a), that the conduct induced by A constitutes a breach of B's existing contract with C; and, in (b), that B and C are already in a business relation terminable at will and A induces B to terminate.

Having examined the historical development of the tort of inducing breach of contract, it is appropriate to analyze

[10] 107 Md. 556, 69 A. 405 (1908). Sumwalt Co. contracted to deliver ice at a set price to Gardiner, plaintiff. Sumwalt bought most of its ice from Knickerbocker, defendant, an ice manufacturer. Knickerbocker, knowing of the contract between Gardiner and Sumwalt, and intending to benefit himself, notified Sumwalt that if it sold to Gardiner, Knickerbocker would cease supplying it ice. Consequently Sumwalt broke its contract with Gardiner, and the latter was compelled to buy its ice directly from Knickerbocker at a higher price. The court held Knickerbocker liable to Gardiner for the loss caused. In a subsequent case arising from the same facts, Sumwalt Co. v. Knickerbocker, 114 Md. 403, 80 A. 48 (1911), Sumwalt sued Knickerbocker for forcing him to breach his contract with Gardiner, and the court again found Knickerbocker liable.

[11] United Rental Equip. Co. v. Potts & Callahan Con. Co., 231 Md. 552, 191 A. 2d 570 (1963); Baird v. C. & P. Tel. Co. of Baltimore, 208 Md. 245, 117 A. 2d 873 (1955), where a finding of intentional interference with contract rights and not mere negligent omission to publish ordered advertising was held necessary for recovery; Standard v. McCool, 198 Md. 609, 84 A. 2d 862 (1951), where knowledge of the existing contract by third person was required for recovery; Knocke v. Standard Oil Co., 138 Md. 278, 113 A. 754 (1921); Cumberland Glass Mnf'g Co. v. DeWitt, 120 Md. 381, 87 A. 927 (1913), *aff'd*, 237 U.S. 447 (1915), where malice was determined to be an intentional doing of a wrongful act without justification rather than ill will in the criminal sense; Willner v. Silverman, 109 Md. 341, 71 A. 962 (1909); Note, *Tortious Interference with Real Estate Contracts*, 14 Md. L. Rev. 157 (1954), noting Horn v. Seth, 201 Md. 589, 95 A. 2d 312 (1953).

[12] RESTATEMENT, TORTS § 766, at 49 (1939).

[13] *Id.*, Comment (c) at 53.

and determine the legal effect that the interference of a third person has on a contract terminable at will.[14] At the outset, a problem of interpretation must be discussed. When B and C have made an agreement terminable at will, the termination by B, induced by A, cannot constitute a breach of contract since B is merely exercising his contractual right to end the agreement. It seems, however, that many courts ignore this distinction and continue to call the action by A "inducing breach of contract".[15]

There are two different approaches to cases in this area. A large majority of American courts have stated that the fact that a contract is terminable at will has no effect upon the existence of a cause of action for inducing breach of contract. There is some authority to the contrary, however, as a few courts have held that, since the contract is terminable at will and the terminating party, therefore, cannot be liable for breach, no action can lie against the party inducing termination. Though these views as stated appear to be absolute, in practice most courts look to the conduct of the inducing party rather than the type of contract involved as the real determinant.

The reasoning of the majority is that, until a contract at will is terminated, "the contract is a subsisting relation, of value to the plaintiff, and presumably to continue in effect."[16] The case most often cited in support of the general rule is *Truax v. Raich,* where the Supreme Court, after holding that a state statute limiting work opportunities to aliens was unconstitutional as a violation of the Fourteenth Amendment, stated with regard to the employment contract concerned therein: "The fact that the employment is at the will of the parties, respectively, does not make it one at the will of others. * * * [U]njustified interference of third persons is actionable. . . ."[17] As in England, the tort of inducing breach of contract was extended to reach cases

[14] For a good analysis of the general area of inducing breach of contracts, see Annot., 84 A.L.R. 43 (1933), supplemented in 26 A.L.R. 2d 1227 (1952); PROSSER, TORTS § 106, at 720-45 (2d ed. 1955).

[15] See generally Comment, *Inducing Breach of Contract: Herein of Contracts Terminable at Will,* 56 N.W.U.L. Rev. 391 (1961); Note, *Interference with Contracts at Will A Problem of Public Policy,* 25 Brooklyn L. Rev. 73 (1959).

[16] PROSSER, *op. cit. supra,* note 14, at 726.

[17] 239 U.S. 33, 38 (1915); *accord,* Canuel v. Oskoian, 184 F. Supp. 70, 75 (D.R.I. 1960), where a labor union, in enforcing its "closed shop" policy, induced employer to fire employees and the court stated, "The fact that employment is terminable at the pleasure of employer does not render it valueless; and the law should and does protect the employee from . . . unprivileged interference by third persons. . . ."; Mallard v. Boring, 182 Cal. App. 2d 390, 6 Cal. Rptr. 171 (1960); Childress v. Abeles, 240 N.C. 667, 84 S.E. 2d 176 (1954).

other than employment contracts, for, as said by the New York Supreme Court in *Silva v. Bonafide Mills,* "The tendency has been to enlarge rather than restrict the landmark doctrine of *Lumley v. Gye.*"[18] Following this trend, courts have held liable persons who induced corporations to terminate contracts,[19] agency agreements,[20] and, recently, some partnership agreements.[21]

The minority doctrine is well stated by Professor Corbin:

> "Where by the terms of a contract a party thereto has the power and privilege of termination, by notice or otherwise, one who induces him to exercise that power is not inducing a breach of contract. A competitor may lawfully bargain with such a party to induce the termination for the purpose of getting advantages that would otherwise have been enjoyed by the other contractor. . . ."[22]

Thus, in the case of *E. R. Squibb & Sons v. Ira J. Shapiro,* where an exclusive agency contract was terminated through the inducement of defendant, the New York Superior Court stated in finding for defendant, "If defendant had induced a 'breach' of contract as contradistinguished from merely inducing a 'termination' as expressly authorized by the contract, a different situation would be present. . . ."[23]

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[18] 82 N.Y.S. 2d 155, 156 (1948). Applying this philosophy, the court rejected defendant's assertion that the contract being terminable at will could be terminated as a matter of right by the contracting party, since defendant's methods in inducing termination were unfair and thus not privileged.

[19] Tye v. Finklestein, 160 F. Supp. 666 (D. Mass. 1958); Mendelson v. Blatz Brewing Co., 9 Wis. 2d 487, 101 N.W. 2d 805 (1960). Both cases involved attempts by stockholders or prospective stockholders to exercise more power in corporate affairs causing firing of employees and termination of agency contracts.

[20] See Freed v. Manchester Service, 165 Cal. App. 2d 186, 331 P. 2d 689, 690 (1958), where the court stated that "an action will lie for inducing breach of contract although the means employed were in themselves lawful unless there is sufficient justification for such conduct"; Speegle v. Board of Fire Underwriters, 29 Cal. 2d 34, 172 P. 2d 867 (1946); Grattan v. Societa Per Azzioni Cotonificio Cantoni, 137 N.Y.S. 2d 235 (1954).

[21] See Romano v. Wilbur Ellis & Co., 82 Cal. App. 2d 670, 186 P. 2d 1012 (1947); Goldfarb v. Strauss, 212 N.Y.S. 2d 579 (1961).

[22] 6A CORBIN, CONTRACTS § 1470 at 581-82 (1962 ed.).

[23] 64 N.Y.S. 2d 368, 370 (1945). This minority doctrine has been supported in some employment contracts [Cohen v. Brunswick Record Corp., 221 N.Y.S. 2d 893 (1961), where the court stated that exercising of a legal right by contracting party cannot be the subject of an action against a third person for procuring a breach. The result would be different if the gravamen were fraud] and other business relationships [*e.g.* Kingsbery v. Phillips Petroleum Co., 315 S.W. 2d 561 (Tex. Civ. App. 1958), where the court stated that, in a contract terminable at will, defendant had the legal right to persuade contracting party to terminate the agreement if a legitimate purpose was served.].

From an examination of the cases, however, it appears that even courts which purport to follow the minority view investigate the conduct of the party inducing termination of the contract to determine whether it is justified.

The opinion in the case noted herein[24] is illustrative of the confusion generated by the majority and minority views. After examining both viewpoints and all of the surrounding circumstances, Chief Judge Rhynhart held that the defendant did not induce a breach of the insurance contract and that the contracting party had merely exercised his right to terminate. He thus espoused both views in reaching this result, thereby indicating that obsolete distinctions still persist.

The majority and minority views both state that tortious conduct by the person inducing the breach or termination of contract is actionable.[25] In attempting to define what conduct is tortious, the courts have adopted such nominal tests as "malicious interference",[26] and "unlawful means".[27] The adoption of these artificial tests is the result of the desire of the courts to have a convenient category in which they can classify what conduct does, and what conduct does not, induce a breach of contract. A more realistic approach would be for the courts to disregard these tests and concentrate solely on whether or not the actions of the inducing party are justified.

The most practical method of dealing with this tort is simply to treat the factor of whether or not the contract is terminable at will as just *one* of the circumstances to be weighed in determining liability. The effect of such a proposal would be to adopt a principle which the courts tacitly have long recognized,[28] namely, that liability depends upon whether or not the conduct of the inducing party is justified under the circumstances. The focal point of this justification — whether or not the inducing party is privileged in his action — would be determined from the facts of each case by examining the relationship between the parties,

[24] Langrall v. Shamrock Savings & Loan Association, Inc., Daily Record, October 19, 1962 (Md. 1962).

[25] *Supra*, notes 23-24.

[26] See W. P. Iverson v. Dunham Mfg. Co., 18 Ill. App. 2d 404, 152 N.E. 2d 615 (1958).

[27] This is the test used by the New York courts and was first adopted in Coleman & Morris v. Pisciotta, 107 N.Y.S. 2d 715 (1951).

[28] The courts have applied this idea in the analogous area of contracts unenforceable due to the Statute of Frauds, as in Cumberland Glass Mnf'g Co. v. DeWitt, 120 Md. 381, 87 A. 927 (1913), *aff'd*, 237 U.S. 447 (1915), where the Maryland Court of Appeals stated that interference with a contract may be beyond the scope of privilege of lawful competition even though the contract may be unenforceable because of noncompliance with the Statute of Frauds.

the nature of the actor's conduct, the interest sought to be advanced by the actor, the expectancy with which it interferes, and the social interests involved in allowing this freedom of action,[29] as weighed against the harm that this conduct would produce.[30] Such a rationale would put an end to the semantic problems of whether the inducing party has caused a *breach* or a *termination* of contract, since the basic issue would be the nature of the conduct, rather than the nature of the contract.[31] Furthermore, it would allow the courts to divest themselves of artificial tests and employ the more realistic approach of deciding particular cases according to the circumstances. The effect of this approach would be to establish a cause of action in tort for unprivileged interference with contractual relations.

One might ultimately be left with the question of what effect a termination at will clause would have in a contract. The answer is best described in a statement in a recent New York case, *Terry v. Dairyman's League Co-Operative Ass'n*,[32] "The fact that the contract is terminable at will greatly broadens the scope of the defendant's privilege. * * * Under the principles of the free enterprise system, that privilege is a very broad one. . . ." The approach of the New York court is indeed a sound one and should be accorded much weight in analyzing future cases in this tort area.

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[29] Because of the social interests involved, the courts almost uniformly have held that marriage contracts merit special treatment and that it is not a tort to induce parties to break them. See PROSSER, TORTS § 106 at 727 (2d ed. 1955).

[30] See RESTATEMENT, TORTS § 767, at 63 (1939).

[31] See Cosmopolitan Film Distrib. v. Feuchtwanger Corp., 226 N.Y.S. 2d 584, 591 (1962), where the court stated that the issue involved was not the type of business relationship claimed disturbed — a contract for a definite term, one terminable at will, or an unenforceable promise — but rather the actions of the third person in interfering with the relationship.

[32] 157 N.Y.S. 2d 71, 78 (1956). See also a similar statement by the court in Mitchell v. Aldrich, 122 Vt. 19, 163 A. 2d 833, 836 (1960).