Interference with Contractual and Business Relations

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A. Introduction

South Carolina is among the majority of jurisdictions that have recognized tort liability for intentional interference with a person's economic relationship with a third party. Tort liability is imposed for intentional interference with the performance of an existing contract or the formation of a prospective one.

B. Intentional Interference with Existing Contract

1. Theory of Tort

A cause of action for intentional interference with contract is a tort cause of action separate from a cause of action arising from the contract itself. The cause of action for intentional interference with a contractual relationship is premised on the tortious behavior of someone not a party to the contract. Consequently, a party to a contract cannot be liable for tortious interference with that contract.

The South Carolina Supreme Court has explained the theory of the tort as follows:

The theory of this doctrine is that the parties to a contract have a property right therein, which a third person has no more right maliciously to deprive them of, or injure them in, that he would have to injure their property. Such an injury without sufficient justification, amounts to a tort for which the injured party may seek compensation by an action in tort for damages.

Interference with contractual relations requires an intentional, as opposed to a negligent, interference to be actionable. A claim of intentional interference with contract can be based on interference with a contract terminable at will.

2. Elements of Cause of Action

The elements necessary to establish the tort of intentional interference with an existing contract are: (1) a contract; (2) the defendant's knowledge thereof; (3) the defendant's intentional procurement of its breach; (4) the absence of justification; and (5) damages resulting therefrom.

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C. Intentional Interference with Prospective Contractual Relations

1. Theory of Tort

South Carolina has expanded the principles underlying the tort of intentional interference with contract by recognizing a separate, but closely-related, tort of intentional interference with prospective contractual relations. Interference with prospective contractual relations is essentially interference with the formation of a future or expected but yet unrealized contract, as distinguished from interference with the performance of a contract that already exists.

Courts have dismissed claims for intentional interference with prospective contractual relations when the defendant's efforts at interference proved unsuccessful. One case was dismissed even though the plaintiff claimed that the defendant's conduct had interfered with and harmed its contractual business relationship with a third party because the evidence showed that the plaintiff had successfully entered into a contract with the third party despite the defendant's conduct. The court rejected the plaintiff's assertion that the word "potential" should be interpreted to mean not only "future" contractual relations, but also "full" contractual relations; instead, the court held that the tort "usually require[s] the aggrieved party to have been unsuccessful in acquiring an expected contract due to a third party's intentional and wrongful actions." In another case, notwithstanding the defendant's allegation in its counterclaim for intentional interference with prospective contractual relations that the plaintiff "attempted to coerce [the defendant's] customers to switch to [the plaintiff's] products," the court dismissed the counterclaim because the defendant's "customers did, in fact, stay with the" defendant despite the plaintiff's alleged interference.

2. Elements of Cause of Action

To recover for intentional interference with prospective contractual relations, the plaintiff must prove: (1) that the defendant intentionally interfered with the plaintiff's potential contractual relations; (2) for an improper purpose or by improper methods; and (3) which causes injury to the plaintiff.

D. Damages and Other Relief

As an element of proof for either a claim for intentional interference with an existing contract or a claim for intentional interference with a prospective contractual relation, the plaintiff must show that actual harm or damage resulted from the tortious interference.

Because causes of actions for intentional interference with an existing or prospective contract are tort–not contract–claims, the damages recoverable under these causes of action are not limited to traditional contract damages. Instead of being limited to recovery of losses that are within the contemplation of the parties as with contract damages, a plaintiff in an action for intentional interference with an existing or prospective contract can recover for all losses proximately caused by the defendant's wrongful interference. As stated by the South Carolina

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Court of Appeals:

While the causes of action [of breach of contract and tortious interference with contract] involve separate and distinct wrongful acts committed by different parties, there are important commonalities which affect the damages question. The nexus between the two causes of action is the breach of the contract, for . . . breach of the contract is an element of both causes of action. This is the element from which the injured party's actual damages flow on both the contract and tort claims. This does not mean, however, that the measure of actual damages on both causes of action are coextensive.

Under the contract claim the injured party can recover actual damages for the direct and natural consequences of the breach, or for damages that were within the contemplation of the contracting parties. The damages recoverable for intentional interference are not measured by contract rules. The injured party can recover from the tortfeasor: the pecuniary loss of the benefits of the contract; consequential losses for which the interference is the legal cause; and, emotional distress or actual harm to reputation if they are reasonably to be expected to result from the interference. Thus, the actual damages under the contract claim and tort claim will be coextensive only with respect to the lost benefits of the contract which were a direct and natural consequence of the breach, or within the contemplation of the contracting parties. . . .

A plaintiff may obtain injunctive relief for the defendant's intentional interference with his contractual relations.

Elements of recoverable damages include the pecuniary loss of the benefits of the contract or prospective contract, consequential losses for which the interference is the legal cause, lost profits, and loss of business good will.

Although the essence of a tortious interference claim involves injury to the plaintiff's economic or business relations, South Carolina cases have also allowed damages for injury to reputation, mental anguish, and emotional distress if they are "reasonably to be expected" to result from the interference. However, in a rather cryptic opinion, the South Carolina Supreme Court appears to have questioned whether proof of mental anguish is alone sufficient to support an intentional interference with contract claim when the plaintiff suffered no pecuniary loss or actual harm to his economic interests as a result of the interference. By analogy to cases of intentional injury to person or property, it would seem that mental anguish is recoverable for intentional interference with an existing or prospective contract if connected with proof of actual pecuniary or economic loss.

The amount of actual damages must be proved with reasonable, not mathematical or absolute, certainty. It does not matter that the determination of damages depends to some extent on the consideration of contingent events; it is sufficient if a reasonable basis of computation is afforded, even though the result may be only approximate, or to adduce evidence which is the

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best the case is susceptible of under the circumstances and which will permit a reasonably close estimate of the loss.

A plaintiff is required to do those things a person of ordinary prudence would do under the circumstances to mitigate damages; however, the law does not require unreasonable exertion or substantial expense for this to be accomplished. The party who claims that damages should have been minimized has the burden of proving the damages could reasonably have been avoided or reduced. In a case involving a claim for intentional interference with contract, it was held that the trial court erred by not reducing the damages assessed against the defendant by the amount of costs savings that the plaintiff realized when it no longer had to perform the contract that was interfered with, although the trial court characterized those savings as being "rather negligible."

When seeking recovery of lost profits, the plaintiff must prove (1) that it is reasonably certain that profits would have been realized but for the tort and (2) that such lost profits can be ascertained and measured from the evidence produced with reasonable certainty. By reasonable certainty it is meant that the damages may not be left to mere speculation or conjecture. It is sufficient if there is a certain standard or fixed method by which the profits sought to be recovered may be estimated and determined with a fair degree of accuracy. Conversely, it has been held that the evidence of lost profits was too speculative when the plaintiffs provided estimates of the anticipated monthly income and expenses for a school, but the estimates did not reference any operational history of the school or any particular standard or fixed method for estimating future income and expenses for a business of that kind.

Proof of lost profits may be established through expert testimony, economic and financial data, market surveys and analyses, business records of similar enterprises, comparison with profit performance of businesses similar in size, nature and location, comparison with profit history of plaintiff's successor, comparison of similar businesses owned by plaintiff himself, and use of economic and financial data and expert testimony.

The plaintiff is ordinarily entitled to recover "net profits," which have been defined as "gross revenues less operating costs." A plaintiff cannot recover lost profit simply by showing gross receipts without establishing the amount of profits that were reasonably expected to be associated with those receipts. However, it has been held that when a plaintiff seeks damages to his business and reputation, it is not error for the court to utilize "gross revenues" to estimate damages when there is evidence that the operating costs cannot reasonably be reduced by the plaintiff following the defendant's tortious interference.

The South Carolina Court of Appeals has applied the "lost volume seller" doctrine in the context of an intentional interference with contract claim in which the evidence showed that

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the plaintiff-seller had sufficient excess capacity of inventory in which to fulfill both the contract wrongfully interfered with and any subsequent contracts. Under this theory, if the evidence shows that the injured party could and would have entered into a subsequent contract, even if the contract at issue had not been interfered with, and could have had the benefit of both contracts, the plaintiff can be said to have "lost volume" and the subsequent transaction is not deemed a substitute for or reduction of the losses sustained due to the interference of contract.

A South Carolina Court of Appeals decision involving a claim for intentional interference with prospective contractual relations may effectively narrow the damages recoverable in some cases involving alleged business interference. The court held that the allegation of a general or nonspecific loss of potential business customers, as opposed to the loss of potential business relations with specific third parties or with an identifiable class of third persons, is insufficient to state a claim for intentional interference with prospective contractual relations. The plaintiff in that case alleged that the defendant had wrongfully interfered with its mass mailings sent out to a group of potential customers and, as a result, its overall sales had dropped off dramatically. However, the plaintiff was unable to allege that the defendant's conduct had thwarted any "specific contract" which the plaintiff was reasonably certain to enter into.

The court noted that a claim for intentional interference with prospective contractual relations "generally stands following the loss of an identifiable contract or expectation" and the plaintiff "must allege 'either a business relation with specific third parties or with an identifiable class of third persons'" that was lost. The court further observed that "mere allegations of losses from a general list of unknown customers does not sufficiently plead the tort." Because the court found in that case that the plaintiff failed to plead facts stating a cause of action, it did not address what damages would be recoverable. However, it appears that the plaintiff's recovery would be limited to the losses attributable to those "identifiable" or "specific" potential contracts that the defendant interfered with–i.e., the plaintiff would not be allowed to recover damages based merely on proof of a general decrease in sales.

Punitive damages are also recoverable under proper circumstances for tortious interference. Punitive damages are justified upon a showing of an "aggravated" and "unjustified" interference with the contractual rights of a party. One court has held that a showing that the defendant acted with "willful, wanton, and reckless disregard" of a plaintiff's contractual rights was insufficient to support an award of punitive damages under a tortious interference with contract claim because such a finding is nothing more than the elements necessary to establish the underlying cause of action. Instead, the court construed South Carolina law "to be in the same vein" as Maryland law, which holds that punitive damages will lie in tort actions arising out of contractual relations only where there is "actual or express malice," which is defined as

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"an evil or rancorous motive influenced by hate; the purpose being to deliberately and willfully injure the plaintiff." The court in that case further held that a "mere desire to realize commercial gain" does not "constitute actual malice requisite to an award of punitive damages."

In those cases in which the damages recoverable against a party to a contract for breach of contract overlap completely with the damages recoverable against a third party for tortious interference with the same contract, the plaintiff is not entitled to a double recovery and any payments made by the one who breached the contract must be credited in favor of the one who induced the breach. In a case in which the plaintiff prevailed on its breach of contract cause of action against a party to the contract and on its separate cause of action against a third party for tortious interference with the same contract, the appellate court held that the plaintiff was entitled to a single judgment against the defendants because the plaintiff failed to present any evidence of damages other than the lost benefits of the contract that was breached.

E. Parties, Burden of Proof, and Evidence

1. Parties to Action

Any party to a contract may maintain an action for damages against a third party who tortiously interfered with the contract. All persons who unite to interfere with a contract are jointly and severally liable for the resulting damages to the party injured. Therefore, where two or more defendants act separately and independently but do things which combine to cause the tortious interference, they are liable as joint tortfeasors even in the absence of community of design or concerted action.

Adhering to the principle that a party to a contract cannot be liable for tortious interference with that same contract, the courts have held that an officer or employee of a corporate defendant generally cannot be held liable for interfering with a contract of the corporation. These cases are premised on the theory that an officer or employee who is acting within the scope of his or her authority is considered a party to the corporation's contract. However, it has been held that an officer or employee of a corporation may be liable for interfering with a contract of the corporation if he or she is acting outside the scope of his or her authority, acting with malice, or acting to serve his or her own personal interests.

2. Burden of Proof and Evidence

The plaintiff has the burden of proving all the essential elements of a cause of action for intentional interference with an existing or prospective contract. Each element must be proved by the preponderance of the evidence. However, in order to recover punitive damages, the plaintiff has the burden of proving such damages by "clear and convincing evidence."

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