Defense to Tortious Interference with Contract

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There's Justification. And Then There's Justification. Tortious Interference with Contracts in South Carolina.

Whether you're a hummingbird, a professional golfer, or a distributor of beauty supplies, competition is a fact of life. Mates, trophies and sales territories are valuable, and if you want one, you're going to have to beat out other people (or birds) who want the same thing. However, in South Carolina, there are limits to how you can win. Competition requires rules, after all, and those rules determine whether or not you may have a legal case.

Setting aside hummingbirds and golfers, business competition here is governed, or at least shaped, by tort law. One of South Carolina's torts is "interference with contractual relationship," which is a legal term describing causing damage to an existing business relationship. However, as is often the case in legal matters, beneath that relatively simple definition is a lot of complexity. And in all that, the most significant is the magic word "justification." You may be in trouble if you interfere with an existing contractual relationship unless you have the right … justification.

Let's back up a little.

In this state, the elements of a cause of action for tortious interference with an existing contractual relationship are:

- A contract – there has to be a valid agreement in existence.
- Knowledge of the contract by the tortfeasor – the alleged wrongdoer must have known about the agreement.
- Intentional procurement by the tortfeasor of the contract's breach – the contract must have been breached on purpose. In other words, the alleged wrongdoer was *trying* to disrupt the agreement.
- Absence of justification – we'll get to this.
- Damages – someone must have lost money.

Some of these elements are pretty straightforward, and factual. Either there are damages, or there aren't. Either there's a contract in place, or there isn't. And so on. However, justification and "intentional" aren't necessarily straightforward at all, and the meaning of these terms may determine whether you have any available legal remedy. In a sentence, everything turns on whether you were trying to compete fairly, or trying to win by doing something underhanded. South Carolina also requires that disrupting the contract must have been at least one of your

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goals in acting as you did.

One of the clearest explanations of this was set out in 1993, in the case of Waldrep Bros. Beauty Supply, Inc. v. Wynn Beauty Supply Co. In that case, Waldrep had a nonexclusive deal to sell wholesale beauty supplies to salons in South Carolina. After discussions with Waldrep about selling his business to Wynn stalled, Wynn did the next best thing. He went to the manufacturers (Redken and Sebastian) and suggested that he could do a better job selling their products in South Carolina than Waldrep had. Both companies agreed, replaced Waldrep with Wynn as their South Carolina representative, and Waldrep sued for tortious interference with contract. On appeal, Wynn won. The court decided that what took place was plain old, all-American business competition, and wrote that:

What constitutes improper means may be somewhat difficult to distill as a rule of law, but the perspective of consumer welfare provides some guidance. Business rivalry that promotes lower prices, better products, or more efficient services is justified, while business conduct that seeks to impose costs on rivals in order to gain an advantage in the market is not. It is the latter conduct that constitutes improper means under the law of civil conspiracy and cannot serve as justification under the law of intentional interference with contractual relations.

This is interesting for a lot of reasons, but one of them is it reaffirms that in South Carolina, business competition is viewed as a good that benefits everyone, particularly customers. Behavior that promotes competition is, in general, fine, even if someone loses. So, what's not fine? The Waldrep court provides some guidance:

[i]mproper methods may include violence, threats or intimidation, bribery, unfounded litigation, fraud, misrepresentation or deceit, defamation, duress, undue influence, misuse of inside or confidential information, or breach of a fiduciary relationship.

In other words, when it comes to business in South Carolina, how and why you win counts for at least as much as the actual winning. Of course, as the ads say, your results may vary. If you think you may be involved in a tortious interference situation, we'd be glad to discuss it. Just give us a call.

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