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Torts—Interference with At Will Contracts—Cause of Action Allowed

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TORTS

Interference With At Will Contracts—Cause of Action Allowed

In *A. S. Rampell, Inc. v. Hyster Co.*[1] defendant company was a manufacturer of industrial trucks. Plaintiff, a distributor of the trucks, based its first of six causes of action on alleged tortious interference with plaintiffs contractual relations with several of its employees. It is the court's holding as to this cause of action that is significant in the case. Defendant was alleged to have induced several of plaintiff's key salesmen to terminate their at-will employment contracts and enter the employ of defendant company, so that it could then terminate plaintiff's distributorship contract and take over plaintiff's business without a break in sales representation. Denial at Special Term[2] of defendant's motion to dismiss this cause of action as insufficient was affirmed by the Appellate Division,[3] and on appeal, the Court of Appeals sustained the sufficiency of the cause of action. The Court held that, although absent any relation of confidence between the parties the facts alleged would have been insufficient to state a cause of action, and although the dominance of the manufacturer and dependence of the distributor taken alone might not be enough to establish such a relationship, the provisions of the contract whereby plaintiff was obliged to keep its books and records open to defendant indicated such a relation of confidence between the parties as to make actionable the alleged inducement of plaintiff's employees to terminate their contracts.

In this case the Court of Appeals has for the first time firmly established a cause of action consisting of inducement to terminate at-will contracts where there is no breach of the contract and where the means used are not unlawful in themselves. In an Appellate Division case[4] not cited by the court it was held that an action could be maintained against a third person for maliciously inducing a master to discharge the plaintiff, even in the absence of fraudulent means used to that end. Although it was not made explicit, it appears that the employment there was at will. The court cited a Florida case[5] which held that the cause of action was not impaired by the fact that the discharge of plaintiff by his employer did not constitute a breach of contract, and the Appellate Division case was later cited by a New York trial court[6] as intimating this position. In the former of these New York cases, however, it could be easily inferred, and in the latter it was specifically alleged, that defendant procured plaintiff's discharge through

1. 3 N.Y.2d 369, 165 N.Y.S.2d 475 (1957).
2. 1 Misc.2d 788, 148 N.Y.S.2d 102 (Sup.Ct. 1955).
3. 2 A.D.2d 739, 153 N.Y.S.2d 176 (1st Dep't 1956).
4. Warschauser v. Brooklyn Furniture Co., 159 App. Div. 81, 144 N.Y. Supp. 257 (2d Dep't 1913).
5. Chipley v. Atkinson, 23 Fla. 206, 1 So. 934 (1887).
6. Scott v. Prudential Outfitting Co., 92 Misc. 195, 155 N.Y.Supp. 497 (App. Term 1915).

falsehoods. Both these cases also relied to some extent on the *prima facie* tort doctrine as set forth in a Massachusetts case.[7] In *A. S. Rampell,* however, neither the court nor the litigants cited these cases.

The cases cited by the court in connection with the proposition that in certain cases interference with at-will agreements will be actionable were not direct holdings to that effect. In *Federal Waste Paper Corp. v. Capitol*[8] the cause of action was based, not upon the inducement of a party to terminate a contract, but upon a direct interference with plaintiff's ability to carry out the contract. In *American League Baseball Club of New York v. Pasquel,*[9] a temporary injunction was granted to restrain defendants from inducing baseball players to repudiate their employment contracts with plaintiff. The defense was that these contracts would be unenforceable as between the parties, and the holding of the case was that the attempted inducements were unlawful regardless of the enforceability of the contracts. The proposition that malicious attempts to induce employees to terminate their contracts are unlawful was used only to support the holding. Both of these cases and many of the cases cited in Prosser[10] and in the American Law Reports annotation[11] relied to some extent on the statement in a U. S. Supreme Court case,[12] "The fact that the employment is at the will of the parties, respectively, does not make it at the will of others," but ignored the immediately following sentence, "The employee has manifest interest in the freedom of the employer to exercise his judgment *without illegal interference or compulsion*" (Emphasis added); the court was concerned with the constitutionality of an anti-alien labor statute. In *Van Wyck v. Mannino,*[13] a judgment for plaintiff was reversed, the court holding that, even assuming malicious interference as alleged, no cause of action was established because the contract was at will and plaintiff established no resultant damage.

In the present case the court not only recognized a cause of action for interference with contractual relations terminable at will, but recognized it in a broad form. When New York first recognized the tort of inducement of breach of contract, actual malice, purpose to injure the plaintiff, was considered essential to the cause of action,[14] but this requirement was soon diluted to mean only intentional interference without legal or social justification.[15] But where the result of the interference was termination without breach of the contract, it

7. Walker v. Cronin, 107 Mass. 555 (1871).
8. 268 App. Div. 230, 51 N.Y.S.2d 26 (1st Dep't 1944), *aff'd,* 294 N.Y. 714, 61 N.E.2d 451 (1945).
9. 187 Misc. 230, 63 N.Y.S.2d 537 (Sup.Ct. 1946).
10. PROSSER, TORTS §106 (2d ed. 1955).
11. Annot., 26 A.L.R.2d 1227, 1258 (1952).
12. Truax v. Raich, 239 U.S. 33 (1917).
13. 256 App. Div. 256, 9 N.Y.S.2d 684 (2d Dep't 1939).
14. Posner v. Jackson, 223 N.Y. 325, 119 N.E. 573 (1918).
15. Lamb v. S. Cheny & Son, 227 N.Y. 418, 125 N.E. 817 (1920); Campbell v. Gates, 236 N.Y. 357, 141 N.E. 914 (1923).

was indicated that either unlawful means or actual malice, with purpose solely to injure plaintiff, would be required.[16] In a recent Appellate Division case however,[17] this requirement was somewhat more liberally stated, the court holding that such inducement is not actionable, "at least unless the purpose of the actor was solely to produce damage or unless the means employed were dishonest or unfair." In the instant case the Court found this requirement met by defendant's alleged conduct because of the nature of the relationship between the parties, but, in so finding, further diluted the requirement. The Court held that the terms of the contract whereby plaintiff was bound to keep its books and records open to defendant, together with the dominance of the manufacturer and corresponding dependence of the distributor, which alone might not be enough, indicated such a relation of confidence between the parties as to make the alleged interference actionable. The relation here, though described as confidential, was apparently not intended to be fitted into a Technical category of fiduciary relationship. At least the present relationship would not fit into any of the established categories imposing fiduciary duties, breach of which constitutes a tort in itself.[18] Although this is not explicit in the case it appears that the *privilege* formula, whereby interference is actionable if not legally or socially privileged, has been carried over from the cases where a breach of contract has been induced to all interference cases. The court's discussion of cases of inducement of a breach of contract and interference with pre-contractual relations show that it considers these and interference with at-will contractual relations as different form of the same general tort, interference with contractual relations.

Probably the decisive influence in the present case was the nature of the manufacturer-distributor relationship and the recent expressions of public concern for the fairness and stability of this relationship. These relations are marked by a heavy reliance feature, the substantial investment by the dealer which is subject to almost complete loss if the dealership is cancelled. In this situation the manufacturer is in a position of dominance, and threat of cancellation is a strong means of abuse. It is also possible for the manufacturer to realize substantial unjust enrichment by taking over the business built up by the distributor. A recent Congressional investigation which showed widespread abuse of this relationship led to remedial legislation[19] and New York has recently enacted a statute allowing termination of the manufacturer-dealer relationship only upon "cause."[20]

16. Beardsely v. Kilmer, 236 N.Y. 80, 140 N.E. 203 (1923); Licht v. Rosenthal & Slotnick, 32 N.Y.S.2d 150 (App. Term 1941); Silva v. Bonafide Mills, 82 N.Y.S.2d 155 (App. Term 1948).

17. Coleman & Morris v. Pisciotta, 279 App. Div. 656, 107 N.Y.S.2d 715 (2d Dep't 1951).

18. See 15 C. J. S., *Confidential* 821 (1939).

19. 70 STAT. 934, 15 U.S.C. §§1221-25 (1956).

20. N.Y. GENERAL BUSINESS LAW §§195-198.

In taking the requirement of malice to mean only intentional interference without social or legal justification, New York has arrived at the Restatement concept of the tort: ". . . one who, without a privilege to do so, induces or otherwise purposely causes a third person not to (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."[21] Of course, where the contract is terminable at will the law will not afford as much protection to the relation and the range of privilege will be greater. In the present case the existence of the relation described as confidential would preclude any privilege otherwise available to defendant to induce plaintiff's employees to quit and come over to work for him. An ordinary competitor would certainly be privileged to offer employees of plaintiff better terms.[22] But here the relation between the parties was so inconsistent with competition as to eliminate such privilege. With its books open to defendant, plaintiff's position would afford little chance to defend itself against competition by defendant.

In determining whether a privilege exists to induce termination of at-will contracts, it should be noted that there is no interest in the reliability and stability of contracts, as such, to be protected. Perhaps for this reason, inducement to breach a contract, and inducement to terminate according to the terms of the contract, should be considered distinct torts. The interests in the present case are, on the one side, the interest in free competition, and the interest of employees in being able to obtain the best jobs available to them, and on the other side, the interests in economic stability, in confidence in employment relations, in confidence in manufacturer-distributor relations, and perhaps in the survival of smaller business. In the dissent in this case, it was felt that the majority holding entailed too drastic an interference with free competition and noted that employers wishing to protect against such inducement of their employees could obtain term employment contracts. However, in view of the desirability of at-will employment and the special nature of the manufacturer-distributor relation, the majority seems to have reached a proper result. If the Court has extended the tort-if-not-privileged approach, so as to render actionable any intentional interference with contractual relations—regardless of breach of the contract—if not legally or socially privileged (in other words, if the court considers the interference undesirable), the law in this area has become more flexible if less predictable.

MacPherson v. Buick—Applicable To Real Property

In *Inman v. Binghamton Housing Authority*[23] the Court held upon the facts

21. RESTATEMENT, TORTS §766 (1939).
22. RESTATEMENT, TORTS §768 (1939).
23. 3 N.Y.2d 137, 164 N.Y.S.2d 699 (1957).