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Torts—MacPherson v. Buick—Applicable to Real Property

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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).

alleged that neither an injured plaintiff nor a defendant-owner who filed a third party complaint would have a cause of action against the architects or builder of the apartment house at which plaintiff was injured while residing as a tenant.

Plaintiff, a two year old child, fell off the porch of the apartment. There was no protective railing around the porch and a door was constructed in such a manner as to force a person off the porch if standing near its edge when opened. The accident occurred six years after the apartment house had been completed and turned over to defendant-owner.

Plaintiff's cause of action against the architects and builder as third-party defendants states that they had created a "hazardous and extremely dangerous condition." The doctrine of the *MacPherson v. Buick Motor Co.*[24] case, holding a manufacturer liable for injuries arising out of the use of a defectively made chattel which was inherently dangerous, has been extended to real property structures. [25] However, the doctrine applies only to "latent defects" or "concealed dangers."[26] Plaintiff's complaint does not allege such "latent defects" or "concealed dangers," nor do the facts suggest them. Thus the Court held that the complaint against the architects and builder was defective and should be dismissed.[27]

The defendant-owner claimed a common-law right to indemnification from the architects and builder. Plaintiff's complaint against defendant-owner alleged that he was an active tortfeasor and under such circumstances he would not have a right to compel indemnification.[28] A contract existed between the builder and defendant-owner in which the builder agreed to indemnify the owner for injuries "arising out of or in connection with the . . . work." The scope of the words used in a contract should be limited by the intent of the parties as determined by the particular facts of the case.[29] Also, an agreement will not be interpreted as indemnifying a person against an injury arising out of his own negligence unless such intention is clearly shown.[30] The Court held that there was no such express agreement, and it would be unreasonable to think that the

24. MacPherson v. Buick Motor Co., 217 N.Y. 382, 111 N.E. 1050 (1916).
25. Adams v. White Construction Co., 299 N.Y. 641, 87 N.E.2d 52 (1949).
26. Campo v. Scofield, 301 N.Y. 468, 472, 95 N.E.2d 802, 804 (1950).
27. The Court in the instant case does not make it clear but if the remote user can not recover because the intermediate party has knowledge of the defect, the Court has set dangerous precedent. The manufacturer or builder should be liable in all instances where he has been negligent and where the defect is latent as to the user. The manufacturer should be relieved only when there are reasonable grounds to expect the intermediate party will take proper precautions before the chattel is passed on to the user or the premises occupied by the remote party.
28. Dick v. Sunbright Steam Laundry Corp., 307 N.Y. 422, 121 N.E.2d 399 (1954).
29. Robertson v. Ongley Electric Co., 146 N.Y. 20, 40 N.E. 390 (1895).
30. Thompson-Starrett Co. v. Otis Elevator Co., 271 N.Y. 36, 2 N.E.2d 35 (1936).

parties intended the builder to be liable for an injury which did not arise out of a defect in workmanship or material used.

Duty To Provide Safe Equipment

Section 240 (1) of the New York Labor Law provides that, "a person employing or directing another to perform . . . painting . . . of a building . . . shall furnish . . . for the performance of such labor . . . ladders . . . so constructed . . . as to give proper protection. . . ." This statute imposes an absolute duty, the breach of which renders the wrongdoer liable without regard to his care or lack of it.[31]

The plaintiff in *Klutz v. Citron*,[32] hired to paint defendant's home, was provided with a ladder having a defective rung. Because the ladder was too long, the plaintiff without defendant's permission, cut it into two parts and used the section which possessed the weakened rung, from which he fell. The majority of the Court (4-3) held that the plaintiff could not recover for he did not meet his burden[33] of establishing that the employer or director failed to provide him with a ladder which would afford proper protection. The reasoning upon which this conclusion rested was that the injury resulted from an entirely different defective ladder than the one provided by the homeowner.

The dissent cogently points out the confusion of the majority by stating that, "the fact that plaintiff cut a piece from the ladder furnished by defendant has nothing whatever to do with the case since that cutting was in no sense the cause of or related to the accident." This is so because it was the defective rung which was part of the ladder provided by the defendant, which was the cause of the injury.

The Appellate Division[34] had reversed a judgment in favor of the defendant because of an alleged error of the trial judge in his instruction to the jury that it could find liability under section 240 only if it found that the defendant supervised the doing of the work. Although the Court of Appeals evaded this difficult issue by confusing another, it found it could not bypass the problem completely. In passing, it stated that the plaintiff was not an employee, but an independent contractor, and that there was no evidence that the defendant directed the manner or method of painting his home but left it solely to the judgment and experience of the plaintiff. In *Koenig v. Patrick Construction*

31. Koenig v. Patrick Construction Corp., 298 N.Y. 313, 83 N.E.2d 133 (1948).
32. 2 N.Y.2d 379, 161 N.Y.S.2d 26 (1957).
33. Johnson v. Johnson, 249 App. Div. 859, 292 N.Y.Supp. 921 (2d Dep't 1937).
34. 1 A.D.2d 828, 953, 148 N.Y.S.2d 367 (2d Dep't 1956).