TORTS—DAMAGES AND INJUNCTION FOR INDUCING BREACH OF CONTRACT

Defendant, a corporate competitor of plaintiff, persuaded plaintiff's customers to break their contracts by misrepresenting that plaintiff was insolvent, unreliable, and unable to perform its contracts, and further offered to indemnify the customers against liability. For such breaches, plaintiff brought suit for damages and an injunction against malicious conduct calculated to induce others to break their contracts with plaintiff. The trial court granted defendant's motion to dismiss, and plaintiff appealed. On appeal, held: reversed and remanded. Legal equitable relief can be granted for malicious interference with plaintiff's business and contractual relations.[1]

Prior to this decision, Missouri had long belonged to the minority of jurisdictions[2] which does not recognize the liability of a third party for inducing another to break his contract.[3] The minority decisions are based upon the dissent of Coleridge, J., in the case of *Lumley v. Gye*,[4] which argues that the law should confine its remedies to the contracting parties, and to damages directly and proximately consequential to the act of the defendant.[5] The Missouri Supreme Court adopted the minority rule forty-four years after *Lumley v. Gye* in the leading case of *Glencoe Sand & Gravel Co. v. Hudson Bros. Commission Co.*[6]

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1. Downey v. United Weatherproofing, Inc., 253 S.W.2d 976 (Mo. 1953).
2. See Note, 84 A.L.R. 43, 74-76 (1933).
3. For an historical analysis of the tort, see Sayre, *Inducing Breach of Contract*, 36 HARV. L. REV. 663 (1923). For an excellent discussion, see Harper, *Interference with Contractual Relations*, 47 NORTHWESTERN U. L. REV. 873 (1953). Other comments and discussions may be found in RESTATEMENT, TORTS § 766 (1939); Notes, 33 COL. L. REV. 90 (1933); 39 HARV. L. REV. 749 (1946); 3 RUTGERS L. REV. 277 (1949); Comment, 61 HARV. L. REV. 897 (1948); 84 A.L.R. 43 (1933).
4. 2 El. & Bl. 216, 244, 118 Eng. Rep. 749, 759 (1853).
5. *Id.* at 246, 118 Eng. Rep. at 760.
6. 138 Mo. 439, 40 S.W. 93 (1897). Plaintiff contracted with Missouri Pacific Railroad to transport quantities of sand and gravel from plaintiff's land to market. Defendant company represented itself as owner of the land and threatened Missouri Pacific with a trespass prosecution. Missouri Pacific then refused to transport any more sand or gravel from plaintiff's land. The court held that a third person was not liable for maliciously inducing a breach of contract, on the ground that the direct and proximate cause of plaintiff's damage was the voluntary breach of contract on the part of the other party, to whom resort should be had for compensation for the injurious consequences. MacFarlane, J., speaking for a unanimous court, said:

> . . . We are unable to see, in principle, that there is a difference between a breach induced by the advice, persuasion, or even threats, of a

The court, in the principal case, abandoned its prior decisions and expressed its desire to follow the majority[7] of jurisdictions in adopting the rule of *Lumley v. Gye*[8] and *Temperton v. Russell*,[9] which allows recovery against a defendant for maliciously inducing a third party to break his contract. The court defines "malice"[10] in law as the intentional doing of a harmful act without justification or excuse, not necessarily connoting spite or ill will.[11]

The court changed the law because it felt that the rights of the parties to an existing contract are important in the business world and that they should be protected from intentional and un-

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third party, and one caused by circumstances connected with the business or service the party contracted to do. . . . There is no charge in the petition that the railroad company was caused to refuse to carry out its contract, or was rendered unable to do so, contrary to its will, by the fraud, deceit, or coercion of defendant. The direct and proximate cause of plaintiff's damage is the voluntary breach of contract on the part of the carrier, and resort must be had to it for compensation for the injurious consequences.

. . .

If defendant committed no legal wrong, though his act resulted in damage to plaintiff, the law affords no remedy. It is *damnum, absque injuria*. The motive of the defendant is immaterial.

Id. at 455, 40 S.W. at 94.

7. RESTATEMENT, TORTS § 766 (1939). That the view of allowing relief is the majority, see Note, 84 A.L.R. 43, 69-74 (1933).

8. 2 El. & Bl. 216, 118 Eng. Rep. 749 (1853). Defendant induced Wagner, who had agreed with plaintiff to perform and sing for him and no one else for a certain term, to break her contract. The court held:

. . . [A]n action lies for maliciously procuring a breach of contract to give exclusive personal services . . . provided the procurement . . . produces damages: and . . . that the action would lie for the malicious procurement of the breach of any contract, though not for personal services, if by the procurement damage was intended to result and did result to the plaintiff.

Ibid. For an interesting discussion on the limitations of the *Lumley v. Gye* doctrine, see 17 CORNELL L. Q. 509 (1932).

9. [1893] 1 Q.B. 715, 723. The holding of *Lumley v. Gye* was extended: "The principle upon which Lumley v. Gye . . . depend[s] is. . . . not confined to contracts for personal service."

10. Downey v. United Weatherproofing, Inc., 253 S.W.2d 976, 980 (Mo. 1953).

11. Brennan v. United Hatters, 73 N.J.L. 729, 744, 65 Atl. 165, 171 (1906): ". . . [M]alice in the law means nothing more than the intentional doing of a wrongful act without justification or excuse." The court in Caverno v. Fellows, 300 Mass. 331, 337, 15 N.E.2d 483, 487 (1938), correctly expressed the idea that personal spite or ill will is not included in the concept of malice as that term is used in this area, where it said: ". . . [I]n an action for malicious interference with a contract . . . an 'intentional interference . . . without lawful justification is malicious in law, even if it is from good motives and without express malice.' " *Cf.* Mangum Electric Co. v. Border, 101 Okla. 64, 222 Pac. 1002 (1924) and cases cited in Note, 84 A.L.R. 43, 50 (1933). See 36 HARV. L. REV. 663, 675-686 (1923).

justifiable[12] interference from third persons.[13] A person's right to pursue any business, calling or profession he may choose, as well as his rights to contract and to derive the profits and benefits of services under his contracts, are all "property rights"[14] which the law will protect. Conversely, the right to engage in competitive business, use lawful means to solicit and procure it, and even to persuade a competitor's prospective customers not to deal with him, are also property rights which the law will protect.[15] However, where actual malice and unlawful means are used, and the wrongdoer's conduct is directed solely to the satisfaction of spite

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12. As to justification and other defenses to this tort generally, see 2 COOLEY, TORTS 196 (4th ed. 1932); RESTATEMENT, TORTS §§ 767-774 (1939); 40 COL. L. REV. 1094 (1940); 33 MICH. L. REV. 943 (1935); 20 ORE. L. REV. 254 (1941); Notes, 9 A.L.R.2d 228, 259-270 (1950); 84 A.L.R. 43, 79-85 (1933).

13. Other theories supporting recognition of the right of action are: (1) Liability results because the act induced is itself a wrong for which he who procures it may be held liable as a joint wrongdoer; (2) Persuasion to breach a contract deprives one of something to which he has a legal right, *i.e.*, the benefits of its performance. These theories are discussed and cases cited in Note, 84 A.L.R. 43, 73 (1933).

14. Downey v. United Weatherproofing, Inc., 253 S.W.2d 976, 980, 982 (Mo. 1953). It may perhaps be questioned whether these rights and analogous rights which also receive equitable protection, such as rights in trade marks and names, are actually "property rights," but it seems clear that an injunction restraining their violation may properly be issued. 1 NIMS, UNFAIR COMPETITION AND TRADE-MARKS § 165 (4th ed. 1947).

15. In Passaic Print Works v. Ely & Walker Dry Goods Co., 150 Fed. 163 (8th Cir. 1900), *cert. denied*, 181 U.S. 617 (1900), plaintiff was a corporation engaged in the manufacture of calicoes, which it sold through its agents to wholesalers. Defendant companies, being overstocked in calicoes, offered them generally for sale at very much lower prices than the plaintiffs, stating in their advertisements that the sale was limited to their present stock. Plaintiff brought suit for damages caused by loss of trade and customers. The trial court sustained the demurrer to plaintiff's petition. In affirming, the Court of Appeals held:

> . . . The right to offer property for sale, and to fix the price at which it may be bought, is incident to the ownership of property, and the loss which a third party sustains in consequence of the exercise of that right is damnum absque injuria. We are thus confronted with the inquiry whether the motive which influenced the defendant company . . . changed the complexion of the act, and rendered the same unlawful, when, but for the motive of the actor, it would have been clearly lawful. . . . It has been well observed that it would be dangerous to the peace of society to admit the doctrine that any lawful act can be transformed prima facie into an actionable wrong by a simple allegation that the act was inspired by malice or ill will, or by an improper motive. It is wiser, therefore, to exclude any inquiry into the motives of men when their actions are lawful, except in those cases where it is well established that malice is an essential ingredient of the cause of action, or in those cases where, the act done being wrongful, proof of a bad motive will serve to exaggerate the damages.

Id. at 166, 167. See also RESTATEMENT, TORTS § 768 (1939).

or ill will and not to the advancement of his competitive interests, he is not exercising, and is not entitled to invoke, his privileges as a competitor.

The defendant contended that the injunction in the principal case would be chiefly against defamation. The court agreed that injunctions solely against defamation are only to be issued with utmost caution,[16] but held that an injunction may be granted to restrain defendant from violating the property rights of the plaintiff by the defamatory inducement of a third person to break an existing contract with the plaintiff.

Thus, as the Supreme Court of Missouri now declares the law, the plaintiff in an action for inducing breach of contract, may recover damages[17] or obtain an injunction or both, simply by showing "malice," in the limited sense defined above, without proof of fraud and deceit or of coercion.

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16. Downey v. Weatherproofing, Inc., 253 S.W.2d 976, 983 (Mo. 1953).

17. The elements of the cause of action are: an intentional and unprivileged inducement, with knowledge of the contract, resulting in breach and damages to the plaintiff. See 50 MICH. L. REV. 781 (1952) and cases cited in Note, 84 A.L.R. 43, 47-52 (1933). In Sayre, *Inducing Breach of Contracts*, 36 HARV. L. REV. 633 (1923), the author says:

> . . .[T]he majority [of states] accept it [the doctrine of liability] as binding law. Unfortunately, however, where the doctrine has been accepted, there has been so little careful inquiry as to its precise limits and fundamental nature that a somewhat uncertain law has resulted.

Id. at 671, 672. It may be wondered how far the Missouri courts will apply the doctrine as embraced by the general language of the principal case. In Brownstein v. Bricker, 226 Mo. App. 882, 46 S.W.2d 958 (1932) where parents induced a daughter by persuasion to breach her engagement with plaintiff, it was held that plaintiff did not have a cause of action against the parents. *Accord:* RESTATEMENT, TORTS § 698 (1939). However, it may be noted that while the Missouri court there cited cases from four other jurisdictions (each of which still remains the law of the respective jurisdiction), it relied for Missouri authority solely upon Glencoe Sand & Gravel v. Hudson Bros. Commission Co., 138 Mo. 439, 40 S.W. 93 (1897). Query whether, based on the overruling of the *Glencoe* case *supra*, the Missouri courts will, in the future, allow recovery for inducing a person to breach their engagement to marry.