TORTS—INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGES BY CREDIT AGENCIES

Masoni v. Board of Trade of San Francisco, 260 P.2d 205 (Cal. App. 1953)

Plaintiffs' partnership was deeply indebted, but one of the partners had sufficient personal assets to discharge the indebtedness completely. The partners were attempting to effect a settlement with their creditors for less than the full amount of their debts. Defendant board, an association of local businessmen organized to promote co-operation between businesses in their dealings with bad credit risks, informed the creditors of the wealth of the one partner, and offered the services of its employees as collectors. The creditors assigned their claims to employees of the board, who, although not licensed to act as collectors as required by statute,[1] filed separate actions and attached the plaintiffs' personal and partnership property. Plaintiffs were forced to abandon their attempts at settlement and to pay the full amount of their indebtedness. This action was brought against the board and its employees for damages resulting from the interference with plaintiffs' prospective business relations. A demurrer to the complaint was sustained by the trial court. Affirming the decision of the trial court, the District Court of Appeals held that the defendants' interference was justified.[2]

A large majority of courts recognize the right to be free from intentional[3] interference with presently existing contractual relations and prospective economic advantages.[4] If the party asserting the right can establish an intentional interference, then the interfering party must show that the interference was privileged in order to defeat re-

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1. CAL. BUS. AND PROF. CODE § 6870 (1951).

2. Masoni v. Board of Trade of San Francisco, 260 P.2d 205 (Cal. App. 1953). The court also held that the collection without a license, although a breach of a public duty, was not wrongful as to the plaintiffs, because the failure to be licensed in no way contributed to the plaintiffs' injuries.

3. Earlier cases, including the original case in the field of economic interference, *Lumley v. Gye* (1853), 2 E. & B. 216, spoke in terms of a malicious interference. See, *e.g.*, McCann v. Wolff, 28 Mo. App. 447 (1888). Malice was there used in the sense of ill-will. The general rule today is that an unjustified interference constitutes *legal* malice and that is the only requirement necessary for recovery: Kamm v. Flink, 113 N.J.L. 582, 175 Atl. 62 (Ct. Err. & App. 1934); Lamb v. S. Cheney & Son, 227 N.Y. 418, 125 N.E. 817 (1920); Hutton v. Watters, 132 Tenn. 527, 179 S.W. 135 (1915).

4. Lewis v. Bloede, 202 Fed. 7 (4th Cir. 1912); Kamm v. Flink, 113 N.J.L. 582, 175 Atl. 62 (Ct. Err. & App. 1934). RESTATEMENT, TORTS § 766 (1939). *But cf.* Brooks v. Patterson 234 Ky. 757, 29 S.W.2d 26 (1930), where the court held that when no contract is involved, the act must be illegal before there is any liability. PROSSER, TORTS § 105 (1941), suggests that the only real difference between the liability for inducing breach of contract and interfering with prospective advantages is that in the latter situation the privileges are broader and include the right of competition.

covery.[5] Dean Prosser states that courts recognize a privilege to interfere with both prospective advantages and contractual relationships for the disinterested protection of third persons or the general public, *or* for the protection of the defendant's own property interests, *or* by bona fide law suit, *or* by complaint to public authorities.[6] Interference with prospective advantages by fair competition is privileged,[7] but a competitive motive will not excuse interference with contractual relations.[8] No interference is privileged which is predominantly malicious,[9] or which is illegally effected.[10]

Most cases concerning credit agencies have not been based on intentional interference with business relations,[11] but have arisen on the related theories of defamation, right of privacy, or causation of emotional disturbance. In defamation cases the courts have held that a credit association has a privilege to publish to members the names of

5. Berry v. Donovan, 188 Mass. 353, 74 N.E. 603 (1905); Mogul S.S. Co. v. McGregor Gow and Co., [1892] 23 Q.B.D. 598. RESTATEMENT, TORTS § 767 (1934), suggests that the following elements be considered in determining whether there is a privilege to act: 1. the actor's conduct; 2. the interest interfered with; 3. the relation between various parties; 4. the interest that the actor sought to advance; 5. the social value of each interest.

6. PROSSER, TORTS 1019, 1020 (1941). In the principal case the justification for the credit association's conduct would be that it was intended for the protection of third parties or the public in general. The cases, which Dean Prosser cites as authority for the recognition of a privilege to act in the interest of third parties, generally deal with facts very dissimilar from the principal case.

Cases involving credit agencies have largely arisen in related fields of tort and not in actions for intentional interference. An examination of these related fields, see note 9 *infra* and text, discloses that a privilege is accorded to credit agencies. The same problems and criteria for determining privileges are present in torts for interference and these other torts, and therefore it would seem a reasonable assumption that the same decision as to whether there is a privilege or not would result in an action for intentional interference.

7. Westinghouse Electric & Mfg. Co. v. Diamond State Fibre Co., 268 Fed. 121 (D. Del. 1920); Cumberland Glass Mfg. Co. v. De Witt, 120 Md. 381, 87 Atl. 927 (1913); Sorenson v. Chevrolet Motor Co., 171 Minn. 260, 214 N.W. 754 (1927).

8. Katz v. Kapper, 7 Cal. App. 2d 1, 44 P.2d 1060 (1953). Goldman v. Hartford Road Bldg. Assn., 150 Md. 677, 133 Atl. 843 (1926); Mogul S.S. Co. v. McGregor Gow and Co., [1892] 23 Q.B.D. 598.

9. Boggs v. Duncan Schnell Furniture, 163 Iowa 106, 143 N.W. 482 (1913); Tuttle v. Buck, 107 Minn. 145, 119 N.W. 946 (1909). Even though a privilege would normally arise under a given state of facts, it will be invalidated if malice in the sense of ill-will is present. See note 2 *supra*, and compare this type of malice with *legal malice*.

10. International News Service v. Associated Press, 248 U.S. 215 (1918) (plagiarism); Kendall v. Lively, 94 Colo. 483, 31 P.2d 343 (1934) (defamation); Kraus v. Pacter & Co., 134 Misc. 247, 234 N.Y. Supp. 687 (1929) (bribery). RESTATEMENT, TORTS § 767, comment *b* (1934), says ". . . the issue is not simply whether the actor is privileged to cause the harm but rather whether he is privileged to cause it in the manner in which he does it. . . ."

11. The only cases in which interference was the theory on which the collection agency was held liable have been in a limited area, chiefly consisting of employment cases where creditors told the employer that their employees owed them money. In Warschauser v. Brooklyn Furniture Co., 159 App. Div. 81, 144 N.Y. Supp. 257 (1913), there was an actual debt. More typically, however, the cases were further complicated by the fact that the validity of the debt was at best questionable. Hill Grocery v. Carroll, 223 Ala. 376, 136 So. 789 (1931); Surrez v. McFall Bros., 87 S.W. 744 (Tex. Civ. App. 1905).

debtors if it does so with a bona fide intent to protect its members from bad credit risks.[12] Where the truth of the libel is not raised as a defense, or in jurisdictions where truth is not an absolute defense, courts have held that an action for defamation will lie where it was found that the association published the facts of a debt to all its members primarily for the purpose of coercing payment by the debtor.[13] In jurisdictions where truth is an absolute defense to a defamation action, recovery has been allowed in similar situations by employing the recent and less well-defined theory of a right to privacy.[14] In addition to placing these restrictions on publication, the courts have looked with increasingly jaundiced eyes[15] on other methods of collection and have held credit agencies liable for causing emotional disturbances. While the elements of such liability are still uncertain, the cases where recovery has been allowed have involved flagrant misbehaviour[16] on the part of the collector which produced serious injury.[17]

In the principal case, the defendants were functioning both as a credit association, by informing the creditors of the plaintiffs' financial standing, and as a collection agency. The court held that the defendants' conduct in performing both functions was privileged,[18] and that the fact that the defendants received compensation did not destroy the privilege.[19] The court also held that the absence of a license in no way contributed to the plaintiffs' injuries and therefore should have

12. Putnal v. Inman, 76 Fla. 553 (1918); Ideal Motor Co. v. Warfield, 211 Ky. 576, 277 S.W. 862 (1925). See PROSSER, TORTS § 94 (1941). The needs of business require a knowledge of the would-be borrowers' financial standing which the small business man obviously could not hope to acquire independently of any expert aid.

13. Weston v. Barnicoat, 175 Mass. 454, 56 N.E. 619 (1900); Traynor v. Seilaff, 62 Minn. 420, 64 N.W. 915 (1895); Muetze v. Tuteur, 77 Wis. 236, 46 N.W. 123 (1890).

14. Brent v. Morgan, 221 Ky. 765, 299 S.W. 967 (1927); Quina v. Roberts, 16 So.2d 558 (La. 1944). *Contra:* Judevine v. Benzies-Montayne Fuel & Warehouse Co., 222 Wis. 512, 269 N.W. 295 (1936).

15. *See* Clark v. Associated Retail Credit Men, 105 F.2d 62, 67 (D.C. Cir. 1939).

16. Barnett v. Collection Service Co., 214 Iowa 1303, 242 N.W. 25 (1932) (threats); Quina v. Roberts, 16 So.2d 558 (La. 1944) (letter to employer); La Salle Extension Univ. v. Fogarty, 126 Neb. 457, 253 N.W. 424 (1936) (recurring letters).

17. The majority of courts hold that there must be some accompanying physical injury before they will find liability. St. Louis Iron Mountain & Southern R.R. v. Taylor, 84 Ark. 42, 104 S.W. 551 (1907); Grayson v. St. Louis Transit Co., 100 Mo. App. 60, 71 S.W. 730 (1903); Kirby v. Jules Corp., 210 N.C. 808, 188 S.E. 625 (1936). RESTATEMENT, TORTS § 46 (Supp. 1948), however, recognizes liability where only mental anguish results. See note 16 *supra*, for examples of recent collection cases that have permitted recovery where no physical injury resulted.

18. Masoni v. Board of Trade of San Francisco, 260 P.2d 205, 208 (Cal. App. 1953). The court cited RESTATEMENT, TORTS § 767 (1939).

19. See note 9 *supra*, for the effect of an improper motive on privilege. In the principal case the defendant's conduct was not sufficiently bad to warrant liability independent of an action for interference. If the court had found such tortious conduct, then the privilege to interfere would have been vitiated.

no bearing on the question of the defendants' liability to the plaintiffs.[20]

The result in the principal case appears to be fair and reasonable because credit agencies perform a useful function and in the performance of that function they must of necessity interfere with the prospective advantages of debtors. The basis of the relational tort theories, such as interference with contractual relations, interference with prospective advantages, interference with the right of privacy, and causation of emotional disturbance, is a recognition that in a successful society normally protected privileges may have to be restricted when they curtail other more desirable action. The very essence of these relational torts, the subjective weighing of two conflicting interests, makes set rules not only impractical but undesirable.

20. The court's analysis in the principal case followed the general rationale employed in negligence cases where the defendant has failed to obey the state's requirement of a license to practice a profession or to drive a car. Opple v. Ray, 208 Ind. 450, 195 N.E. 81 (1953); Corbett v. Scott, 243 N.Y. 66, 152 N.E. 467 (1926); Brown v. Shyne, 242 N.Y. 176, 151 N.E. 197 (1926).