

Tortious interference with contract and business

Tortious Interference

Texas is a state that believes wholeheartedly in business competition. However, there are practices that Texas believes take the competition too far. If a third party knowingly or intentionally interferes with an existing contract, or even a handshake agreement, between two other parties and the interference harms the plaintiff's business(es), the plaintiff may initiate an action for intentional interference with contractual relationship, or tortious interference with prospective business relations.

Tortious Interference with A Valid Contract

A successful tortious interference claim in Texas must prove the following four elements:

- The plaintiff is a party to an existing and valid contract that is subject to interference;
- A non-party willfully and intentionally committed an act of interference;
- That the willful and intentional act proximately caused damages;
- The factual actual damage or loss occurred.

Tortious Interference with Prospective Business Relations

In absence of a valid contract, the plaintiff may nevertheless bring a tortious interference claim against the defendant on the basis of prospective business relationship. To prevail on tortious interference with prospective business relation, a plaintiff must show:

- There was a reasonable probability that the parties would have entered into a valid contractual relationship;
- The defendant committed an independently tortious or unlawful act that prevented the business relationship from happening;
- The defendant intentionally or knowingly committed such act;
- The plaintiff suffered actual harm or damage as a result of defendant's tortious interference.

Defense to Tortious Interference Claims

If someone brings a tortious interference claim against you, you can negate your liability by raising an affirmative defense. Justification is used as an affirmative defense to tortious interference with



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contract and tortious interference with prospective business relations. To establish a justification defense, the defendant needs to show either (1) one's own legal rights or (2) a good-faith claim to a colorable right, even if the that claim ultimately proves to be mistaken. A defendant can prevail on the affirmative defense of justification, even when a plaintiff establishes all the elements of tortious interference with contract and tortious interference with prospective business relations.

Justification: One's Own Legal Right

In *Calvillo v. Ganzollas*, the defendant was contracted by the hospital to serve as chief of anesthesiology, which gives him exclusive authority to operate and staff the department. The defendant refused to schedule the plaintiff, an anesthesiologist, for work for the hospital. As a result, the plaintiff brought a tortious interference claim against defendant. The Supreme Court of Texas held that the defendant's exclusive contract with the hospital justified his interference.

In addition, if the defendant's interference by justified by a legal right, the defendant's motivation, whether it constitutes actual malice or not, is irrelevant. However, if a defendant fails to justify the interference, actual malice is relevant to the analysis of plaintiff's exemplary damage in tortious interference claims.

Justification: Good-Faith Claim to A Colorable Right

If a defendant cannot establish a legal right to interfere as a matter of law, the defendant may still prevail on its justification defense if (1) the trial court determines that the defendant interfered while exercising a colorable right and (2) the jury finds that, although mistaken, the defendant exercised the colorable right in good faith.

Remedies

When a plaintiff prevails on tortious interference claims, the plaintiff may recover actual damages and losses sustained by him that are a natural and proximate consequences of the interference. When the interference involves the acceptance of salable items, there may be a recovery of loss of profits. If the tortious interference put the plaintiff out of business, there may be a recovery of the difference between the value of his business in the absence of the interference and the amount realized by liquidation.

Furthermore, the party that is liable to another for interference with a contract or prospective contractual relation is liable for damages for (a) the pecuniary loss of the benefits of the contract or the prospective business relation; (b) consequential losses; (c) emotional distress or actual harm to reputation if they can be reasonably expected as a result from the interference.

If you believe that you may have a tortious interference claim, contact THEVOZ & Partners to consult your particular situation. Our attorneys take the time necessary to fully understand your



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matter and provide you with competent, quality representation regardless of the size or magnitude and we keep you informed every step of the journey.