

The Legal Intelligencer

Rules of the Game: Tortious Interference With Contract



By Kevin P. Allen

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Hardball tactics are common in business. Often, the law not only does not prohibit such tactics, it encourages them in the name of vibrant competition and efficiency. However, there are lines that cannot be crossed, at least not without creating risks of liability.

The Pennsylvania Superior Court's recent decision in *Empire Trucking v. Reading Anthracite Coal*, 71 A.3d 923 (June 21, 2013), provides an example of conduct that crossed the line and led to liability for tortious interference with contract. The defendant, Reading Anthracite Coal Co. (RACC), was a coal supplier. The plaintiff, Empire Trucking Co., was a trucking company that contracted with RACC to haul RACC coal. Empire subcontracted much of that work to other trucking companies.

Due to swings in diesel fuel prices, Empire imposed fuel surcharges on RACC, and RACC long acquiesced to those charges. Eventually, however, those surcharges began to pinch RACC's profits, and when RACC's president learned of the extent of the surcharges, he was "furious" and took action.

In an effort to recoup its lost revenue, RACC simply stopped paying Empire for its services even though Empire continued to provide them. Without revenue from RACC, Empire could not pay the subcontractors. The subcontractors, without revenue from Empire, were under financial strain and, therefore, ripe for RACC's picking.

RACC encouraged the cash-strapped subcontractors to work directly for RACC and to cut Empire out of the loop. RACC inaccurately told the subcontractors that RACC had paid Empire for the work performed and that, for reasons unknown to RACC, Empire had just walked away from its relationship with RACC. The subcontractors, in desperate financial shape, grabbed the lifeline and went to work directly for RACC.

Empire sued RACC for breach of contract and for tortious interference with Empire's contracts with the subcontractors. A jury found in favor of Empire on both counts and awarded over \$2 million in compensatory and punitive damages. RACC appealed the tortious interference and punitive awards.

The Superior Court affirmed. In so doing, the court addressed important issues regarding claims for tortious interference with contract.

Gist of the Action

The "gist of the action" doctrine is a defense frequently available in response to tortious interference claims. If the conduct at issue is only improper because of a contract between the parties, then the only viable claim (the gist of the action) is for breach of that contract, and no

tortious interference claim can proceed, even if the defendant's conduct interfered with another contract between the plaintiff and a third party.

RACC may well have had a viable gist-of-the-action defense, but the Superior Court held that RACC waived the defense by failing to raise and preserve it at the trial court level.

Elements of Tortious Interference Claim

On appeal, RACC claimed that Empire failed to satisfy the elements of a tortious interference claim. Those elements are: (1) the existence of a contractual relationship between the complainant and a third party; (2) an intent on the part of the defendant to harm the plaintiff by interfering with that contractual relationship; (3) the absence of the privilege or justification on the part of the defendant; and (4) the occasioning of actual damage as a result of the defendant's conduct.

With regard to the first element, the Superior Court held that there was sufficient evidence of contracts between Empire and the subcontractors, even though those contracts were terminable at will.

The second and third elements turned on whether there was evidence that RACC's actions were "improper." There is no precise formula for determining if a defendant's conduct is improper for purposes of a tortious interference claim. Case-by-case analysis is needed. However, the "central inquiry" in that regard is "whether the defendant's conduct is sanctioned by the rules of the game which society has adopted."

The court held that the jury was well within its rights to conclude that RACC's conduct went beyond the rules of the game. RACC lied to Empire, saying that payment was en route when it was not. RACC then lied to the subcontractors, telling them that RACC had paid Empire in full, when RACC had not done so. RACC's conduct drove the subcontractors to RACC, to Empire's detriment.

The court also rejected RACC's contention that its actions were privileged and, thus, not improper because RACC was merely trying to reduce the shipping expenses. The court refused to conclude that RACC's legitimate ends justified its improper means. A party, when pursuing a legitimate interest, still must abide by the rules of the game, and the court held that RACC did not do so.

The Superior Court also affirmed the jury's damage award. The court held that the evidence of record supported the compensatory award, and the court also concluded that RACC's "dishonesty and lack of business ethics" supported the award of punitive damages.

The Empire Trucking decision should serve as a reminder that the law, particularly in the realm of tortious interference with contract claims, does draw lines, and that potentially large damage awards await the unwary and the overzealous on the other side of those lines.

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