

# Suing a Client for Tortious Interference After Being Booted from a Law Partnership

**T**ortious interference with contract “includes an intentional, unjustified interference by third parties with an employment contract.” *Drake v. Dickey*, \_\_\_ N.E.2d \_\_\_, 2013 WL 6500097. (Ind.App.), \*3. “This tort reflects the public policy that contract rights are property and under proper circumstances are entitled to enforcement and protection from those who tortiously interfere with those rights.” Can a lawyer voted out of a law partnership state such a claim against a client whose interference with the lawyer’s relationship with his or her partners prompted the expulsion? *Drake* is a recent case in which the Court of Appeals of Indiana considered this issue.

In *Drake* the lawyer had been a partner in the law firm for 21 years. One of the firm’s clients was a real estate developer with a project located next to real estate owned by the lawyer. The developer offered to purchase the lawyer’s property, but she declined. Realizing that there was a conflict between the lawyer and the developer with respect to how the developer wanted to develop the land, the law firm suspended its representation of the developer. Thereafter the lawyer and the developer reached an agreement with respect to restrictions that should be imposed on the portion of developer’s land located near the lawyer’s land and they entered into a written confidential land-use agreement. Upon the execution of that agreement, the law firm resumed its representation of the developer.

Thereafter the lawyer and the developer became embroiled in several disagreements. For example, the lawyer applied to the local school district to be appointed to the county area plan commission. In response a representative of the developer contacted another partner of the law firm and told “him that if [the lawyer] did not withdraw that application [the other partner] would not ... represent [the developer] again.” At the partner’s request, the lawyer withdrew her application.

Thereafter the lawyer wrote a letter to the developer in which she identified several instances in which she contended that the developer had breached the land-use agree-

ment and requested that the developer abide by the agreement. A representative of the developer then met with two other partners of the law firm and told them that “[i]f [the lawyer] formally intervene[s] or protests[s] or either party files a complaint on the [land-use agreement, the law firm’s] relationship with [the developer] will be terminated.” He also stated that “if [the lawyer] file[d] anything or remonstrate[d], whatever relationship ... [the developer] has had with [the law firm] will be ended.” One partner stated in his notes that it was “in [the law firm’s] best interest to see if this can be resolved.” Before that meeting, “none of the partners had indicated in any way that [the lawyer’s] future with the firm was in any jeopardy” and the lawyer “did not sense a change in tenor with respect to the other partners’ attitude[s] towards [her.]”

Thereafter the two partners who had been in the meeting with the developer’s representative described that meeting to their other partners, including the lawyer. One of the other partners told the lawyer that “the situation with [the developer] was a problem that needed to go away” and that “this could be your job ... if you don’t sell your farm” to the developer. The lawyer refused to sell. The law firm partners then conducted a meeting in which they voted to “reconstitute” the partnership agreement, which effectively removed the lawyer from the partnership.



The lawyer filed suit against the developer “for tortious interference with her partnership agreement with” the law firm. The developer moved for summary judgment, contending that the facts did not support a tortious interference claim. The trial court granted the motion based upon the reasoning that the facts did not support a reasonable inference of tortious interference. In that court’s view, “[i]t is obvious that [the developer] pressured [the law firm] with the intent that [the law firm] would pressure [the lawyer] to reach an agreement with [the developer]. ... But it was not obvious at all that [the developer’s] intent was to pressure [the law firm] to terminate [the lawyer] if she did not reach an agreement. ...” (Emphasis added.) Instead, the trial court viewed the developer’s action as merely an exercise of its “clout ... to interfere with [the lawyer’s] personal legal claim against” the developer.

## Avoiding Liability



By Jeffrey P. Lewis

*Jeffrey P. Lewis is a member in the Philadelphia office of the law firm of Eckert Seamans Cherin & Mellott LLC. He serves on the PBA Professional Liability Committee.*

The Court of Appeals reversed. It found that the evidence supported a fair inference of tortious interference. It noted that the land-use agreement had resolved the lawyer’s dispute — for the time being — with the developer. But the court found that the intent to interfere could be inferred from the fact that it was “[the developer’s] breach of that agreement, together with [its] threat conveyed to [the law firm] that [the law firm] would lose [the developer] as a client if [the lawyer] sought to enforce that agreement, that caused [the law firm] to remove [the lawyer] from the partnership.” The court viewed it to be a jury question as to whether the developer’s threat was made to “intentionally induce [the law firm] to remove [the lawyer] as a partner without legal justification.”

The Court of Appeals noted that the developer and the law firm had a business relationship and that the law firm was, in effect, the lawyer’s employer. It rejected the technical argument that, because the lawyer was a partner in the firm and not an employee, the case law recognizing tortious interference where the interference caused the discharge of an employee-at-will did not apply. Instead it found that the lawyer’s status as a partner was analogous to an employee-at-will status because she could be voted out of the partnership by a majority of the partners without cause.

The developer also argued that it could be liable only if it had “specifically intended” to have the lawyer removed as a partner. The Court of Appeals held that “[i]t may be enough that [the developer] interfered with the partnership agreement for [the developer] to be found liable. In other words, it is not necessary for [the developer] to have

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specifically intended only that [the lawyer] be terminated as a partner for [the developer] to have tortiously interfered with the partnership agreement.”

In the court’s view, tortious interference can be established either if the jury finds that the developer had actual intent “that its conduct would interfere with [the lawyer’s] partnership agreement or that it was within the reasonable contemplation of [the developer] that its conduct would or would likely interfere with the partnership agreement, in which latter case, [the developer] will be deemed by law to have desired that result.” The court recognized that the intentional inducement element may be established using direct or indirect proof and inferentially.

The court also rejected the developer’s argument that the pressure its threat placed on the law firm was legally justified. In the court’s view, justification was a question for the jury, especially since the developer did not simply terminate its relationship with the law firm because of a concern over a conflict of interest and/or retain other counsel.

What constitutes tortious interference in the context of a law firm, just as in any other instance, requires a fact-intensive analysis. However, this case presents a telling example of what can happen when a client attempts to influence or manipulate — depending on one’s point of view — law-firm policy.