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Equity--Injunctive Relief--Inducing Breach of Contract--Trade Libel (Paramount Pictures, Inc., et al. v. Leader Press, Inc., 106 F.2d 229 (10th Cir. 1939))

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EQUITY—INJUNCTIVE RELIEF—INDUCING BREACH OF CONTRACT—TRADE LIBEL.—The plaintiff corporation alleged that it was engaged in the production and distribution of motion pictures; that it distributed its pictures to theatres for exhibition under license agreements which provided that the advertising of the pictures must conform to certain formal and artistic standards set by the plaintiff; that knowing these facts and circumstances, the defendant manufactured, sold, and distributed advertising of the plaintiff's pictures which advertising was inartistic, grotesque, misleading, containing deceptive information bringing discredit upon the pictures and damaging and impairing the good will of the plaintiff as well as injuring and jeopardizing its business integrity. On appeal by the plaintiff from a judgment sustaining the demurrer, *held,* reversed. The plaintiff's complaint that the defendant's advertising violated the license agreement or wrongfully disparaged the plaintiff's business set forth a good cause of action. *Paramount Pictures, Inc., et al.* v. *Leader Press, Inc.,* 106 F. (2d) 229 (C. C. A. 10th, 1939).

"The right to have one's contractual relations free from the disruptive influence of third parties has repeatedly been declared to be a valuable property right, and thus entitled to the protection of a court of equity provided the other grounds for equitable interposition are present." [1] To establish the tort of interference with contractual relations, most authorities agree that the element of malice has long been supplanted by the test of foreseeability.[2] The primary consideration is whether the defendant observed the proper standard of care in his negotiations with respect to the already existing contract. That standard is based upon the doctrine of foreseeability and if, as a reasonable man, the defendant should have anticipated the results, the standard has been violated.[3] In the instant case, the court called the conduct of the defendant in selling inferior advertising to the plain-

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PRUDENCE (4th ed. 1919) § 1696: "Some courts have intimated that either a general building scheme or an express declaration in the covenant is essential; but the better view seems to be that the intent may be otherwise determined."

[1] 2 POMEROY, EQUITY JURISPRUDENCE (2d ed. 1919) 4571. Accord: Central Metal Corp. v. O'Brien, 218 Fed. 827 (D. C. 1922), *appeal dismissed,* 284 Fed. 850 (C. C. A. 6th, 1922); Second Nat. Bank v. Samuel and Sons, 12 F. (2d) 963 (C. C. A. 2d, 1926), *cert. denied,* 273 U. S. 720, 47 Sup. Ct. 110 (1926).

[2] Carpenter, *Interference With Contractual Relations* (1928) 41 HARV. L. REV. 728, 745; HARPER, TREATISE ON THE LAW OF TORTS (1933) 476; Chipley v. Atkinson, 23 Fla. 206, 1 So. 134 (1877); Beekman v. Marsters, 195 Mass. 205, 80 N. E. 817 (1907).

[3] Campbell v. Gates, 236 N. Y. 457, 141 N. E. 914 (1923) (The action of *C* is malicious in that with knowledge of *A's* rights he intentionally and knowingly and for unworthy and selfish purposes violates them by inducing *B* to breach his contract. It is a wrongful act, done intentionally, without just cause or excuse, and from this a malicious motive is to be inferred. This does not necessarily mean actual malice or ill-will but the intentional doing of a wrongful act without legal or social justification. This action is predicated not on the intent to injure, but on the intentional interference, without justification of *A's* contractual rights, with knowledge thereof).

tiff's licensee a "wrongful contribution or inducement to the breach of the license agreements." [4] Regardless of his motive or intent [5] the wrongdoer will be held liable provided he acted with knowledge of the existing contract,[6] unless he can show that his conduct was justifiable or privileged in that he was advancing some public interest or an equal or superior right of his own.[7] Justification cannot be based on the defendant's freedom to enter into contracts where injury will result to the contract rights of another although he is motivated by a desire to further his own business interests.[8] Nor does the fact that the plaintiff and defendant are in competition offer justification.[9]

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[4] Instant case at 232.

[5] Lamb v. Cheney & Son, 227 N. Y. 418, 125 N. E. 817 (1920) (It was alleged that the defendant induced the plaintiff's employee to break his contract with the plaintiff. The defense demurred. The court held the gist of the action not to be the intent to injure, but to interfere without justification with knowledge of the plaintiff's rights); Hornstein v. Podwitz, 254 N. Y. 443, 173 N. E. 674 (1930) ("Malicious" as malicious procurement of a breach of contract is actionable, does not mean necessarily actual malice or ill-will but the intentional doing of a wrongful act without legal or social justification); Mohammed Al Raschid v. News Syndicate Co., Inc., 265 N. Y. 1, 191 N. E. 713 (1934); Campbell v. Gates, 236 N. Y. 457, 141 N. E. 914 (1923) ("This action is not predicated on the intent to injure but on the intentional interference without justification of *A's* contractual rights with knowledge thereof"); Husting Co. v. Coca Cola Co., 205 Wis. 356, 237 N. W. 85 (1931), *cert. denied,* 285 U. S. 538, 52 Sup. Ct. 311 (1931); Tubular Rivet and Steel Co. v. Exeter Boot & Shoe Co., 159 Fed. 824 (C. C. A. 1st, 1908). *Contra:* Ashley v. Dixon, 48 N. Y. 430 (1872); Roseneau v. Empire Circuit Co., 131 App. Div. 429, 115 N. Y. Supp. 511 (4th Dept. 1909) (The interfering party must be guilty of some fraud or fraudulent representation).

[6] R. & W. Hat Shop v. Scully, 98 Conn. 1, 118 Atl. 55 (1922) (One who acts in ignorance of an existing contract is guilty of no wrong); Robbins Drydock, etc. Co. v. Flint, 275 U. S. 303, 48 Sup. Ct. 134 (1927). *Contra:* Glanzer v. Shephard, 233 N. Y. 236, 135 N. E. 275 (1922); Cue v. Breeland, 78 Miss. 864, 29 So. 850 (1901).

[7] Bohlen, *Incomplete Privilege to Inflict Intentional Invasions of Interests of Property and Personality* (1926) 39 HARV. L. REV. 307, 314 ("Upon one thing there is substantial agreement. An act intended to invade another's legally protected interests is privileged only if done to protect or advance some public interest or an interest of the actor. If the act is done only for the protection of one of the actor's interests, it must be an interest of a value greater than, or at least equal to, that of the interest invaded, or if the interests are similar, the harm which the act is appropriate to prevent must be substantially equal to or greater than that which it is intended or likely to cause"); HARPER, TREATISE ON THE LAW OF TORTS (1933) 7; R. & W. Hat Shop v. Scully, 98 Conn. 1, 118 Atl. 55 (1922); Brimelow v. Casson, [1923] 1 Ch. Div. 302; (1925) 38 HARV. L. REV. 115; Northern Wisconsin Co-op. Tobacco Pool v. Bekkedal, 182 Wis. 571, 97 N. W. 936 (1924).

[8] Bitterman v. Louisville & N. R. R., 207 U. S. 205, 28 Sup. Ct. 91 (1907); Lamb v. Cheney & Sons, 227 N. Y. 418, 125 N. E. 817 (1920); Standard Fashion v. Segal-Cooper, 30 App. Div. 564, 52 N. Y. Supp. 433 (1st Dept. 1898); Gonzales v. Kentucky Derby Co., 197 App. Div. 277, 189 N. Y. Supp. 783 (2d Dept. 1921); Montgomery Enterprise Co. v. Empire Theater Co., 204 Ala. 566, 86 So. 880 (1920); Bowen v. Spear, 166 S. W. 1183 (Tex. Civ. App. 1914).

[9] Montgomery Enterprises Co. v. Empire Theater Co., 204 Ala. 566, 86 So. 880 (1920); E. L. Husting Co. v. Coca Cola, 205 Wis. 356, 237 N. W. 85 (1931), *cert. denied,* 285 U. S. 538, 52 Sup. Ct. 311 (1931); Heath v. American

It is more difficult to follow the reasoning of the court in respect to the other ground on which it based its decision, and which appears somewhat unusual. The court cites Sections 626 and 629 of the Restatement of the Law of Torts [10] under the topic of Trade Libel. Section 629 defines "disparagement" as "matter which is intended by its publisher to be understood or which is reasonably understood to cast doubt on another's property in lands, chattels or intangible things, or upon their quality * * *." Courts in this country have consistently denied injunctions against trade libels as they have against other libels,[11] in order to uphold the constitutional guaranty of freedom of the press. However, where the libel has been incidental or instrumental to another tortious transaction equity has intervened.[12] Therefore, it does not seem in line with the great weight of judicial authorities [13] that the cause of action should have been sustained on the separate ground that the defendant was disparaging the plaintiff's business. But the court may have construed the libelous acts as falling into the latter category and enjoined them only as an incident of the tort of inducing the breach of the plaintiff's contract.

B. S.

EVIDENCE — WIRE TAPPING — INTERPRETATION OF FEDERAL COMMUNICATIONS ACT.—(First Case) Defendants appeal from a judgment convicting them of smuggling and concealing alcohol and of conspiracy to do so. An earlier conviction under the same indictment was reversed by the Supreme Court on the ground that the admission of evidence directly procured by means of wire-tapping was

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Book Co., 97 Fed. 533 (1899); Sumwalt Ice & Coal Co. v. Knickerbocker Ice Co., 114 Md. 403, 80 Atl. 48 (1911); Beekman v. Marsters, 195 Mass. 205, 80 N. E. 817 (1907).

[10] RESTATEMENT, TORTS (1938) §§ 626, 629.

[11] Boston Diatite Co. v. Florence Mfg. Co., 114 Mass. 69 (1873); Marlin Fire Arms Co. v. Shields, 171 N. Y. 384, 64 N. E. 163 (1902); Balliet v. Cassidy, 104 Fed. 704 (1900); American Malting Co. v. Kreitel, 207 Fed. 351 (C. C. A. 2d, 1913); Vassar College v. Loose-Wiles Biscuit Co., 197 Fed. 982 (D. C. Mo. 1912); (1927) 75 U. OF PA. L. REV. 258, 260.

[12] Nann v. Raimist, 255 N. Y. 317, 174 N. E. 690 (1931) (Equity does not interfere to restrain the publication of words on a mere showing of their falsity. It intervenes in those cases where restraint becomes essential to the preservation of a business or other property interest threatened with impairment by an illegal combination or other tortious acts, the publication of the words being merely instrumental and incidental); Gompers v. Buck Stove Co., 221 U. S. 418, 31 Sup. Ct. 492 (1910); Casey v. Typographical Union, 45 Fed. 135 (C. C. S. D. Ohio 1891); Sherry v. Perkins, 147 Mass. 212, 17 N. E. 307 (1888).

[13] Pound, *Equitable Relief Against Defamation and Injuries to Personality* (1915) 29 HARV. L. REV. 640; (1927) 75 U. OF PA. L. REV. 258.