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Contracts--Liability of One Wrongfully Inducing Breach (Hornstein v. Podwitz, 254 N.Y. 443 (1930))

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been effected, plaintiff would have earned commissions from Klein. Yet the defendant did not employ plaintiff until reference to his brokerage contract with Klein. The contract of employment was unilateral and Fox could have performed by producing anyone willing to buy on defendant's terms.[6] This case is distinguishable from the cases wherein the circumstances of the broker's employment enabled the court to find an express or implied agreement to be responsible for the loss of the commissions from a third party.[7] Thus where the prospect agreed with the owner's broker that he would buy the property if the agent could induce the owner to accept on certain terms, knowing all the time that the broker's only compensation would be the commissions received from the owner, he was properly held liable to the broker for the loss of those commissions occasioned by his refusal to go through with the purchase as agreed.[8] The loss of commissions was the natural, certain and direct consequence of the breach. From the very nature of the contract such would be the damage attendant upon its breach.[9] The principal case reiterates a rule which has received widespread judicial sanction.[10]

L. G. H.

CONTRACTS — LIABILITY OF ONE WRONGFULLY INDUCING BREACH.—Plaintiff was a real estate broker who was employed by his principal to bring about a sale of the latter's property. Plaintiff procured defendant who agreed to purchase on the seller's terms. The defendant then induced the seller to break his contract with the plaintiff broker and to consummate the sale unknown to the broker and thereby deprive him of his commission. Thereupon the buyer and seller distributed a sum of money between themselves in lieu of the broker's commission. The seller being insolvent, the broker

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[6] 1 Williston on Contracts (1920) Sec. 13.

[7] Pease & Elliman, Inc. v. Gladwin Realty Co., Inc., 216 App. Div. 421, 215 N. Y. Supp. 346 (1st Dept., 1926); McKnight v. McGuire, 117 Misc. 306, 191 N. Y. Supp. 323 (1921); Louis Starr, Inc. v. Blumenthal, 132 Misc. 222, 228 N. Y. Supp. 486 (1927).

[8] James v. Home of the Sons and Daughters of Israel, 153 N. Y. Supp. 169 (App. Term, 1915).

[9] Houser v. Pearce, 13 Kan. 104 (1874); Hexter v. Knox, 63 N. Y. 561 (1876); Beeman v. Banta, 118 N. Y. 538, 23 N. E. 887 (1890); Fox v. Everson, 27 Hun 355 (N. Y., 1882); New York Market Gardeners' Assn. v. Adams, 115 App. Div. 42, 100 N. Y. Supp. 594 (2nd Dept., 1906), *aff'd* 190 N. Y. 514, 83 N. E. 1128 (1907); Hammer v. Schoenfelder, 47 Wisc. 455 (1879).

[10] Anvil Mining Co. v. Humble, 153 U. S. 540, 14 Sup. Ct. 876 (1894); Gagnon v. Sperry Hutchinson Co., 206 Mass. 547, 92 N. E. 761 (1910); Lewiston v. Vulcon, 139 Minn. 180, 165 N. W. 1071 (1918); Dart v. Laimbeer, 107 N. Y. 664, 14 N. E. 291 (1887).

sued the defendant buyer for his commission. The defendant contended that the plaintiff had suffered no damage as he still had a cause of action against the seller. *Held,* plaintiff was entitled to a judgment. Defendant with full knowledge of plaintiff's contract, wrongfully induced the seller to breach it. All parties who induced the breach of the contract are jointly and severally liable. Hornstein v. Podwitz, 254 N. Y. 443, 173 N. E. 674 (1930).

In early times a master had a cause of action for the loss of services caused by injury to his servant.[1] Soon an action was recognized for enticing away anyone legally bound to work for another.[2] A father was upheld in a suit against one who interfered with his right to his minor daughter's services by obtaining the plaintiff's written consent to marriage on the false statement that he was not married.[3] More recently a right of action was sustained for enticing one away and inducing him to break a contract for labor.[4] Interfering with contracts for services which were unique has been held an actionable tort.[5] The rule has been thus developed and broadened until it has been held applicable to any contract relation.[6] It has even been held that where the plaintiffs could not enforce their contract with the third party because it was not binding under the statute of frauds, they could recover from the defendant who caused the breach.[7] The Court said that the third party might have carried out the contract but for the defendant and that therefore the plaintiff was injured. The decisions on the subject seem to agree that actual malice or ill-will is not the gist of the action, but it is sufficient that the one who induced the breach knew of the contract relation between the plaintiff and the third party, and induced its breach with-

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[1] Burdick, Law of Torts, (4th ed. 1926) Sec. 415 at p. 472.

[2] *Ibid.*

[3] Lawyer v. Fritcher, 130 N. Y. 239, 29 N. E. 267 (1891), which also held that a jury had a right, in their discretion, to impose punitive damages. For a comprehensive study of damages in such cases see note (1930) 30 Col. L. Rev. 232.

[4] Lamb v. Cheney & Son, 227 N. Y. 418, 125 N. E. 817 (1920).

[5] Posner v. Jackson, 223 N. Y. 325, 119 N. E. 573 (1918), plaintiff corporation sued defendant for enticing away an expert dress designer who had organized the corporation and contracted with it to render it exclusive services for a period of time; Campbell v. Gates, 236 N. Y. 457, 141 N. E. 914 (1923), third party who was experienced and skilled in magazine publishing had contracted with the plaintiff to cooperate with him in publishing a magazine was induced to break it by the defendant.

[6] Campbell v. Gates, *supra* note 5; Gonzales v. Kentucky Derby Co., 197 App. Div. 277, 189 N. Y. Supp. 783 (2nd Dept., 1921), *aff'd* 233 N. Y. 607, 135 N. E. 938 (1922); Third Ave. Ry. Co. v. Shea, 109 Misc. 18, 179 N. Y. Supp. 43 (1919) order *aff'd* 191 App. Div. 949, 181 N. Y. Supp. 956 (1st Dept., 1920) (Defendant induced employees of the plaintiff to break their contract with the plaintiff that they would not join a certain labor organization. Here an injunction *pendente lite* was granted against the labor organization); Burdick, Law of Torts, *supra* note 1; 2 Cooley, Torts (3rd ed., 1906) p. 592, 600.

[7] Rice v. Manley, 66 N. Y. 82 (1876).

out legal or social justifiable cause to the injury of the plaintiff.[8] From this malice may be inferred. As to what constitutes justifiable cause must be left to the jury in each case.[9] The right to contract enjoyment is now held by the courts to be a property and a legal right; and any unjustified interference with it is an actionable legal wrong.[10] It is only natural for it to follow that broker's contracts should be as zealously protected by the courts against interference as other contracts. Surely in the instant case there was such a "malicious interference" as to bring it within the interpretation of that term in previous cases and was such as to justify the holding of the court.

E. H. S.

CORPORATIONS—REFUSAL OF DIRECTORS TO DECLARE DIVIDENDS.—On April 8, 1909, plaintiff's foster mother died. At the time of her death she was the owner of 20 shares of the capital stock of the David Maydole Hammer Company. She left a will in which she bequeathed to plaintiff during her lifetime the income and dividends thereof, and after her decease the stock was given absolutely to the three individual defendants. These three then were and still are the owners of one-half of the stock of the corporation, the remaining twenty shares being owned since 1926 by a daughter of one of them. The three individual defendants are and since 1908 have been the controlling directors of the corporation, and they are the ones who will eventually own the twenty shares of which plaintiff has the dividends. The plaintiff charges that these defendants, being so in control and with intent to build up a large surplus which under the circumstances would profit them but would not benefit plaintiff, have withheld making dividends in such sums as the business would warrant, and have permitted large sums, which should have been paid out as dividends, to accumulate as surplus. Plaintiff seeks an accounting. *Held,* denied. Ochs v. David Maydole Hammer Co., 138 Misc. Rep. 665, 246 N. Y. Supp. 539 (1930).

The directors of a corporation possess the right to declare dividends, and it is for the directors, and not the stockholders to determine whether or not a dividend shall be declared.[1] When therefore, the directors have exercised this discretion and refused to declare a

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[8] Campbell v. Gates, *supra* note 5; Lamb v. Cheney & Son, *supra* note 4 at p. 422; Posner v. Jackson, *supra* note 5; Gonzales v. Kentucky Derby Co., *supra* note 6; Burdick, Law of Torts, *supra* note 1, Sec. 23 at p. 25, Sec. 415 at pp. 472-3.

[9] Cooley, Torts, *supra* note 6, p. 592.

[10] *Supra* note 8.

[1] Schell v. Alston Mfg. Co., 149 Fed. 439 (N. D., Ill., 1906); Dodge v. Ford Motor Co., 204 Mich. 459, 170 N. W. 668 (1919); Hastings v. International Paper Co., 187 App. Div. 404, 175 N. Y. Supp. 815 (1st Dept., 1919).