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Interference With Contract—Liability Where No Enforceable Contract

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when both parties claim title to the same property. *Sinclair v. Friedlander*, 197 Ga. 797, 30 S.E.2d 398 (1944).

In *Summerfield v. White*, *supra*, there is a dictum that seems to support the position of the court in the *Toppins* case. Plaintiff claimed under *O*, who had owned that tract in fee, while *O* had owned defendant's tract as a tenant in common. The court said that since the cotenant of *O* would not be estopped to claim to the full extent of his deed, even though hostile to an adjoining tract owned by *O*, ". . . it is apparent that the two titles in question do not come from the same source. . . ." *Id.* at 321. Again, there would be a stronger reason for this holding than that of the instant case, because defendant claimed under the cotenant as well as under *O*.

However, it is submitted that the distinction between "common grantor" and "common source" as made in the *Toppins* case is the correct and logical rule. When there is a common source of title, such as an undivided tract subsequently divided, an attack on part of the title is an attack on the whole, and an estoppel is proper. But when the common grantor has acquired title to the adverse tract from a stranger to the title of the other tract, and has conveyed them as separate tracts, doing nothing to merge the parcels, the validity of the title to one tract will have no effect on the validity of the title to the other tract, and neither party should be estopped to attack the title of the adverse claimant.

C. M. C.

INTERFERENCE WITH CONTRACT—LIABILITY WHERE NO ENFORCEABLE CONTRACT.—*P* owned a tract of land on an island. *A* contracted with *B* construction company to dredge a channel in waters adjoining *P*'s land. *P* gave *A* and *B* permission to use a strip of his land for the purpose of depositing the dredged material in a bay adjoining this land. This would have increased the value of *P*'s land. *P* alleged that *D*, having no right to do so, advised *B* that if it proceeded to build up *P*'s land with dredged materials, then he, *D*, would sue to restrain the operation. In consequence of *D*'s action, *B* deposited the materials elsewhere. *D* filed a demurrer on the ground that the complaint failed to state a cause of action for it appeared from the complaint that *P* had no enforceable contract. Demurrer sustained. *Held*, that *P*'s complaint failed to state

a cause of action since *P* had no enforceable contract with the construction company for such deposit. Judgment affirmed. *Morgan v. Speight*, 89 S.E.2d 137 (N.C.1955).

Although this action was based upon wrongful interference with contract, from the decision the following questions are raised: (1) whether there must be an enforceable contract before an action for wrongful interference with contract will lie; and (2) whether there could be a cause of action for wrongful interference with an advantageous relation had there been no contract at all.

In order to maintain an action for wrongful interference with contract, the plaintiff must allege and prove these essential elements: (1) that there was a valid contract existing between the plaintiff and a third party; (2) that the defendant had knowledge of the plaintiff's contract; (3) that the defendant intentionally induced the third party to break the contract with the plaintiff; (4) that the defendant acted without justification; and (5) that the defendant's act caused the plaintiff actual damages. *Childress v. Abeles*, 240 N.C. 667, 84 S.E.2d 176 (1954). In the principal case the court considered only the requirement that there be a valid contract.

Whether the court was correct in its holding will depend upon whether a contract is valid although it is unenforceable. In North Carolina it has been held that although the parties to the contract would have a defense in an action between themselves, if the contract is valid, then there can be liability for wrongful interference with that contract for the intermeddler cannot take advantage of those defenses. *Haskins v. Royster*, 70 N.C. 601 (1874). The Statute of Frauds is not available as a defense to one who wrongfully interferes with a contractual relationship for it is a defense which is personal to the parties to the contract. *Childress v. Abeles*, *supra* at 678, 84 S.E.2d at 184. In these decisions the court makes a distinction between a valid contract and an enforceable contract and holds that it is only necessary to have a valid contract in order to maintain a cause of action for wrongful interference. Therefore, in the principal case the court should not have sustained the demurrer on the ground that there was no enforceable contract alleged. However, the court might have found that there was no valid contract and have reached the same result.

In the case of contracts for the sale of land, there is an additional requirement for the action. Before an action will lie for

wrongful interference with land sale contracts, the contract must be registered. *Eller v. Arnold*, 230 N.C. 418, 53 S.E.2d 266 (1949). Due to the recording statutes, this is an exception to the rule governing liability in cases for wrongful interference. See *Bruton v. Smith*, 225 N.C. 584, 588, 36 S.E.2d 9, 11 (1945) (concurring opinion). These decisions do not deny liability on the basis that the contract was unenforceable but rather on the ground that third parties are justified in disregarding such contracts until they are registered. Presumably, if such contracts were enforceable between the parties because they were in writing or they were partly performed, there still would be no cause of action for wrongful interference against a third party unless the contract was registered. Therefore, if the contract in the principal case involved an interest in land, an easement, the court could have more properly denied liability on the ground that the contract was not registered.

In the principal case the court did not consider whether a cause of action would lie for an interference with an advantageous relation even if there were no contract at all. It has been held that where there were certain noncontractual expectancies which were not realized due to the unjustifiable interference by a third party, then the intermeddler would be liable. *Tuttle v. Buck*, 107 Minn. 145, 119 N.W. 946 (1909). For the most part the expectancies thus protected have been those involving commercial dealings, such as the prospect of obtaining employment or employees, or the opportunity of obtaining customers. When the attempt has been made to extend liability beyond those expectancies, the courts have usually refused to allow recovery on the basis that there is too much speculation involved in determining whether the plaintiff would have received the benefit. PROSSER, TORTS § 107 (2d ed. 1955). Since the courts have protected certain noncontractual expectancies, there seems to be no logical reason why the courts will not protect other advantageous relations where it can be proved that the plaintiff would have received the benefit had it not been for the unjustifiable interference. In such cases the objection that there is too much speculation involved, is removed.

In the principal case even if there was no contract between the plaintiff and the third party, if the plaintiff could prove that had it not been for the unjustifiable interference of the defendant he would have received the benefit of the relation, then the plaintiff should have been able to recover damages for the defendant's wrongful action. However, there appears to be no case which has

extended liability to this extent. Also, as this case was decided on the pleading, the complaint might have been found defective even under this view.

In conclusion, the court in the principal case might have reached the same result on the basis that there was no valid contract alleged, or that the contract fell under the rule governing land sale contracts which must be registered. But the fact that there is no enforceable contract alleged is not a sufficient reason to deny liability under the prior decisions in North Carolina. However, if the situation was one where the plaintiff would have received the benefit had it not been for the defendant's unjustifiable interference, then the plaintiff should have been able to recover although there was no valid contract between the parties.

R. W. F.

MUNICIPAL CORPORATIONS—DUTY TO PROTECT POLICE INFORMER—NO LIABILITY FOR INJURY TO INFORMER.—*P*, as administrator, brought an action against the city of New York for the wrongful death of *P*'s intestate. *P*'s intestate had informed the police of the whereabouts of a notorious criminal and leader of gangs, and, through this information, the police apprehended the criminal. The role the intestate played in the capture was greatly publicized, and he received countless threats to his person. At the request of the intestate, the police furnished him some special protection, but later this protection was withdrawn over the protests of the intestate. Soon thereafter the intestate was murdered, in gangland fashion, by a person or persons unknown. *P*'s bill of complaint was dismissed by the lower court, and he appealed to the intermediate appellate court. Affirming the order and judgment, *held*, with one dissent, that there was no duty on the city of New York to protect *P*'s intestate, and, if such a duty did exist, the complaint failed to show that the violation of the duty was the proximate cause of intestate's death. *Schuster v. City of New York*, 286 App. Div. 389, 143 N.Y.S. 2d 778 (2d Dep't 1955).

It has always been the basic duty of government to protect its citizens from loss of life, limb or property by unlawful acts. This duty has traditionally been vested in the various police organizations. In New York, the city charter imposes upon the police department the mandatory duty to "protect the rights of persons and property," to "preserve the public peace," to "prevent crime," to "detect and arrest offenders" of the law, and to "suppress riots, mobs