UNC SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 14 | Number 1 Article 21

12-1-1935

Torts -- Inducing Breach of Contract -- Malice

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that the Court will be reluctant to recognize another taxable interest, and is likely to adopt the view taken by the Maryland Court that, for purposes of taxation, there is no intermediate ground between the income and the value of the property held by the trustee.

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Torts—Inducing Breach of Contract—Malice.

Plaintiff contracted to sell land to *B*. Defendant, who held a deed of trust on the land, induced *B* to breach his contract by falsely informing him that plaintiff could not pass good title and by promising to sell the land to him after the pending foreclosure proceedings for an amount less than that stated in plaintiff's contract. Plaintiff sued for malicious interference with his contract and was non-suited. *Held,* judgment affirmed. Since defendant had a right to compete with plaintiff, the question of malice was immaterial, for it could not make an act unlawful which in essence was lawful.[1]

The right to maintain an action against a third person for maliciously inducing another to break his contract with the plaintiff has long been recognized in this state.[2] Though there was no indication at first that the rule would be extended beyond the field of employment contracts, it was later held that an action would lie for maliciously inducing the breach of any contract.[3] This is the majority rule today.[4]

North Carolina, however, has at times receded from this position, and at present the state of the law is uncertain. Doubt was first thrown upon the early cases in 1909 when the court said that generally no action could be maintained for inducing breach of contract, since the consequence is only a broken contract for which the party injured may sue.[5]

Ct. 436, 74 L. ed. 1056 (1930); Beidler v. South Carolina, 282 U. S. 1, 51 Sup. Ct. 54, 75, L. ed. 131 (1930); First National Bank v. Maine, 284 U. S. 312, 52 Sup. Ct. 174, 76 L. ed. 313 (1932).

[1] Holder v. Atlantic Joint Stock Land Bank, 208 N. C. 38, 178 S. E. 861 (1935).

[2] Haskins v. Royster, 70 N. C. 601 (1874) (employment contract).

[3] Jones v. Stanly, 76 N. C. 355 (1877) (contract to haul goods).

[4] Dade Enterprises v. Wometco Theaters, 160 So. 209 (Fla. 1935); Caverno v. Fellows, 286 Mass. 440, 190 N. E. 739 (1934); Louis Kamm, Inc. v. Flink, 113 N. J. Law 582, 175 Atl. 62 (1934); Lumley v. Gye, 2 E. & B. 216 (Q. B. 1853), a leading case which is the forerunner of all cases allowing recovery for inducing breach of employment contracts. For a collection of the cases, see Note (1933) 84 A. L. R. 43. For detailed treatments of the subject, see Carpenter, *Interference with Contract Relations* (1928) 41 HARV. L. REV. 728; and Sayre, *Inducing Breach of Contract* (1923) 36 HARV. L. REV. 663.

[5] Swain v. Johnson, 151 N. C. 93, 65 S. E. 619 (1909). "To this rule there are but two generally recognized exceptions—one where servants and apprentices are induced from malicious motives to leave their masters before the term of service

A comparatively recent case, however, again recognizes that the action will lie.[6] In the present case, the court, after apparently recognizing the right to maintain the action in a proper case, appends a quotation from a treatise on torts[7] in which it is said that generally no action will lie for inducing breach of contract. If the court accepts this broad statement as the law, then it is decisive of the issue.

The decision in the instant case, however, seems to be based on the idea that plaintiff's injury, if any, was the result of lawful competition and that therefore defendant was justified in inducing the breach of contract. While the doctrine of freedom of competition may be invoked to justify defendant's acts when both plaintiff and defendant are engaged in similar enterprises,[8] it is difficult to see how it could be applied in the present case, for plaintiff was a borrower and defendant was a lender (land bank). Since the only object of defendant should have been to realize the amount loaned by it plus interest, the policy of allowing it to compete with its customers may well be doubted.

Assuming, however, that the proposition laid down by the court is sound, should the presence of malice make a difference? The point is often made, as in the instant case, that malice unconnected with a legal wrong will not support an action.[9] Thus if defendant's act in inducing a breach of contract between plaintiff and a third person is lawful, there is no need for inquiring into his motive. The fallacy in this reasoning is obvious. If the act of defendant in inducing a breach of contract is *unlawful,* that in itself will support an action. Thus if malice is ever to be an important factor (except on the question of punitive damages) it will necessarily be in a case where the defendant's conduct is otherwise lawful. It is submitted, therefore, that the presence of malice, in a case where the defendant's conduct is otherwise lawful, should resolve the question of justification in plaintiff's favor, and a recovery should be permitted. And in the instant case the fact that defendant made a false

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expires, and the other arises when a person has been procured against his will or contrary to his purpose, by coercion or deception of another, to break his contract."

[6] Elvington v. Waccamaw Shingle Co., 191 N. C. 515, 132 S. E. 274 (1926).

[7] 2 COOLEY, TORTS (3d ed. 1906) 948: "An action cannot, in general, be maintained for inducing a third person to breach his contract with the plaintiff, the consequence, after all, being only a broken contract for which the party to the contract may have his remedy by suing on it." The next sentence, which the court does not quote, reads, "But if the person was induced to break his contract by deception it may be different." On the subject of *inducing breach of contract* it is said in that same volume that, "One who maliciously or without justifiable cause induces a person to break his contract with another will be liable to the latter for the damages resulting from such breach." 2 COOLEY, TORTS (3d ed. 1906) 592.

[8] Mogul Steamship Co. v. McGregor, Gow & Co., 23 Q. B. D. 598 (1889).

[9] Richardson v. Wilmington & Weldon R. Co., 126 N. C. 100, 35 S. E. 235 (1900); Biggers v. Matthews, 147 N. C. 299, 61 S. E. 55 (1908).

statement concerning plaintiff's ability to pass good title should have been evidence of malice sufficient to take the case to the jury.[10]

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Usury—Affirmative Relief for the Debtor.

In spite of the anomalous situation which results from such a decision, and the questionable policy motivating it, the Supreme Court of North Carolina seems determined to follow its line of cases which deny the debtor party to a usurious contract affirmative relief of an equitable nature.[1] In two cases decided this year,[2] the creditor has brought action to foreclose a deed of trust. The debtor has set up usury in his answer, and prayed for injunctive relief. In both cases, defendant's prayer has been denied on the tenuous and abstract ground that he has asked equity and must therefore do equity—in other words, pay the principal plus legal interest.[3] Had the debtor restricted himself to purely legal defenses and remedies, he would have been required to pay no interest, and could have recovered back double the amount of any interest already paid.[4] Or, had he accompanied his prayer for an injunction with a tender of principal and legal interest, presumably he could have had the injunction, and saved his property from sale on foreclosure.[5] But, having chosen neither of these alternatives, he was not only denied the equitable relief which he asked, but, for the mere asking, was penalized

[10] It will be noticed that malice in this connection is not used "in the sense of actual ill-will to the plaintiff, but in the sense of an act done to the apparent damage of another without legal excuse." Morgan v. Smith, 77 N. C. 37 (1877) (action for enticing away servants). This view finds support in other jurisdictions. Employing Printers Club v. Dr. Blosser Co., 122 Ga. 509, 50 S. E. 353 (1905); Quinlivian v. Brown Oil Co., 96 Mont. 147, 29 Pac. (2d) 374 (1934); Lamb v. S. Cheney & Son, 227 N. Y. 418, 125 N. E. 817 (1920).

[1] For a discussion of this situation, see Comment (1934) 12 N. C. L. REV. 279. See also Waters v. Garris, 188 N. C. 305, 124 S. E. 334 (1924).

[2] Thomason v. Swenson, 207 N. C. 519, 177 S. E. 647 (1935); and C. D. Kenny Co. v. Hinton Hotel Co., 208 N. C. 295, 180 S. E. 697 (1935). In the latter case, receivers had been appointed for the debtor. The petition for foreclosure was filed in the receivership proceeding. The other creditors and the receivers answered, praying for the injunction (among other things). The sale was ordered and confirmed, and the lower court decreed that the petitioner was entitled to principal plus six per cent interest. The receivers' appeal was dismissed on other grounds, while the decree was affirmed on the creditors' appeal. The Court treats the case as if only the debtor were the defendant.

The still more recent case of Ghormley v. Hyatt, 208 N. C. 478 (1935) incidentally reaffirms the rule, at p. 482.

[3] Yet note the Court's language in C. D. Kenny Co. v. Hinton Hotel Co., 208 N. C. 295, 298, 180 S. E. 697, 698 (1935): "If this was an action in which [petitioner creditor] . . . was seeking to recover of the defendant [debtor] . . . the amount due on his bond, . . . he would be liable for the statutory penalties for usury."

[4] N. C. CODE (1935) §2306, and annotations thereto. Also note 3 *supra*.

[5] Jonas v. Home Mortgage Co., 205 N. C. 89, 170 S. E. 127 (1933) *semble*.