

PJI 3:57. Intentional Torts—Business Torts--Interference with Prospective Economic Relations

As you have heard, in this case, the plaintiff AB claims that (he, she, it) had an opportunity to enter into a [state nature of prospective business relationship, such as contract, partnership, joint venture, financial arrangement, etc.] with EF and that the defendant CD knew about and intentionally interfered with that [state nature of prospective business relationship] by using wrongful means in that [set forth claimed conduct constituting wrongful means, such as physical violence, fraud, commencement of a frivolous lawsuit, use of undue economic pressure] [add or substitute, where appropriate: for the sole purpose of harming AB]. AB further claims that but for CD's interference, EF would have entered into the [state nature of prospective business relationship] and that, as a result of the loss of the [state nature of prospective business relationship], AB sustained damages.

CD denies that (he, she, it) [state as appropriate: (1) knew about AB's opportunity to enter into the business relationship with EF, (2) intentionally interfered with AB's opportunity to enter into the business relationship with EF, (3) caused AB to lose the opportunity to enter into the business relationship with EF, (4) used wrongful means in that [set forth claimed conduct constituting wrongful means, (5) and/or acted for the sole purpose of harming AB].

In order for AB to recover, AB must prove that (1) AB and EF would have entered into a [state nature of prospective business relationship], (2) CD knew about that [state nature of prospective business relationship], (3) CD intentionally interfered with that [state nature of prospective business relationship], (4) but for CD's interference, AB and EF would have entered into the [state nature of prospective business relationship], (5) CD used wrongful means in that [set forth claimed conduct constituting wrongful means] [add or substitute where appropriate: CD acted for the sole purpose of harming AB. A person does not act for the sole purpose of harming another when they have another reason, such as to promote (his, her, its) own business]. AB must also prove that (he, she, it) sustained damages as a result of CD's interference.

In considering whether CD knew about [state nature of prospective business relationship], you will decide whether CD was actually aware of the [state nature of prospective business relationship], although knowledge of the specific terms of the prospective contract or business relationship is not required. In considering whether CD intentionally interfered with the [state nature of prospective business relationship], you will decide whether CD acted with the purpose of interfering with (a person's, an entity's) ability to obtain the [state nature of prospective business relationship].

If you decide that AB and EF would not have entered into a [state nature of prospective business relationship], or that CD did not know about that [state nature of prospective business relationship], or that CD did not intentionally interfere with that [state nature of prospective business relationship], or that CD did not use wrongful

means in that [*set forth claimed conduct constituting wrongful means*] [*add or substitute where appropriate: CD did not act for the sole purpose of harming AB*], or that **AB would not have entered into the** [*state nature of prospective business relationship*] **with EF even if CD had not interfered, you will find for CD and proceed no further** [*state where appropriate: on this claim*]. **On the other hand, if you decide that AB and EF would have entered into a** [*state nature of prospective business relationship*], **that CD knew about the** [*state nature of prospective business relationship*] **and intentionally interfered with it, that CD used wrongful means in that** [*set forth claimed conduct constituting wrongful means*] [*add or substitute where appropriate: CD acted for the sole purpose of harming AB*], **that, but for CD's interference, AB and EF would have entered into the** [*state nature of prospective business relationship*], **and that AB sustained damages as a result of CD's interference, you will find for AB and go on to consider the amount of AB's damages.**

Comment

Based on *Carvel Corp. v Noonan*, 3 NY3d 182, 785 NYS2d 359, 818 NE2d 1100; *NBT Bancorp Inc. v Fleet/Norstar Financial Group, Inc.*, 87 NY2d 614, 641 NYS2d 581, 664 NE2d 492; *Guard-Life Corp. v S. Parker Hardware Manufacturing. Corp.*, 50 NY2d 183, 428 NYS2d 628, 406 NE2d 445; *A.S. Rampell, Inc. v Hyster Co.*, 3 NY2d 369, 165 NYS2d 475, 144 NE2d 371; *Union Car Advertising Co. v Collier*, 263 NY 386, 189 NE 463; *Fantaco Enterprises, Inc. v Iavarone*, 161 AD2d 875, 555 NYS2d 921; *Williams & Co. v Collins, Tuttle & Co.*, 6 AD2d 302, 176 NYS2d 99.

Note: In most cases, the use of “wrongful means,” *i.e.*, conduct amounting to a crime or an independent tort, is an essential element of a cause of action for tortious interference with prospective economic relations, *Carvel Corp. v Noonan*, 3 NY3d 182, 785 NYS2d 359, 818 NE2d 1100. However, determining whether particular conduct amounts to a crime or an independent tort involves a legal analysis and is not an appropriate function for a jury. For that reason, the pattern charge asks the jury to consider only whether defendant actually engaged in the specific alleged acts constituting the claimed “wrongful means.” Whether, as a matter of law, those acts rise to the level of “wrongful means” remains a question of law for the court to decide. For a discussion of the “wrongful means” element of the cause of action, see Comment, *infra*.