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807.00 WRONGFUL INTERFERENCE WITH CONTRACT RIGHT

The *(state number)* issue reads:

"Did the defendant wrongfully interfere with a contract right between the plaintiff and *(name other party to contract)*?"

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, five things:[1]

First, that a valid contract right existed between the plaintiff and *(name other party to contract)*.

Second, that the defendant had knowledge of the facts giving rise to the plaintiff's contract right with *(name other party to contract)*. (It does not matter that the defendant was mistaken as to the legal significance of these facts or that the defendant believed that no contract right existed.[2])

Third, that the defendant intentionally[3] induced *(name other party to contract)* [not to perform] [to alter adversely the performance of][4] [not to renew][5] [to terminate] the contract right to which the plaintiff was entitled.

Fourth, that the defendant acted without justification.[6]

And Fifth, that the defendant's actions resulted in actual damages to the plaintiff.

Finally, as to the *(state number)* issue on which the plaintiff has the burden of proof, if you find, by the greater weight of the evidence, that the defendant wrongfully interfered with a contract right between the plaintiff and *(name other party to contract)*, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

1. *Embree Constr. Group, Inc. v. Rafcor, Inc.*, 330 N.C. 487, 498, 411 S.E.2d 916, 924 (1992); *United Labs., Inc. v. Kuykendall*, 322 N.C. 643, 661, 370 S.E.2d 375, 387 (1988); *Peoples Sec. Life Ins. Co. v. Hooks*, 322 N.C. 216, 220, 367 S.E.2d 647, 649-50 (1988); *Wilson v. McClenny*, 262 N.C. 121, 132, 136 S.E.2d 569, 577-78 (1964); *Childress v. Abeles*, 240 N.C. 667, 674, 84 S.E.2d 176, 181-82 (1954); *Meehan v. Am. Media Int'l, LLC, et al.*, 214 N.C. App. 245, 261-62, 712 S.E.2d 904, 914 (2011).

2. *United Labs., Inc.*, 322 N.C. at 663, 370 S.E.2d at 388.

3. For an instruction on intent, see N.C.P.I.—Civil 101.46.

4. *See Lexington Homes, Inc. v. W.E. Tyson Builders, Inc.*, 75 N.C. App. 404, 411, 331 S.E.2d 318, 322 (1985); *see also Cheryl Lloyd Humphrey Land Inv. Co. v. Resco Prods., Inc.*, ___ N.C. App. ___, ___, 831 S.E.2d 395, 405 (2019) (stating that tortious interference with a prospective economic advantage "includes contractual modifications equivalent in effect to terminations of parts of multi-part agreements").

5. *Wilson v. McClenny*, 262 N.C. 121, 133, 136 S.E.2d 569, 578 (1964) (recognizing that wrongful interference with contractual relations can occur when the defendant causes a third party not to renew a contract to which plaintiff was entitled).

6. Whether a defendant acts without justification depends on the unique facts of each case. This element of the instruction may be supplemented to explain the meaning of "without justification" as supported by the evidence. Caution should be exercised in supplementing this element. For example, "[i]nterference with contract is justified if it is motivated by a legitimate business purpose, as when the plaintiff and the defendant, an outsider, are competitors." *Embree Constr. Group, Inc.*, 330 N.C. at 498, 411 S.E.2d at 924. However, there may be instances where, because the parties are competitors, certain acts of interference would not be justified. *United Labs., Inc. v. Kuykendall*, 335 N.C. 183, 185-88, 437 S.E.2d 374, 375-76 (1993).

> *NOTE WELL: The* Noerr-Pennington *doctrine protects businesses from antitrust liability when their conduct is aimed at influencing governmental action and their petitioning activity otherwise potentially violates §§ 1 and 2 of the Sherman Act. The doctrine also gives businesses immunity from antitrust liability under the First Amendment for concerted efforts to influence public officials regardless of intent or purpose. The doctrine does not, however, grant immunity where the conduct at issue is a "mere sham."* Cheryl Lloyd Humphrey Land Investment Co., LLC v. Resco Products, Inc., ___ *N.C. App. ___, ___, 831 S.E.2d 395, 399 (2019).*

Also note that where the defendant is an insider (e.g., an officer, director, or shareholder of the corporation on which the interference was allegedly practiced), the acts of the insider "in inducing his company to sever contractual relations with a third party are presumed to have been done in the interest of the corporation." *Wilson*, 262 N.C. at 133, 136 S.E.2d at 578. However, this presumption may be overcome by evidence that the interference was performed for the insider's own interest or benefit and adverse to the interests of the company. *Embree Constr. Group*, 330 N.C. at 498-99, 411 S.E.2d at 924-25.