
807.10 WRONGFUL INTERFERENCE WITH PROSPECTIVE CONTRACT.

The (*state number*) issue reads:

"Did the defendant wrongfully interfere with a prospective contract between the plaintiff and (*name other party to prospective 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 but for the defendant's conduct, the plaintiff and (*name other party to the prospective contract*) would have entered into a valid contract.[2]

Second, that the defendant had knowledge of the facts and circumstances associated with the plaintiff's prospective entry into a contract with (*name other party to prospective contract*).

Third, that the defendant maliciously[3] induced (*name other party to the prospective contract*) not to enter into the prospective contract with the plaintiff.

Fourth, that the defendant acted without justification.[4]

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

Finally, as to this 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 prospective contract between the plaintiff and (*name other party to prospective 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. *Spartan Equip. Co. v. Air Placement Equip. Co.*, 263 N.C. 549, 559, 140 S.E.2d 3, 11 (1965); *Johnson v. Graye*, 251 N.C. 448, 451, 111 S.E.2d 595, 597 (1959).

2. *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").

3. In the context of wrongful interference with an existing or prospective contract right, the term "malice" is used in its legal sense, which "denotes the intentional doing of the harmful act without legal justification." *Childress v. Abeles*, 240 N.C. 667, 675, 84 S.E.2d 176, 182 (1954) (citing *Coleman v. Whisnant*, 225 N.C. 494, 506, 35 S.E.2d 647, 656 (1945). For an instruction on intent or intentional, see N.C.P.I.- Civil 101.46.

4. 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. v. Rafcor, Inc.*, 330 N.C. 487, 498, 411 S.E.2d 916, 924 (1992). 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 v. McClenny*, 262 N.C. 121, 133, 136 S.E.2d 569, 578 (1964). 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.