

813.22 TRADE REGULATION—VIOLATION—DEFINITION OF CONSPIRACY.¹

A conspiracy is an agreement of two or more persons to accomplish some unlawful purpose, or some lawful purpose by unlawful means.²

A cause of action for damages resulting from a conspiracy is for the damage caused by acts committed pursuant to a formed conspiracy.³ The conspiracy is the agreement itself.⁴

(A [person] [corporation] [partnership] [(*name other business association*)] cannot conspire with [himself] [herself] [itself]. Before there can be a conspiracy, there must be more than one person or participant involved.)

(Furthermore, a [corporation] [partnership] [(*name other business association*)] such as (*name corporation or other business association*) cannot conspire with its own [officers] [partners] [employees]. A [corporation] [partnership] [(*name other business association*)] is considered by law to be one person or participant.)⁵

(It is not necessary to show that members of a conspiracy entered into any express, written or oral agreement stating between themselves what their object or purpose was to be, or how it was to be accomplished. Indeed, it would be unusual if there were any such formal agreement, because conspirators do not normally put their agreements in writing, nor do they usually make their plans public. A conspiracy may be inferred from facts and circumstances, including the communications and general conduct of the parties showing a mutual intention to agree.)⁶

(A conspiracy need not be proved by direct evidence, but may be established by circumstantial evidence from which the conspiracy may be inferred. Mere similarity of conduct among various persons, the fact that they may have associated with each other, or the fact they may have assembled together and discussed common aims and interests, does not necessarily establish the existence of a conspiracy. A conspiracy exists when its members, in some way or manner, or through some contrivance, come to an agreement to accomplish an unlawful purpose or a lawful purpose by unlawful means.)⁷

1. This instruction is to be used in conjunction with N.C.P.I.-Civil 813.20 (Issue of Contracts or Conspiracies in Restraint of Trade) and N.C.P.I.-Civil 813.23 (Issue of Price Suppression of Goods).

2. *State v. Gallimore*, 272 N.C. 528, 532, 158 S.E.2d 505, 508 (1968); *State v. Brewer*, 258 N.C. 533, 538, 129 S.E.2d 262, 266 (1963).

3. *See Burton v. Dixon*, 259 N.C. 473, 476, 131 S.E.2d 27, 30 (1963).

4. *Dickens v. Puryear*, 302 N.C. 437, 456, 276 S.E.2d 325, 337 (1981) ("The common law action for civil conspiracy is for damages caused by acts committed pursuant to a conspiracy rather than for the conspiracy, i.e., the agreement, itself."); *see also Shope v. Boyer*, 268 N.C. 401, 405, 150 S.E.2d 771, 774 (1966) (observing that unless something is actually done by a conspirator that results in damage, no civil action lies against anyone for the conspiracy).

5. So long as a business enterprise is an individual economic unit, there can be no conspiracy or combination among its various officers or employees. *Nelson Radio & Supply Co. v. Motorola*, 200 F.2d 911, 914 (5th Cir. 1952), *cert. denied*, 345 U.S. 925 (1953).

An issue may arise in defining "the business enterprise." A parent and its wholly owned subsidiary should be treated as a single entity. *Copperweld Corp. v. Indep. Jube Corp.*, 467 U.S. 752, 771 (1984). Likewise, two wholly owned subsidiaries should be treated as a single entity. *See id.* at 770. However, problems may arise in other areas. First, two subsidiaries may be separate profit-making enterprises if the parent lacks legal or practical control over one. Hovenkamp, *Federal Antitrust Policy: The Law of Competition and Its Practice*, § 4.7 at 181 (1994). Second, when a firm hires an independent agent to carry out certain acts, there

is generally no conspiracy between the firm and the agent. However, if the agent has distinct and independent interests in the furtherance of the purpose of the acts, then there might be a conspiracy. *Poller v. Columbia Broad. Sys.*, 368 U.S. 464, 469 (1962).

6. *State v. Williams*, 255 N.C. 82, 86, 110 S.E.2d 442, 466 (1961); *State v. Smith*, 237 N.C. 1, 16, 74 S.E.2d 291, 301 (1953); *State v. Whiteside*, 204 N.C. 710, 712, 169 S.E. 711, 712 (1933).

7. See cases cited in note 5.

