CHAPTER TWENTY FOUR

INTERFERENCE WITH CONTRACT

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Instruction No. 24.1

Instruction No. 24.1

Interference with Contract --- Elements

[Plaintiff] claims that [he/she/it] had a contract with [Third Party] in which they had agreed to [Describe the terms of the contract]. [Plaintiff] also claims that [Defendant] intentionally and wrongfully interfered with this contract, and that [he/she/it] suffered damages as a direct result. In order to win on the claim of intentional interference with a contract, [Plaintiff] must show by the weight of the evidence that:

1. [Plaintiff] had a contract with [Third Party];
2. [Defendant] knew [or under the circumstances reasonably should have known] about the contract;
3. [Defendant] interfered with the contract [or induced the Third Party to breach the contract, or made it impossible for the contract to be performed];
4. [Defendant]'s conduct was intentional;
5. [Defendant] used improper or unfair means; and
6. [Plaintiff] suffered damages as a direct result of [Defendant]'s actions.
Notes on Use

This Instruction should be used where a plaintiff seeks recovery for intentional interference with a contract. For a definition of intent, see Instruction No. 24.4, infra. For an enumeration of factors to consider for improper or unfair means, see Instruction 24.3, infra. Instruction No. 24.2, infra, should be used where a plaintiff seeks recovery for intentional interference with a prospective business relationship that has not been reduced to a contract.

Comments

The Oklahoma Supreme Court set out the elements of a claim for malicious interference with contract or business relations in Mac Adjustment, Inc. v. Property Loss Research Bureau, 1979 OK 41, ¶ 5, 595 P.2d 427, 428, as follows:

In order to recover in [an action for malicious interference with contract or business relations], a plaintiff must show:

1. That he or she had a business or contractual right that was interfered with.
2. That the interference was malicious and wrongful, and that such interference was neither justified, privileged nor excusable.
3. That damage was proximately sustained as a result of the complained-of interference.

See also Del State Bank v. Salmon, 1976 OK 42, n.1, 548 P.2d 1024, 1026 n.1 (setting out instructions that had been approved by both parties in a case involving intentional interference with an employment contract.

The Restatement (Second) of Torts 2d recognizes two types of interference with contractual relations. Section 766 involves interference with the performance of contract by causing a party to the contract other than the plaintiff not to perform. Section 766A involves interference of a contract by preventing the plaintiff's own performance of the contract or by making the plaintiff's performance more expensive or burdensome. Both types of interference with contract are recognized in Oklahoma. Wilspec Techs., Inc. v. DunAn Holding Grp. Co., 2009 OK 12, ¶ 11, 204 P.3d 69, 73. A claim for interference with a contract requires interference with a contract between the plaintiff and a third party, as opposed to breach of a contract between the plaintiff and the defendant. Voiles v. Santa Fe Minerals, Inc., 1996 OK 13, ¶ 18, 911 P.2d 1205, 1209; Navistar Int'l Transp. Corp.
Instruction No. 24.2

Interference with Prospective Economic Advantage --- Elements

[Plaintiff] claims that [he/she/it] had a [prospective] business relationship with [Third Party]. [Plaintiff] also claims that [Defendant] intentionally and wrongfully interfered with this [prospective] business relationship, and that [he/she/it] suffered damages as a direct result. In order to win on the claim of intentional interference with a [prospective] business relationship, [Plaintiff] must show by the weight of the evidence that:

1. [Plaintiff] had a [prospective] business relationship with [Third Party];

2. [Defendant] knew [or under the circumstances reasonably should have known] about the [prospective] business relationship;

3. [Defendant] interfered with the [prospective] business relationship by:

   causing [Third Party] not to [enter into]/[continue]

the [prospective] business relationship;

OR

4. [Defendant]'s conduct was intentional;
5. [Defendant] used improper or unfair means; and
6. [Plaintiff] suffered damages as a direct result of [Defendant]'s actions.

Notes on Use

This Instruction should be used in a case where a plaintiff seeks recovery for intentional interference with a business relationship or prospective business relationship that has not been reduced to a contract. For an enumeration of factors to consider for improper or unfair means, see Instruction No. 24.3, infra. For a definition of intent, see Instruction No. 24.4, infra.

Comments

Oklahoma courts have recognized claims for intentional interference with a prospective contractual relation under Restatement (Second) of Torts § 766B. Wilspec Techs., Inc. v. DunAn Holding Grp. Co., 2009 OK 12, ¶ 7, 204 P.3d 69, 71. Section 766B provides:

One who intentionally and improperly interferes with another's prospective contractual relation (except a contract to marry) is subject to liability to the other for the pecuniary harm resulting from loss of the benefits of the relation, whether the interference consists of
(a) inducing or otherwise causing a third person not to enter into or continue the prospective relation or
(b) preventing the other from acquiring or continuing the prospective relation.
Instruction No. 24.3

Interference with Contract --- Improper or Unfair Means

Whether the defendant's conduct was improper or unfair depends upon your consideration of all the facts and circumstances of the case, and a balancing of the following factors:

1. The nature of the defendant's conduct;

2. The defendant's motive;

3. The interests of the plaintiff with which the defendant's conduct interfered;

4. The interests sought to be advanced by the defendant;

5. The social interests in protecting the freedom of action of the defendant and the contractual interests of the plaintiff;

6. The proximity or remoteness of the defendant's conduct to the interference claimed by the plaintiff; and

7. The relationship among the plaintiff, _______ [name of breaching party], and the defendant.

Comments

This Instruction is based on language that the Oklahoma Supreme Court quoted with approval in *Wilspec Technologies, Inc. v. DunAn Holding Group Co.*, 2009 OK 12, n.6, 204 P.3d 69, 74 n.6.
Instruction No. 24.4

**Intent --- Definition**

[Defendant]'s actions were intentional if [he/she/it] either desired to interfere with [Plaintiff]'s contract with [Third Party], or [he/she/it] was substantially certain that [his/her/its] actions would interfere with the contract.

**Comments**

The Oklahoma Supreme Court stated in *Del State Bank v. Salmon*, 1976 OK 42, ¶ 9, 548 P.2d 1024, 1026: “Intentional interference may be malice in the law without personal hatred, ill will, or spite.”

Instruction No. 24.5

**INTERFERENCE WITH CONTRACT --- DAMAGES**

If you decide for [Plaintiff], you must then fix the amount of [his/her/its] damages. This is the amount of money that will reasonably and fairly compensate [him/her/it] for the losses [he/she/it] has sustained from the breach of the contract.
In appropriate cases the court should also give Instruction No. 5.5 for punitive damages.

(2020 Supp.)