**BREACH OF CONTRACT AND INTERFERENCE BY THIRD PARTIES**

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Almost everyone knows breach of contract means the parties entered an agreement that one failed to perform. Damages for breach of contract are intended to place the performing party in position he or she would have held if the other party did not breach.

A breach of contract case can include a lot of arguments. The first argument might be whether the contract exists at all. The parties must agree on all essential terms to form a contract. In many cases, the defendant argues there was not an agreement. The defendant might also argue the contract is unenforceable because it is either illegal or fails to meet formalities required under Florida law.

The most common formality defense is probably the Statute of Frauds. The Statute of Frauds requires certain contracts be in writing to be enforceable. One example of a contract that must be written to be enforceable is a contract for purchase and sale of real estate. Other statutory requirements included such items as disclosures, witnesses and formalities. If the contract does not meet statutory requirements, it may be unenforceable.

There is always opportunity to argue performance. Did the defendant properly perform, partially perform or not at all? Almost all contract lawsuits argue over the amount of damages required to restore the non-defaulting party to benefit of the bargain. That means arguing about cost to cure the non-performance.

If the non-defaulting party paid to complete performance, the argument can be over whether what was paid was necessary and if that cost was reasonable. A party paying to complete performance after the other party defaults is not entitled to an open checkbook with the idea the defaulting party will pay.

These are major areas ripe for disagreement in a breach of contract lawsuit. There are others. They all open the door for lengthy discovery as each party in the case tries to push the “facts” favorable to that party. The result can be dispute costing tens of thousands of dollars in attorney fees in even a “simple” case. What seems simple to one or both parties often is a complicated quagmire of law and fact.

The parties to an alleged contract are not the only ones who might be drawn into the suit. In many cases, the plaintiff blames someone else for causing the breach. Thinking there might be money there or just because the plaintiff is mad about losing a customer, the plaintiff might also sue someone the plaintiff thinks caused the breach. That can be done in the same lawsuit and without the expense of a new and separate case. The claim against such third parties is known as tortious interference with a contract.

There does not even have to be a contract to support a claim against a third-party for t tortious interference. There is a comparable cause of action for tortious interference with a business relationship. The two theories for liability are virtually the same. The primary difference being that in one case there is a contract and in the other, there is no contract but there is a business relationship.

In both tortious interference cases, a plaintiff must prove that the defendant knew of the contract or business relationship, that the defended intentionally and unjustifiably interfered with the contract or business relationship, if a contract existed that the contract was breached due to defendant’s actions, and damages resulting from the breach of contract or interference with business relationship. Damages recoverable by the plaintiff do not include attorney’s fees, because those are generally available only if provided by contract between the parties or a statute. Punitive damages might be available if the defendant’s conduct was particularly heinous, but recovery of punitive damages in these cases is rare.

In many of these cases the plaintiff is mostly interested in stopping the defendant from continued interference is damages may be minor is likely to increase over time. Courts can issue injunctions if the damage is deemed irreparable and continuing.

In addition to the usual arguments about damages, a major focus in tortious interference cases is whether the defendant’s action was justified or privileged. If the defendant’s action was privileged, it does not create liability even if a contract or business relationship is affected. Florida courts have reached different conclusions on whether the plaintiff must disprove justification or privilege or the defendant must prove those elements in defense. All Florida courts agree that justification or privilege keeps the defendant free from liability.

Florida has a strong public policy favoring competition. That policy is particularly applicable in this area when a third party offers to replace another under contract which is terminable at will or to enter a contract in the future after an existing contract will expire. The courts consider that action is pursuing a legitimate business interest as long as the third-party is not attempting to induce a breach of the contract prior to end of its term.

Privilege to offer a competing deal also applies to a contract which is renewable unless canceled by a party or an arrangement under which annual contracts have historically been entered. If the third party is offering a competing arrangement to take effect at any of the term and before the contracting parties enter a renewal or replacement contract, the privilege of fair competition applies. If the third party’s sole motive is to harm a party to the contract rather than to compete, the privilege will not protect.

Privilege based on competing financial interest is a much more limited defense when the third-party interferes with an existing contract that is not terminable at will and effort is made to cause a breach of the contract. In that case, the nonparty must have an investment or similar interest in one of the parties to the contract. Even then, one Florida appellate courts stated that in no case will privilege include the right to intentionally cause a breach of contract.

One way to improve protection from liability when competing for business is to make it clear that one’s efforts are directed toward entering an agreement at termination of any existing contract. Even then, someone losing business to someone else may want to “settle the score”. Sometimes a lawsuit for tortious interference is filed to punish someone for legitimately taking customers and to scare others from competing.

If it can be shown a case is frivolous, the court can award attorney fees from both plaintiff and counsel as sanctions. Otherwise, these cases can be expensive as the plaintiff is often driven more by anger and a desire to hurt someone who took business rather than sincere effort to correct a legal wrong.

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