

## Interference in Contractual Relations

The Federal Court has recently issued a powerful warning to those who may be considering intervening in the contractual affairs of others. A party to a contract may take legal action against strangers to the contract in the event that those strangers interfere with a party's rights or obligations under that contract. The Federal Court's decision in *News Limited v Australian Rugby League Limited* provides a timely illustration.

The offence of inducing a breach of contract can be traced to 14th century England. The devastating effect of the black death on the agrarian labour market at that time saw the introduction of the *Statute of Labourers*. That statute made it an offence to entice labour prematurely to leave its employment. For over 500 years the offence remained tied to the notion of "personal service".

Service, however, is no longer the exclusive domain of the offence. In the case of *Lumley v Gye*, in 1853, the notion was rejected that an inducement to breach a contract was only actionable if the contract was one between employer and servant. In that matter the relevant contract was between Mr Lumley's theatre and an opera singer who was not an employee or servant of the theatre.

Throughout this century the tort of interfering with contractual relations, including the tort of inducing a breach of contract, has been applied in a wide variety of situations. Situations in which interferences have successfully been prevented include contracts for supply of goods, for carriage, for service, for sale of land and for sale of businesses. Even sporting organisations such as the ICC, cricket's governing authority, have not remained unscathed.

In order to be actionable, interference may be direct or indirect. Direct interference such as an inducement or procurement of a breach of contract is generally actionable so long as that interference is done with the knowledge and intent of procuring a breach of the contract. Indirect interference, however, requires an additional element. The means of indirect interference must be unlawful and independent of the interference itself. Examples of such unlawful indirect interference may include the members of a picket line who by committing a nuisance prevent employees from their employment, wrecking a means of production so that a supply contract cannot be fulfilled or abducting a party to a contract so that he cannot perform it.

In the widely publicised case of *News Limited v Australian Rugby League Limited* a number of football clubs playing under the banner of the ARL had entered into loyalty agreements and commitment agreements with the Australian Rugby League. The effect of those agreements was to bind those clubs to participate in the competition run by the ARL for the playing seasons 1995-1999.

In the belief that those agreements were restrictive and exclusionary in breach of the *Trade Practices Act* (1974), News Limited and Star League Pty Limited (otherwise known as Super League) set about signing up clubs which had entered into the agreements with the ARL. Apparently acting in the same belief, Super League's franchisee companies also signed up many of the ARL's high profile players who had contracted with clubs under the ARL umbrella.

Super League's claims under the *Trade Practices Act* failed.

New South Wales Rugby League Limited and Australian Rugby Football League Limited sued the Super League companies and their franchisees for inducement of breach of the contractual obligations which the clubs owed to the league. Although there was no direct evidence that Super League acted with knowledge of the relevant contracts, the Court found a strong inference that Super League in fact possessed such knowledge.

The Court considered the decision in *All State Life Insurance Co v Australia and New Zealand Banking Group Limited* (1995). In that matter the Court had decided that intention to procure a breach may be proved on evidence that the alleged interferer acted with "reckless indifference" to the precise terms of the contract. There need only be "sufficient knowledge" of the contract to ground an intention to interfere with it.

In *Super League*, the Court found that:

*"there is no doubt on the evidence that all the cross-respondents were very well aware of the situation and acted intentionally. There had been a careful and meticulous examination of the structure of the League and the Clubs, including their contractual arrangements ... the inference that they would have obtained knowledge of the relevant contracts is strong, and they have not gone into the witness box to deny it."* (at page 205).

Having failed in its attempts to set the contracts aside pursuant to the *Trade Practices Act*, the Super League companies defended their interference on the basis that they acted in the *bona fide* belief that the contracts were unlawful and that they "should" be able to have the contracts set aside under the *Trade Practices Act*.

*"They gambled on the correctness of their advice, and did so in circumstances where, even if the advice was correct, there was no certainty that it would lead to a setting aside of the contracts back dated to a time before their breach."* (at page 207).

The Court did not decide whether Super League's belief would have justified its interference had the contracts been set aside pursuant to the *Trade Practices Act*. The Court, in passing, suggested that it would not likely entertain such a defence.

Although the decision in *News Limited v Australian Rugby League Limited* dealt with numerous other causes of action, its decision in respect of inducement of breach of contract sounds a strong warning to those engaged in commerce, trade, employment or any number of commercial fields of endeavour. Potential interveners do not need a detailed knowledge of their competitors' contractual arrangements in order to fall foul of such an action. It would be highly risky to attempt to justify an interference by way of a genuinely held belief that the "target" contract is unlawful. Such belief, even though genuinely held, may indeed be no defence at all.

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