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Tortious Interference With Hotel Management Agreements


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Hotel management agreements (HMAs) often have terms extending 20, 30 or even 50 years. Over such an expanse of time, many things can and do change. With inevitable personnel changes and evolving market dynamics, what was once a fruitful partnership between the hotel owner and operator can devolve into a relationship that no longer works, and negatively impacts the performance of the hotel. In such circumstances, hotel owners often need to consider the consequences of terminating an HMA before it expires. Aside from the obvious legal implications, including possible breach of contract claims brought by the owner and/or operator, owners are faced with the practical dilemma of how to find a replacement operator to manage and operate the hotel going forward. Fearful of exposing themselves to liability for tortiously interfering with the existing HMA, potential replacement operators often are reluctant to take on such a role.

While it is well-known that "tortious interference" claims are available to protect against wrongful competition, it is far less well understood what conduct will give rise to such claims. This confusion largely is rooted in the fact that New York courts recognize at least two separate "tortious interference" torts—tortious interference with contract and tortious interference with prospective business relations—the elements of which, while linguistically similar, are in many ways materially different.

This article explores the often misunderstood landscape of "tortious interference" claims available in New York, and specifically the distinct legal framework applicable to a claim for tortious interference with contract. We also lay out factors hotel owners and operators should consider to minimize the likelihood of such a claim arising in the context of contemplating a replacement operator relationship.

The Basics

To sustain a cause of action for tortious interference with contract, a plaintiff must plead "the existence of its valid contract with a third party, defendant's knowledge of that contract, defendant's intentional and improper procuring of a breach, and damages." *White Plains Coat & Apron v. Cintas*, 8 N.Y.3d 422, 426 (2007).

In general, the difficulty in assessing one's potential exposure to a claim for tortious interference with contract lies in determining whether the procurement of the breach was "improper." The Court of Appeals has identified certain factors to be considered when "determining whether an intentional interference with a contract is 'improper,'" including "the nature of the conduct of the person who interferes (a chief factor in determining whether conduct is improper), the interest of the party being interfered with (whether in an enforceable contract or in a contract voidable and thus unenforceable or terminable at will), and the relationship between the parties." *Guard-Life v. S. Parker Hardware*, 50 N.Y.2d 183, 190 (1980) (citing Restatement (Second) of Torts §767 (1979)).

With respect to the nature of the conduct of the interfering party, the Court of Appeals provided further guidance in *White Plains Coat*:

> [W]e note that protecting existing contractual relationships does not negate a competitor's right to solicit business, where liability is limited to *improper* inducement of a third party to breach its contract. Sending regular advertising and soliciting business in the

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normal course does not constitute inducement of breach of contract. A competitor's ultimate liability will depend on a showing that the inducement exceeded "a minimum level of ethical behavior in the marketplace." 8 N.Y.3d at 427 (emphasis in original).

In considering the relationship between the parties, Section 767 of the Restatement (Second) of Torts distinguishes between situations where the acting party is a competitor as opposed to an advisor. Restatement (Second) of Torts §767 (1979). The Court of Appeals has explained that where the acting party is a competitor, it is an "occasion for the application of the general principles as to liability for tortious interference with contract performance." *Guard-Life*, 50 N.Y.2d at 190. In other words, "interference with an existing contract" may be shown even where the interfering conduct is not "wrongful." Id. at 190. This distinguishes the level of "interference" necessary to support a claim for tortious interference with prospective business relations, which requires a showing of "more culpable conduct on the part of the defendant," i.e., unlawful conduct. *Carvel v. Noonan,* 3 N.Y.3d 182, 190 (2004) (quoting *NBT Bancorp v. Fleet/Norstar Fin. Group,* 87 N.Y.2d 614 (1996)).

Finally, the interest of the victim of the interference is largely a binary analysis, rising and falling on whether the contractual interest is enforceable or, alternatively, is voidable or terminable for any reason. Interfering conduct with respect to a contract that is terminable or voidable at will generally is actionable only where the conduct meets the more stringent "more culpable," "unlawful" standard applied to claims for tortious interference with prospective business relations. *Guard-Life*, 50 N.Y.2d at 191-92.

Other Considerations

Parties also should be aware of the economic interest defense to a claim for tortious interference with contract. While oft-invoked, the scope of the economic interest defense is narrowly applied by New York courts, and is applicable only where the defendant can demonstrate that it "acted to protect its own legal or financial stake in the breaching party's business." *White Plains Coat*, 8 N.Y.3d at 426. The defense has been applied, for example, "where defendants were significant stockholders in the breaching party's business; where defendant and the breaching party had a parent-subsidiary relationship; where defendant was the breaching party's creditor; and where the defendant had a managerial contract with the breaching party at the time defendant induced the breach of contract with plaintiff." Id. "[M]ere status as plaintiff's competitor is not a legal or financial stake in the breaching party's business that permits defendant's inducement of a breach of contract." Id.

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If a defendant is able to establish an economic interest defense, an action for tortious interference with a contract cannot be maintained unless there is a showing of malice or illegality. *Foster v. Churchill*, 87 N.Y.2d 744, 750 (1996) ("[E]conomic interest is a defense to an action for tortious interference with a contract unless there is a showing of malice or illegality."). To be clear, as explained above, a showing of malice or illegality is unnecessary to prove a claim of tortious interference with a contract absent the existence of a valid economic interest defense. Id.; *Guard-Life*, 50 N.Y.2d at 190.

Conclusion

Given the fact-intensive nature of a claim for tortious interference with contract, hotel owners and prospective replacement operators should proceed cautiously and deliberately when discussing a potential partnership. Assuming no legal or financial relationship exists to support an economic interest defense, and that the HMA is not voidable or terminable at will, potential replacement operators should avoid undertaking conduct that could be perceived as inducing the hotel owner to breach its existing HMA. To the extent possible, the parties should make clear that the hotel owner is acting of its own volition, and that the potential replacement operator is responding to an inquiry from the hotel owner rather than seeking out the opportunity.