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TORTS--INDUCING BREACH OF CONTRACT--ATTORNEY-CLIENT CONTINGENT FEE CONTRACT

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TORTS—INDUCING BREACH OF CONTRACT—ATTORNEY-CLIENT CONTINGENT FEE CONTRACT—Plaintiff, a practicing attorney, undertook on a contingent fee basis to represent a husband and wife in separate claims for damages alleged to have been suffered by them through the negligence of the driver of a motor vehicle. The driver was insured under a policy issued by defendant. Defendant had notice of the contract. After plaintiff had started suit on the damage claim and as the case was about to be tried, defendant's adjusters, without knowledge on the plaintiff's part, allegedly induced the clients to discharge the plaintiff (and "thereby break their contingent fee contract with him") and subsequently to settle their claims with defendant. Plaintiff instituted a tort action against defendant for maliciously inducing a breach of the contingent fee contract. The trial court granted defendant's motion to dismiss and denied plaintiff's motion to set aside the order of dismissal. On appeal, *held,* affirmed.[1] In an action by an attorney against a third party for inducing the attorney's client to break a contingent fee contract, the defendant's acts in obtaining an independent settlement are privileged, and therefore not unlawful. *Krause v. Hartford Accident and Indemnity Co.,* 331 Mich. 19, 49 N. W. (2d) 41 (1951).

Since the famous case of *Lumley v. Gye,*[2] the courts have steadily expanded[3] application of the concept that unlawful interference with contract rights by a person not a party to the contract is an actionable tort. The elements of the tort of inducing breach of contract are the existence of the contract; the breach by *X* and resultant injury to *P*; and inducement of the breach by *D* knowingly, maliciously,[4] and without reasonable justification or cause (i. e., privilege). Within recent years there have been attempts to apply the principle to the situation in which a third person, knowing of the existence of an attorney-client contingent fee contract, procures a settlement with the client, the end

[1] On two grounds, one of which is not pertinent to this note.

[2] 2 El. & Bl. 216, 118 Eng. Rep. 749 (1853).

[3] For a thorough analysis of the historical development of this tort, see Sayre, "Inducing Breach of Contract," 36 HARV. L. REV. 663 (1923). Authority for application of the concept in Michigan is Morgan v. Andrews, 107 Mich. 33, 64 N.W. 869 (1895), and Wilkinson v. Powe, 300 Mich. 275, 1 N.W. (2d) 539 (1942).

[4] The term "malice" of course has been a word of inexact meaning. The Sayre article, supra note 3, at 675-686, reviews various interpretations of the term. In consideration of this tort, it is generally assumed today that "malice" does not require any actual hostility; e.g., the court in Klauder v. Cregar, 327 Pa. 1, 192 A. 667 (1937), quoted with approval the language of the court in Campbell v. Gates, 236 N.Y. 457 at 460, 141 N.E. 914 (1923): "Maliciousness 'does not necessarily mean actual malice or ill will, but the intentional doing of a wrongful act without legal or social justification.'"

result of which is to deprive the attorney of his fee.[5] Occasionally recovery has been allowed.[6] However, two important obstacles confront the attorney in bringing such an action. One is identification of a *breach* of the contract.[7] In the principal case the plaintiff alleged that the client's act in discharging him amounted to a breach. It is well established that a client may discharge his attorney at any time, even if the attorney is without fault,[8] because of the policy which recognizes the inherently confidential nature of the attorney-client relationship. Such discharge, however, gives the attorney a cause of action, on either a quantum meruit[9] or breach of contract[10] basis. In jurisdictions in which the attorney is relegated to a claim for the reasonable value of his services, a discharge by the client does not constitute a breach of the contract;[11] and since there is no breach, it should follow that an action for inducing breach of contract would not lie, under facts similar to those of the principal case. However, under the "majority rule"[12]—that a discharge without cause amounts to a breach of contract giving the attorney an action for the breach—it would seem that the attorney could also rely upon such discharge in bringing an action for *inducing* a breach. Beyond this first difficulty, an attorney faces a second hurdle: the courts will direct particular attention to determining whether the defendant has acted with reasonable justification, so as to make his acts privileged and not unlawful. Settlements and compromise are looked upon with high favor by the courts; mere negotiations between defendant and client designed to produce a settlement justifiably wear the cloak of privilege, even though the attorney is indirectly injured. The attorney's rights do not limit the right of the client to seek a settlement of his own.[13] But if the defendant purposively instigated the settlement with the client with specific intent to "bilk

[5] Illustrative decisions which have denied liability in such an action are Cameron v. Barancik, 173 Ill. App. 23 (1912); Hebbits v. Constitution Indemnity Co., 279 Mass. 539, 181 N.E. 723 (1932); Wahl v. Strous, 344 Pa. 402, 25 A. (2d) 820 (1942); Barnes v. Quigley, (D.C. Cir. 1946) 49 A. (2d) 467.

[6] E.g., Keels v. Powell, 207 S.C. 97, 34 S.E. (2d) 482 (1945); Lurie v. New Amsterdam Casualty Co., 270 N.Y. 379, 1 N.E. (2d) 472 (1936); Klauder v. Cregar, supra note 4; Bennett v. Sinclair Nav. Co., (D.C. Pa. 1940) 33 F. Supp. 14.

[7] Courts permitting recovery have recognized as a breach by the client such acts as a "repudiation" of the contract, Lurie v. New Amsterdam Casualty Co., supra note 6; abandoning the lawyer to save the fee, State Farm Fire Insurance Co. v. Gregory, (4th Cir. 1950) 184 F. (2d) 447; withholding of entire sum obtained in settlement, Klauder v. Cregar, supra note 4; selling judgment to defendant, Hogue v. Sparks, 146 Ark. 174, 225 S.W. 291 (1925).

[8] See annotation, 136 A.L.R. 231 (1942).

[9] Martin v. Camp, 219 N.Y. 170, 114 N.E. 46 (1916).

[10] For an enlightening examination of the judicial attitude in Pennsylvania, see 54 DICK. L. REV. 465 (1950), wherein the author concludes that both bases have been adopted at one time or another in Pennsylvania decisions.

[11] The plaintiff's theory in the principal case, as stated by him in his brief, was that, "Had the Paquins settled their claims, without being induced by defendant to discharge plaintiff, the latter's remedy would have been confined solely to pursuit of his right to an attorney's lien. This, however, is not the situation in the instant case. Defendant did commit a wrong, both in fact and in law, by inducing the breach. . . ." Plaintiff's brief, p. 8.

[12] So called in 30 YALE L.J. 514 at 517 (1921).

[13] A clause in an attorney-client contract prohibiting settlement without the attorney's

a lawyer out of his fee,"[14] his conduct should not be considered privileged. The line of privilege is difficult to draw; however, mere allegations of inducing settlement, or discharge and settlement, should not warrant recovery. Thus the attorney must show that there has been a breach by the client, and that the defendant's conduct has been of such a nature as to lose its privileged character. In the principal case the court, quoting from other opinions, apparently reasoned that neither element had been satisfactorily established, although its own language emphasized privilege. From the decisions it appears that the attorney will find recovery based on such a tort very difficult, unless the conduct of the defendant has been deliberately and willfully directed toward depriving the attorney of his rights. This approach seems well-grounded[15] in view of the premium which the law places on settling claims out of court.

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consent is generally considered void as against public policy. Nichols v. Waters, 201 Mich. 27, 167 N.W. 1 (1918).

[14] Language from the opinion in Barnes v. Quigley, supra note 5.

[15] For an article encouraging liability for interference with attorney-client contractual relationships in such cases, see Blackwell, "Interference with Contract for Attorney's Fees as Cause of Action," 9 SELDEN. SOC. YEAR BOOK (Univ. of South Carolina) Pt. II, p. 31 (Feb. 1948).