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Torts - Privacy - Collection Method

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TORTS—PRIVACY—COLLECTION METHODS—Plaintiff disputed the debt which the defendant corporation asserted against her. Defendant made no attempt to recover this asserted debt by legal action but instead sent a letter to the personnel director of plaintiff's employer. This letter stated that plaintiff had refused to cooperate in reaching an amicable settlement and requested the assistance of the personnel director in collecting this "honest debt." Plaintiff was then summoned to the office of her superior and informed that the letter would be placed in her file and remain there until the asserted indebtedness had been settled. Plaintiff sought damages for an invasion of privacy, alleging the above facts. Defendant's demurrers

were overruled by the trial court. The Court of Appeals of Georgia approved this action, holding that such a communication by a creditor to the employer of a debtor concerning a disputed debt constituted an actionable invasion of privacy.[1] On appeal to the Georgia Supreme Court, *held,* reversed. Since this communication was directed to the debtor's employer, which has a natural and proper interest in its employees' debts, it was a reasonable and necessary method of collection by the creditor, and hence not an unwarranted interference with the debtor's right of privacy. *Gouldman-Tabor Pontiac, Inc. v. Zerbst,* (Ga. 1957) 100 S.E. (2d) 881.

The tort liability of creditors for improper and excessive collection methods is an uncertain area of the law.[2] At the one extreme it is clear that a creditor will be liable if he uses physical force.[3] At the other extreme it is equally clear that a creditor will not be liable if he gently reminds a debtor of his obligation.[4] Between these extremes is an area on which there is little agreement. The problem is, of course, basically a matter of adjusting the competing interests of the debtor and the creditor, but this analysis is obscured by the several torts involved. This is particularly true where, as in the principal case, the alleged tortious act is a communication by the creditor. The communication might be to the plaintiff himself,[5] to merchants,[6] or to the general public,[7] as well as to the plaintiff's employer,[8] as in the principal case. Such communications may contain traces of the torts of defamation,[9] malicious infliction of mental injury,[10] and interference with contract,[11] as well as invasion of privacy.[12] Defamation actions

1 Gouldman-Taber Pontiac, Inc. v. Zerbst, (Ga. App. 1957) 99 S.E. (2d) 475. The words "creditor" and "debtor" will be used although the validity of the debt might be disputed, as it was in the principal case.

2 See generally, "High Pressure Collection Methods," 66 U.S. L. REV. 349 (1932); Birkhead, "Collection Tactics of Illegal Lenders," 8 LAW AND CONTEM. PROB. 78 (1941); 91 A.L.R. 1491 (1934); 55 A.L.R. 964 (1928); 24 UNIV. CHI. L. REV. 572 (1957).

3 Davidson v. Lee, (Tex. Civ. App. 1911) 139 S.W. 904. Nor may the creditor hold the body of the debtor's dead son: Gadbury v. Bleitz, 133 Wash. 134, 233 P. 299 (1925).

4 Davis v. General Finance and Thrift Corp., 80 Ga. App. 708, 57 S.E. (2d) 225 (1950).

5 Duty v. General Finance Co., 154 Tex. 16, 273 S.W. (2d) 64 (1954).

6 Masters v. Lee, 39 Neb. 574, 58 N.W. 222 (1894); Muetze v. Tuteur, 77 Wis. 236, 46 N.W. 123 (1890).

7 Burton, Lingo and Co. v. O'Niell, 6 Tex. Civ. App. 613, 25 S.W. 1013 (1894); Woodling v. Knickerbocker, 31 Minn. 268, 17 N.W. 387 (1883); Brents v. Morgan, 221 Ky. 765, 299 S.W. 967 (1927).

8 Hawley v. Professional Credit Bureau, 345 Mich. 500, 76 N.W. (2d) 835 (1956); Voneye v. Turner, (Ky. 1951) 240 S.W. (2d) 588; Neaton v. Lewis Apparel Stores, 267 App. Div. 728, 48 N.Y.S. (2d) 492 (1944); LaSalle Extension University v. Fogarty, 126 Neb. 457, 253 N.W. 424 (1934).

9 Riley v. Askin and Marine Co., 134 S.C. 198, 132 S.E. 584 (1926).

10 Barnett v. Collection Service Co., 214 Iowa 1303, 242 N.W. 25 (1932); Clark v. Associated Retail Credit Men, (D.C. Cir. 1939) 105 F. (2d) 62.

11 Warschauser v. Brooklyn Furniture Co., 159 App. Div. 81, 144 N.Y.S. 257 (1913). Cf. Hollenbeck v. Ristine, 114 Iowa 358, 85 N.W. 377 (1901).

12 Cf. Davis v. General Finance and Thrift Corp., note 4 supra.

have been generally unsuccessful,[13] because of the defense of truth[14] and because it is not considered shameful merely to owe money and hence not defamatory so to charge.[15] This latter argument has sometimes been avoided by reading the communication as implying that the plaintiff had refused to pay his just debts.[16] Malicious infliction of mental injury is a second possible theory of recovery.[17] It is not generally available to injured debtors, however, for it usually requires extreme misconduct on the part of the creditor,[18] and perhaps some resulting physical injury to the debtor as well.[19] Interference with contract is of similarly narrow application, because it is commonly limited to communications from the creditor to the plaintiff's employer, and may require that the debtor have been discharged.[20] The restrictions inherent in these other torts have moved many debtors, like the plaintiff in the principal case, to seek recovery under the flexible new tort of invasion of privacy. It seems that this tort, not yet restricted by traditional elements, provides the best framework for the many social considerations essential to a proper resolution of the problems presented in this area. The principal case notably mentions the interests of not only the parties to the lawsuit, the debtor and creditor, but also the debtor's employer. Complaining debtors have, however, rarely been successful when suing in privacy.[21] It seems that the courts are reluctant to expand further this new tort, which even after fifty years of growth is relatively undefined. The principal case is an example of this judicial attitude, for both the court of appeals and the supreme court relied for their conflicting decisions on the same liberal language in the case which initially recognized the right of privacy in Georgia,[22] but reached opposite results on the application of that language to the principal case. Yet many of the decisions denying the right of privacy are either very tentative[23] or accompanied by ringing dissents.[24] Perhaps the courts are now in the process of change,

13 Speake v. Hughes, [1904] 1 K.B. 138; Stannard v. Wilcox and Gibbs Sewing Machine Co., 118 Md. 151, 84 A. 335 (1912); Hudson v. Slack Furniture Co., 318 Ill. App. 15, 47 N.E. (2d) 502 (1943).

14 Hutchins v. Page, 75 N.H. 215, 72 A. 689 (1909). See Ray, "Truth: A Defense to Libel," 16 MINN. L. REV. 43 at 61 (1932).

15 Zier v. Hofflin, 33 Minn. 66, 21 N.W. 862 (1885); Fry v. McCord Brothers, 95 Tenn. 678, 33 S.W. 568 (1895). Cf. Hanaw v. Jackson Patriot, 98 Mich. 506, 57 N.W. 734 (1894).

16 Turner v. Brien, 184 Iowa 320, 167 N.W. 584 (1918); Thompson v. Adelberg and Berman, 181 Ky. 487, 205 S.W. 558 (1918); Keating v. Conviser, 219 App. Div. 836, 220 N.Y.S. 874 (1927), reversing 127 Misc. 531 (1926), affd. without opinion, 246 N.Y. 632, 159 N.E. 680 (1927). *Contra*, Judevine v. Benzies-Montanye Fuel and Warehouse Co., 222 Wis. 512, 269 N.W. 295 (1936).

17 See note 10 supra.

18 See note 4 supra.

19 See note 5 supra.

20 See note 11 supra.

21 Patton v. Jacobs, 118 Ind. App. 358, 78 N.E. (2d) 789 (1948).

22 Pavesich v. New England Life Ins. Co., 122 Ga. 190 at 195, 50 S.E. 68 (1905).

23 Patton v. Jacobs, note 21 supra.

24 Hawley v. Professional Credit Bureau, note 8 supra.

and the future will see more collection cases considered as possible violations of privacy. Then the outlines of permissible creditor conduct could be shaped. The significant factors in this development might include (1) the creditor's motives, (2) the presence or absence of malice, (3) the validity of the debt, (4) whether the debtor disputed the debt, and if so, (5) whether his dispute was bona fide, as well as (6) the practicability of alternative credit procedures, such as garnishment and prior investigation of the debtor's financial standing. Additional factors, the significance of any single factor and the interrelationship among all factors could be determined from case to case. It would seem that this approach would be preferable to the blanket denial of any right of privacy which is given in the principal case and other recent decisions.

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