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'Economic Interest' Defense to a Tortious Interference Claim

The Aug. 15, 2006, decision by the U.S. Court of Appeals for the Second Circuit in *White Plains Coat & Apron Co., Inc. v. Cintas Corp.*¹ certified to the New York state Court of Appeals a question which has been unresolved for commercial practitioners: specifically, whether a generalized interest in soliciting business for profit constitutes a defense to a claim of tortious interference with an existing contract for an alleged tortfeasor with no previous economic relationship with the breaching party.

The factual background of the *White Plains* litigation represents a fairly typical basis for asserting a tortious interference claim. Plaintiff White Plains Coat & Apron Company provided linen rental service to bars and restaurants pursuant to written contracts with its customers. The standard White Plains contract provided that a given customer "agrees to rent from [White Plains] exclusively during the term of [the] Agreement, all of the Customer's requirements for laundered articles." In consideration of the five-year exclusive contract, White Plains commits to provide customers with linen rental services on a periodic basis.

Cintas, a competing concern, enters the scene and "allegedly intentionally induced dozens of [White Plains] customers to breach their agreements with [White Plains] and enter into rental agreements with Cintas." Cintas denied the allegations. Thereafter, when Cintas failed to conform with a demand by White Plains that Cintas cease and desist its practice of soliciting White Plains customers, and simultaneously discontinue servicing those customers who had an exclusive



contract with White Plains, White Plains sued Cintas for tortious interference with existing customer contracts.

Cintas moved for summary judgment after discovery, arguing that it had no knowledge of the agreements with White Plains and that it had not induced any breach. The court's oral ruling specified that assuming *arguendo* Cintas interfered with its competitor's contractual relationships, it had "a legitimate economic interest as a competitor to go sell or rent the linens."

Southern District Judge Charles L. Briant determined that the economic interest defense was triggered and in order to defeat it, White Plains was compelled to demonstrate malice or illegality, which burden it failed to satisfy.

Economic Interest Defense

Tortious interference claims can be premised upon interference with an existing contract or interference with a prospective, non-contractual, business relationship.

At bar, the tortious interference with contractual relations cause of action required: a valid contract between White Plains and a third-party customer; Cintas' knowledge of the underlying contract; Cintas' intentional

procurement of the customer's breach; actual breach by the linen customer; and actual damages sustained by White Plains.² As noted, for the limited purpose of resolving the motion, Judge Briant proceeded on the assumption that White Plains could establish the elements of the tort.

The economic interest defense provides a complete defense to a tortious interference claim:

The New York Court of Appeals carved out an important defense to the tort—the economic interest defense: "[P]rocurring the breach of a contract in the exercise of equal or superior right is acting with just cause or excuse and is justification for what would otherwise be an actionable wrong."³

The Second Circuit's *White Plains* opinion requests that the Court of Appeals clarify the scope of the economic interest defense in light of the "inconsistent" application of the defense by New York state and federal courts. Specifically, "what constitutes the 'equal or superior right' to trigger the economic interest defense in the first place has never been clarified by the Court of Appeals."

Equal or Superior Right

On one end of the spectrum, the case law is clear that defendant's stockholder or equity interest in an underlying entity provides a sufficient basis to invoke the economic interest defense. For example, in *Felsen v. Sol Café Mfg. Corp.*,⁴ plaintiff Felsen was the treasurer, comptroller and general administrator of Sol Café, an instant coffee manufacturing plant. After Sol Café was bought out by Chock Full O'Nuts, Felsen was terminated. Felsen sued Sol Café and its sole shareholder, Chock Full O'Nuts, for breach of his employment agreement and malicious inducement of that breach, respectively.

Although the jury returned a verdict in favor of Felsen against both defendants,

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the Court of Appeals held that the claim against Chock Full O'Nuts should have been dismissed because Chock Full O'Nuts, as the sole stockholder of Sol Café, had an economic interest to safeguard the affairs of Sol Café. That interest justified Chock Full O'Nuts' interference with Felsen's employment agreement with Sol Café, unless Chock Full O'Nuts was motivated by malice or employed illegal means to protect that interest.

The *Felsen* Court cited *Morrison v. Frank*⁵ for the proposition that one who possesses a financial interest, as a stockholder, in the business of another entity is privileged to interfere with a contract which that other entity had with a third person if the purpose is to protect his own interest and if he does not employ improper means.

Morrison v. Frank represents one of the few instances in which a court has precisely identified a particular 'interest,' the protection of which may provide the basis for the 'just cause or excuse' in the face of which plaintiff's cause of action for malicious inducement of a breach of contract will fail.⁶

In *Felsen*, relying on *Morrison*, the Court of Appeals determined that plaintiff failed to demonstrate evidence that the interference was motivated by malice, and concluded, to the contrary, that the evidence indicated that the officers of Chock Full O'Nuts were reasonably concerned with the internal management of the Sol Café manufacturing plant, for which plaintiff had general responsibility, and that this concern led them to recommend plaintiff's discharge.

Indeed, the Second Circuit's *White Plains* decision reiterates that New York law is well settled that a "concrete, pre-existing interest such as an existing equity interest is sufficient" to trigger the economic interest defense.

General Economic Interest

On the other end of the spectrum is the certified question at bar. The Second Circuit opined that the District Court's reliance for ruling that Cintas successfully established an economic interest defense, despite the fact that Cintas had no pre-existing relationship with the customers who breached their exclusive agreements with White Plains, is not sufficiently founded on existing New York law.

As we have noted, while the elements of the tort and the consequences of triggering the economic interest defense are relatively clear, the type of economic interest required to trigger it is not. We cannot determine from New York case law whether the district court was correct when it held that a "general economic interest of

a company to solicit business and make a profit" was sufficient to trigger the defense.⁷

Indeed, the Second Circuit noted that federal district court decisions have run the gamut, from a very limited application of the defense (ruling that a corporate parent has the right to interfere with the contractual relations with its subsidiaries) to broad treatment (determining that a mere financial interest in the business of another is sufficient to interfere with a contract between the other and a third party).

Public policy considerations may rule the day. Of course, the sanctity of a contract must be preserved and the tort cause of action achieves that end. But as the *White Plains* court noted, the tort claim also "has the potential to restrain business competition." Of course, the plaintiff, White Plains, possesses an action against the breaching restaurant owners. However, as a general matter, it may be unlikely that a typical business which has sustained damages will pursue the 35 small business customers, across three states, such as the ones that Cintas allegedly lured away from White Plains. So much for purportedly exclusive contracts.

The case law is clear that defendant's stockholder or equity interest in an underlying entity provides a sufficient basis to invoke the economic interest defense.

And even if successful, what are the chances that the plaintiff will recover funds from 35 small business owners to satisfy the damages that it has sustained by the breach? It is likely an exercise in futility. The pragmatic course is for the plaintiff to pursue Cintas, a deep pocket, in an attempt to be made whole—if it can establish the tort.

The economic interest doctrine, as presently articulated by New York courts, will shield a defendant from liability in the event that the defendant can demonstrate it is exercising an "equal or superior right" in encouraging the breach. The *Morrison* court confirmed that one who has a "financial interest in the business of another possesses a privilege to interfere with the contract between the other and someone else if his purpose is to protect his own interests and he does not employ improper means."⁸

Financial Interest

At bar, assume for a moment that Cintas possessed a financial interest in one of the underlying restaurants that had already

contracted with White Plains to provide linens exclusively for five years. In that scenario, assuming no malice or illegal means to procure the breach, Cintas is entitled to assert the economic interest defense to the tort claim merely because Cintas was advancing its own financial interest (in the underlying venture) in encouraging the breach of the contract between White Plains and the restaurant owner.

But notwithstanding the rationale for Cintas' breach, whether a "general business interest in luring customers from a competitor," or the self interest in protecting or advancing its own economic interest in an underlying business venture (one of the restaurants), the breach of the contract has the identical effect on plaintiff/White Plains. As the saying goes, "Whether the rock hits the glass or the glass hits the rock, it is going to be bad for the glass."

From Cintas' perspective, its goal is to generate more income. Do the public policy considerations really differ if Cintas is simply seeking to improve the balance sheet of its underlying restaurant venture as opposed to improving its balance sheet by pursuing its "general business interest in luring customers from a competitor"? Maybe the Court of Appeals will confirm the expansion of the economic interest defense, consistent with the federal district court ruling, in an attempt to further the free-market economy.

In the alternative, restricting the economic interest defense as presently articulated will direct Cintas, or any potential defendant opposing a tortious interference claim, to "do the math" and perform its cost/benefit analysis in determining whether or not to interfere. Is there middle ground?

Stay tuned for continued deliberations at 20 Eagle Street in Albany.

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1. ___F.3d___, 2006 WL 2348549 (2nd Cir. 2006).

2. *Lama Holding Co. v. Smith Barney, Inc.*, 88 N.Y.2d 413, 646 N.Y.S.2d 76 (1996).

3. *White Plains v. Cintas*, supra note 1, citing *Foster v. Churchill*, 87 N.Y.2d 744, 642 N.Y.S.2d 583 (1996).

4. 24 N.Y.2d 682, 301 N.Y.S.2d 610 (1969)

5. 81 N.Y.S.2d 743

6. *Felsen*, supra note 5, at 687, 613.

7. *White Plains*, supra note 1, at 5.

8. *Morrison v. Frank*, 81 N.Y.S.2d 743, at 744 (Sup. Ct. N.Y. County 1948).