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Delaware Court Authorizes New Theory of Tortious Interference with Contract

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Deciding an issue of first impression, the Superior Court of Delaware recently authorized the assertion of claims based on a new theory of tortious interference with contract, but ruled that the plaintiff failed to state a claim under that theory. Allen Family Foods, Inc. operates a poultry processing facility and had contracted with Capital Carbonic Corporation to supply dry ice for the facility. In September 2010, Allen, believing that its contract with Carbonic had been terminated by its terms, entered into a contract with Praxair Distribution, Inc. to supply dry ice. Thereafter, Carbonic sent a letter to Praxair threatening litigation, after which Allen ceased performance of its contract with Praxair and, instead, continued to purchase dry ice pursuant to its previous agreement with Carbonic.

Allen then sued Carbonic, alleging that Carbonic tortiously interfered with its agreement with Praxair. Traditionally, to assert a tortious interference with contract claim, the plaintiff must allege that the defendant's conduct "induce[d] a third party to terminate a contract with the plaintiff unlawfully." Under the Restatement (Second) of Torts, there is an additional basis for a tortious interference claim where, rather than induce a third party to breach a contract, the alleged wrongdoer "intentionally and improperly interferes with the performance of a contract... between [the plaintiff] and a third person, by preventing the [plaintiff] from performing the contract or causing his performance to be more expensive or burdensome."

No Delaware court had reviewed this theory of tortious interference before, and the court examined opinions from other jurisdictions before holding that it was a valid expansion of the law of tortious interference of contract. In so holding, the court noted that "it seems irrational to recognize a cause of action for a party's conduct directed at a third party designed to prevent that third party from performing a contract with [the plaintiff] and not recognize a similar cause of action for [the plaintiff] where the actor's conduct is instead directed at the [plaintiff] to prevent them (sic) from performing."

Nevertheless, the court held that Allen failed to state a claim under the new theory because the letter that Carbonic sent that formed the basis for Allen's claims was directed to Praxair, not Allen. Moreover, the claim failed because Allen failed to allege that it was prevented from performing the agreement with Praxair or that its performance of that agreement was made more expensive by Carbonic's actions. Nor did Allen allege a breach of contract by Praxair, a

requirement to state a claim under the traditional theory of tortious interference. Instead, Allen merely alleged that it was damaged because it continued to accept shipments of dry ice from Carbonic, an allegation that is insufficient to state a claim for tortious interference with contract under any theory. (*Allen Family Foods, Inc., v. Capital Carbonic Corp.*, No. N10C-10-313 (Sup. Ct. Del. Mar. 31, 2011))

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