

An established cemetery sells "pre-need" funeral plans, which include funeral services, a casket, and a burial plot, in exchange for advance payment. By state statute, any purchaser of a funeral plan of this sort can cancel the purchase at any time, subject to a penalty imposed by the seller of up to 15% of the purchase price.

A former high-level employee of the cemetery, who knew of the limitations specified in the state statute, recently built a new cemetery near the established cemetery. To promote the new cemetery, the former employee sent postcards to local residents asserting that anyone who had already purchased a pre-need funeral plan had "an unlimited right to cancel that plan at any time, for any reason, without penalty." The postcard also offered a \$100 rebate on a pre-need funeral plan with the new cemetery to anyone who canceled an existing plan elsewhere.

Shortly after the promotion began, several purchasers of funeral plans with the established cemetery canceled their plans and purchased plans from the new cemetery. When the established cemetery withheld penalties from the refund amounts, the purchasers objected and threatened to notify the state consumer protection bureau.

The established cemetery has sued the former employee for tortious interference with contract. The former employee has moved for summary judgment, based on the foregoing facts.

Should the court grant the motion?

- A. No, because a reasonable jury could conclude that the former employee bribed purchasers in order to take business from the established cemetery. (4%)
- B. No, because the former employee could be found by a jury to have intentionally and improperly interfered with the established cemetery's contracts. (73%)
- C. Yes, because the established cemetery's contracts with purchasers were terminable at the option of the purchasers. (10%)
- D. Yes, because the former employee was simply competing with the established cemetery. (11%)

Correct

73% Answered correctly

01 min, 51 secs Time Spent

2023 Version

### Explanation:

A court should deny a defendant's motion for summary judgment when the evidence is legally sufficient for a reasonable jury to find in the plaintiff's favor. A claim for **intentional (ie, tortious) interference with a contract** requires evidence that:

a **valid contract** existed between the **plaintiff and a third party**

the defendant **knew of that contractual relationship**

the defendant **intentionally and improperly interfered** with the contract's performance *and*

that interference caused the plaintiff **pecuniary (ie, monetary) loss**.

Here, the established cemetery (plaintiff) had contracts with purchasers (third parties) for funeral plans, and the former employee (defendant) knew of those contracts. Several purchasers canceled their plans after the former employee intentionally misrepresented state law by telling them that they could cancel their plans without penalty. As a result, a jury could find that the former employee intentionally and improperly interfered with the established cemetery's contracts. Therefore, the court should *deny* the former employee's motion for summary judgment.

**(Choice A)** The jury is not required to conclude that bribery occurred for the former employee to be liable for tortious interference with contract.\*

\*Additionally, the monetary incentive offered by the former employee does not amount to bribery, which requires proof of a corrupt payment of something of value for the purpose of influencing the action of a public official in the discharge of his/her public or legal duties.

**(Choice C)** Although persons who entered contracts to purchase the established cemetery's "pre-need" funeral plans had the option to terminate the contracts, the former employee tortiously interfered with those contracts by intentionally misstating state law. Therefore, the court cannot grant the former employee's motion for summary judgment on this basis.

**(Choice D)** The former employee was not simply competing with the established cemetery by knowingly sending false information about pre-need funeral plans to those who purchased them from the established cemetery. Rather, such conduct could be found to be an intentional and improper interference with the purchasers' contractual relationships with the established cemetery.

### Educational objective:

Intentional interference with a contract requires proof that (1) a valid contract existed between the plaintiff and a third party, (2) the defendant knew of that contract, (3) the defendant intentionally and improperly interfered with the contract's performance, and (4) that interference caused the plaintiff pecuniary loss.

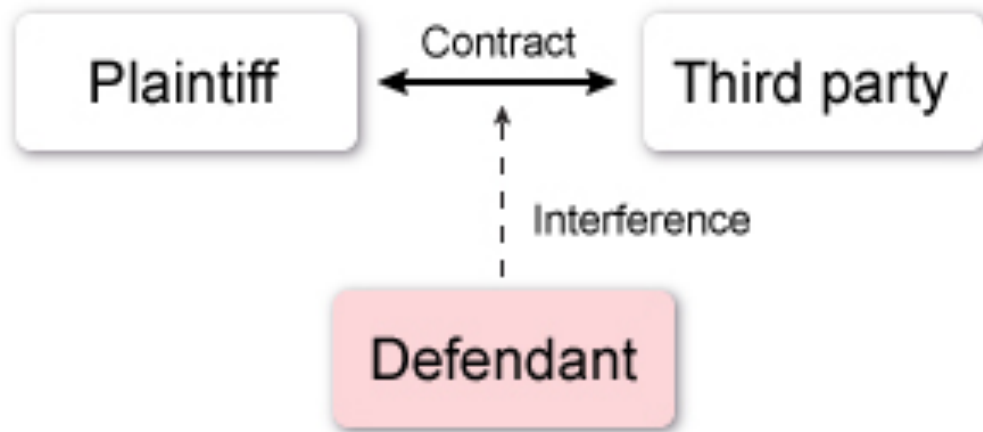
### References

Restatement (Second) of Torts §§ 766, 766A (Am. Law Inst. 1979) (explaining intentional interference with contract).

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## Tortious interference with contract



Defendant liable