Tortious Interference? Tell me who.

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Name a few claims you'd expect to see in a non-compete case. Breach of contract. Misappropriation of trade secrets. Tortious interference with contract and relationships. These are a few claims commonly pleaded in employee defection cases.

A recent case in Pennsylvania federal court serves as an important reminder about the importance of carefully pleading tortious interference claims.

In Council for Educational Travel v. Agata Czopek and Harristown Development Corporation, the federal court granted a motion to dismiss because the plaintiff failed to identify a specific contract or relationship with whom the defendants had interfered. Observing the elements of a tortious interference claim, the court stated that the plaintiff must allege the existence of a contractual relationship with an identified third party: "Courts have held that because the subject contract actually exists, a claim must include 'definite, exacting identification.'" In this case, the plaintiff merely alleged in conclusory fashion that the defendants' actions interfered "with clients and/or prospective clients." There was no indication that the failure to identify specific clients was a result of any intent to conceal the identity of a trade secret.

Likewise, while alleging tortious interference with prospective contractual relations, the plaintiff failed to allege a specific, reasonable probability that it would have entered into a specific contractual relationship with a third party. According to the court, this "requires the plaintiff to identify with sufficient precision which, if any, prospective contracts it would have entered into but for the alleged tortious interference."

Without these allegations, the court concluded that it could not infer that the claims were plausible, as required under controlling Supreme Court precedent (which too many attorneys have written about). It is enough to say that, as many courts have noted, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements do not suffice." (A copy of the Czopek decision is available in pdf format below.)

The danger of insufficient pleading exists in employee defection litigation as much if not more than in other cases. Non-compete and trade secret plaintiffs are often moving quickly in an effort to obtain a temporary restraining order or other expedited relief. Some lawyers may be tempted to grab a form off the shelf, allege the facts, and then say "the foregoing constitutes tortious interference." The Czopek case serves as a reminder about the importance of careful pleading. Tortious interference claims do not automatically follow in non-compete and trade secret cases. Plaintiffs must carefully think through and identify with specificity where and how they were harmed. Did the defendant's conduct interfere with the plaintiff's contract with an employee? A contract with client? If both, plaintiffs may want to plead them as separate claims. But be specific.

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