LAW OFFICES OF JONATHAN M. COOPER

Monthly Newsletter
September 2013
Volume 5
Issue 6

Inside This Issue

What a School's Textbook Defense of a Bullying Claim Looks Like

In response to a formal complaint filed against a Catholic school alleging that their teenage son sustained concussions and hearing loss following a series of schoolyard bullying incidents where he was stomped upon by fellow students, the school adopted the textbook response:

The school denied ever being made aware of the prior incidents.

"Why is that significant?" you ask.

Granted, this case wasn't brought in New York, but the principle at issue is likely the same:

Unless the plaintiffs can demonstrate that the school either knew, or should have known, about the prior incidents, yet failed to undertake reasonable measures to prevent the subject incident from occurring, chances are that the case will be dismissed.

(For additional information on school bullying under New York law, please see "Can a School Be Held Liable for Bullying Under NY Law?")

How to Prove Tortious Interference Under New York Law

Let's start at the beginning. Tortious interference is a closely related cousin of a breach of contract claim; it's not the same thing. This article will focus on the two types of tortious interference claims that are available under New York law - interference with prospective advantage, and interference with contract.

- Interference With Contract - In order to prevail, the plaintiff claiming that the defendant interfered with an existing contract is required to show that the defendant not only knew about the plaintiff's contract with a third party, but that the defendant purposely - and without a good reason (in legalese, "justification") caused the third party to break its contract with the plaintiff.

Continued on page 3

Why Nothing is So Small That it Should Be Taken for Granted

As you may know, we were recently blessed with the birth of a baby girl, Yael (hence, the delay in getting out this month's newsletter).

Granted, my wife and I have heard quite a few jokes about how our 7th child, Isaac, was born in the front seat of our Jeep. This time, however, we made it to the hospital with more than ample time to spare (about 12 hours, to be more precise).

There is an important lesson to be gleaned here.

Granted, this time around neither the food situation nor the accommodations at the hospital were particularly good, but I try to remember the most important parts: thank G-d, everyone was healthy, and yes, **I should be thankful that we simply made it to the hospital before the baby was born.**

We strongly encourage the readers of our monthly newsletter to provide feedback about issues they would like to see addressed in our future publications.

To do so, please contact us through our website, www.JMCooperLaw.com or via e-mail at jmcooper@jmcooperlaw.com

"Non-competes stifle movement and inhibit competition and we do not want that" – Gregory Bialecki, MA Secretary of Housing and Economic Development

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We Appreciate Your Referrals!

Why Massachusetts May Be Employee Heaven (at least for non-competes)

In a remarkable shift, Massachusetts Governor Patrick's administration has now firmly aligned itself with employees' interests, publicly supporting a bill that would ban non-compete agreements (or at least find them unenforceable) in the State.

Here is the money quote from Patrick's Secretary of Housing and Economic Development, Gregory Bialecki:

> "Non-competes stifle movement and inhibit competition and we do not want that. The evidence is clear—we are not seeing the kind of spin-offs and starts up at the same rate that previously made Massachusetts an enviable model.
>
> "Individual career growth is good for the Commonwealth: We encourage our talent to be creative, to be innovative, and to network with other talented people. Furthermore, we encourage employers to recruit talented people.
>
> "However, we send a mixed message: providing the talent needed to support the kind of explosive growth we want in the innovation economy is considerably more difficult if employees are legally unable to move between jobs in the innovation economy."

All the news on this front is not bleak for employers, however.

First, there is no guarantee that the Massachusetts legislature will follow Patrick's lead and pass this legislation.

Second, Patrick's proposal does not neglect entirely the employers' right to protect its proprietary intellectual property, as Patrick has also urged the legislature to pass the Uniform Trade Secrets Act.

It certainly will be interesting to see how this pans out - and whether any other states will follow suit.

Check Out Our New Website!

Admittedly, having a new baby has slowed my office down a bit. I'm not ashamed of that.

But I've been fortunate in still being able to lean on my quality outside people to get some quality work done, like launching our re-designed website that is dedicated to making your user experience better in learning more about New York accident cases, and which mistakes to avoid, particularly in the school negligence and defective products contexts.

I just ask one thing in return: If you find the information on the site useful, please **share it** with other people. (Social media is a very easy way to do it).

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How to Prove Tortious Interference Under New York Law

cont'd from page 1

- Interference With Prospective Advantage - Unlike the interference with contract claim, this cause of action does not involve an already existing contract; it arises out of the defendant inducing the third party to walk away from a *prospective contract*, i.e., a contract that had not yet been finalized, with the defendant. Naturally, since this claim does not involve a finalized agreement, and therefore, the potential for abuse by overly litigious claimants with "questionable" proof of phantom agreements would in theory be rather great, the courts and legislature set the plaintiff's burden of proof on this claim significantly higher than in the interference with contract realm.

"There are two types of tortious interference claims under NY law – interference with contract, and interference with prospective advantage."

Here, the plaintiff is required to prove not only that the defendant "intentionally and knowingly" induced the third party to act against the defendant (as is the case with interference with contract); the plaintiff must also prove that the defendant acted "by wrongful means," i.e., used "physical violence, fraud, misrepresentation or undue economic pressure" to prevent the third party from completing its contract with the plaintiff.

Thus, there is no question that the latter form of tortious interference claim is significantly more challenging to sustain than the former.

***COMMUNICATION POLICY**: As a general rule, Mr. Cooper does not accept unscheduled phone calls. This policy affords Mr. Cooper the ability to pay closer and more focused attention to each case, resulting in more efficient and effective representation for his clients. Moreover, it avoids the endless and needless game of phone tag played by most businesses and law firms. To schedule a phone call or in-person appointment with Mr. Cooper, please call his office at 516.791.5700.*

Citing Flammability Hazard, The Children's Place Recalls Nearly 40,000 Footed Pajamas

Maybe I'm just trying to be a vigilant Dad, but when I see recalls of products designed for small children, I try to take notice.

On September 17, the Children's Place voluntarily recalled three different styles of its bunny-footed pajamas after it was discovered that they failed to meet Federal flammability requirements for pajamas.

The total number of pajamas that were recalled?

Nearly 40,000. Ouch.

According to the recall information, the sizes of the pajamas involved range from 9-12 months up to 3T (thus included in the recall are sizes 12-18 months and 2T.

A picture of the recalled pajamas is to the right.

The Children's Place Recalled Pajamas

If you want further information regarding this recall, you can contact The Children's Place toll-free at (877) 752-2387.

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