

TORTIOUS INTERFERENCE WITH EXPECTANCY

The tort of intentional interference with an expectancy was first discussed with favor in *Lowe Foundation v. Northern Trust Co.*, 342 Ill.App. 379, 96 N.E.2d 831 (1st Dist.1951). Since that time, the existence of this cause of action has been generally accepted by the courts in this state. *Nemeth v. Banhalmi*, 99 Ill.App.3d 493, 425 N.E.2d 1187, 55 Ill.Dec. 14 (1st Dist.1981), *appeal after remand*, 125 Ill.App.3d 938, 466 N.E.2d 977, 81 Ill.Dec. 175 (1st Dist.1984); *Robinson v. First State Bank of Monticello*, 97 Ill.2d 174, 454 N.E.2d 288, 73 Ill.Dec. 428 (1983); *In re Estate of Knowlson*, 154 Ill.App.3d 249, 507 N.E.2d 28, 107 Ill.Dec. 364 (1st Dist.1987); *In re Estate of Jeziorski*, 162 Ill.App.3d 1057, 516 N.E.2d 422, 114 Ill.Dec. 267 (1st Dist.1987). To recover on this theory, the plaintiff must prove the existence of an expectancy; that the defendant interfered with his expectancy; that the interference involved conduct that is tortious in itself such as fraud, duress or undue influence; that there is a reasonable certainty that the expectancy would have been realized but for defendant's interference; and damages. *Nemeth v. Banhalmi*, 99 Ill.App.3d at 499; *In re Estate of Knowlson*, 154 Ill.App.3d 249, 507 N.E.2d 28, 31, 107 Ill.Dec. 364, 367 (1st Dist.1987). The plaintiff's expectancy would include any devise or bequest that would otherwise have been made under a testamentary instrument or any property that would have passed to the plaintiff by intestate succession. *Nemeth v. Banhalmi*, *in supra*, 99 Ill.App.3d at 498-499.

The availability of this tort action may depend upon the availability of a will contest remedy under the provisions of the Illinois Probate Code. 755 ILCS 5/8-1 and 8-2 (1994). If the tort action is premised upon the invalidity of a will, the plaintiff must contest the will within the six-month period provided by the Probate Code. Unless a will contest is filed, an action for tortious interference with an expectancy will be considered an impermissible collateral attack upon the probate proceedings and will not be available to the injured party. *Robinson v. First State Bank of Monticello*, 97 Ill.2d 174, 454 N.E.2d 288, 73 Ill.Dec. 428 (1983). Further, an action for tortious interference will not lie if the actual damages recoverable under the tort action are the same as under a will contest. *In re Estate of Hoover*, 160 Ill.App.3d 964, 513 N.E.2d 991, 992; 112 Ill.Dec. 382, 383 (1st Dist.1987). The availability of punitive damages for tortious interference is not considered grounds in itself to allow the plaintiff to pursue this tort action when a will contest remedy would otherwise provide adequate relief. *Id.*

If additional relief is possible under an action for tortious interference which is not available in a will contest, then the tort remedy is cognizable under limited circumstances. *In re Estate of Knowlson*, 154 Ill.App.3d 249, 507 N.E.2d 28, 31; 107 Ill.Dec. 364, 367 (1st Dist.1987) (“tort action is appropriate where the tort has made it impossible to probate a prior will”); *In re Estate of Jeziorski*, 162 Ill.App.3d 1057, 516 N.E.2d 422, 114 Ill.Dec. 267 (1st Dist.1987) (where plaintiff alleges fraudulently induced *inter vivos* transfers depleting the probate estate, a will contest will not provide adequate relief). In determining whether an injured party has an adequate remedy under the Probate Act, the plaintiff is not required to probate the earlier will upon which

plaintiff bases his claim to an expectancy. *Nemeth v. Banhalmi*, 125 Ill.App.3d 938, 466 N.E.2d 977, 991; 81 Ill.Dec. 175, 189 (1st Dist.1984). However, under these circumstances, the tort action should likewise be filed within the six-month period provided to contest a will.

In the event that a will is probated, an action for tortious interference with an expectancy should be consolidated with the will contest action. *In re Estate of Jeziorski*, 162 Ill.App.3d at 1062, 114 Ill.Dec. 267, 516 N.E.2d at 426. However, the trial court will retain discretion to sever issues for trial, “based upon an appraisal in each case of administrative convenience and the possible prejudice to substantial rights of litigants in light of particular problems which may arise at trial.” *In re Estate of Knowlson*, 507 N.E.2d at 32.

The following instructions are for use when there is a claim for tortious interference with an expectancy of an inheritance. Since the same fundamental principles apply to a claim of tortious interference with an expectancy of a gift, these instructions can be used for that claim also if modified accordingly, i.e., substitute “gift” for “inheritance.”

**205.01 Tortious Interference With Expectancy—
Issues Made by the Pleadings**

The issues to be decided by you under [Count ____ of] the plaintiff's complaint are as follows:

[1]. The plaintiff claims that he had an expectation that he would receive an inheritance from the decedent upon the decedent's death;

[2]. The plaintiff further claims that the defendant, through [fraud,] [duress,] [or] [undue influence], intentionally interfered with plaintiff's expectation in one or more of the following ways:

[Set forth in simple form, without undue emphasis or repetition, those alleged grounds of intentional interference which are supported by the evidence.]

[3]. The plaintiff further claims that there was a reasonable certainty that the plaintiff's expectancy would have been realized but for the defendant's interference;

[4]. The plaintiff further claims that he has suffered damages as a result of the loss of inheritance.

The defendant denies [that there was a reasonable certainty that the plaintiff would receive an inheritance from the decedent] [that he interfered with the plaintiff's expectancy in any manner claimed by the plaintiff] [that he did any of the things claimed by the plaintiff] [that the plaintiff suffered damages as a result of the loss of the inheritance].

Notes on Use

Use IPI 205.02 with this instruction.

Comment

The court in *Nemeth v. Banhalmi*, 99 Ill.App.3d 493, 425 N.E.2d 1187, 55 Ill.Dec. 14 (1st Dist.1981), adopted the Restatement (Second) of Torts §774B approach to the tort of intentional interference with an expectancy. Section 774B states: "One who by fraud, duress, or other tortious means intentionally prevents another from receiving from a third person an inheritance or gift that he would otherwise have received is subject to liability to the other for loss of the inheritance or gift." Comment *d* to §774B recognizes that the major causation problem is whether the plaintiff would have received the expectancy but for the tortious act. The normal remedy for intentional interference with an expectancy is an action in tort for the loss suffered by the one deprived of the legacy or gift. Restatement (Second) of Torts §774B, Comment *e* (1979).

"Inheritance" is defined in Restatement §774B, Comment *b*.

**205.02 Tortious Interference With Expectancy—
Burden of Proof**

The plaintiff has the burden of proving each of the following propositions in [Count ____ of] his complaint:

First, that the plaintiff had an expectancy that he would receive an inheritance from the decedent upon the decedent's death;

Second, that the defendant intentionally interfered with the plaintiff's expectancy;

Third, that the interference involved [fraud,] [duress,] [undue influence] [or] [describe other tortious conduct charged];

Fourth, that there was a reasonable certainty that the inheritance to the plaintiff would have been received but for the defendant's interference; and

Fifth, that the plaintiff suffered damages as a result of the loss of the inheritance.

If you find from your consideration of all the evidence that each of these propositions has been proved, then your verdict should be for the plaintiff. On the other hand, if you find from your consideration of all the evidence that any of these propositions has not been proved, then your verdict should be for the defendant.

Notes on Use

Use IPI 205.01 with this instruction.

Comment

See IPI 205.00, *Introduction*, and IPI 205.01 for further discussion of the elements of tortious interference with expectancy.

“Inheritance” is defined in Restatement (Second) of Torts, §774B, Comment *b*, at 58 (1979), cited with approval in *Nemeth v. Banhalmi*, 99 Ill.App.3d 493, 425 N.E.2d 1187, 1190; 55 Ill.Dec. 14, 17 (1st Dist.1981).

**205.03 Tortious Interference with Expectancy—
Instruction on Verdict Forms**

When you return to the jury room, you will first select a foreperson. He or she will preside during your deliberations.

Your verdict must be unanimous.

Forms of verdicts are supplied with these instructions. After you have reached your verdict, fill in and sign the appropriate form of verdict and return it to the court. Your verdict must be signed by each of you. You should not write or mark upon this or any of the other instructions given to you by this court.

If you find for [plaintiff's name] and against [defendant's name], then you should use Verdict Form A.

[When reading this instruction, the court should now say, “which reads as follows:” and should then read the corresponding verdict form to the jury.]

If you find for [defendant's name] and against [plaintiff' name], then you should use Verdict Form B.

[When reading this instruction, the court should now say, “which reads as follows:” and should then read the corresponding verdict form to the jury.]

**205.04 Tortious Interference With Expectancy—
Verdict Form A--Verdict for Plaintiff**

Verdict Form A

[As to Count ____], We, the Jury, find for [plaintiff's name] and against defendant's name].

We assess [plaintiff's name]'s damages in the sum of ____\$.

[Signature Lines]

**205.05 Tortious Interference With Expectancy—
Verdict Form B--Verdict for Defendant**

Verdict Form B

[As to Count ____], We, the Jury, find against [plaintiff's name] and in favor of [defendant's name].

[Signature Lines]