

**3.30B TORTIOUS INTERFERENCE WITH CONTRACTUAL
RELATIONS (REALTY BROKER V. THIRD PARTY)**
(Approved 6/79)

The law protects those in the pursuit of their livelihood. The right to pursue the real estate brokerage business is one of the property rights and interest which the law protects against unlawful interference¹. A person who unjustifiably interferes with the contract of another is guilty of a wrong. The protection of the law is not limited only to those contracts already made, but also protects a person's interest in a reasonable expectation of economic gain². When a party contracts with a real estate broker, the broker agrees to use his/her knowledge of what property is or can be made available and who is or can be interested in a given parcel, in return for a commission if he/she succeeds in bringing buyer and seller together at terms agreeable to both. In the practical world of business dealings, the broker trusts that those who accept or seek his/her services will not cheat him/her of the fruit of his/her labors.

In order to show that a party has interfered with the broker's expectation of economic gain from the successful performance of his/her services as a broker, the broker must prove several elements of his/her claim:

¹*Louis Kamm, Inc. v. Flink*, 113 N.J.L. 582 (E. & A. 1934).

²*Harris v. Perl*, 41 N.J. 455 (1964).

FIRST: The broker must prove the existence of an agreement between himself/herself and the seller of the property, under which agreement the seller agreed to pay the broker a commission.

SECOND: The broker must prove that the defendant had knowledge of the agreement between the broker and the seller.

THIRD: The broker must prove that the defendant intentionally, and maliciously, that is, with motive to harm and without justification, interfered with the contractual relation existing between the broker and the seller by inducing, procuring or causing a breach of termination of the agreement,³ or if he/she did not act out of sheer malice, but rather for profit or to enhance his/her financial position, then it must be shown that his/her conduct went beyond or transgressed generally accepted standards of morality; that is, a violation of standards of socially acceptable conduct.⁴

FOURTH: The broker must also prove it is reasonably probable he/she could have found a purchaser willing and able to buy on the seller's terms as communicated to the broker and thus would have received the anticipated economic benefit.⁵

³*McCue v. Deppert*, 21 N.J. Super. 591 (App. Div. 1952); *DiCristofaro v. Laurel Grove Memorial Park*, 43 N.J. Super. 244 (App. Div. 1957); *Sustick v. Slatina*, 48 N.J. Super. 134 (App. Div. 1957).

⁴*Lesli Blau Co. v. Alfieri*, 157 N.J. Super. 173 (App. Div. 1978).

⁵*Myers v. Arcadio, Inc.* 73 N.J. Super. 493 (App. Div. 1962).

Cases:

Harris v. Perl, 41 N.J. 455 (1964), suit by broker against purchaser and others, involving interference with contractual relations and interference with reasonable expectations of economic advantage; *George H. Beckmann, Inc., v. Charles H. Reid & Sons, Inc.*, 44 N.J. Super. 159 (App. Div. 1957), broker had oral listing from seller and recovered damages from purchaser; *Sustick v. Slatina*, 48 N.J. Super. 134 (App. Div. 1957); *Wear-Ever Aluminum, Inc., v. Townecraft, etc., Inc.*, 75 N.J. Super. 135 (Ch. Div. 1962); *Kurtz v. Oromland*, 33 N.J. Super. 443 (Ch. Div. 1955), “malice” as necessary element of action for malicious interference with contract, meant intentional commission of wrongful act without just case or excuse; as to suit against owner, see *Brenner and Co. v. Perl*, 72 N.J. Super. 160 (App. Div. 1962), motion for summary judgment denied; *Louis Schlesinger Co. v. Rice*, 4 N.J. 169 (1956); *Louis Kamm, Inc. v. Flink*, 113 N.J.L. 582 (E. & A. 1934).

NOTE TO JUDGE

For distinction between the tort of interference with contractual relations, and interference with the opportunity to enter into an advantageous business relationship, see *Fitt v. Schneidewind Realty Corp.*, 81 N.J. Super. 497 (Law Div. 1963), involving suit by broker against purchaser.

The mere fact that a contract is unenforceable between the parties affords no justification for the act of a third person who, for his/her own purposes, takes steps which prevent its performance by one of the parties to it, who, although not bound to execute it, is willing and anxious to do so.

Prosser, Torts (2nd Ed.) Sec. 726; 1 *Harper & James*, Sec. 6.7 (1956); *AALFO Co., Inc. v. Kinney*, 105 N.J.L. 345, 347 (E. & A. 1929); *Louis Kamm, Inc. v. Flink*, 113 N.J.L. 582, 591 (E. & A. 1934); *George H. Beckmann, Inc. v. Charles H. Reid & Sons, Inc.*, 44 N.J. Super. 159 (App. Div. 1957) at p. 165; *Harris v. Perl*, 41 N.J. 455 (461), and cases therein cited.

But see Tanenbaum v. Sylvan Builders, 50 *N.J. Super.* 342 (App. Div. 1958), which holds that an unlicensed broker cannot sue for tortious interference with a real estate commission contract, affirmed in 29 *N.J.* 62 (1959) but modified to permit the cooperating New Jersey broker to sue on his/her commission agreement.

Myers v. Arcadio, Inc., 73 *N.J. Super.* 493 (App. Div. 1962); *C.B. Snyder Realty Co., Inc. v. Seaman Bros., Inc.*, 79 *N.J. Super.* 88 (App. Div. 1963); *Sustick v. Slatina*, 48 *N.J. Super.* 134 (App. Div. 1957); *Fitt v. Schneidewind Realty Corp.*, 81 *N.J. Super.* 497 (Law Div. 1963); *Harper and James Law of Torts*, (1956), Sec. 6.11, p. 510; *DiCristofaro v. Laurel Grove Memorial Park*, 43 *N.J. Super.* 244 (App. Div. 1957); *Weinstein v. Clementsen*, 20 *N.J. Super.* 367 (App. Div. 1952) (as to competing real estate brokers).