



Transactional Torts

Torts
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Konemark
Most rights sharable

Transactional Torts

- Intentional Economic Interference
 - Intentional Interference with Prospective Economic Advantage
 - Intentional Interference with Contract
- Fraud
- Negligent Misrepresentation
- Innocent Misrepresentation
- plus more we won't be covering, e.g.,
 - Breach of Fiduciary Duty
 - Breach of the Covenant of Good Faith and Fair Dealing

Intentional Economic Interference

The Elements:

1. Valid contract or economic expectancy between plaintiff and third party (not defendant!)
2. Defendant's knowledge of contract or expectancy
3. Intent to interfere
4. Actually caused interference
5. Damages (to plaintiff, not third party)

NOTE: Wide ranging, nebulously defined "justifications" are the key defense.

Intentional Economic Interference - Defenses

Here are some "privilege" or "justification" defenses, which may go by various names or may lack names:

- Bona-fide, honest business or legal advice
 - Helps if the advice is asked for
 - Helps if the advice is in the context of some relationship, such as attorney/client, consultant/client
- Competition
 - Bona fide competition is the foundation of our economy, so it's generally privileged.
 - Or at least as long as it's "fair." But what does that mean? There's plenty of room to argue in litigation.
- Privilege in situations where there is a coinciding interest
 - Such as a parent corporation telling a subsidiary to breach a contract

Fraud

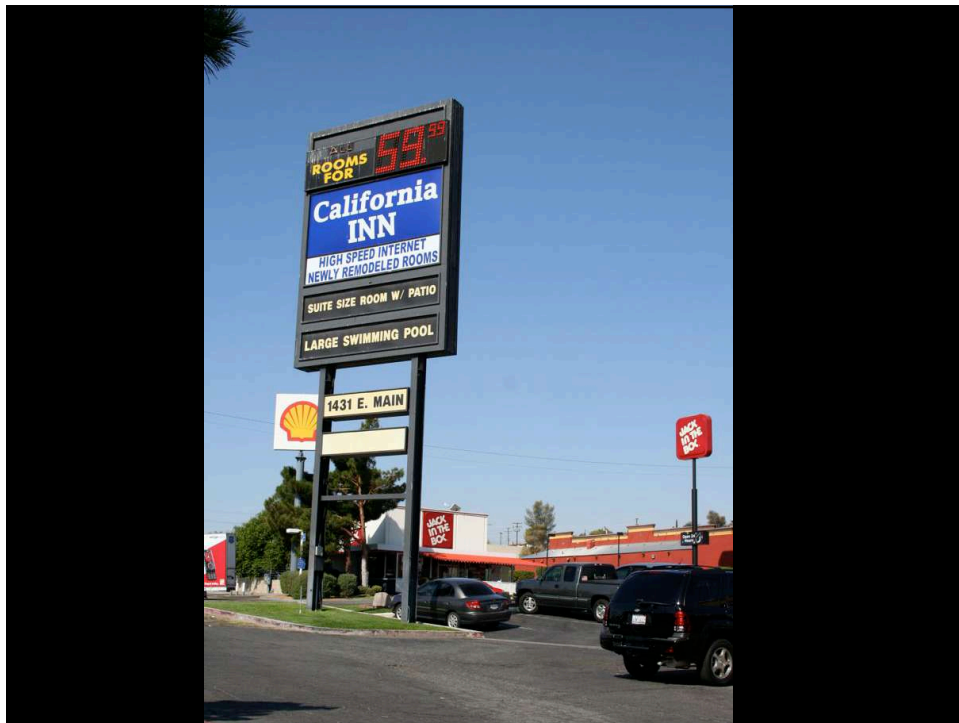
The Elements:

1. Material misrepresentation by defendant
2. Scinter
 - (at least recklessness; it's a lie)
3. Intent to induce reliance
4. Reliance
 - a. Actual reliance (causation)
(victim must be actually deceived)
 - b. Justifiable reliance
(must be reasonable in falling for it)
5. Damages (detriment)

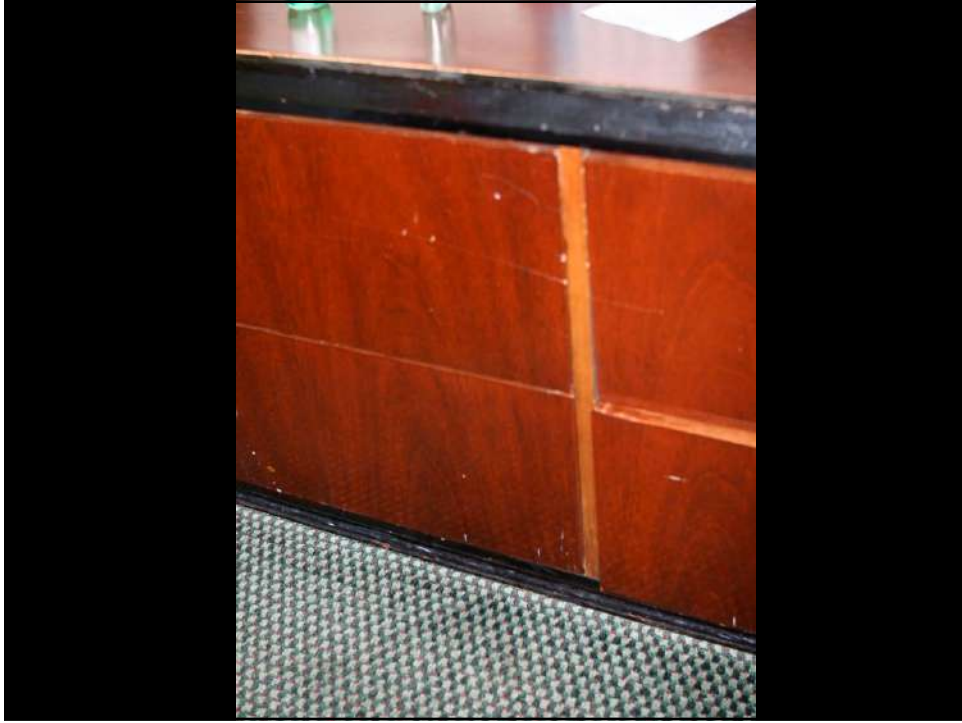
Fraud - Pleading Requirement

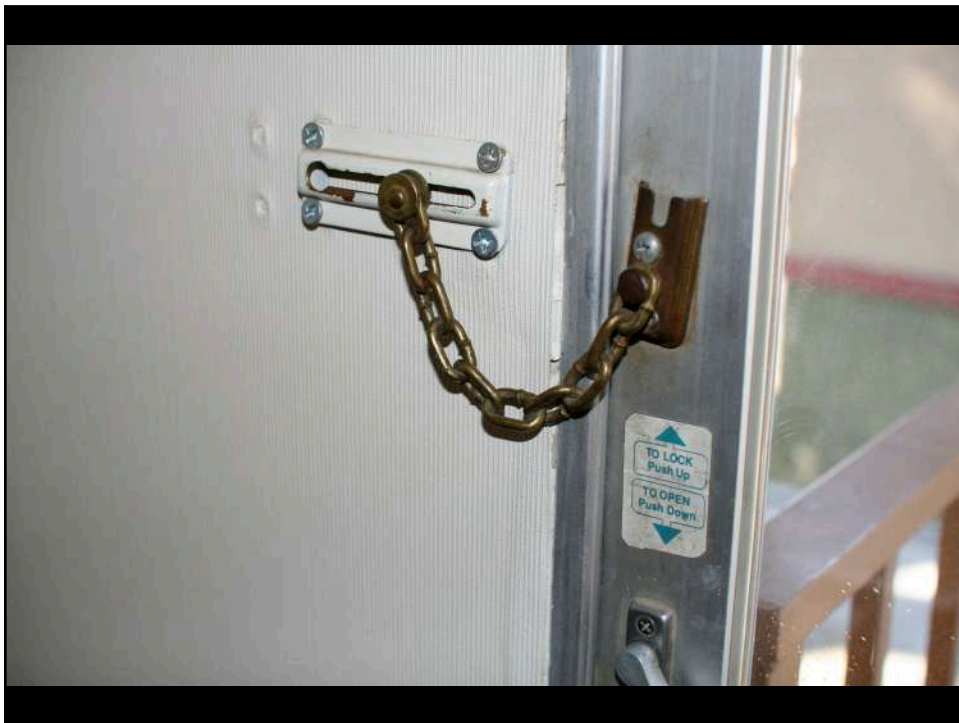
- Fraud must be pled with particularity.
- This is a matter of substantive tort doctrine, and it is independent of Twiqbal requirements.
- This points up a problem for fraud plaintiffs: You need information about how you were suckered to bring a fraud claim. But the very nature of fraud is an intentional concealment of information from the plaintiff.
- This is part of the reason why fraud is a difficult claim to bring and win.

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