

807.10 WRONGFUL INTERFERENCE WITH PROSPECTIVE CONTRACT.

The (*state number*) issue reads:

"Did the defendant wrongfully interfere with a prospective contract between the plaintiff and (*name other party to prospective contract*)?"

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, five things:¹

First, that but for the defendant's conduct, the plaintiff and (*name other party to the prospective contract*) would have entered into a valid contract.

Second, that the defendant had knowledge of the facts and circumstances associated with the plaintiff's prospective entry into a contract with (*name other party to prospective contract*).

Third, that the defendant maliciously induced (*name other party to the prospective contract*) not to enter into the prospective contract with the plaintiff.

Fourth, that the defendant acted without justification.²

And fifth, the defendant's actions resulted in actual damages to the plaintiff.

Finally, as to this issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that the defendant wrongfully interfered with a prospective contract between the plaintiff and (*name other party to prospective contract*), then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

1. *Spartan Equip. Co. v. Air Placement Equip. Co.*, 263 N.C. 549, 559, 140 S.E.2d 3, 11 (1965); *Johnson v. Graye*, 251 N.C. 448, 451, 111 S.E.2d 595, 597 (1959).

2. Whether a defendant acts without justification depends on the unique facts of each case. This element of the instruction should be supplemented upon presentation of appropriate requests for charge which explain the meaning of "without justification" within the context of and the facts in evidence in the case. Caution should be exercised in supplementing this element. For example, "[i]nterference with contract is justified if it is motivated by a legitimate business purpose, as when the plaintiff and the defendant, an outsider, are competitors." *Embree Constr. Group, Inc.*, 330 N.C. at 498, 411 S.E.2d at 924. However, there may be instances where, because the parties are competitors, certain acts of interference would not be justified. *United Laboratories, Inc. v. KuyKendall*, 335 N.C. 183, 185-8, 437 S.E.2d 374, 375-6 (1993).

Also note that where the defendant is an insider (e.g., an officer, director, or shareholder of the corporation on which the interference was allegedly practiced), the acts of the insider "in inducing his company to sever contractual relations with a third party are presumed to have been done in the interest of the corporation." *Wilson*, 262 N.C. at 133, 136 S.E.2d at 578. However, this presumption may be overcome by evidence that the interference was performed for the insider's own interest or benefit and adverse to the interests of the company. *Embree Constr. Group*, 330 N.C. at 498-99, 411 S.E.2d at 924-25.