

# LHAG Insights

Technology, Media & Telecommunications



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### Tortious Interference with Contract — Key Takeaways

“*Tortious interference with contract*” refers to the tort of procurement of breach of contract. It is a form of economic tort which is designed to protect economic interests of parties. This tort imposes liability on a third party who deliberately induces or procures one party to a contract to breach his or her contract with the other contracting party. A typical example would be this: A and B enter into a service agreement. C induces B to break his contract with A. In such a case, A may have a cause of action against C under the tort of procurement of breach of contract.

In a recent case, lawyers from LHAG’s Technology, Media and Telecommunications (TMT) dispute resolution practice — G Vijay Kumar and Chan Mun Yew — successfully represented one of the largest telecommunications companies (**telco**) in Malaysia to strike out a multimillion-ringgit claim that was filed against the telco for tortious interference.

The claim was filed by a major network facilities provider (**NFP**) based in Perak. The NFP’s main allegation was that the telco’s conduct caused the Perak state government to breach a concession agreement that it had with the NFP concerning the construction of telecommunications structures in Perak. In striking out the claim, the High Court found that the pleadings filed by the NFP were fundamentally defective. The NFP failed to plead particulars of key elements of the tort. The NFP’s allegation was also inconsistent with the allegations which they had made in their previous civil suit against the Perak state government.

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## Key takeaways on the tort of procurement of breach of contract

We will examine some of the key legal principles in relation to the tort of procurement of breach of contract:

### ***Breach of contract***

The tort of procurement of breach of contract imposes a secondary or accessory liability on the third party. The third party's liability is secondary in the sense that it is premised upon a breach of contract by the contracting parties. If there is no breach of contract by the contracting parties, liability under this tort does not arise.

### ***Void contracts***

Likewise, if the contract itself is void and unenforceable, liability under this tort does not arise. An example of unenforceable contracts would be contracts involving illegal considerations (*e.g.*, a moneylender lending money to borrower at interest, without obtaining the necessary licence under the Moneylenders Act 1951). One cannot procure or induce a breach of contract which is not valid in law or enforceable in the first place.

## Key elements of the tort

In addition to the above, the plaintiff has to prove the following elements of the tort to establish liability:<sup>1</sup>

### ***a. There is a direct interference of the contract by the third party***

There must be some direct persuasion, inducement, procurement or pressure by the third party to the contracting party to break the contract. A causal link must be established between the third party's conduct and the eventual breach of contract. If it can be proven the contract would have been breached or terminated irrespective of the third party's conduct, liability will not arise.<sup>2</sup>

### ***b. Third party has knowledge of the contract***

The third party does not need to have exact knowledge of all terms of the contract. It suffices if the Plaintiff could show that the third party was aware of the existence of the contract and the key terms that the third party wishes to interfere with.<sup>3</sup>

<sup>1</sup> *Loh Holdings Sdn Bhd v Peglin Development Sdn Bhd* [1984] 2 MLJ 105

<sup>2</sup> *Fong Seng Fatt & 1 Other v Syarikat Cekal Kasih Sdn Bhd* [2011] 4 MLJ 27; *Policy Management Sdn Bhd & Ors v Perodua Sales Sdn Bhd* [2015] 5 MLJcon 179

<sup>3</sup> *OBG Ltd v Allan* [2007] UKHL 21

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**c. The third party intended to interfere with the contract**

It must be shown that the third party had the desire to interfere with the contract, and knew that his actions would cause the contract to be breached. Liability does not attach to a third party who was simply negligent or had acted in the honest belief that his actions would not cause a breach of contract.<sup>4</sup>

**d. The plaintiff has suffered special damages which is more than mere nominal damages**

The plaintiff needs to be able to prove that he or she has suffered losses as a result of the third party's inducement or procurement to breach of contract. In situations where the contract would have been breached without the inducement or procurement by the third party, the plaintiff will fail to prove such loss.<sup>5</sup>

The plaintiff must also be able to successfully rebut any reasonable defence based on justification raised by the third party. Immorality or public interests are some of the common grounds for justification raised in relation to this tort. For instance, in an English case,<sup>6</sup> the High Court held that it was justified for a trade union to procure a breach of contract between theatre proprietors and a theatrical manager, as the theatrical manager had paid very low wages to the chorus girls, resulting in them resorting to prostitution.

**Conclusion**

Liability under the tort of procurement of breach of contract can arise in various different situations. Parties encountering issues or disputes in relation to this tort are therefore advised to seek legal advice promptly to ensure that the issue can be managed to the best of their interest.

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<sup>4</sup> *Ibid*  
<sup>5</sup> *Jones Bros (Hunstanton) Ltd v Stevens* [1955] 1 QB 275  
<sup>6</sup> *Brimelow v Casson* [1924] 1 Ch 302