

“You can’t always get what you want”: inducing a breach of contract by inconsistent dealings

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Allegations of breaches of contract are bread and butter in commercial disputes, but it is not only the party who breaches the contract who may be liable. Anyone who instigates, or ‘induces’, a breach of contract may also be on the hook for the damages caused.

In *Northamber PLC v Genee World Ltd and Others* [2024] EWCA Civ 428, the Court of Appeal has revisited the test for the tort of inducing a breach of contract. This tort is one of the economic torts recognised by English law. The Court of Appeal held that the trial judge, who had found the defendant not liable, had set the bar too high. The defendant was in fact liable - because it had had dealings with a counterparty that were inconsistent with a pre-existing contract between that counterparty and someone else. The defendant was well aware of the existence of that other agreement. It did not matter that the counterparty had already been habitually breaching that pre-existing contract and needed no further encouragement from the defendant.

This case is a useful reminder that even in the cut-and-thrust of commerce, it is important to tread carefully whenever one has notice of another contract that is inconsistent with the bargain that you are trying to strike.

England has (not) got talent

The origins of the tort of inducing breach of contract are traced back to the decision in *Lumley v Gye* (1853) 2 El & Bl 216. Johanna Jachmann-Wagner was a celebrated mezzo-soprano singer. She was the adopted daughter of Albert Wagner, the brother of (the) Richard Wagner. By the 1850s, Ms Jachmann-Wagner had achieved considerable fame across Europe. Rave reviews of her performances included one by a certain Benjamin Lumley:

“She appeared: tall, stately, self-possessed, clothed in glittering gilded mail, with her fine fair hair flung in masses upon her neck: a superb air that seemed to give full earnest of victory, and a step revealing innate majesty and grandeur in every movement ... She sang! The sonorous voice, which heralded the mission of the young warrior to his enemies, rang through the house as penetrating and awakening as the summons of a clarion.”

Mr Lumley was a solicitor by training and an opera manager by profession. In 1852, he wanted to bring Ms Wagner to England, where she had yet to perform. He invited her to sing at Her Majesty’s Theatre in London, a venue he was managing. No doubt to Mr Lumley’s great delight, Ms Wagner accepted. However Ms Wagner’s renown was such that when her upcoming residency became known, Frederick Gye, the manager of the Royal Opera House, quickly approached Albert Wagner, Ms Wagner’s manager, to strike a deal to have her sing there instead. Albert Wagner, acting as Ms Wagner’s agent, agreed to change the venue. When Ms Wagner cancelled her appearance at Her Majesty’s Theatre, Mr Lumley put his legal training to good use. He sued Mr Gye for inducing Ms Wagner’s breach of contract.

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