

1. For several years Ed Employee worked for Bill Boss at Custom Computers in Memphis, Tennessee. Employee was Boss's sole employee. Together they assembled and sold customized computer hardware and software to local businesses in Memphis and in surrounding communities, including Forrest City, which is located in Arkansas. Boss is a citizen of Memphis. Employee, on the other hand, lives in Forrest City and is a citizen of Arkansas.

On January 1, 2002, Boss fired Employee. On February 1, 2002, Employee opened a new business, Ed's Customized Computers, in Forrest City, and began soliciting customers from among the businesses that previously had done business with Boss's firm. Employee won business, in part, by telling Boss's former customers that "I did all the work when I worked for Boss" and that "Boss is a drunken bum who cannot be relied upon."

In late 2001, Bill Boss sued Ed Employee in federal district court in Tennessee, alleging that Employee had stolen most of Boss's customers and caused Boss damages of more than \$100,000. The complaint alleged that Employee had "maliciously interfered with Boss's contractual relationships with former customers by lying about the extent of Employee's role in Boss's business and by lying about Boss's drinking habits."

Both Tennessee and Arkansas recognize the tort of malicious interference with contractual relations. The law of each state provides that "malice" exists only when one person interferes with another person's contractual relationships either (a) with improper motive—that is, with intent to injure the plaintiff's business for a purpose other than competition, or (b) by improper means. Improper means is defined as means that are civilly actionable (such as libel and slander) or criminally unlawful.

The parties and the court are in agreement on the following matters: (1) subject matter jurisdiction exists; the amount in controversy is satisfied; (2) sufficient time for discovery has been granted.

A) Employee filed a motion to dismiss the complaint for failure to state a claim upon which relief could be granted. Ed attached to the motion to dismiss an affidavit in which Ed swore "that employee's efforts to take Boss's customers away were motivated not by malice but by an honest desire to compete and win the business for Employee."

The trial judge accepted Employee's motion and affidavit, treated the motion as a motion for summary judgment, and gave Boss the opportunity to file opposing affidavits. Bill Boss filed a memorandum in opposition to Employee's motion but did not attach any documents or affidavits. You are the trial judge. Write a brief opinion ruling on Ed's motion. Use appropriate authorities. (10 points)

B) At trial Bill Boss offers three witnesses: Bill testifies that Ed did little of the work and was basically a lazy employee. Wanda Witness says that Ed approached her, asked for her business, and said that "Bill is drunk and rarely does any work". Connie Computer testifies that she has worked in the computer business in the Arkansas-Tennessee region for 10 years and Bill has an excellent reputation.

Ed denies that he made any accusatory or defamatory statements. On cross examination, Wanda admits that she is hard of hearing; and further that they were discussing employees who drink Coca Cola all day and never do any work. Further, it turns out that Connie Computer has a long standing alliance with Bill and her business benefits significantly.

After the conclusion of all the testimony, Bill moves for a judgment as a matter of law on the issue of liability (but not damages). You are the judge. Decide the issue. Use appropriate authorities. (10 points).

2. Tim Tyler underwent surgery in which a "plate and screw device " was implanted in his lower spine. Tyler was disappointed with the results of the surgery and resorted to litigation in the federal court in Arkansas, based on diversity jurisdiction. The suit was brought against one defendant, Surgical-Ortho Corporation (SOC), the manufacturer of the device. Other potential parties are the hospital (HOSP) and the surgeon (MD).

Instructions: each of the following subparts is worth 2 points. Each is independent and each can be answered in a paragraph. Detailed analysis is not required. Jurisdiction is not an issue in any of the subparts. .

- A) SOC files a 12 (b)(7) motion to dismiss. How should the judge rule? Why?
- B) Tyler moves to amend his complaint. He argues that this device has been inserted into approximately 500 patients across the nation in the last 3 years. He wishes to add a count, by naming himself as the representative of the class of 500 patients. How should the judge rule? Why?
- C) Paula Patient had the same device inserted into her spine. She has her own lawyer who attempts to have Paula join Tim Tyler's law suit. How should the judge rule? Why?
- D) The jury returned a verdict for the defendant. The jury was dismissed. Minutes later, while the attorneys were discussing other matters, the bailiff notified the court that the jury had gone back into the jury room. The jury foreman emerged and told the judge that the jurors felt they had misunderstood the jury instruction on damages. The trial judge polled the jurors and found that 10 of the 12 said that the verdict for the defense was not their verdict. As a matter of fundamental fairness, the trial court let the jury reconvene. One hour later, they returned with a verdict of \$15,000 for the plaintiff Tim Tyler.

The defendant has appealed to the 8th Circuit. How should the 8th Circuit rule? Why?

- E) The jury concludes in a special verdict that the device was not defective. Accordingly, Tim Tyler loses. Six months later, in Oklahoma, Victoria Victim sues SOC, alleging that she had received the same device and she was harmed. SOC files a Rule 8(c) affirmative defense. SOC asks the court to give estoppel effect to the finding of the Arkansas court. How should the Oklahoma judge rule? Why?