

Tortious Interference in a Business Relationship

LIABILITY CONCERNS IN POSTING A "FOR SALE" SIGN

By Shaun K. Ramey

The law is filled with situations in which normal, mundane, and otherwise legal acts are transformed into liability nightmares based upon the greater context in which they took place. Seemingly legal acts can lead to liability for tortious interference if the motive for committing the act can be called into question. Take for example an individual who places a "for sale" sign on his or her own property. This "legal" act, a Florida appellate court held in *Walters v. Blankenship*, 931 So.2d 137, 138 (Fla. Dist. Ct. App. 2006), may constitute tortious interference with another's business relationships.

The Walters, owners of four luxury condominium units, listed all four of their units for sale through a real-estate auction company. Potential bidders were required to give a deposit as a precondition to participating as a bidder in the auction. There was no reserve listed for the auction, and twenty-some bidders gave a deposit. On the day before the auction, the Walters alleged that one of their neighbors confronted another unit owner and said, "You

wait until the day of the sale and see what we are going to do to Dick Walters." On the day of the auction, that neighbor, along with four other neighbors, put "for sale by owner" signs in front of their respective units. Those neighbors removed all of their signs immediately after the auction. While all of the Walters' units sold at the auction, the Walters alleged that the combined acts of the neighbors posting the "for sale" signs caused financial and emotional damage and that, as a proximate result, each unit sold at a substantial loss.

The elements used in Florida to determine cause of action based on tortious interference with a business relationship are similar to the elements used by other states. They are (1) the existence of a business relationship, (2) the defendant's knowledge of the relationship, (3) the defendant's intentional and unjustified interference with the relationship, and (4) damage to the plaintiff as a result of the breach of the relationship. In this case, the court held that the Walters had alleged sufficient facts to state a cause of action for tortious interference.

In holding as such, the court first held that the allegations involved much more than a "mere offer to sell," which normally does not create a business relationship. The court observed that once the Walters agreed to the auction without a reserve, they were obligated to accept the offers on their units irrespective of the price. Thus, the parties had progressed beyond the stage of a mere offer to sell, and hence, a business relationship had been established. Second, the court stressed that the defendants' acts were unjustified because they did not have a legitimate reason for posting their "for sale" signs. Their units were not for sale as best evidenced by the fact that the signs were removed as soon as the auction concluded. The court further stated that the defendants did not have an absolute First Amendment right to post the "for sale" signs. In doing so, the court inferred that a legitimate motive must still support the act of posting the sign in order to be protected as free speech.

As the *Walters* court noted, almost all, if not all, tortious interference cases involve acts

that are otherwise "legal." The issue is thus not whether the act is "legal" but whether it was "unjustified." That question requires a balancing of interests and turns on what is "right" and "just" under the "rules of the game." In *Walters*, no legitimate interests were advanced by the interference. Conversely, the right of plaintiffs to sell their property was of paramount importance.

Walters is significant because, for perhaps the first time, it forces real-estate owners to question their own motives before they offer or otherwise advertise their property for sale. So the question becomes what type of motives are "legitimate" for posting a "for sale" sign? Does an owner actually have to be planning to sell their property? What about homeowners who are merely "fishing" or "testing the waters" and thus may not actually be in the market of selling their home? And what about homeowners who post such signs merely to get a fair-market appraisal of their property? Can these reasons be considered "legitimate" or legitimate enough?

Like answers to most legal



tests, a balancing of interests will likely be required. The *Walters* decision, nevertheless, adds another item to sellers' checklists before they sell or advertise their property. It also highlights the need for attorneys, especially newer attorneys, to dig deeper and look behind the mere act(s) to motive when assessing liability.

This article is a revised version of "Think Twice Before Posting a 'For Sale' Sign: Tortious Interference with Another's Business Relationship" by Shaun K. Ramey published in Business Torts Journal, Volume 14, No. 2, Winter 2007. Copyright © 2007 by the American Bar Association. Reprinted with permission.

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■ *Business Torts and Unfair Competition Handbook, Second Ed.* 2006. PC # 5030485.

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