

Liability for Inducing a Corporation to Breach Its Contract

Alfred Avins

Follow this and additional works at: <http://scholarship.law.cornell.edu/clr>

 Part of the [Law Commons](#)

Recommended Citation

Alfred Avins, *Liability for Inducing a Corporation to Breach Its Contract*, 43 Cornell L. Rev. 55 (1957)
Available at: <http://scholarship.law.cornell.edu/clr/vol43/iss1/4>

This Article is brought to you for free and open access by the Journals at Scholarship@Cornell Law: A Digital Repository. It has been accepted for inclusion in Cornell Law Review by an authorized administrator of Scholarship@Cornell Law: A Digital Repository. For more information, please contact jmp8@cornell.edu.

LIABILITY FOR INDUCING A CORPORATION TO BREACH ITS CONTRACT

Alfred Avins†

1. THE PROTECTION OF THE CORPORATE VEIL

There is an absence of early case-law dealing with the liability of corporate officers, directors, employees and stockholders for inducing their own corporation to breach its contract. During the period when the doctrine of *Lumley v. Gye*¹ was first accepted and applied in the United States, courts apparently were not asked to do away with the protection afforded by the corporate veil and thereby attach such liability to these parties. Perhaps lawyers then felt it would be impossible to extend a new tort whose limits had not yet been defined, and whose basis—except where relief was granted to an employee who had been discharged,² or to an employer whose employees had been persuaded to leave their jobs³—was nebulous, if not non-existent, in light of the common law. Moreover, lawyers probably found little incentive to attach liability to corporate officers, directors, employees or stockholders, since in most cases it was much easier to recover from the corporation for breach of contract.

However, two factors arose which apparently influenced lawyers to the extent that they sought to overcome the protection of the corporate veil. The first of these was the extension of the doctrine of *Lumley v. Gye*⁴ to include the inducement of the termination of a contract between a corporation and a third person.⁵ If a corporation exercised a legal right to terminate its contract, it obviously would not be liable for breach of contract. Hence, the other party to the contract stood without a remedy unless those responsible for inducing the corporation to terminate its contract could be held liable *ex delicto*. Since, in the final analysis, the corporate officers decided that the corporation should terminate its contract, the disappointed party became interested in casting aside the corporate veil in order to hold the officers liable.

The second factor was the rise of the close corporation as a familiar form of business organization on the American economic scene. Corpora-

† See Contributors' Section, Masthead, p. 66, for biographical data.

¹ 2 El. & Bl. 216, 118 Eng. Rep. 749 (Q.B. 1853).

² See 29 A.L.R. 532 (1924).

³ See 84 A.L.R. 69 (1933); 26 A.L.R.2d 1255, 1259 (1952). This action has now fallen into disuse except where the acts committed were done with a design to compete unfairly with the plaintiff.

⁴ *Supra* note 1.

⁵ Restatement, Torts § 766c (1938); 84 A.L.R. 43 (1933); 26 A.L.R.2d 1227 (1952); Carpenter, "Interference with Contract Relations," 41 Harv. L. Rev. 728, 743 (1928); 7 Ore. L. Rev. 181, 301 (1928). See also, Avins, "Inducing the Termination of Contract," 24 Tem. L. Rev. 1089 (1957).

tions of this type at times were financially unable to respond in damages. Also, they provided a vehicle for those officers who wished to injure the other party to the contract by inducing a breach. Whether malicious breach of contract might form the basis of a tort action was somewhat doubtful;⁶ hence, the disappointed party often turned to the more familiar tort of inducing a breach of contract. It was here that the barrier of the corporate veil proved a stumbling block.

2. DIRECTORS

It seems that among corporate officers, directors, employees and stockholders, those most likely to be shielded from liability for inducing a breach of contract are the corporation's directors. The courts have recognized that directors are vested with the widest powers to make corporate policy, and that if they find that it is to the benefit of the corporation to breach its contract, they should not be held liable for inducing the corporation to do so.⁷ Of course, this assumes that such action was in good faith⁸ and for the benefit of the corporation.⁹

Thus, in *Schuster v. Largman*,¹⁰ the directors (who were also majority stockholders) of a close corporation induced the breach of an employment contract between the corporation and the plaintiff employee. In disallowing the plaintiff's claim against the directors, the court advanced the proposition that "in the exercise of their discretion and in acting on their judgment for the benefit of their corporation, the directors should be free from possible liability of that kind."¹¹

Another close corporation case illustrates this principle even more clearly. In *Application of Brookside Mills*,¹² the defendant, who was the corporation's director and secretary, was the person primarily responsible for the management of the corporation's business. The plaintiff had

⁶ Compare *Canister Co. v. National Can Corp.*, 96 F. Supp. 273 (D. Del. 1951) with *Schissall v. Fairchild Publications, Inc.*, 207 Misc. 224, 137 N.Y.S.2d 312 (Sup. Ct. N.Y. County 1955), Note, 41 Cornell L.Q. 507 (1956).

⁷ *Lukach v. Blair*, 108 Misc. 20, 178 N.Y. Supp. 8 (Sup. Ct. N.Y. County 1919), aff'd, 192 App. Div. 957, 182 N.Y. Supp. 935 (1st Dep't 1920).

⁸ *Bostelmann v. Rheinstein*, 268 App. Div. 1041, 52 N.Y.S.2d 281 (2d Dep't), aff'd, 294 N.Y. 822, 62 N.E.2d 245 (1945).

⁹ *Moskowitz v. Feuer*, 265 App. Div. 884, 38 N.Y.S.2d 242 (2d Dep't), aff'd, 291 N.Y. 568, 50 N.E.2d 659 (1943); *Downtown Harvard Lunch Club v. Racso, Inc.*, 199 Misc. 618, 106 N.Y.S.2d 805 (Sup. Ct. N.Y. County 1951). See *Scammell & Nephew Ltd. v. Hurley*, [1929] 1 K.B. 419.

¹⁰ 318 Pa. 26, 178 Atl. 45 (1935).

¹¹ *Id.* at 32, 178 Atl. at 47.

¹² 276 App. Div. 357, 94 N.Y.S.2d 509 (1st Dep't 1950). See also in accord, *Finkelstein v. Kesalp Realty Corp.*, 279 App. Div. 939, 111 N.Y.S.2d 282 (2d Dep't 1952); *Horan v. John F. Trommer, Inc.*, 124 N.Y.S.2d 217, 125 N.Y.S.2d 34 (Sup. Ct. N.Y. County 1953), aff'd, 283 App. Div. 774, 128 N.Y.S.2d 595 (1st Dep't 1954), Note, 30 N.Y.U.L. Rev. 1554 (1955) (where the two defendant directors owned all of the stock); and see *Rubin v. M. S. W. Hotels, Inc.*, 275 App. Div. 829, 89 N.Y.S.2d 241 (1st Dep't 1949).

contracted with the corporation to act as its general and exclusive selling agent. Thereafter a dispute arose between the plaintiff and the defendant over the prices of textiles manufactured by the corporation, and this resulted in a great reduction of the merchandise orders procured by the plaintiff's selling organization. The defendant then decided that it was necessary for the corporation to seek other outlets for the sale of its goods, and, hence, the corporation violated the terms of its contract. In a suit brought against the defendant for inducing the breach of contract, the court refused to find personal liability:

The decisions are clear that an officer or director of a corporation is not personally liable to one who has contracted with the corporation on the theory of inducing a breach of contract, merely due to the fact that, while acting for the corporation, he has made decisions and taken steps that resulted in the corporation's promise being broken.

To hold otherwise would be dangerous doctrine, and would subject corporate officers and directors continually to liability on corporate contracts and go far toward undermining the limitation of liability which is one of the principal objects of corporations.

. . . The only way in which a personal advantage to . . . [the defendant] . . . would be relevant to the issue . . . would be that . . . [he was] . . . to derive a personal gain from causing this contract to be broken.¹³

In accord with the above view is *Hicks v. Haight*¹⁴ wherein the plaintiff sought to hold the directors of a corporation, who were acting in their representative capacity, liable for procuring a breach of contract by the corporation. The court declared that it would be anomalous to hold an agent liable for a tort committed within the scope of his authority when liability did not attach to the principal for the same tort committed on his behalf and presumably for his benefit. Moreover, the court stated that as long as the plaintiff could recover from the corporation for breach of contract, no reason existed for extending liability to the directors, and that only if the corporation were financially insolvent should the directors become personally liable.

It would seem that the above test is not particularly satisfactory. A remedy for breach of contract does not preclude a tort remedy for inducing the breach.¹⁵ On the other hand, if the directors are not liable when the corporation is solvent, should the fact of insolvency create a tort which theretofore did not exist?

The immunity which the courts have granted to corporate directors has been extended by one case to a situation where the defendant, as

¹³ 276 App. Div. at 367-68, 94 N.Y.S.2d at 517-18.

¹⁴ 171 Misc. 151, 11 N.Y.S.2d 912 (Sup. Ct. Kings County 1939).

¹⁵ Restatement, Torts § 766 (1938). This applies even where the demand is liquidated. See, for example, *Moser v. Kremer*, 192 Misc. 85, 80 N.Y.S.2d 199 (Sup. Ct., App. T. 1st Dep't 1948).

chairman of the board of directors, conspired with the corporation to bring about a breach of contract and to divide the profits of the breach between himself and the corporation.¹⁶ In denying recovery, the court based its decision upon the principle that the corporate officer so inducing the breach was a mere agent of "his master," the corporation.¹⁷

However, the better rule, which apparently is followed by most courts, does not grant absolute protection to corporate directors. In short, those who act for their *own* benefit may be held personally liable. In *Remy Beverages, Inc. v. Myer*,¹⁸ the plaintiff had entered into a contract with a corporation whereby the latter agreed to sell its carbonated beverages to the plaintiff for exclusive resale in certain designated localities. The directors induced the corporation to breach its contract, and the plaintiff consequently lost its trade and went out of business. The corporation subsequently moved into the designated localities and acquired the trade which formerly belonged to the plaintiff. In the suit brought against the corporation's directors, the court agreed with the general rule that directors may not be held personally liable for inducing their corporation to breach its contract. It pointed out that the theory of such immunity was that the directors act as agents of the corporation and, accordingly, the whole transaction merely constitutes a breach on the part of the corporation. (Of course, this theory begs the entire question, since the very problem is whether directors who induce the corporation to breach its contract act merely as its instruments or as independent tortfeasors.) The court tacitly recognized the inadequacy of this theory when it stated that such immunity was sound from a practical viewpoint; if directors were held personally liable for inducing a breach of contract, they might be deterred from acting upon their best judgment for the interests of the corporation. In other words, sound business judgment should not be hindered by fear of personal liability.

However, in the *Remy Beverages* case the directors were held personally liable under an exception to the general rule:

The exemption from personal responsibility which the mentioned rule confers is not absolute; it is but a privilege; the immunity thus granted rests primarily upon the privilege to advise, but the advice given must be honest and the act done in good faith . . . [W]here the breach of the contract is induced it must not be without reasonable justification or excuse It would be an anomalous rule which would condemn one to respond in damages for wantonly inducing a breach of contract and ap-

¹⁶ *J. E. Brulastour, Inc. v. Wilmer & Vincent Corp.*, 63 N.Y.S.2d 54 (Sup. Ct. N.Y. County 1946).

¹⁷ *Id.* at 57.

¹⁸ 56 N.Y.S.2d 828 (Sup. Ct. Bronx County), *aff'd*, 269 App. Div. 1013, 59 N.Y.S.2d 371 (1st Dep't 1945).

prove of such a wrongful act and immunize the actor from legal accountability therefor simply because in so doing he acted as an officer or director of a corporation or in the capacity of an agent or servant.¹⁹

A somewhat extreme view was taken by the court in *De Jetley Marks v. Greenwood*.²⁰ As a defense the directors alleged they had good cause to induce the company to breach its contract with the plaintiff, since the latter's unwise purchases were forcing the corporation into debt. However, the court did not agree with this contention:

The good cause which excuses the procurement of a breach of contract must be something more than a belief by the . . . [directors] . . . that the company might become insolvent if the contract were not broken. To allow such cause to be sufficient would be to excuse the procurement of a breach where a breach itself could not be justified The justification must . . . involve an action taken as a duty, not the mere protection of defendants' own interest.²¹

While such language seemingly goes too far in attaching liability to directors, it does indicate that this group does not have a complete charter of immunity in inducing their corporation to breach its contract with another.

3. CORPORATE OFFICERS

Corporate officers likewise enjoy a wide measure of immunity, and once again public policy plays an important role. Since the officers hold policy-making positions, their freedom of action aimed toward corporate benefit should not be curtailed by fear of personal liability. However, when the action is detrimental to the corporation and outside the scope of corporate authority, immunity ceases to exist.²² In *Burr v. American National Theatre*,²³ one of the parties was a corporate officer who had induced his corporation to breach its contract with the plaintiff. Even though the complaint alleged this particular officer had acted for his own personal interest, the court refused to find personal liability because such interest had not been adverse to the interests of the corporation.²⁴ Similarly, it has been held that a willful refusal to pay an unliquidated claim does not afford the basis for a separate and independent suit against corporate officers who induce such action.²⁵

¹⁹ *Id.* at 830. This case was followed in *Ehrlich v. Alper*, 145 N.Y.S.2d 252 (Sup. Ct. Bronx County 1955), *aff'd*, 1 App. Div. 2d 875, 149 N.Y.S.2d 562 (1st Dep't 1956) (Corporate directors held liable for inducing a breach to benefit themselves although they committed no independent tort). Note, 31 N.Y.U.L. Rev. 497 (1956).

²⁰ [1936] 1 All E.R. 363.

²¹ *Id.* at 873.

²² *Morris v. Blume*, 55 N.Y.S.2d 196 (Sup. Ct. N.Y. County 1945). And see 26 A.L.R.2d 1270 (1952).

²³ 103 N.Y.S.2d 589 (Sup. Ct. N.Y. County), *aff'd*, 278 App. Div. 908, 105 N.Y.S.2d 901 (1st Dep't 1951).

²⁴ 103 N.Y.S.2d at 592.

²⁵ *Terry v. Tachery*, 272 S.W.2d 157 (Tex. Civ. App. 1955).

But where the corporate officer induces the breach to benefit himself or to injure the other party to the contract, personal liability is imposed.²⁶ The same is true where the corporate officer induces a breach of contract which is against the best interests of the corporation.²⁷

Of course, the procuring of the breach of contract may be accompanied by another independent tort. Thus, a corporate officer was held personally liable for inducing a breach of contract when he converted a note retained by the corporation which the latter had agreed to pledge to the plaintiff as collateral security for a debt.²⁸ Similarly, in *Dickerson v. Dickerson*,²⁹ the court intimated that if the plaintiff had proved that the corporation's president had induced his corporation to cancel its contract with the plaintiff by falsely accusing the latter of stealing cattle, the president could have been held personally liable for inducing the cancellation. This case is particularly interesting because it involved a contract which was subject to cancellation by either party, with or without reason, upon ten days notice.

In summation, the cases seemingly stand for the proposition that a corporate officer who acts for the benefit of the corporation will be free from liability, but where corporate benefit is not present, the officer may be required personally to respond in damages.

4. EMPLOYEES

Because an employee usually does not hold a policy-making position in his corporation, his immunity against any action for inducing a breach of contract is much narrower in scope than that of a director or officer. Nevertheless, an employee is shielded from personal liability when he induces a breach in good faith and for the benefit of the corporation.³⁰

A leading case on this point is *Said v. Butt*.³¹ After the plaintiff had criticized the management of a theatre owned by the corporation, he was not allowed to purchase a ticket for the opening night of a play. He then had a friend buy the ticket and when he appeared that night at the theatre, the theatre manager ordered him ejected. The plaintiff failed in his suit against the theatre manager for inducing a breach of contract; the latter had acted within the scope of his authority and for the best interest of the corporation.

²⁶ *Louis Kamm v. Flink*, 113 N.J.L. 582, 175 Atl. 62 (1934). A similar case, although the issue was not passed upon directly is *Hornstein v. Podowitz*, 254 N.Y. 443, 173 N.E. 674 (1930).

²⁷ *Rendich v. Preferred Mutual Fire Ins. Co. of Chenango County*, 274 App. Div. 800, 79 N.Y.S.2d 501 (2d Dep't 1949).

²⁸ *Carpenter v. Williams*, 41 Ga. App. 685, 154 S.E. 298 (1930).

²⁹ 197 La. 903, 2 So. 2d 643 (1941).

³⁰ *Greyhound Corp. v. Commercial Casualty Ins. Co.*, 259 App. Div. 317, 19 N.Y.S.2d 239 (1st Dep't 1940).

³¹ [1920] L.R., 3 K.B. 497.

. . . [T]he servant who causes the breach of his master's contract with a third person . . . is the alter ego of his master. His acts are in law the acts of his employer. In such a case it is the master himself, by his agent, breaking the contract he has made, and . . . an action against the agent under the *Lumley v. Gye* principle must therefore fail . . .³²

Another case on this point is *Nathanson v. Brown & Williamson Tobacco Corp.*³³ The plaintiff's contract with the corporation provided for the payment of certain commissions, but the employees of the corporation induced it to breach its contract by selling the corporation's products at a price too low for commissions to be paid. The plaintiff did not succeed in his suit against the employees because he did not allege that the defendants derived any personal benefit.

Since a corporation can act only by its employees and since whatever they do in relation to corporate business is corporate and not individual action, the conspiracy charge fails. Any other rule would make it impossible for corporate business to be carried on at all except at the peril that every agent who advised concerning corporate action would be suable under some such allegations as are made in this complaint.³⁴

There remains the question as to what motive will be sufficient to impose liability upon the employee for inducing the breach of contract, or, to phrase the question in another manner, what motive will make the employee's action one for his own benefit. *A.S. Rampell, Inc. v. Hyster Co.*³⁵ is a recent case which illustrates the problem and indicates a possible solution. The plaintiff was a distributor of the defendant company under a contract which either party could terminate at will; the complaint alleged, *inter alia*, that the defendant's district sales manager induced the defendant to terminate the contract, whereupon the defendant took over the plaintiff's business and function. The motive behind the manager's act was alleged to be his desire for advancement and promotion in the defendant company. In dismissing the complaint, the court stated:

The general rule is that an . . . employee of a corporation is immune from personal tort liability for inducing breach by his firm of its obligations . . . (citations omitted) Such act is presumed to be done in the interest of his corporation even though it may have been marked with excess of zeal or personal malice to plaintiff. Individual liability may, however, be imposed where his acts involve *individual* and *separate torts* distinguishable from acts solely on his employer's behalf or where his acts are performed *in his own interest and adverse* to that of his firm.³⁶ (Emphasis added.)

³² Id. at 505-06.

³³ 189 Misc. 1024, 68 N.Y.S.2d 914 (Sup. Ct. N.Y. County 1947).

³⁴ Id. at 1030, 68 N.Y.S.2d at 919.

³⁵ 1 Misc. 2d 788, 148 N.Y.S.2d 102 (Sup. Ct. N.Y. County), modified and aff'd, 153 N.Y.S.2d 176 (1st Dep't 1956).

³⁶ 1 Misc. 2d at 792, 148 N.Y.S.2d at 106.

The court also declared that "doing certain acts to secure promotion is within the scope of one's employment," and distinguished this from the situation where acts were done with the intent of acquiring personal profit without any benefit accruing to the corporation.

Hence, the test of personal liability is whether or not the employee's acts were intended to benefit the corporation. Another case which is in accord with this test is *Navarro v. Fiorita*.³⁷ The complaint alleged that the corporation's general manager had maliciously removed products from the corporation's warehouse, thereby depriving the plaintiff of his commissions on export orders. Since the plaintiff was entitled to the commissions under an employment contract with the corporation, he brought suit against the general manager for malicious interference with that contract. In overruling the defendant's motion to dismiss, the court declared that a cause of action will lie where an officer or employee induces the corporation to violate a contractual obligation in bad faith and with dishonesty of purpose or ulterior motive. The court thus recognized that an employee has no charter of immunity when he uses the corporation as a vehicle to serve his own ends.

The most frequent situation giving rise to liability in this area is where an employee induces the corporation to discharge another employee. Since the courts have recognized that such inducement is quite often motivated by personal feelings, defendants have found but limited success in pleading corporate immunity.³⁸ Support for this position is found in those cases which have held that an employee of a public agency may maintain a suit against another employee or official of that agency who procured his discharge, when the party who brought about the discharge acted because of personal motives rather than the public benefit.³⁹

Thus, in *Vassardakis v. Parish*,⁴⁰ the court held that the complaint stated a cause of action when it alleged that the general manager had induced the corporation to discharge the plaintiff because of spite, ill-will, vindictiveness, and solely to serve his own interests. Similarly, *Allison v. American Airlines*⁴¹ held that if the defendant employee mis-

³⁷ 271 App. Div. 62, 62 N.Y.S.2d 730 (1st Dep't 1946), aff'd, 296 N.Y. 783, 71 N.E.2d 468 (1947), Note, 46 Colum. L. Rev. 1039 (1946). This case was followed in *Buckley v. 112 Central Park South, Inc.*, 285 App. Div. 331, 136 N.Y.S.2d 233 (1st Dep't 1954), Notes, 30 N.Y.U.L. Rev. 1555 (1955); 31 N.Y.U.L. Rev. 497 (1956).

³⁸ See *McGurk v. Cronemwett*, 199 Mass. 457, 85 N.E. 576 (1908), where the court held that an action lay against an officer of the corporation for inducing the corporation to discharge an employee.

³⁹ See, *Graham v. Hubert*, 58 Ga. App. 19, 197 S.E. 335 (1938); *Bullock v. School Dist.* 241, 75 Idaho 304, 272 P.2d 292 (1954); *Caverno v. Fellows*, 300 Mass. 331, 15 N.E.2d 483 (1938).

⁴⁰ 36 F. Supp. 1002 (S.D.N.Y. 1941). Accord, *Weinstein v. Banks*, 279 App. Div. 764, 109 N.Y.S.2d 185 (2d Dep't 1951).

⁴¹ 112 F. Supp. 37 (D. Okla. 1953).

represented certain facts to induce the corporation to discharge the plaintiff and because of such misrepresentations the corporation did discharge the plaintiff, the latter could recover both compensatory and punitive damages from the employee for procuring his discharge. However, the court also stated that if the employee acted for the benefit of the corporation, no cause of action would exist.⁴² Hence, the rule appears to be that an employee will not be personally liable if he induces the corporation to discharge a fellow employee solely for the corporation's benefit or in the course of his duties.

5. STOCKHOLDERS

In considering the liability of corporate officers, directors, employees and stockholders for inducing their own corporation to breach its contract, it should be noted that stockholders face the greatest danger insofar as liability is concerned. Of course, this group cannot be described as the alter ego of the corporation, because the latter acts through its agents but not through its stockholders. Hence, the theory of immunity for this group seems to be that stockholders act to protect their own interests.⁴³ Support for this theory is found in the cases which have held that a person may speak out to protect his own interests,⁴⁴ or give disinterested advice⁴⁵ (especially where there is a confidential relationship⁴⁶), even though he thereby induces a breach of contract.

This rule is illustrated by *Petit v. Cuneo*.⁴⁷ The defendant held a large block of stock in a corporation which had secured the services of the plaintiff under an employment contract providing for compensation to be fixed by the corporation's executive committee. After the committee had decided upon the amount to be paid the plaintiff, they were influenced by the defendant to reduce the compensation. The plaintiff thereupon brought suit against the defendant for the difference. Since the directors are elected to represent the stockholders, who are the corporation's real owners and whose money is involved, the court held that a stockholder can influence the action of the directors with respect to the amount to be paid for services rendered to the corporation.

⁴² Id. at 38.

⁴³ Restatement, Torts § 769 (1938):

One who has a financial interest in the business of another is privileged purposely to cause him not to enter into or continue a relation with a third person in that business if the actor (a) does not employ improper means, and (b) acts to protect his interest from being prejudiced by the relation.

Comment (a) illustrates this rule with the cases of a partner or stockholder.

⁴⁴ *Owens v. Automotive Engineers, Inc.*, 208 Okla. 251, 255 P.2d 240 (1953).

⁴⁵ *Arnold v. Moffitt*, 30 R.I. 310, 75 Atl. 502 (1910). And see Note, 56 L.Q. Rev. 303 (1940).

⁴⁶ *Lawless v. Brotherhood of Painters, Decorators and Paperhangers of America*, 300 P.2d 159 (Cal. App. 1956). And see Restatement, Torts § 770.

⁴⁷ 290 Ill. App. 16, 7 N.E.2d 774 (1937).

This rule is especially applicable to a close corporation,⁴⁸ since any loss to the corporation directly affects the stockholders who have a greater financial interest in the detailed activities of the corporation. Here it would seem much easier to find a legitimate personal interest by the individual stockholders, for there is greater reason to identify the stockholders with the close corporation than with the public issue corporation.

A case which appears to lend some support to this position is *Braden v. Perkins*,⁴⁹ where the court held that a partner could not be held liable *ex delicto* for inducing a breach of contract by his partnership. The court reasoned that his duty to the other partners gave him an absolute right to interfere with the contract, and that such interference was privileged and justifiable. On the other hand, *Phillips & Benjamin Co. v. Ratner*⁵⁰ held that the fact that a manufacturer had a contract claim against its sales agent's subsidiary would not preclude an additional claim against the sales agent for inducing a breach of contract where the agent had instructed its subsidiary not to pay the debt. This case represents an extreme view of a stockholder's liability for inducing the corporation to breach its contract. It might seriously impede the operations of a close corporation, especially if extended to cases of individual stockholders and one-man corporations.

Of course, even in close corporations liability will be imposed upon a stockholder who induces a breach of contract, not to protect his own interests, but to injure another. In *Pennington Trap Rock Corp. v. Pennington Quarry Co.*,⁵¹ the individual defendant was the sole owner of the corporate defendant's stock; he caused a violation of the corporate defendant's lease with the plaintiff by failing to keep a quarry and certain machinery in good repair. The individual defendant was held personally liable on the ground that he had maliciously and unjustifiably ordered the tort to be committed.⁵² In accord with this decision is *Morgan v. Andrews*,⁵³ wherein the defendant stockholder, who was also the corporation's factory manager, maliciously and without good cause persuaded the corporation to reject the plaintiff's machine. There is sound reason for holding stockholders liable in such cases. The stockholders were not acting to protect their own interests but rather were giving expression

⁴⁸ *Vaporate Co. v. Peerless Film Processing Corp.*, 77 N.Y.S.2d 459 (Sup. Ct. N.Y. County 1947).

⁴⁹ 174 Misc. 885, 22 N.Y.S.2d 144 (Sup. Ct. N.Y. County 1940).

⁵⁰ 206 F.2d 372 (2d Cir. 1953).

⁵¹ 22 N.J. Misc. 318, 38 A.2d 869 (1944). See also the concurring opinion of Judge Clark in *Republic of Italy v. DeAngelis*, 206 F.2d 121 (2d Cir. 1953) at 126.

⁵² See also *Lien v. Northwestern Engineering Co.*, 73 S.D. 84, 39 N.W.2d 483 (1949).

⁵³ 107 Mich. 33, 64 N.W. 869 (1895). And see, for a similar result, *Aalfo Co. v. Kinney*, 105 N.J.L. 345, 144 Atl. 715 (1929).

to their personal feelings against the particular plaintiffs. There is no public policy which protects a person who wishes to injure another; in such cases protection by means of the corporate veil is not justified.

6. CONCLUSION

Officers, directors, agents or employees who have an interest in the activities of a corporation or the duty to advise or direct such activities should be immune from liability for inducing the corporation to breach its contract, assuming their actions are in pursuit of such interests or duties. Public policy demands that so long as these parties act in good faith and for the best interests of their corporation, they should not be deterred by the danger of personal liability. Any other position would make the limited liability of a corporation somewhat meaningless.

On the other hand, the corporate veil should not stand as a means of protection for those who choose to employ corporate power to serve their own ends. Tort liability should be swiftly imposed whenever an officer, director, employee or stockholder induces a breach of contract for private benefit or to satisfy personal feelings against a third party. The limited liability of the corporate charter was granted for corporate purposes. Where such purposes no longer exist, there should be no limited liability.