

# What is Tortious Interference?

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The Bullet Point is a biweekly update of recent, unique, and impactful cases in Ohio state and federal courts in the area of commercial litigation.

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### Libel

***Grubb & Associates LPA v. Brown, 9th Dist. Lorain No. 17CA011201, 2018-Ohio-3526.***

This was an appeal of the trial court's decision to grant a motion to dismiss in a libel case. In July 2014, a local newspaper published an article entitled "Former client sues attorney". The article described the claims filed against the plaintiff, as well as the underlying facts in support of the claims. The article also included statements from the client's attorney, the defendant in this action.

The plaintiff then sued the newspaper and the former client's attorney alleging defamation per se (libel) and tortious interference with a business relationship. The defendants moved to dismiss, and the trial court granted the motion.

Plaintiffs appealed, and on appeal the Ninth Appellate District affirmed. In so ruling, the court found that the newspaper had only printed factual assertions and matters and therefore had not made a false statement of fact as required to state a claim for libel.

***The Bullet Point:*** To establish a claim for libel, a party must demonstrate five elements:

1. that a false statement of fact was made,
2. that a false statement of fact was made,
3. that a false statement of fact was made,
4. that a false statement of fact was made,
5. that a false statement of fact was made,

Whether a statement is actionable for libel is a question for a court to decide. Written matter, such as the article at issue in this case, “is libelous per se if, on its face, it reflects upon a person’s character in a manner that will cause him to be ridiculed, hated, or held in contempt; or in a manner that will injure him in his trade or profession.”

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### Standing to Foreclose

#### ***HSBC Bank USA v. Brinson, 9th Dist. Summit No. 28783, 2018-Ohio-3467.***

This was an appeal of the trial court’s decision to grant a mortgage lender summary judgment in a foreclosure action. The defendant claimed that the evidence established that the plaintiff lacked standing to foreclose. While the trial court disagreed, the Ninth Appellate District reversed, finding that a question of fact existed as to when the lender came into possession of the promissory note as required to establish its standing to foreclose.

**The Bullet Point:** A plaintiff in a foreclosure action must have standing at the time it files the complaint in order to invoke the jurisdiction of the court. In the Ninth Appellate District, in order to have standing to foreclose a mortgage and to seek a judgment on a note, the plaintiff must hold both the note and the mortgage prior to filing the complaint. To establish one is the “holder” of a promissory note, it must be established that the note was indorsed in blank or to that person and that the holder had possession prior to the commencement of a lawsuit. This sometimes requires evidence of when and how the individual or entity came into possession of the note. While courts are split on the type of evidence needed to establish possession of a promissory note, in the Ninth Appellate District something more than a vague statement that the lender had possession “at the time of filing the complaint” is typically needed.

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### Law of the Case

#### ***Keybank N.A. v. Thalman, 8th Dist. Cuyahoga No. 106250, 2018-Ohio-3367.***

This case involved the application of the “law of the case doctrine.” The underlying action involved various disputes over how a trust and its assets should be managed by the trustee, KeyBank. The dispute resulted in a lawsuit and various claims filed against the trustee and the beneficiaries of the trust. Eventually, KeyBank was awarded summary judgment and the beneficiaries appealed. On appeal the Eighth Appellate District reversed, and the case was remanded. A trial then occurred and again KeyBank was awarded judgment. The beneficiaries appealed a second time and for a second time the Eighth Appellate District reversed, this time on the basis of the law of the case doctrine.

**The Bullet Point:** “The law-of-the-case doctrine provides that the decision of a reviewing court in a case remains the law of that case on the legal questions involved for all subsequent proceedings in the case at both the trial and reviewing levels.” The law-of-the-case doctrine is a rule of practice that ensures consistency of results in a case, avoids endless litigation of settled issues, and preserves the structure of superior and inferior courts as designed by the Ohio Constitution.

## Tortious Interference with a Business Relationship

### *N. Chemical Blending Corp. v. Strib Industries, Inc., 8th Dist. Cuyahoga No. 105911, 2018-Ohio-3364.*

This was an appeal of the trial court's decision to grant the defendant summary judgment. Plaintiff operated a chemical blending company, and the defendant does similar work. For many years the plaintiff would subcontract with the defendant for customers who required smaller packaging. Defendant, in turn, was paid a certain percentage for the work it did. Eventually the parties entered into a confidentiality/non-disclosure agreement. Thereafter, plaintiff entered into a relationship with another company and had the defendant, pursuant to the subcontract, perform the work. A few years later, that company ceased doing work with the plaintiff and began to work directly with the defendant. Plaintiff eventually sued the defendant for, among other things, tortious interference with business relations.

The trial court granted defendant's motion for summary judgment, and the plaintiff appealed. On appeal the Eighth Appellate District affirmed. Regarding the tortious interference claim, the court found that there was no evidence that the defendant used improper means to terminate the plaintiff's relationship with its client.

**The Bullet Point:** "The elements of a tortious interference with a business relationship claim require

1. a business relationship;
2. the wrongdoer's knowledge of the relationship;
3. the wrongdoer's intentional and improper action taken to prevent a contract formation, procure a contractual breach, or terminate a business relationship;
4. a lack of privilege; and
5. resulting damages."

Tortious interference with a business relation occurs when "a person, without privilege, induces or otherwise purposely causes a third party not to enter into, or continue, a business relationship, or perform a contract with another."

"Whether the business relationship is an at-will relationship does not in and of itself preclude a finding that the defendant tortiously interfered with the business relationship and, therefore, is not dispositive of the claim.[...] On the other hand, interference with the business relationship alone is insufficient to sustain a cause of action for tortious interference." Rather, courts look at a totality of the circumstances, including "(a) the nature of the actor's conduct, (b) the actor's motive, (c) the interests of the other with which the actor's conduct interferes, (d) the interests sought to be advanced by the actor, (e) the social interests in protecting the freedom of action of the actor and the contractual interests of the other, (f) the proximity or remoteness of the actor's conduct to the interference, and (g) the relations between the parties."

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