

IN THE SUPREME COURT OF TEXAS

No. 98-1053

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, PETITIONER

v.

FINANCIAL REVIEW SERVICES, INC., RESPONDENT

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE FOURTEENTH DISTRICT OF TEXAS

Argued October 6, 1999

JUSTICE ENOCH, joined by JUSTICE OWEN and JUSTICE BAKER, dissenting.

The Center for Health Excellence precipitated a fee dispute with an insurer of a number of the Health Center's patients when it hired a bill collecting firm, Financial Review Services. Financial Review promised the Health Center that it could find unbilled charges, that it would bill those who owed for uncharged services, and that the cost of its billing services would be a percentage of what it collected. Not surprisingly, when notified of charges due, the insurer was unpersuaded that services had been provided to its insureds for which it had, either directly or indirectly on behalf of its insureds, not been previously billed. And it fought back. But what is surprising, is this Court's conclusion that the insurer seemingly owes a duty to the bill collecting firm to not get it fired by the Health Center as a result of the dispute. Because I believe that, as a matter of law, Financial Review cannot establish the elements of tortious interference with contract, I

respectfully dissent.

To reach its decision, the Court initially concludes that although Financial Review is the Health Center's agent for collecting unbilled charges, that fact is no barrier to Financial Review's tortious interference with contract cause of action against Prudential. The Court then holds that Prudential did not conclusively establish that its interference with Financial Review's contracts was justified. But the fact that Financial Review *was* the Health Center's agent to collect the unbilled charges against Prudential *is* the dispositive fact.

Only a stranger to a contract can tortiously interfere with that contract.¹ The parties to a contract, therefore, cannot as a matter of law tortiously interfere with that contract.² Nor can the parties' agents while they are acting in their principals' interests.³ The efficacy of this latter proposition is self-evident in the context of corporate entities. Corporations cannot act but through agents, who are usually but not always, its employees.⁴ Necessarily then, Texas law views a principal and its agent as the same legal entity when the agent deals with others on behalf of the principal.⁵

Holding, as the Court does, that one contracting party may be exposed to tort liability for the firing of the other party's agent unduly muddles this established principle. Moreover, the decision's

¹ See *Morgan Stanley & Co. v. Texas Oil Co.*, 958 S.W.2d 178, 179 (Tex. 1997) (citing *Holloway v. Skinner*, 898 S.W.2d 793, 797 (Tex. 1995)).

² See *Baker v. Welch*, 735 S.W.2d 548, 549 (Tex. App.–Houston [1st Dist.] 1987, writ dismissed).

³ See *Morgan Stanley*, 958 S.W.2d at 179.

⁴ See *Holloway*, 898 S.W.2d at 795.

⁵ *Morgan Stanley*, 958 S.W.2d at 182 (Enoch, J., concurring).

effect is heedless of the potential for unlimited expansion of the tort. For example, any employee of the Health Center who is discharged by the Health Center because of the Health Center's dispute with Prudential will have a cause of action for tortious interference with contract against Prudential. But the foundation of agency law is that the agent and its principal are the same entity with respect to the principal's contracting party. A corollary proposition then is that the contracting party cannot be a third-party to the other party's agency relationship. Because in this case Financial Review is the same entity as the Health Center as far as Prudential is concerned, Financial Review cannot establish the elements of tortious interference with a contract for its claim against Prudential.

The Court errs in permitting Financial Review to act as the Health Center's agent in billing Prudential and then allowing it to interpose its agency contract to split its identity from the Health Center, enabling it to hold Prudential liable for its being fired because Prudential objected to that billing. The great flaw in the Court's adopting Financial Review's theory that it can sue Prudential for tortiously interfering with its agency contract is that this theory potentially converts into a tort every breach of contract claim when one party to the contract is represented by an agent. The mischief of the Court's reasoning is particularly evident in this case. Here, the Health Center has not even claimed that its contract with Prudential has been breached, but rather it fired its agent for mishandling that contract.

The Court, rejecting Prudential's position, asserts that Prudential asks us to draw too broad a principle – that an agent cannot sue a third-party for tortious interference with its agency contract. But the Court recasts Prudential's argument in order to avoid a critical element of the argument. Prudential is not a third-party to Financial Review's agency contract with the Health Center because

that contract makes Financial Review one with the Health Center with respect to Prudential. This does not foreclose actions against true third-parties. Another bill auditing company seeking to replace Financial Review, for example, could interfere with Financial Review's agency contract with the Health Center. This is so because Financial Review's agency contract does not make it one with the Health Center with respect to this other auditing company. As well, were Prudential to have engaged in some conduct, not related to its dispute with the Health Center over the billing, with the intent that Financial Review's agency be terminated, then that would be tortious interference. And this is so because outside the context of Prudential's contract with the Health Center, Prudential would not be dealing with Financial Review as the Health Center's agent.

Finally, the Court suggests that the concerns in *Morgan Stanley*⁶ and *Holloway*⁷ are not present here, and that those cases are therefore inapposite. But the Court errs in its judgment because in its reasoning, it too easily dismisses these cases. On the surface, *Morgan Stanley* and *Holloway* can be distinguished because in those cases the principal's agent did not sue, but *was* sued, for tortious interference. Below the surface of those decisions, though, underlies the agency principle that pervades this decision.

Both cases are predicated on the principle that because principals and agents are legally the same entity, they are both considered party to a contract the principal makes with another. And both cases recognize that if both principal and agent are party to a contract for which tortious interference is alleged, the tort is confounded because parties to a contract cannot tortiously interfere with it as

⁶ 958 S.W.2d 178.

⁷ 898 S.W.2d 793.

a matter of law. Consequently, to allow the claim to proceed, the Court had to identify some factor that would separate the legal identity of principal and agent such that the agent could be considered a third-party to the contract. Thus, those cases held that when agents are sued for tortious interference by a party to the principal's contract, the agents are only liable if they break the identity of interests between principal and agent by acting in their own self-interest at the expense of the principal's.⁸

Here, by contrast, it is not even suggested that Financial Review's identity of interests that bonded its legal identity to that of its principal was abrogated. And *Holloway* flatly states that "[w]hen there is a complete identity of interests [between principal and agent], there can be no interference as a matter of law."⁹

Conclusion

Financial Review was hired by the Health Center to negotiate on its behalf for payment of previously unbilled services from Prudential. As a matter of law, Financial Review, the agent, and the Health Center, the principal, are the legal equivalent for the purposes of bill collecting under the Health Center's contract with Prudential. Now that it has been fired, Financial Review cannot cleave its legal identity from that of the Health Center's and point to its agency contract in order to claim tortious interference with contract. Because as a matter of law Prudential is not a third-party to Financial Review's agency relationship with the Health Center, Financial Review cannot establish the elements of tortious interference with contract as a matter of law. Therefore the court of appeals'

⁸ See *Morgan Stanley*, 958 S.W.2d at 179 (quoting *Holloway*, 898 S.W.2d at 797.).

⁹ *Holloway*, 898 S.W.2d at 797.

judgment should be reversed. I respectfully dissent.

Craig T. Enoch
Justice

Opinion delivered: June 29, 2000