

A solid yellow right-angled triangle pointing towards the top-left corner.

BLOGS

Tortious Interference

Tenth Circuit Upholds Business Competitor Privilege Against Tortious Interference Claim

In *Utility Trailer Sales of Kansas City, Inc. v. MAC Trailer Manufacturing, Inc., et al.*, 2001 U.S. App. LEXIS (10th Cir. Oct. 5, 2011), MAC and Utility entered into a dealer agreement, which granted Utility the right to “be the only dealer authorized or licensed by MAC in the [Kansas City] area” to sell MAC trailers. The dealer agreement also provided that neither MAC nor any other MAC dealer was prohibited from selling MAC trailers in the Kansas City area.

Several years after executing the dealer agreement, Utility filed a complaint in federal district court alleging that MAC, Transwest (a MAC dealer in Colorado), and Summit (a sister company of Transwest) had entered into a sham agreement under which Summit would operate a de facto MAC dealership in Kansas City by selling MAC trailers that it would obtain from Transwest. Utility contended that the conduct gave rise to claims for tortious interference with contract and tortious interference with prospective business advantage. In defense of those claims, MAC and Summit argued that their actions were protected by the business competitor privilege, which states that a party that intentionally causes a third person not to enter into a prospective contractual relationship with another who is his competitor does not interfere with the other’s relation if the actor does not employ “wrongful means.” After a jury trial on the issue, the district court determined as a matter of law that Utility failed to show that MAC and Summit employed “wrongful means” in competing with Utility.

In affirming the trial court’s decision, the Tenth Circuit noted that Utility’s dealer agreement stated that neither MAC nor any other MAC dealer was restricted from selling MAC products at any time or in any place to any person. Because the dealer agreement contemplated at least some competition, the appellate court held that MAC and Summit were entitled to assert the business competitor privilege. The Tenth Circuit also held that none of Utility’s evidence established the requisite “wrongful means” necessary to overcome the privilege.