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Chapter 31

ABUSE OF PROCESS

Section

682. General principle

§ 682. General principle

One who uses a legal process, whether criminal or civil, against another primarily to accomplish a purpose for which it is not designed, is subject to liability to the other for harm caused by the abuse of process.

Comment:

a. The gravamen of the misconduct for which the liability stated in this Section is imposed is not the wrongful procurement of legal process or the wrongful initiation of criminal or civil proceedings; it is the misuse of process, no matter how properly obtained, for any purpose other than that which it was designed to accomplish. Therefore, it is immaterial that the process was properly issued, that it was obtained in the course of proceedings that were brought with probable cause and for a proper purpose, or even that the proceedings terminated in favor of the person instituting or initiating them. The subsequent misuse of the process, though properly obtained, constitutes the misconduct for which the liability is imposed under the rule stated in this Section.

Illustrations:

1. A, the master and owner of a vessel, mortgages it to B, with a stipulation that A shall retain the possession of the vessel and make voyages in it. In order to compel A to give up the register of his vessel, to which B was not entitled under the terms of the mortgage, B causes a *capias* to issue in an action to recover the amount loaned, knowing that A cannot pay the money or obtain bail. A is arrested under *capias* and kept in prison until he gives up the register, his lack of which prevents him from making several profitable voyages. B is subject to liability to A for abuse of process, although the proceedings have not terminated in A's favor and irrespective of whether B has probable cause for the action in which the *capias* was issued.

See Appendix for Reporter's Notes, Court Citations, and Cross References

2. A obtains a judgment against B for a debt owed by him. After the debt has to his knowledge been paid, A takes out execution on the judgment. A is subject to liability to B for abuse of process.

3. A, an attorney to whom C has entrusted the collection of a debt owed by B, assigns C's claim to D, who resides some distance from B. In accordance with A's instructions D brings an action as assignee and causes a subpoena to issue at a time when it is extremely inconvenient for B to appear, A's purpose being to force B to pay the claim rather than to undergo the inconvenience of appearance. B not appearing, A causes a bench warrant to issue for his arrest under which B is fined and execution against his body is ordered. Before this order is carried out, B brings his action against A. A is subject to liability to B for abuse of process.

b. "*Primarily.*" The significance of this word is that there is no action for abuse of process when the process is used for the purpose for which it is intended, but there is an incidental motive of spite or an ulterior purpose of benefit to the defendant. Thus the entirely justified prosecution of another on a criminal charge, does not become abuse of process merely because the instigator dislikes the accused and enjoys doing him harm; nor does the instigation of justified bankruptcy proceedings become abuse of process merely because the instigator hopes to derive benefit from the closing down of the business of a competitor.

For abuse of process to occur there must be use of the process for an immediate purpose other than that for which it was designed and intended. The usual case of abuse of process is one of some form of extortion, using the process to put pressure upon the other to compel him to pay a different debt or to take some other action or refrain from it. See Illustrations 1, 2 and 3 above.

Illustration:

4. A is a dangerously insane person. B, her son, instigates lunacy proceedings against her, seeking to have her confined for the protection of herself and others. His motive in doing so is to succeed to the control of her property after she is committed. This is not abuse of process.