

Pitcher-Victims of Major League Baseball “Illegal” Sign Stealing Should Have Viable Tortious Interference with Contractual Relations Claims Against the Opposing Teams

JOSHUA D. WINNEKER, DAVID GARGONE, AND DANIELLE CLIFFORD*

In baseball, sign stealing occurs when a team deciphers their opponent’s signals meant to convey the pitcher’s upcoming pitch.¹ Since the nineteenth century, sign stealing has been a part of baseball.² Having the ability to know the pitch before the pitcher throws the ball gives a decided advantage to the batter. Consequently, teams always try to decode signs from the opposing catchers and third-base coaches.³ Sign stealing is not always “illegal” or against the rules; indeed, if a team can figure out their adversary’s signs simply by paying close attention and without in-game electronics, binoculars, or other foreign objects, then it is considered an acceptable part of the game.⁴

In baseball’s recent past, however, there have been two major sign stealing scandals: one involving the 2017 Houston Astros and another with the 2018 Boston Red Sox. In both incidents, the teams used live electronic equipment to capture their opposition’s signals, which contravened Major

* Joshua D. Winneker, J.D., Associate Professor, Misericordia University; David Gargone, Ed.D., Associate Professor, Misericordia University; and Danielle Clifford, J.D., Associate at Troutman Pepper Hamilton Sanders LLP.

¹ David Schoenfield, *Everything You Need to Know About Sign-Stealing*, ESPN (Sept. 5, 2017, 9:28 PM ET), <https://perma.cc/G6M5-MEWW>.

² Cliff Corcoran, *Everybody Tries to Cheat a Little’: The Weird and Wild History of MLB Sign-Stealing*, THE ATHLETIC (Oct. 18, 2018), <https://perma.cc/LV4V-3VVZ>. Sign stealing was born when pitchers started throwing curveballs. One of the first examples of sign stealing occurred during the 1876 season, when the Hartford Dark Blues used a person to notify batters of upcoming curveballs.

³ See *id.* The most visible position to decode signs is when runners are on second base directly in front of the catcher.

⁴ Jacob Bogage, *What Is Sign Stealing? Making Sense of Major League Baseball’s Latest Scandal*, WASH. POST (Feb. 14, 2020, 12:15 PM EST), <https://perma.cc/77DW-B383>.

League Baseball's (MLB) directive on sign stealing.⁵ As a result, MLB punished both teams.⁶

When a team engages in illegal sign stealing, they open themselves up to not only league punishment but also to potential civil liability. Any pitchers whose signs are stolen illegally, who then performed poorly because of it, and were subsequently demoted to the minor leagues and then released by their club should be able to sue the offending team for tortious interference with contractual relations for both current and prospective contracts (if they are not signed by any MLB team going forward). Tortious interference is a common law tort that affords a right of recovery against a defendant who causes injury to a plaintiff by intentionally interfering with the plaintiff's third-party business or contractual relationship.⁷

Part I of this paper will discuss the recent sign stealing scandals with the Houston Astros and Boston Red Sox. Part II will review MLB's current rules on sign stealing. Part III will detail the incident with Toronto Blue Jays' pitcher Mike Bolsinger and his corresponding lawsuits. Part IV will examine the law of tortious interference with contractual relations for both current and prospective contracts. Part V will argue tortious interference with contractual relations should be a viable claim for any MLB pitcher whose signs were illegally stolen and who then suffered adverse employment consequences.

I. Houston Astros and Boston Red Sox Sign Stealing Scandals

Illegal sign stealing in MLB is exemplified in the Houston Astros' and the Boston Red Sox's recent scandals.⁸ These scandals led to MLB formalizing sign stealing rules to keep up with the integration of technology into baseball and provide teams with concrete guidance.

A. Houston Astros

In the 2017 season, the Houston Astros were wildly successful and won the World Series. A few years later, a former Astros player alerted MLB about the Astros' sign stealing during their World Series winning season, and an investigation was launched.⁹ It was uncovered that the Astros stole

⁵ *Id.*

⁶ See generally *infra* Part I(A), (B) (discussing the Houston Astros and Boston Red Sox scandals).

⁷ Legal Info. Inst., *Tortious Interference*, CORNELL L. SCH., <https://perma.cc/6UNL-8KYH> (last visited Oct. 30, 2023).

⁸ Edward Sutelan, *Astros' Cheating Scandal, Explained: How Houston's 2017 Sign-Stealing Scheme Shook up MLB*, THE SPORTING NEWS (Oct. 29, 2021), <https://perma.cc/LWU5-R2DL>.

⁹ *Id.*

the opposing catcher's signs by using a camera from behind the centerfield fence.¹⁰ The team had an employee, located in the tunnel leading to the dugout, monitoring the camera.¹¹ Once the team had deciphered the catcher's signs, they would relay the information from the dugout to the baserunner on second base.¹² As the season progressed, the Astros moved from only using the scheme when the team had a baserunner at second base to any hitting situation.¹³ At this point, the Astros had a staff member alert the upcoming pitch to their own hitter.¹⁴ The upcoming pitch was relayed by banging on a metal trash can or the roof of the dugout.¹⁵ The Astros' sign stealing turned out to be very effective, resulting in the World Series win.¹⁶ Specific hitters that received stolen signs showed better hitting statistics while at their home stadium as compared to road games.¹⁷ MLB fined the Astros five million dollars and took away the Astros' future first and second round draft picks.¹⁸ Both the general manager, Jeff Luhnow, and manager, A.J. Hinch, received one-year suspensions.¹⁹ Alex Cora, the bench manager who was found to have developed the scheme, was not suspended pending the investigation into the Boston Red Sox, the team he became manager for following the 2017 season.²⁰

B. *Boston Red Sox*

In 2018, the Red Sox employed a similar technique as the Astros to steal signs. The Red Sox also used a centerfield camera and their replay room coordinator, and advanced video scout J.T. Watkins watched in real-time as their adversary's catcher sent signals to the pitcher.²¹ Watkins would also decipher upcoming opponent pitch sequences during his advanced scouting work (prior to the game).²² Combining the advanced scouting with real-time

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Sutelan, *supra* note 8.

¹⁵ Sutelan, *supra* note 8.

¹⁶ *See* Sutelan, *supra* note 8.

¹⁷ *See generally* Sutelan, *supra* note 8.

¹⁸ Michael Conklin, *There's No Lawsuits in Baseball: Houston Astros' Liability for Sign Stealing*, 9 MISS. SPORTS L. REV. 1, 2 (2020).

¹⁹ Sutelan, *supra* note 8.

²⁰ Tom Verducci, *MLB Reveals Red Sox' Cheating Scandal, Tainting Yet Another Championship Team*, SPORTS ILLUSTRATED (Apr. 22, 2020), <https://perma.cc/VN85-VB6>.

²¹ *Id.*

²² *Id.*

information, Watkins would alert runners on second base by using hand signals to indicate the upcoming pitch, which was then conveyed to the current batter.²³ The team's on-base plus slugging (OPS) of .872 with runners in scoring position was the highest in the league, and the best of any team in over a decade.²⁴ Like the Astros in the previous season, the Red Sox won the 2018 World Series.²⁵ The Red Sox, however, had a less severe punishment from MLB, losing only a second round draft pick along with a year-long suspension for Watkins.²⁶ Cora also received the same year-long suspension handed out to Hinch in the Astros' 2017 scandal.²⁷

II. How Sign Stealing Is Currently Regulated by MLB

Beyond an MLB directive dating back to 2001 stating that use of electronic devices or binoculars was prohibited in-game, sign stealing was not technically violative of any MLB rules.²⁸ Given the current state of the game and the recent scandals, MLB created new rules to curtail illegal sign stealing.

A. Current Major League Baseball Rules

MLB created new rules in the 2019-20 season regarding electronic sign stealing.²⁹ The rules were aimed at the prior actions by certain MLB teams (Astros and Red Sox) of placing cameras in centerfield to steal and relay the opposing catcher's signals.³⁰ The rules banned all in-house cameras from foul pole to foul pole, and also provided:

- [t]he only live feed of a broadcast will be the one provided to each team's designated replay official[;]
- [a] specially trained monitor, not a Resident Security Expect, will be assigned to each designated replay official to make sure that person has no communication with team personnel regarding signs, either in person, by phone or any other device[;]

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ Tyler Kepner, *Red Sox' Alex Cora Suspended Through 2020 in Sign-Stealing Scandal*, N.Y. TIMES, <https://perma.cc/9HV4-MGH9> (last updated Oct. 15, 2021).

²⁷ *Id.*

²⁸ Schoenfield, *supra* note 1.

²⁹ Jacob Bogage, *MLB Aims to Crack down on the Game's Tradition of Sign Stealing*, WASH. POST (Feb. 20, 2019, 2:53 PM EST), <https://perma.cc/Z7ZH-LWZC>.

³⁰ Tom Verducci, *Exclusive: MLB Set to Pass New Rules Designed to Crack down on Sign Stealing*, SPORTS ILLUSTRATED (Feb. 19, 2019), <https://perma.cc/T72F-G2E4>.

- [a]ll other bullpen and clubhouse television monitors will receive game broadcasts on an eight-second delay[;]
- [n]o television monitors are permitted in the tunnels or auxiliary rooms between the dugout and the clubhouse[; and]
- [e]ach club must provide to MLB an audit of every in-house camera, detailing its purpose, its wiring and where its signal can be viewed.³¹

Legal sign stealing, however, is still allowed to gain a competitive advantage as long as the teams are not using electronics, binoculars, or other foreign objects.³² As noted previously, when runners are on second base they are often attempting to decode the catcher's signs, which are visible from their position.³³ Hundreds of signals are constantly exchanged during a game, giving the opposing team an advantage if they can simply detect and decipher a relaxed or obvious sign.³⁴

But trying to gain this competitive edge by using electronic or foreign objects in-game runs afoul of the rules. Recently, in the 2022 MLB season, the league allowed teams to use anti-sign stealing devices to send signals from the catcher to the pitcher through a listening device.³⁵

III. Mike Bolsinger Lawsuits

The first player to file suit over the Astros' sign stealing scandal was Toronto Blue Jays' pitcher, Mike Bolsinger. On August 4, 2017, Bolsinger was pitching for the Blue Jays against the Astros.³⁶ Bolsinger was formerly a starting pitcher but was transitioning to a relief role when he was brought in to pitch.³⁷ Bolsinger entered the game in the bottom of the fourth inning with two outs and one runner on first base.³⁸ Bolsinger suffered a rough outing, throwing twenty-nine pitches, giving up four runs, and watching seven

³¹ *Id.*

³² Bogage, *supra* note 4.

³³ Bogage, *supra* note 29.

³⁴ *See* Bogage, *supra* note 4.

³⁵ Zack Koons, *Report: MLB to Allow Anti-Sign-Stealing Technology During Regular Season*, SPORTS ILLUSTRATED (Apr. 5, 2022), <https://perma.cc/P2TC-YEV6>.

³⁶ Conklin, *supra* note 18, at 2.

³⁷ Conklin, *supra* note 18, at 2. Bolsinger had five previous relief appearances with the Blue Jays leading up to the Astros game.

³⁸ *Toronto Blue Jays vs. Houston Astros Box Score: Aug. 4, 2017*, BASEBALL REFERENCE, <https://perma.cc/HJ5B-8J8P> (last visited Oct. 30, 2023).

consecutive batters reach base, before ending the inning.³⁹ It turns out that of the twenty-nine pitches Bolsinger threw that day, his signs were illegally stolen for twelve of those pitches.⁴⁰ Astros' hitters went three for four with a three-run home run and two RBI singles over those pitches.⁴¹ The very next day, Bolsinger was demoted to AAA in the minor leagues and never played in the majors again.⁴² He went on to finish the year at AAA with seven more appearances.⁴³ Over fourteen innings of work, Bolsinger only allowed eleven hits and three earned runs, pitching to a 1.93 ERA.⁴⁴ Despite this performance in the minor leagues, the Blue Jays released Bolsinger on October 2, 2017.⁴⁵

Bolsinger then filed a lawsuit against the Astros alleging: (1) unfair business practices; (2) negligence; (3) intentional interference with contractual relations; (4) intentional interference with prospective economic relations; and (5) negligent interference with prospective economic relations.⁴⁶ Bolsinger filed suit in California, but the case was dismissed for lack of jurisdiction, and the merits were never reached on any of these claims.⁴⁷ Bolsinger has since re-filed his lawsuit in Texas but with only two counts this time: (1) trade secret misappropriation; and (2) conversion.⁴⁸ The case is currently pending.

IV. Tortious Interference with Contractual Relations Elements

Because the California court never reached the merits on any of Bolsinger's initial claims, there are no known court decisions involving baseball sign stealing and intentional interference with contractual relations' claims. Bolsinger's re-filed Texas lawsuit does not include these claims, leaving no pending outcome in that court either. With that backdrop, however, if a court is faced with these specific claims in the future, the court should find these claims to be viable causes of action.

³⁹ *Id.*

⁴⁰ *See, e.g., id.*

⁴¹ *Id.*

⁴² Conklin, *supra* note 18, at 2.

⁴³ *Mike Bolsinger*, BASEBALL REFERENCE, <https://perma.cc/FA4H-P72Q> (last visited Oct. 30, 2023).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Conklin, *supra* note 18, at 1.

⁴⁷ Daniel Kaplan, *Ex-Blue Jays Pitcher Michael Bolsinger's Suit vs. Astros in Cheating Scandal Dismissed*, THE ATHLETIC (Mar. 17, 2021), <https://perma.cc/W9MV-8DCJ>.

⁴⁸ Plaintiff's Original Petition, *Bolsinger v. Houston Astros, LLC*, No. 2021-28763 (D. Tex. May 13, 2021), <https://perma.cc/G4L6-FVCG>.

Generally, tortious interference with contractual relations for both current contracts and prospective contracts have similar elements: (1) the existence of a contract between the plaintiff and a third party, a business relationship, or a prospective advantage or opportunity; (2) the defendant's knowledge of the contract, business relationship, or prospective advantage or opportunity; (3) the defendant's intentional, unjustified interference with the contract, business relationship, or prospective advantage or opportunity; (4) the proximate cause between the alleged interference with the contract, business relationship, or prospective advantage or opportunity; and (5) the injury to the plaintiff as a result of the defendant's actions.⁴⁹ To prevail in an action for tortious interference, the plaintiff must show all of these elements.⁵⁰

V. Pitcher-Victims Should Have Viable Tortious Interference Claims

When applying the required elements of tortious interference with contractual relations for both current and prospective contracts to a pitcher whose signs were illegally stolen, which caused their poor performance and subsequent demotion and release by their MLB team, it is evident that this is a viable cause of action.

A. *Existence of a Contract, Business Relationship or Prospective Opportunity*

To meet the first element in the case of interference with a contract, there must be a valid, existing contract.⁵¹ To show interference with a business relationship, the plaintiff must have had a reasonable expectation of a benefit flowing from the business relationship.⁵² The defendant must be aware of the relationship and intend to interfere with it.⁵³ Here, it is clear any MLB pitcher whose signs were stolen had a valid existing contract or business

⁴⁹ RESTATEMENT (THIRD) OF TORTS: LIAB. ECON. HARM § 17 (AM. L. INST. 2020). Because torts are governed by state laws the specific elements can vary by state. Therefore, the above-referenced elements are a general representation of tortious interference with contractual relations.

⁵⁰ *See, e.g.,* *Baseball at Trotwood, LLC v. Dayton Pro. Baseball Club*, No. C-3-98-260, 2003 U.S. Dist. LEXIS 27460, at *51 (S.D. Ohio Sept. 2, 2003) (finding there was no evidence the defendant knew of the prospective agreement, thus failing element one of a claim of tortious interference).

⁵¹ *Mest v. Cabot Corp.*, No. 01-4943, 2004 WL 1102754, at *5 nn.24–25 (E.D. Pa. May 14, 2004) (noting plaintiffs' "most glaring omission" was their failure to "cite to any evidence of specific contracts"); *Exxon Corp. v. Emerald Oil & Gas Co.*, 348 S.W.3d 194 (Tex. 2011).

⁵² *Natralite Filters, Inc. v. Rexel, Inc.*, No. 11-01557, 2012 U.S. Dist. LEXIS 20522, at *12 (D.N.J. Feb. 17, 2012) (noting that to establish a tortious claim, plaintiff must allege there was an existing contract or a reasonable expectation of economic benefit or advantage).

⁵³ *Id.* (listing the elements for tortious interference with a contractual relationship).

relationship with their current MLB team, considering MLB players cannot perform for a team without a valid contract that is dictated by the league's collective bargaining agreement.⁵⁴ In Bolsinger's case, he was under contract with the Blue Jays at the time the signs were stolen.

The concept of intentional interference also extends to prospective contracts. To support a cause of action for prospective advantage, the plaintiff must establish there was a "reasonable probability" the plaintiff would have entered a contractual relationship.⁵⁵ For example, in the landmark case *Temperton v. Russell*, a labor union forbade its members to work for anyone who supplied their employer.⁵⁶ Temperton, a member of the union, continued to supply the union's employer, and in return, the union successfully induced both existing customers and potential customers from doing business with Temperton.⁵⁷ Holding for Temperton, the court stated that a contract "imposes on all the world the duty of respecting contractual obligations."⁵⁸ The court reasoned that the harm imposed by the unlawful interference with an existing contract was no different from an injury resulting from prospective negotiations.⁵⁹ Therefore, the decision established how wrongful interference should be evaluated according to the plaintiff's "impaired interests" in both formal contracts and prospective contracts.⁶⁰

While it is clear that current MLB pitchers whose signs were stolen are playing under a valid, existing contract, pitchers who are then released and not picked up by another team have an equally strong argument for intentional interference with prospective contracts. Indeed, in Bolsinger's situation, no other MLB team signed him to a contract after the Blue Jays

⁵⁴ See generally Major League Baseball, THE OFFICIAL PROFESSIONAL BASEBALL RULES BOOK r. 3, at 38–66 (2021), <https://perma.cc/PML4-YGLW>.

⁵⁵ *TXCO Res., Inc. v. Peregrine Petroleum, L.L.C. (In re TXCO Res., Inc.)*, 475 B.R. 781, 828 (2012) (quoting *Verkin v. Melroy*, 699 F.2d 729, 732 (5th Cir. 1983) (quoting *Martin v. Phillips Petroleum Co.*, 455 S.W.2d 429, 435 (Tex. Civ. App. 1970))) (discussing the first element requires a "reasonable probability that the plaintiff would have entered into a contractual relationship, but '[i]t need not be absolutely certain that the prospective contract would have been made were it not for such interference. A reasonable assurance thereof in view of all the circumstances, is generally sufficient.'").

⁵⁶ [1893] Q.B. 715 (C.A.) at 715. In England in 1844, the Court allowed an actor to recover against a defendant who had succeeded in having him hissed off the stage, as a result of which he was unable to obtain further employment. *W. PAGE KEETON ET AL., PROSSER AND KEETON ON TORTS*, at 1005 (5th ed. 1984).

⁵⁷ *Temperton*, [1893] Q.B. at 715.

⁵⁸ *Id.* at 730.

⁵⁹ *Id.*

⁶⁰ *Id.* at 728–30.

released him following the 2017 season.⁶¹

B. *Defendant's Knowledge of the Contract, Business Relationship, or Prospective Opportunity*

For the second element, the defendant must have had knowledge of the contract that he is charged with interfering with, as well as the fact that his conduct interfered with the performance of that contract.⁶² Knowledge is a “question of fact, and proof may be predicated on circumstantial evidence.”⁶³ Liability does not require the defendant to have knowledge of every detail of the contract.⁶⁴ Moreover, a defendant with the knowledge of facts giving rise to a contractual duty may be liable for interference, even if the defendant is mistaken as to whether those facts give rise to a contract.⁶⁵

Pitcher-victims of illegal sign stealing can easily meet this element because the opposing teams that steal the signs absolutely have knowledge that the opposing team's players are all under contract with the team with which they are currently playing. As noted above, players cannot play for an MLB team without a contract. The opposing teams illegally stealing signals are also aware that they are interfering with the performance of the opposing pitcher's contract because players who do not perform well are often demoted and released.⁶⁶

C. *Defendant's Intentional, Unjustified Interference*

For the third element, a plaintiff must be able to show the defendant took an active part in persuading the other party to the contract to breach the

⁶¹ Peter Hayes, *Ex-Blue Jays Pitcher Loses Lawsuit over Astros' Sign Stealing*, BLOOMBERG L. (Mar. 18, 2021, 12:03 PM), <https://perma.cc/496L-LQHZ>.

⁶² *DBS Constr. Inc. v. New Equip. Leasing, Inc.*, No. 2:10-cv-225, 2011 WL 1157531, at *4 (N.D. Ind. Mar. 28, 2011) (holding objective standards “like implied knowledge or constructive knowledge are insufficient”); *Cohen v. Battaglia*, 202 P.3d 87, 94 (Kan. Ct. App. 2009) (finding plaintiff is not required to allege knowledge of precise terms of contract or relationship).

⁶³ *Texaco, Inc. v. Pennzoil Co.*, 729 S.W.2d 768, 797 (Tex. App. 1987); *see also* *Wesco Autobody Supply, Inc. v. Ernest*, 243 P.3d 1069, 1083 (Idaho 2010) (noting intent can be inferred from evidence of conduct substantially certain to interfere with the contract); *Maxvill-Glasco Drilling Co. v. Royal Oil & Gas Corp.*, 800 S.W.2d 384, 386 (Tex. App. 1990) (explaining one who tortiously interferes with contractual rights is liable for damage proximately caused).

⁶⁴ *Gold Medal Farms, Inc. v. Rutland Cnty. Coop. Creamery, Inc.*, 195 N.Y.S.2d 179, 185 (App. Div. 1959) (finding full knowledge of contract terms is not necessary for liability).

⁶⁵ *Texaco, Inc.*, 729 S.W.2d at 796–97 (explaining full knowledge is not necessary).

⁶⁶ *See* Ray Tannock, *Bullpen Duty: 10 MLB Starting Pitchers in Danger of Being Demoted to Bullpen*, BLEACHER REP. (May 25, 2011), <https://perma.cc/B64W-W7DW> (discussing players who do not perform are in danger of being demoted).

contract or otherwise intentionally acted to disrupt the contract.⁶⁷ The act must be “improper.”⁶⁸ It is not necessary for a plaintiff to demonstrate that a defendant acted with actual malice or desire to harm the other, just that they acted unfairly, dishonestly, or wrongfully.⁶⁹ In the context of interference with business relations, to show wrongful or improper means, there must be conduct by the defendant that is “independently tortious or wrongful.”⁷⁰

Here, any team engaged in illegal sign stealing is not acting fairly or honestly, and their acts are independently wrongful or unlawful.⁷¹ Indeed, in the cases of the Astros and the Red Sox, both teams were punished by MLB for their actions. A team sued under this tort may respond that it was just competition within a business—the business of baseball. But courts have rejected that argument when fraud was involved. For example, in *Chambers v. Baldwin*, the Court of Appeals of Kentucky stated “competition in every branch of business [is] not only lawful, but necessary and proper, [and] no person should . . . be made liable [for] damages . . . if done without fraud.”⁷²

D. Proximate Cause

The fourth element, proximate cause, as with any tort, is an essential element of a claim for tortious interference. As a general matter, the Restatement notes the tests for legal causation for the tort of tortious interference have not been reduced to precise rules.⁷³ “The Restatement does, however, indicate that the issue of whether the actor's conduct caused the third party to breach his contract with another or caused other adverse effect on a business relation is a question of fact.”⁷⁴ Courts have held that to establish proximate cause, a plaintiff must show the defendant took an active role in persuading a party to a contract to

⁶⁷ *Cantu v. Cantu* (In re Cantu), 400 B.R. 104, 108 (S.D. Tex. 2008) (noting “intent to injure is not a required element” of a claim for tortious interference; one must plead only “intent to cause the consequences of one's act[s]”).

⁶⁸ *Id.* at 110.

⁶⁹ *Scutti Enters., LLC v. Park Place Ent. Corp.*, 322 F.3d 211, 216 (2d Cir. 2003) (explaining standard is whether defendant employed wrongful means).

⁷⁰ This element has been met in cases involving sports agents unlawfully interfering with competing agencies' clients' contracts. *Hambric Sports Mgmt., LLC v. Team AK, Inc.*, No. 3:09-CV-1662, 2010 WL 2605243, at *10 (N.D. Tex. June 29, 2010) (finding sports agents' actions constituted intentional and willful interference).

⁷¹ *See id.*

⁷² 15 S.W. 57, 59 (Ky. 1891) (emphasis added).

⁷³ Thomas J. Collin et al., *Ohio Tortious Interference Law and the Role of Privilege and Competition*, 18 U. DAYTON L. REV. 635, 636, 689 (1993).

⁷⁴ *Id.* at 689.

breach its terms.⁷⁵ Before tort liability can arise, there must be some act of interference or persuasion to bring about the breach.⁷⁶

As noted above, causation is a question of fact; for the pitcher-victims in our scenario, the timing of the player's demotion to the minors and release will be critical and case-specific. If a pitcher's signs are illegally stolen, resulting in the pitcher playing poorly, and then that pitcher is immediately sent down to the minors after the game, then that is strong evidence that the sign stealing was the cause. Bolsinger's situation proves this point. As noted previously, Bolsinger was moving to a relief pitcher role and actually had five previous outings pitching in relief, but after his one disastrous outing against the Astros, he was immediately designated to the minors *the next day* and never played in MLB again.⁷⁷

E. Injury

Regarding the last element, a plaintiff must suffer damages because of the actor's conduct, "and those damages cannot be speculative or conjectural losses."⁷⁸ Upon proof of a cause of action, a plaintiff may seek to recover pecuniary loss, including consequential damages caused by the interference, damages to reputation, as well as punitive damages.⁷⁹

Here, any pitcher who is demoted, released, and not signed by another team due to the illegal sign stealing clearly is damaged. Other former MLB players have successfully shown injury for loss of earning capacity following

⁷⁵ Top Value Enters., Inc. v. Carlson Mktg. Grp., Inc., 703 S.W.2d 806, 811 (Tex. Ct. App. 1986) (finding sufficient evidence of proximate causation where the defendant made an active presentation and topped the terms of plaintiff's previous contracts, resulting in a successful offer).

⁷⁶ *Id.* Regarding the element of proximate cause, "[t]he difference between a tortious interference with contract claim and a tortious interference with prospective economic advantage claim lies in the timing of the interference." Loyd v. Griffin, No. 20-CVS-2394, 2021 NCBC 77, *34 (N.C. Super. Ct. 2021). "While a tortious interference with contract claim exists when the interference occurs after the contract is formed, a tortious interference with prospective economic advantage claim arises when someone 'induces a third party not to enter a contract with the [claimant] when the contract would have resulted but for the interference.'" *Id.* (quoting Dalton v. Camp, 353 N.C. 647, 654 (2001) (internal citations omitted)).

⁷⁷ See Zuchowicz v. United States, 140 F.3d 381, 385 (2d Cir. 1998) (finding that the timing of the plaintiff's illness in relation to the defendant's actions proved necessary causation under Federal Torts Claims Act).

⁷⁸ Chemawa Country Golf, Inc. v. Wnuk, 402 N.E.2d 1069, 1073 (Mass. App. Ct. 1980); see also James Crystal Licenses, LLC v. Infinity Radio, 43 So. 3d 68, 73-74 (Fl. Dist. Ct. App. 2010) (stating "an award of lost profits cannot be based on mere speculation or conjecture").

⁷⁹ ABA SECTION OF ANTITRUST L., BUSINESS TORTS AND UNFAIR COMPETITION HANDBOOK 147-49 (2d ed. 2006).

their release from a team. For example, in *Felder v. Physiotherapy Associates*,⁸⁰ Kenneth Felder sued Physiotherapy Associates for loss of earning capacity and projected earnings after being released from his contract with the Milwaukee Brewers because of an injury sustained at Physiotherapy Associates.⁸¹ The jury awarded Felder seven million dollars in damages, which was affirmed on appeal.⁸² The *Felder* Court noted the jury could find Felder could have remained in the minor leagues as an organizational player for years, or that he could have made it to the major leagues.⁸³

No longer being under contract with a major league baseball team due to the opposing teams' actions is evidence of a concrete injury to the plaintiff. For Bolsinger, after being sent to the minors, he never received another MLB contract.

CONCLUSION

It is evident that illegal sign stealing can cause harm to the opposing team and, in particular, to the opposing pitcher whose signs were stolen. The pitcher-victims are being unfairly taken advantage of and should have legal recourse if the sign stealing caused their poor performance and subsequent demotion and dismissal from the team. As demonstrated above, the pitchers can meet all the required elements of a tortious interference with contractual relations claim. While Bolsinger was the first player to bring a lawsuit over illegal sign stealing, there were likely other players who were victims of this scheme and did not come forward.⁸⁴ As this article has proven, should another player decide to file a lawsuit over adverse employment actions caused by illegal sign stealing either from the Astros or Red Sox scandal, or a future illegal sign stealing scandal, a court should find a viable claim in tortious interference with contractual relations.

⁸⁰ 159 P.3d 877, 877 (Ariz. Ct. App. 2007).

⁸¹ *Id.* at 881–82.

⁸² *Id.* at 891.

⁸³ *Id.*

⁸⁴ It is not uncommon for professional athletes to forgo potential viable lawsuits for torts committed against them while playing their sport because of fear of retribution from their current teams or prospective future teams. *See, e.g.,* Joshua Winneker & Lindsay Demery, *Protecting the Unprotected: Creating an Anti-Retaliation Policy for Professional Athletes that Exercise Their Legal Rights in Participant vs. Participant Liability Contact Sports*, 12 VA. SPORTS & ENT. L.J. 315, 332 (2013) (stating that the NFL needs to adopt an anti-retaliation policy similar to Title VII's for players that file lawsuits against fellow players); Joshua Winneker, *Possible Workplace Retaliation Will Keep Geno Smith from Filing Lawsuit for Broken Jaw*, VILLANOVA UNIV. (Aug. 26, 2015), <https://perma.cc/M8PG-WDKK>.