# In the
# United States Court of Appeals
## For the Seventh Circuit

Nos. 22-2300 & 22-2311

CREATION SUPPLY, INC.,

*Plaintiff-Appellant*,

*v.*

GEORGE CHERRIE, DAVID HAHN, and DREW L. BLOCK,

*Defendants-Appellees*.

Appeals from the United States District Court for the
Northern District of Illinois, Eastern Division.
Nos. 1:21-cv-00529 & 1:19-cv-06063 — **Rebecca R. Pallmeyer**, *Chief Judge*.

ARGUED FEBRUARY 14, 2023 — DECIDED FEBRUARY 27, 2023

Before ROVNER, KIRSCH, and JACKSON-AKIWUMI, *Circuit Judges*.

KIRSCH, *Circuit Judge*. Creation Supply, Inc., bought insurance from Selective Insurance Company of the Southeast. Selective denied coverage, and Creation sued for breach of contract and won. But Creation was not satisfied with its contractual damages and pursued costs and fees for Selective's vexatious and unreasonable delay under section 155 of the Illinois Insurance Code. 215 ILCS 5/155. As we explained two years

ago, that remedy was unavailable, *Creation Supply, Inc. v. Selective Insurance Co. of the Southeast*, 995 F.3d 576 (7th Cir. 2021), although we later noted that other breach-of-contract damages might yet be. *Creation Supply, Inc. v. Selective Insurance Co. of the Southeast*, 51 F.4th 759 (7th Cir. 2022). In addition to its section 155 damages suit, Creation brought these suits against Selective's in-house lawyer, the lawyer's supervisor, and its outside counsel, alleging that they tortiously interfered with the contract between Selective and Creation.

Corporations may be people, see 1 U.S.C. § 1, but as legal figments, they act in the flesh and blood world through their agents. In return, those agents are generally shielded from liability by the corporation for acts undertaken on its behalf. *Nation v. Am. Cap., Ltd.*, 682 F.3d 648, 651–52 (7th Cir. 2012) (citing *HPI Health Care Servs., Inc. v. Mt. Vernon Hosp., Inc.*, 545 N.E.2d 672, 677 (Ill. 1989)). When a corporation enters a contract, an agent decides that the contract is in the corporation's interest and signs her name on the firm's behalf. And when a corporation breaks that same contract, it does so through the acts of its agents. At all times, though, it is the corporation that is bound and benefitted by the contract, even though the agent is indispensable. This pair of suits is an attempt at double recovery—one from the principal and one from its agents—but the corporate form limits, not doubles, liability.

In Illinois, tortious interference requires some sort of interloper. See *Douglas Theater Corp. v. Chicago Title & Tr. Co.*, 681 N.E.2d 564, 567 (Ill. App. 5th 1997) ("It is settled law that a party cannot tortiously interfere with his own contract; the tortfeasor must be a third party to the contractual relationship."); see also *Fellhauer v. City of Geneva*, 568 N.E.2d 870, 878–79 (Ill. 1991); *Webb v. Frawley*, 906 F.3d 569, 577 (7th Cir. 2018).

Creation urges us to discard that rule and let it pursue tort damages from a counterparty's agents. Such a suit might normally be barred by the economic loss doctrine because Creation could have demanded a lower premium, liquidated damages, or the like to guard against the possibility that Selective's agents would fly off the handle. See, e.g., *Schrieber Foods, Inc. v. Lei Wang*, 651 F.3d 678 (7th Cir. 2011). But Illinois law, which governs this case, precludes applying the economic loss doctrine to claims for tortious interference. *2314 Lincoln Park W. Condo. Ass'n v. Mann, Gin, Ebel & Frazier, Ltd.*, 555 N.E.2d 346, 352 (Ill. 1990).

Illinois does, however, provide a corporation's agents with a conditional privilege, rooted in the business judgment rule, from tortious interference suits. *HPI Health Care Servs., Inc. v. Mt. Vernon Hosp., Inc.*, 545 N.E.2d 672, 677 (Ill. 1989). So long as an agent acts in the corporation's interests, she is protected from liability for interfering in her principal's contractual affairs. *Id*. The law places a higher value on having corporations (really, their agents) make decisions in their own best interests, having taken stock of their potential liability for any breaches, than it does on a contract creditor's expectation of performance. *TABFG, LLC v. Pfeil*, 746 F.3d 820, 825 (7th Cir. 2014). When an agent interferes with a contract, she is therefore presumed to do so for the company's benefit (given their aligned interests), and thus lacks the malice necessary to tortiously interfere. *Webb*, 906 F.3d at 577. The district court dismissed Creation's suits with prejudice on the grounds of that privilege. The district court alternatively dismissed the suit against Hahn and Block on the basis of an attorney's absolute immunity for conduct undertaken during litigation, but for reasons to come, we say no more on the issue.

On appeal, Creation says it overcame the defendants' privilege by alleging that they acted against Selective's interests—that they acted in their own interests and contrary to Selective's "or engage[d] in conduct totally unrelated or antagonistic to the interest giving rise to the privilege." *Citylink Grp., Ltd. v. Hyatt Corp.*, 729 N.E.2d 869, 877 (Ill. App. 1st 2000). Under Illinois law, overcoming the privilege was Creation's burden to plead, *Fellhauer*, 568 N.E.2d at 878, and its failure—twice, now—to do so with more than mere conclusory allegations as to how it was not in Selective's interest to deny Creation's claim (and then defend that denial) dooms its suit at the outset. See *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2006) ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice."). In any event, we fail to see how the defendants' conduct did not benefit Selective. An insurer's profitability turns on paying as few claims as possible. And, thanks to the defendants, Selective has now vacated a $2.8 million judgment against it and dragged a simple coverage dispute into its eleventh year of litigation. Maybe Selective regrets this mess: one of the defendants is no longer with the company. But under the business judgment rule, that decision—like whether to deny Creation's claim—was Selective's alone.

AFFIRMED