



Alerts

Architect Not Liable to Unsuccessful Bidder for Tortious Interference

October 31, 2012

Professional Lines Alert

Defendant architectural firm was retained by a school district to evaluate bid applications and to make recommendation as to which contractor should be awarded a contract to construct a school building. The school district awarded the contract to the second lowest bidder based on the architect's recommendation even though the successful bid was approximately \$50,000 more than the low bid. The unsuccessful low bidder sued the architectural firm for tortious interference with a business expectancy. The trial court granted summary judgment for the architect, but the intermediate appellate court reversed. The Michigan Supreme Court reversed, holding that a disappointed low bidder did not have a valid business expectancy to be awarded a contract on a public construction project.

Question Before the Court and How the Court Decided It

Was a valid business expectancy created under a school district's policy that bids were to be awarded under the "lowest responsible bidder" rule?

No. The Michigan Supreme Court held that although the school district's financial management policy provided that the contract would be awarded to the "lowest responsible bidder," the school district retained the right to choose the lowest responsible bidder. The policy provided a list of factors for the school district to consider, including the input of its architect, which gave the school district discretion to reject the lowest bidder.

Under Michigan law, to establish a claim for tortious interference with the business expectancy the plaintiff must prove the existence of a valid business expectancy. Under the common law rule, low bidders on public contracts do not have standing to sue the public entity that rejects their bid, especially where a municipality has adopted a provision requiring it to accept the "lowest responsible bidder." In addition, Mich. Comp. Laws § 380.1267(6) provided that a school board may reject any and all bids, and the advertisement for the bids at issue expressly stated that the school district reserved the right to accept or reject any and all offers. The Court reasoned that because a disappointed low bidder may not bring claims against a municipality that rejects its bid, such a bidder has no valid expectancy in having its bid accepted. Therefore a disappointed low bidder may not assert a claim for tortious interference against an architect who merely advises the municipality to reject the bid. Plaintiff had argued that the architect's recommendation was based on improper motivation

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stemming from a prior dispute between the parties. The Court found no evidence that the architect improperly influenced the school district and there was no other evidence of fraud, injustice or violation of a trust.

A dissenting justice stated that the disappointed bidder rule did not apply to claims against a third party such as the architect which may be influenced by improper motivation such as were alleged by plaintiff here.

What the Court's Decision Means for Practitioners

The Court refused to carve out an exception to the disappointed bidder rule for design professionals hired by a municipal body to make recommendations on awarding public contracts. A contrary result would have a chilling effect on the willingness of design professionals to become involved in making recommendations and opening themselves to potential liability for tortious interference. In *Debcon Inc. v. City of Glasgow*, 28 P.3d 478 (Mont. 2001), the Supreme Court of Montana declined to allow a disappointed bidder to maintain a similar action against an engineering firm based on a negligence theory.

Cedroni Associates, Inc. v. Tomblinson, Harburn Associates, Architects & Planners, Inc., No. 142339 (Sup. Ct. Mich. July 27, 2012).

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