

## COA Opinion: The offer of judgment rule applies to sum certain offers to resolve mixed actions involving claims in law and equity

29. July 2010 By Jason Byrne

---

On July 27, 2010, the Court of Appeals published its per curiam opinion in *McManus v. Toler*, No. 290249. This is the second appeal arising from this case. In the first, the Court of Appeals affirmed a verdict of no cause of action in a breach of contract claim where plaintiff alleged he had entered into a contract to sell an investment franchise to his daughter and the defendant if his daughter acquired her licenses in an agreed time-frame. The trial court and Court of Appeals confirmed there was no breach of the contract where the daughter was not able to acquire the necessary licenses in the requisite time.

Now, the issue in the present appeal is the award of attorney fees pursuant to the offer of judgment rule found in MCR 2.405. Prior to obtaining the liability verdict, defendant had offered to settle for \$25,000, but that offer noted the \$25,000 would be in addition to the purchase price for the business. The Court of Appeals concluded that the statement regarding the purchase of the business did not turn the \$25,000 sum certain offer of judgment into a conditional offer outside the scope of MCR 2.405. Additionally, plaintiff had argued that the case was wholly in equity, and the offer of judgment rule did not apply. The Court of Appeals found that the plaintiff had asked for damages, and thus the case was a mixed law and equity action. The Court concluded that the offer of judgment rule applies to such mixed actions, but left open the question of whether it would apply to a purely equitable case.