

## COA Opinion: Tortious interference with a construction contract

17. November 2010 By Jeanne Long

On November 16, 2010, the Court of Appeals decided *Cedroni Associates, Inc v Tomblinson, Harburn Associates Architects & Planners, Inc*, No. 287204. In *Cedroni*, the plaintiff was the lowest bidder on a school district's construction contract. The plaintiff sued the engineering firm that recommended to the school district that the district not select plaintiff as its contractor. The plaintiff alleged that the recommendation constituted tortious interference. The defendant engineering firm moved for summary judgment, which the trial court granted. On appeal, the Court held by a two-to-one majority that the plaintiff had provided sufficient evidence to avoid summary judgment on its tortious-interference claim.

In *Cedroni*, the defendant was retained by a school district to act as its agent and assist in the competitive bid process for a construction project. The plaintiff was the low bidder on that project. In its duties as agent for the school district, the defendant contacted plaintiff's listed references to evaluate its past project performance. Based on the references' responses and the defendant's own experience with the plaintiff, the defendant recommended that the school board retain the second-lowest bidder instead of the plaintiff. The school board adopted defendant's recommendation.

The plaintiff then sued the defendant, claiming that it had a valid business expectancy in the construction project and that the defendant had tortiously interfered with that expectancy. The defendant moved for summary judgment, and the trial court granted the motion. The plaintiff appealed.

The Court of Appeals reversed the trial court's grant of summary judgment and remanded the case for trial. The Court noted that although Michigan law granted the school board broad discretion in selecting contractors, the school board had adopted a policy for selecting contractors that required the board to retain the "lowest responsible bidder." Applying the board's policy, the Court concluded that plaintiff had created a genuine issue of material fact on the issue of whether it was a responsible bidder. Accordingly, the Court held that the plaintiff was entitled to a trial on whether the defendant's recommendation had caused the plaintiff to lose a bid to which it was entitled. Additionally, the Court held that there was sufficient evidence to conclude that defendant might have intentionally interfered with plaintiff's business expectation by "sabotaging" plaintiff's efforts in the bid process, and summary judgment for the defendant therefore was improper.

In a strong [dissent](#), Judge Kelly would have affirmed the trial court. Judge Kelly would hold that the plaintiff failed to produce evidence sufficient to support several elements of its tortious interference claim, including the requirement that the interference stem from a third party. Here, where the defendant was the school board's agent and not a third party attempting to interfere with the plaintiff's business expectation, Judge Kelly would hold that plaintiff's claim could not survive summary judgment. Additionally, Judge Kelly would affirm the grant of summary judgment to the defendant on the ground that Michigan law gives the

school board broad discretion in its bid selection, which he would hold limits the plaintiff's expectancy to a fair bidding process free of fraud, not a favorable outcome. Because the plaintiff failed to produce evidence that the bidding process was tainted, Judge Kelly would hold that the plaintiff had no claim under Michigan tort law.