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## **Case Study – Cedroni vs. Tomblinson Harburn Assoc.**

“The Michigan Court of Appeals just came down with a new published decision which addresses the potential exposure of a design professional for tortious interference when recommending that a contractors bid be rejected. That case is Cedroni vs. Tomblinson Harburn Assoc. I am attaching a copy of the decision for your reference.

The Court of Appeals reversed the trial court's order granting defendant summary disposition and remanded the case for trial. The Contractor claimed that the Architect acted improperly and in a malicious manner through its conduct, communications, and recommendations. As a result of Architect's actions the school district decided not to award plaintiff a construction project despite the fact it submitted the lowest bid.

The Court of Appeals held that genuine issues of material fact existed as to the elements of plaintiff's cause of action and specifically rejected the trial court's determination that, as a matter of law, plaintiff lacked a valid business expectancy. Plaintiff, as the lowest bidder, submitted evidence sufficient to create a factual dispute as to whether it was a "responsible" contractor such that there existed a reasonable probability or likelihood that it would have been awarded the project absent the alleged tortious interference. Thus, the Court of Appeals determined that plaintiff had a valid business expectancy. The court emphasized that the submission of the lowest bid, alone, was inadequate to sustain plaintiff's suit. The Court held that absent sufficient additional evidence on relevant award criteria, there would be no valid business expectancy.

The court also rejected the trial court's determination that, as a matter of law, plaintiff failed to show that defendant did anything improper. Plaintiff, Contractor submitted evidence sufficient to create a factual dispute as to whether defendant's conduct was intentional and improper, motivated by malice and not legitimate business reasons.

The court did emphasize that the exercise of professional business judgment in making recommendations as to government contracts and projects must be afforded some level of protection and deference. But the court would not preclude litigation where "there exists evidence suggesting that the ostensible exercise of professional business judgment is in reality a disguised and veiled attempt to intentionally and improperly interfere with the contractual or expectant business relationship of others."

One of the three judges on the panel wrote a strident dissent to the decision.

Unfortunately, it is possible that this decision will result in claims against design professionals if a proper basis for rejecting the bid and proper unbiased documentation of the decision process is not provided.”

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