

CONTRACTOR TERMINATED BY OWNER CAN SUE ARCHITECT FOR INTERFERENCE

A contractor terminated by a project owner brought suit against the architect alleging that the architect falsely certified grounds for termination. Barr Inc. v. Studio One, Inc., 2015 U.S. Dist. LEXIS 156007, C.A. No. 15-40056-MGM (D.Mass. Nov. 18, 2015). The architect certified, in essence, that the contractor breached its contract with the owner by “repeatedly refusing or failing to supply enough properly skilled workers or proper materials.” In its suit, the contractor asserts that the architect knew this was not true and points to project correspondence and meeting minutes to establish that the project delays were not attributable to the contractor.

Based primarily on these facts, the contractor’s suit alleges that the architect tortiously interfered with its contractual relations (Count I) and with its advantageous relations (Count II). In order to establish its claim of interference with contractual relations, the contractor must show that:

1. it had a contract with the owner;
2. the architect “knowingly induced” the owner to breach its contract with the contractor;
3. the architect acted with an “improper motive or means”; and,
4. the architect’s acts caused damage to the contractor.¹

Similarly, to prove tortious interference with advantageous relations, the contractor must establish that:

- a. the architect was aware of an advantageous relationship between contractor and others;
- b. the architect intentionally interfered with that relationship;
- c. the architect acted with an “improper motive or means”; and
- d. the contractor suffered economic damages.²

Therefore, in order to establish either claim the contractor must demonstrate that the architect acted with an improper motive or means.

¹ See Weiler v. Portfolioscope, Inc., 469 Mass. 75, 12 N.E.3d 354, 363 (Mass. 2014) (quoting Psy-Ed Corp. v. Klein, 459 Mass. 697, 947 N.E.2d 520, 536 (Mass. 2011)).

² See Tuli v. Brigham & Women’s Hosp., 656 F.3d 33, 43 (1st Cir. 2011) (citing Ayash v. Dana-Farber Cancer Inst., 443 Mass. 367, 822 N.E.2d 667, 690 (Mass. 2005)).

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The architect filed a motion seeking to dismiss these two counts asserting that the contractor failed to allege that the architect acted with actual malice, which is more stringent than “improper motive.” In ruling on the architect’s motion, the Court held that no showing of malice is required to prove the two intentional interference torts; instead, the contractor need only make a showing of improper conduct by the architect. The Court found that the contractor’s allegations in the Complaint – primarily that the architect knowingly certified false reasons to induce the owner to terminate its contract with the contractor – met the elements of the intentional interference torts.

Take Away

In this case, the architect was the “Initial Decision Maker” under the standard AIA contract provisions and per the contract was to review claims. Further, under the contract the owner could not terminate the contractor for cause without the architect’s certification of the grounds for termination. Here, the contractor has alleged facts sufficient to establish a claim that the architect was not carrying out its contractual duties objectively and in good faith. This decision demonstrates that although an architect is employed by the project owner, it still must act objectively and in good faith when performing its duties under the contract documents, including its review of contractor claims.

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