

Calif. High Court Takes Contractors' Prevailing Wage Fight

Share us on: By **Beth Winegarner**

Law360, San Francisco (June 11, 2015, 8:16 PM ET) -- The California Supreme Court agreed Wednesday to decide whether construction companies can sue when a competitor's winning low bid is based on violations of prevailing-wage laws, reviewing a California appeals court's decision to revive claims from two construction firms who sued after being outbid on projects in Southern California.

Roy Allan Slurry Seal Inc. and Doug Martin Contracting Inc. sued American Asphalt South Inc. in Los Angeles, San Bernardino, Riverside, Orange and San Diego counties after they were outbid on \$14.6 million in public works contracts by the company between 2009 and 2012. Allan and Martin argued that the only reason American won the contracts is that it planned to pay its workers less than the legal wage, according to the appeals court's decision.

Among other things, Allan and Martin claimed that American's conduct constituted intentional interference with their prospective economic advantage; a Los Angeles Superior Court judge dismissed that claim. California's second appellate district reversed that decision, saying Allan and Martin reasonably expected to win their respective contracts because they had submitted the lowest lawful bids.

Allowing claims like theirs to go forward would add “an extra disincentive to discourage unscrupulous contractors from violating the prevailing wage laws,” the appeals court said. “Whether a plaintiff was in fact the second lowest bidder and would have been awarded a contract had the winning bidder complied with the prevailing wage law is a factual issue susceptible to standard civil discovery practices and is amenable to proof at trial.”

After Allan and Martin sued, the Los Angeles court initially overruled American's demurrers to the intentional interference claim, along with an Unfair Competition Law claim, and sustained its demurrer on a claim under the California Unfair Practices Act. Meanwhile, Riverside Superior Court sustained American's entire demurrer, while the San Diego Superior Court overruled the demurrer, according to the appeals court.

The plaintiffs appealed the Riverside decision, and the California Supreme Court consolidated the cases in Los Angeles Superior Court.

American argued in its demurrer, which was later sustained by the Los Angeles court, that the plaintiffs didn't establish an existing relationship or a reasonable probability that they would have been awarded the contracts without American's lower bid. The appeals court disagreed.

“We conclude that plaintiffs, as the alleged lawful lowest bidders, had a tangible expectancy the contracts would be theirs, an expectation that was thwarted only by American’s unlawful conduct,” the ruling said.

Finding otherwise, the appeals court said, would mean holding that no losing bidder could ever sue a competitor for interfering with the bidding process — no matter how egregious the misconduct — because there was no existing economic relationship at the time of the bid.

American Asphalt attorney Scott K. Dauscher of [Atkinson Andelson Loya Ruud & Romo](#) said high court's decision to review the case was good news.

The appeals court was “the first court in the country to allow the expansion of the tort of intentional interference with prospective economic advantage in the public bidding and contracting arena,” Dauscher said.

Dave Klehm of [Doyle Schafer McMahon LLP](#), representing the plaintiffs, said he's confident the high court will affirm the appeals court's decision. “The rationale of the majority opinion from the court of appeals was well-reasoned and supporting by a long history of case law on this tort,” he said.

Allan and Martin are represented by Daniel W. Doyle and David Klehm of Doyle Schafer McMahon LLP.

American Asphalt is represented by Scott K. Dauscher, Paul G. Szumiak and Jennifer D. Cantrell of Atkinson Andelson Loya Ruud & Romo.

The case is Roy Allan Slurry Seal Inc. v. American Asphalt South Inc., case number S225398, in the California Supreme Court.

--Editing by Brian Baresch.