



## ALERTS

### California Court Allows Subcontractor To Pursue Project Owner For Tortious Interference

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#### Highlights

A California appellate court recently held that an owner on a construction project could be liable to a subcontractor for the tort of intentional interference with the subcontractor's contract with the general contractor

The decision further eroded an apparent exception under California law that immunized parties from tortious interference claims who were technically strangers to a contract, but had an "economic interest"

While the decision is not limited to the construction context, it could have broad implications for owners and contractors on California construction projects

In a case of first impression in the district, California's Fourth District Court of Appeal found in *Caliber Paving Co., Inc. v. Rexford Industrial Realty & Management, Inc.* that an owner on a construction project could be liable to a subcontractor for the tort of intentional interference with the subcontractor's contract with the general contractor. The court held that even though the owner may have had an "economic interest" in the subcontractor's contract with the general contractor, the owner was still a

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“stranger” to the contract and could be liable for intentional interference.

In *Caliber Paving Co.*, the defendant-owner entered into a contract with a general contractor to make improvements on the owner’s property. The general contractor, in turn, contracted with the plaintiff-subcontractor to perform paving work at the project. A dispute arose during construction regarding payment and, shortly thereafter, the subcontractor was terminated from the project. The subcontractor subsequently sued alleging that a representative from the owner had directed the general contractor to “kick [the subcontractor] off the job or hire somebody else,” and that the owner “wanted [the subcontractor] off the job.”

The trial court dismissed the subcontractor’s intentional interference with contract claim against the owner, relying on the California Supreme Court’s prior decision in *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* There, the California Supreme Court held that only strangers to a contract – “outsiders who have no legitimate social or economic interest in the contractual relationship” – can be liable for intentional interference with contract. The trial court in *Caliber Paving Co.* reasoned that because the contract involved improvements to the owner’s property, the owner had a “direct economic interest” in the contract and was not a stranger. The trial court emphasized that “[i]t is hard to envision a situation where the alleged interfering party does not have a more direct economic interest in a contract than one between its general contractor and a subcontractor over how the property is improved.”

The appeals court reversed the trial court’s decision. The appeals court analyzed the California Supreme Court’s language in *Applied Equipment*, specifically the Supreme Court’s statement that “outsiders” to a contract are those “who have no legitimate social or economic interest in the contractual relationship,” and found that they were not dispositive. The appeals court reasoned:

The Supreme Court’s comments about the liability of noncontracting parties were unnecessary to the holding of *Applied Equipment*, which was limited to whether a party can be liable for conspiracy to interfere with its own contract. The Supreme Court never addressed whether a tort claim for interference with contract could be made against a noncontracting party claiming to have a social or economic interest in the contractual relationship. Cases are not authority for propositions not considered ... The context of *Applied Equipment* leaves no doubt the Supreme Court did not intend to restrict tort liability for interfering with contractual relations to noncontracting parties with no social or economic interest in the contract.

The appeals court also looked to the reasoning and purpose for imposing liability for intentional interference with contract and determined that there is no immunity for noncontracting parties with a social or economic interest in the contract. Instead, where a noncontracting party engages in conduct that is “socially opprobrious” and induces a party’s breach, they may be liable for intentional interference regardless of any social or economic interest in the contract. In addition, the appeals court expressed concern over insulating noncontracting parties from their own tortious conduct. The appeals court reasoned that a party with an economic interest could intentionally interfere with a contract without facing either tort or contract liability, given their status as a stranger. “This result is particularly perverse as it is those parties with some type of economic interest in a contract who[ ] would have the greatest incentive to interfere

with it.”

The appeals court declined to follow California federal court decisions to the contrary. Instead, it favorably cited other California state court decisions that similarly declined to follow the “social or economic interest” language from *Applied Equipment*.

While this decision is not limited to the construction context, it nonetheless has broad implications for owners and contractors on construction projects in California. It is likely that owners can no longer rely on the Supreme Court’s “social or economic interest” language in *Applied Equipment* to immunize themselves from tortious interference claims brought by downstream subcontractors. The same applies for contractors defending tortious interference claims from sub-subcontractors or suppliers.

Notably, the appeals court’s decision may not be limited to situations where a subcontractor is removed from the project and could arguably apply where a subcontractor alleges that an owner improperly interferes with a subcontractor’s scope of work or means and methods.

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