

Hawaii Court Finds No Duty of Care to Seller

In a recent case, a Federal District Court in Hawaii affirmed that consulting engineers providing services to a buyer in a business transaction do not typically have a duty of care to the seller in the transaction. This holding helps protect engineers and other similarly situated design professionals who may provide services to a buyer from a number of claims that disgruntled sellers may seek to allege.

In Hawaii Motorsports Investment, Inc. v. Clayton Group Services, two companies entered into a binding letter of intent for the sale of a Raceway Park in Kapolei, Hawaii (“Park”) for over twenty million dollars. No. 09-304 SOM/BMK, 2009 WL 3109941 (D. Hawaii Sept. 25, 2009). The buyer hired an environmental consultant to prepare an environmental assessment of the Park. After the consultant issued its assessment, the buyer refused to pay twenty million dollars for the Park. The seller and the buyer ultimately agreed-upon a reduced sale price, approximating seven million dollars less than what had initially been agreed to in the letter of intent.

The seller, in turn, sued the consultant stating that the assessment was incomplete and erroneous in that it identified problems that were “alleviated” by the time the assessment was completed. The seller alleged that the consultant had derailed the negotiations for the sale of the Park causing significant economic loss, and asserted claims for professional negligence, breach of contract, negligent misrepresentation and tortious interference.

The court dismissed all of the claims except for the tortious interference claim. In addressing the seller’s professional negligence claim, the court explained that the seller had to first show that it had a special relationship with the consultant to establish a duty of care owed to the seller. The court discussed several factors that it found relevant in determining a duty of care:

Whether a special relationship exists ... the foreseeability of harm to the injured party, the degree of certainty that the injured party suffered injury, the closeness of the connection between the defendants’ conduct and the injury suffered, the moral blame attached to the defendants, the policy of preventing harm, the extent of the burden to the defendants and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved. (citations omitted).

Since the seller did not have a contract with the consultant, the duty of care could not be established contractually. The seller instead argued that the consultant’s status as a professional consultant created a duty of care to the seller. The court disagreed and held that, even though the consultant prepared the assessment that may have been relied on by the seller and buyer during their negotiations, the relationship between the consultant and seller did not establish a duty of care to the seller. At most, the seller was an “incidental beneficiary” of the consultant’s contract with the buyer. As an incidental beneficiary, the seller could not show that the Consultant owed it special care.

The court used similar reasoning to dismiss some of the remaining claims. In its breach of contract claim, the seller alleged it was harmed because the consultant failed to provide the buyer “a clear and accurate evaluation” of the Park. The court held that this claim failed because the consultant did not contract with

the seller and the seller failed to show that it was intended to benefit from the contract. Even though the consultant may have been aware of the negotiations between the buyer and seller, that was insufficient to establish the seller as an “intended beneficiary.”

The court also dismissed the negligent misrepresentation claim because it found that the seller could not prove that “the person for whose benefit the information is supplied,” in this case, the buyer, “suffered the loss.” The fact that the consultant may have known that its assessment was used in the business transaction or that the assessment even influenced the transaction was insufficient to establish that the assessment was intended to benefit the seller. As such, the negligent misrepresentation claim failed.

While the court allowed the claim for tortious interference to proceed to trial, the court’s other rulings were very favorable to consulting engineers and other design professionals

Risk Management Prevention Tip

This Hawaii decision illustrates the importance of having a contract in place that defines the party for whom the work is to be completed. This language is especially important when performing consulting work on a sales transaction that could result in an unhappy seller. By doing so, you can help limit your duty of care to your client under the agreement, as opposed to all parties involved in the business deal. Although the Court granted permission to proceed with the tortious interference claim in this case, the clear delineation of who the contractor worked for was key to having the other three allegations dismissed.

by Sa’adiyah Masoud, Esq., Donovan Hatem LLP, Seaport East, Two Seaport Lane, Boston, MA 02210.
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