

Court Of Appeal Rules That A Defendant, Not A Party To A Contract, May Be Liable In
Tort For Intentional Interference With That Contract Even If It Has A Social Or
Economic Interest In The Contractual Relationship

By: Edward F. Morrison, Jr., Esq.
Larry A. Schwartz, Esq.

California law recognizes a tort of action against a non-contracting party—sometimes called a "stranger" to a contract—who intentionally interferes in the performance of a contract to which it is not a party. See, *Applied Equipment Corp. v. Litton Saudi Arabia, Ltd.* (1994) 7 Cal.4th 503, 513-514 ("Applied Equipment Corp."). But what if the "stranger" to the contract has a legitimate interest in the outcome of the contract? Many have argued that the holding in Applied Equipment Corp. should not apply to a stranger/non-contracting party which has a social or economic interest in the contract (i.e., that party should not be considered a "stranger" because it has a legitimate interest in the outcome of the contract). This is a significant issue for construction contracts where an owner may be alleged to have interfered with a contractual relationship between a prime contractor and the prime contractor's subcontractor.

In the recently published Court of Appeal decision in Caliber Paving Company, Inc. v. Rexford Industrial Realty and Management, Inc. (2020) 54 Cal.4th 175 ("Caliber case"), the Court of Appeal (Fourth District, Division 3) ruled that a defendant who is not a party to a contract (i.e., a stranger), and who may have a social or economic interest in the contractual relationship to which it is a stranger, *may in fact be liable* in tort for interference with the contract. The facts of the Caliber case are fairly common. Rexford Industrial Realty and Management, Inc. ("Rexford") owns and operates industrial properties throughout Southern California. In 2017, Rexford hired a prime contractor, Steve Fodor Construction ("SFC") for various works of improvement. SFC in turn hired Caliber Paving Company, Inc. ("Caliber") as a subcontractor who agreed to pave various parking lots in phases. The first parking lot was paved without incident in or around June of 2017. However, the next phase, which was to occur on September 11, 2017, did not go forward due to disputes involving trucks and trailers being parked on the jobsite. SFC and Caliber disagreed on the facts. SFC's owner, Steve Fodor, claimed that Caliber had arrived earlier than expected, left the premises without permission and then issued a "move on" charge of \$7,500 to SFC, which was increased to \$15,000. SFC refused to pay the "move on charge." Caliber, on the other hand, disputed SFC's version and noted that it had been willing to complete the work on other days. Caliber's president, Darin Gilchriese, also testified in his deposition that Mr. Fodor had told him that Rexford's primary representative had directed Mr. Fodor "to kick [Caliber] off the job" (and claimed that Rexford had been a cause of the discord)

Caliber sued SFC for breach of contract. Caliber also sued Rexford for intentional interference with contract. At the trial court level, Rexford successfully moved for summary judgment on the ground that Rexford was not a stranger to the SFC-Caliber contract as Rexford had a legitimate economic interest in the contract between Caliber and SFC (citing the holding in Applied Equipment Corp.). Caliber argued that, if Rexford was correct in construing the holding in Applied Equipment Corp., a "non-contracting/non-stranger" to a contract could never be liable for its actions because a contract claim would fail given the lack of privity and any interference claim would fail due to the party being a stranger to the contract. The trial court granted summary judgment to Rexford. The trial court also addressed evidentiary issues which are not the subject of this article.

On appeal, the California Court of Appeal reversed the trial court and ruled, in a case of first impression in that District, that even where a party has a social or economic interest in a contract, such as Rexford, the stranger to the contract cannot pursue a defense under the Applied Equipment Corp. holding. The Caliber holding probably makes sense. If Rexford had its way, it could not be liable for breach of contract, being a stranger to the contract, but then also could not be liable for interfering with that same contract. What the Caliber holding does mean, irrespective of its merits, is that a property owner can potentially be liable for interference with a contract between a prime contractor and subcontractor, even though it is a "stranger" to that contract.

About the Authors: Edward F. Morrison, Jr. is the founding partner and Larry A. Schwartz is Of Counsel to The Morrison Law Group, a professional corporation. Their biographies can be viewed at .

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