Colorado Allows Interference Claim Against Neighbor Who Scared Off Contractor

By Tim Gordon

Good fences may make good neighbors, but construction projects often make bad ones. In Begley v. Ireson, 2017COA3, Begley and Hirsh wanted to demolish the old house on their property and build a new home. They hired an architect, submitted plans to Denver for approval, and hired a contractor to perform the work. But the work abruptly stopped after their neighbors complained and scared off the contractor.

The contractor walked off the job after having demolished the old house and preparing for the basement excavation work. The problem, according to Begley and Hirsh, was that the neighbors on each side of them and their neighbors' attorney threatened the contractor, causing the contractor to stop work and to breach its contract.

Begley and Hirsh filed claims against both neighbors and the neighbors' attorney for intentional interference with contract. The District Court, however, dismissed the lawsuit, ruling that Begley and Hirsh failed to state a claim against their neighbors, and that the statements made by the attorney to the contractor were made in anticipation of a lawsuit against Begley and Hirsh and were therefore could not be the basis of a claim against the attorney. A division of the Colorado Court of Appeals reversed.

In Colorado, "[o]ne who intentionally and improperly interferes with the performance of a contract . . . by inducing or otherwise causing the third person not to perform the contract, is subject to liability to the other for the pecuniary loss resulting to the other from the failure of the third person to perform the contract." Westfield Development Co. v. Rifle Investment Assoc., 786 P.2d 1112, 1117 (Colo. 1990). According to the Court of Appeals in Begley, the following allegations were sufficient for Begley and Hirsh to maintain a claim against their neighbors for intentional interference with contract:

- One neighbor called the City and County of Denver and fraudulently complained about the placement of a construction fence.
- Both neighbors made complains and demands about damage they said the contractor caused to their property that was later admitted to be pre-existing.
- The neighbors and the attorney caused the contractor to fear that if it continued working on the project that it would be subject to increased scrutiny during inspections on other projects, expensive litigation, loss of reputation and future business, and increased insurance premiums.
- The contractor, induced to do so by the neighbors and their attorney, breached the construction contract.

As for the statements made by the neighbors' attorney, the Court of Appeals held that the privilege that protects attorneys against tort claims for statements made about litigation did not automatically apply. The attorney's statements were not made in the course of a lawsuit, but instead were arguably only made in anticipation of future litigation. According to the Court, if such prelitigation statements were absolutely protected, it would condone improper behavior. So for prelitigation statements to enjoy protection, they must relate to prospective litigation and the prospective litigation must be contemplated in good faith.

As a practical note, often times the real teeth in a claim for intentional interference is that the plaintiff's damages are not limited by any contractual limitations or waivers of consequential damages in the contract that was breached. So, hypothetically, the contractor who walked off the job in Begley might be protected by a contractual waiver of consequential damages, which would protect the contractor against damages for additional time needed by Begley and Hirsh to rent a home during construction, and additional carrying costs for a construction loan. But these sorts of contractual limitations and waivers would not apply to protect the neighbors who allegedly induced the contractor to breach.