

STATE OF MICHIGAN  
COURT OF APPEALS

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LONG MECHANICAL, INC.,

UNPUBLISHED

Plaintiff-Appellant,

v

No. 185526

Wayne Circuit Court

LC No. 95-501238-CB

RIVER ROUGE SCHOOL DISTRICT and  
RIVER ROUGE SCHOOL BOARD,

Defendant-Appellees.

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Before: Hoekstra, P.J., and Marilyn Kelly and J.C. Sullivan\*, JJ.

HOEKSTRA, P.J. (concurring).

I concur in result because I agree that plaintiff is restricted to a cause of action that alleges fraud, abuse or illegality by defendants. *Great Lakes Heating, Cooling, Refrigeration and Sheet Metal Corp v Troy School Dist*, 197 Mich App 312; 494 NW2d 863 (1992). Because plaintiff's complaint failed to so allege, defendant was entitled to summary disposition pursuant to MCR 2.116(C)(8), and the trial court's ruling on that basis must be affirmed.

I write separately because I respectfully disagree with the conclusion of the lead opinion that plaintiff, who is a disappointed bidder, lacked standing to pursue an action for injunctive relief. In *City of Saginaw v Consumers' Power Co*, 213 Mich 460, 477; 182 NW 146 (1921), our Supreme Court expressed support for the proposition that a competitive bidder, as well as taxpayers and the attorney general, are all proper parties to challenge the award of a public contract. Further, I believe that the cases cited by the majority for the proposition that a disappointed bidder lacks standing are based on a misapplication of *Talbot Paving Co v City of Detroit*, 109 Mich 657; 67 NW 979 (1896). I read *Talbot* to hold that a disappointed bidder may pursue injunctive relief, but that the court declined to apply the rule to the facts of that case because the contract in question had been completely performed prior to the time the matter reached the court. In effect, the court in *Talbot* ruled the challenge to the awarding of the contract moot on the facts of that case. Additionally, a rule holding that a disappointed bidder has standing to an equitable action to enjoin the awarding of a public contract is consistent with decisions of other jurisdictions.<sup>1</sup>

\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Finally, I am persuaded that public policy considerations favor a holding that would grant a disappointed bidder standing. I believe that a disappointed bidder is in a more favorable position to discover instances of fraud, illegality, or abuse in the awarding of public contracts than are either taxpayers or the attorney general, and is more likely to pursue such claims because of his economic interest. If exposure of wrongdoing in the awarding of public contracts is a desirable objective, then granting standing to a disappointed bidder, in my judgment, is the most effective means to assure that objective.

/s/ Joel P. Hoekstra

<sup>1</sup> See *Merriam v Kunzig*, 476 F2d 1233, 1240 (CA 3, 1973); *Sutter Bros Construction Co v City of Leavenworth*, 708 P2d 190, 196 (Kan, 1985); *MA Stephen Const Co v Borough of Rumson*, 308 A2d 380, 383 (NJ Super, 1973); *Mottner v Mercer Island*, 452 P2d 750 (Wash App Ct, 1969).