See para. 5

*Indexed as:*

# Gottcon Contractors Ltd. v. Manzo

**Between**
**Gottcon Contractors Limited and Gottardo Contracting (1980) Inc., plaintiffs (respondents), and**
**Emilio Manzo, Joseph Maio, Claudio Memme and Maystar Contracting Ltd., defendants (appellants)**

[1996] O.J. No. 1773

File No. C10991/92

Ontario Court of Appeal
Toronto, Ontario

**Labrosse, Austin and Moldaver JJ.A.**

Heard: May 21, 1996.
Oral judgment: May 22, 1996.

(3 pp.)

*Torts -- Interference with economic relations -- Interference with business relations -- Solicitation of clients of former employer -- Master and servant -- Duties of servant -- On termination -- Competition in business, use of employer's material -- Competition in business, solicitation of clients of former employer.*

Appeal by the defendants and cross-appeal by the plaintiffs in a case involving the wrongful use of confidential information. The defendant Manzo had worked for the plaintiff companies, which were a general building contractor and a masonry contractor. Shortly after preparing a quotation for a job to a customer, Manzo formed his own company and obtained that job on behalf of his new company, the corporate defendant. The plaintiffs claimed that Manzo had wrongfully used information from their bid in order to prepare the defendant company's bid. The trial judge had found in favour of the plaintiffs, and had assessed damages based on the plaintiffs having lost the contract and their obligation to mitigate. The plaintiffs cross-appealed on the issue of the scale of costs awarded at trial.

HELD: Appeal and cross-appeal dismissed. There was ample evidence to support the trial judge's conclusion that the defendants used confidential information from the plaintiffs' bid in preparing the defendants' quotation. The trial judge had correctly assessed the damages. The court was not persuaded that it should interfere on the issue of costs.

**Statutes, Regulations and Rules Cited:**

Ontario Rules of Civil Procedure, Rule 49.10(3).

**Counsel:**

M. Sclisizzi for the appellants.
H. James Marin for the respondents.

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The following judgment was delivered by

**1** THE COURT (oral endorsement):-- The appeal and the cross-appeal raise issues with respect to liability and damages.

**2** The respondents recovered judgment against the appellants Manzo and Maystar Contracting Ltd. in the sum of $125,000 plus interest, for improper use of confidential information. Gottcon and Gottardo are related family-run businesses. Gottcon is a general building contractor and Gottardo is a masonry contractor. Manzo was hired by Gottardo in 1981 and by 1986, he was the chief masonry estimator for Gottardo and from time to time estimated general contracting work for Gottcon.

**3** In 1986, Manzo, on behalf of Gottcon, prepared a quotation for the Stonor Group. In February 1987, he joined the other individual defendants (the action was dismissed against them) and formed Maystar Contracting Ltd., which was awarded the Stonor Group contract.

**4** The evidence of the defendants was not believed. The trial judge found that Manzo used information from the Gottcon bid in preparing the Maystar quotation. In our view, there was ample evidence that the appellants wrongfully used confidential information.

**5** As to damages, the trial judge considered evidence relating to the estimated profit, the contingency of not being awarded the contract and the obligation to mitigate. The assessment was a difficult one to make and we see no error in his conclusion.

**6** We agree with the trial judge that this case did not involve conduct that would warrant punitive damages.

**7** Finally, the cross-appeal raises an issue with respect to the scale of costs awarded at trial, in light of the provisions of Rule 49.10(3). We have not been persuaded that we should interfere on this issue.

**8** In the result, the appeal and cross-appeal are dismissed with costs.

LABROSSE J.A.
AUSTIN J.A.
MOLDAVER J.A.

qp/d/mmr/DRS/DRS/DRS