STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: April 29, 2013)

MARON CONSTRUCTION COMPANY, INC.	:	
V.	:	**C.A. No. PB-12-5409**
IRON CONSTRUCTION GROUP, LLC	:	

DECISION

SILVERSTEIN, J. Before the Court is Defendant Iron Construction Group, LLC's (Iron) Motion to Dismiss the one-count Complaint of Plaintiff Maron Construction Company, Inc. (Maron). At issue is the interpretation of G.L. 1956 § 9-1-52: a unique Rhode Island statute that provides a cause of action to the next lowest qualified bidder when a bid-winning contractor violates the state's prevailing wage law.

I

Facts and Travel

The facts alleged in the Complaint are as follows. The State of Rhode Island (the "State") invited bids for the construction of the new Salty Brine Bath House (the "Project"). (Compl. ¶ 6.) The Invitation to Bid included a provision that stated, "Provisions of State labor laws concerning payment of prevailing wage rates shall apply for the contracts involving public works construction, alteration, or building repair work." Id. ¶ 7. Eight companies bid for the Project. Id. ¶ 8.

Iron submitted the lowest bid ($1,759,000) and recognized in its Certification Cover Form that prevailing wage rates under State labor laws applied. Id. ¶¶ 9, 11. The State awarded the Project to Iron in March 2009. Id. ¶ 13. Maron submitted a bid of $2,229,000, which was

the second lowest amount. Id. ¶ 11. On March 23, 2011, Iron entered into a Consent Order with the Rhode Island Department of Labor and Training which found that Iron "failed to pay the prevailing wage rate" to various employees on the Project, in violation of G.L. 1956 § 37-16-1 et seq. Id. ¶ 15. Maron filed this claim for damages pursuant to § 9-1-52 (the Statute). Id. ¶¶ 16-20.

II

Standard of Review

It is well settled in Rhode Island that the "'sole function of a motion to dismiss is to test the sufficiency of the complaint.'" Narragansett Elec. Co. v. Minardi, 21 A.3d 274, 277 (R.I. 2011) (quoting Laurence v. Sollitto, 788 A.2d 455, 456 (R.I. 2002)). The court must "assume the allegations contained in the complaint are true, and examine the facts in the light most favorable to the nonmoving party." A.F. Lusi Constr., Inc. v. R.I. Convention Ctr. Auth., 934 A.2d 791, 795 (R.I. 2007) (citations omitted); McKenna v. Williams, 874 A.2d 217, 225 (R.I. 2005) (noting that the Court's function is to "examine the complaint to determine if plaintiffs are entitled to relief under any conceivable set of facts"). The trial judge "must look no further than the complaint . . . and resolve any doubts in the plaintiff's favor." Pellegrino v. R.I. Ethics Comm'n, 788 A.2d 1119, 1123 (R.I. 2002) (citations omitted); see Narragansett Elec., 21 A.3d at 277 (noting that court is "confined to the four corners of the complaint" in deciding motion to dismiss). Generally, the pleading must give fair and adequate notice of the plaintiff's claim, but need not contain a "high degree of factual specificity." See Hyatt v. Village House Convalescent Home, Inc., 880 A.2d 821, 824 (R.I. 2005); Hendrick v. Hendrick, 755 A.2d 784, 791 (R.I. 2000) ("Although a plaintiff is not obligated to set out the precise legal theory upon which his or her

claim is based, he or she must provide the opposing party fair and adequate notice of the type of claim being asserted.") (internal quotations and citations omitted).

A court should grant a 12(b)(6) motion only "when it is clear beyond a reasonable doubt that the plaintiff would not be entitled to relief from the defendant under any set of facts that could be proven in support of the plaintiff's claim." Palazzo v. Alves, 944 A.2d 144, 149-50 (R.I. 2008) (quoting Ellis v. R.I. Pub. Transit Auth., 586 A.2d 1055, 1057 (R.I. 1991)). Rhode Island state courts ascribe to notice pleading and have not formally adopted (or rejected) the newer, federal standard on a motion to dismiss, as set forth in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007) and Ashcroft v. Iqbal, 556 U.S. 662 (2009). See Narragansett Elec., 21 A.3d at 277 (applying Rhode Island standard in 2011 decision); Barrette v. Yakavonis, 966 A.2d 1231, 1233-34 (R.I. 2009) (applying Rhode Island standard). But see Rosano v. MERS et al., No. PC-2010-0310, June 19, 2012, Rubine, J., at 5-6; Siemens Fin. Servs., Inc. v. Stonebridge Equip. Leasing, LLC, No. PB-2009-1677, Nov. 24, 2009, Silverstein, J., at 5 (noting that Rhode Island Supreme Court's "overall approach in analyzing a 12(b)(6) motion does not conflict with the holding in Ashcroft that a complaint that includes well-pleaded factual allegations and a plausible claim for relief should survive a motion to dismiss"). Given that this Decision hinges upon the interpretation of the Statute, the Court's Decision would be the same under either formulation of the standard.

III

Discussion

Title 9 of the Rhode Island General Laws addresses "Courts and Civil Procedure—Procedure Generally." Chapter 9-1 provides for "Causes of Action." Section 9-1-52 is captioned, "Cause of action for next lowest bidding qualified contractor," and provides merely

the following: "Whenever a contractor or subcontractor, having been awarded the contract as the lowest qualified bidder, violates the state's prevailing wage, a cause of action shall be for the next lowest qualified bidder for any and all damages incurred as the result of not being awarded the contract."

Iron argues that the Statute does not dispense with the general causation requirement. This argument starts with the statutory language and focuses on the use of the terms "cause of action" and "damages." Iron argues that those terms "must incorporate a causation requirement to logically connect the defendant's liability, the remedy created, and the plaintiff's purported loss or injury." (Def.'s Mem. Supp. Def.'s Mot. to Dismiss 7.) Iron contends that Maron must allege "(1) that Iron's bid was fraudulent because Iron prepared and submitted its bid with the intention of illegally underpaying its employees in violation of the state's prevailing wage laws; and (2) that had it not been for Iron's fraudulent bid, Maron would have actually won the contract itself." Id. at 3. Furthermore, Iron argues that absent proof of causation, the Statute violates its equal protection and due process rights under the state and federal constitutions.

Maron argues that the plain language of the Statute "demonstrates that the [S]tatute is a strict liability statute which does not require the plaintiff to prove that the defendant was motivated by fraud when it submitted its bid." (Pl.'s Mem. Supp. Pl.'s Obj. to Def.'s Mot. to Dismiss 6.) Additionally, Maron argues that the Statute presumes that the next lowest qualified bidder lost the contract because of the winning bidder's wage violation. As to the constitutional issues raised, Maron points out that legislative enactments are presumed to be constitutional and the Statute nonetheless meets rational basis scrutiny.

1

Iron's Statutory Construction Arguments

There is scant authority on the Statute. Based on the Court's research and the representations of counsel at oral argument, only two cases and three decisions address the Statute: John Marandola Plumbing & Heating Co. v. Delta Mechanical, Inc., 769 A.2d 1272 (R.I. 2001); John Marandola Plumbing & Heating Co. v. Delta Mechanical, Inc., No. KC-1997-0126, Bench Decision, Aug. 14, 1998, Israel, J. (Marandola Bench Decision); James J. O'Rourke, Inc. v. Century Electric Co., No. KC-1995-0828, 1996 WL 937022 (Silverstein, J., Dec. 16, 1996). Additionally, the Statute seems to be a unique creature of Rhode Island law. Nevertheless, the Court must interpret the inartfully drafted statute and apply it to this case.

"In reviewing the language of a statute, [the Court's] ultimate goal is to give effect to the General Assembly's intent, and [the Supreme Court has] repeatedly observed that the plain statutory language is the best indicator of such intent." Mutual Development Corp. v. Ward Fischer & Co., 47 A.3d 319, 328 (R.I. 2012) (internal quotations and citations omitted). "It is generally presumed that the General Assembly intended every word of a statute to have a useful purpose and to have some force and effect." Peloquin v. Haven Health Center of Greenville, LLC, 61 A.3d 419, 425 (R.I. 2013) (internal quotations and citations omitted). "The plain meaning approach, however, is not the equivalent of myopic literalism, and it is entirely proper for [the Court] to look to the sense and meaning fairly deducible from the context." Mendes v. Factor, 41 A.3d 994, 1002 (R.I. 2012) (internal quotations and citations omitted). Thus, the Court considers an individual provision "in the context of the entire statutory scheme, not as if each section were independent of all other sections." Id.

Iron argues that Maron must allege "that Iron's bid was fraudulent because Iron prepared and submitted its bid with the intention of illegally underpaying its employees in violation of the state's prevailing wage laws." (Def.'s Mem. Supp. Def.'s Mot. to Dismiss 3.) The plain language of the Statute contains no requirement that the plaintiff must plead or prove that the defendant had fraudulent intent at the time of the bid. The Statute says nothing about the intent of the bid winner. See § 9-1-52. Furthermore, the Statute suggests that the only relevant information about the bid is the amount and the bidder's qualifications. See id. Indeed, by the General Assembly's use of present perfect tense ("having been awarded the contract"), which denotes that something has occurred in the past, the Statute acknowledges that a violation of the prevailing wage law can only come after the bid has been awarded; it is only at that point that a cause of action accrues for the next lowest qualified bidder. See id.; Bryan A. Garner, Garner's Modern American Usage 802-03 (3d ed. 2009) (noting that the present perfect tense "sometimes represents an action as having been completed at some indefinite time in the past"). Therefore, Maron's failure to allege that Iron's bid was fraudulent, or that Iron had an intention to violate the State's prevailing wage at the time of its bid, is irrelevant to Maron's ability to state a claim for relief under the Statute. See State v. Filler-Balletta, 996 A.2d 133, 143 (R.I. 2010) ("It is not the function of the Court to add language to an otherwise clear and unambiguous enactment.").

The more contentious issue relates to what must be pled under the Statute regarding the connection between the bidding and damages. Both the Superior Court Decision and the Supreme Court Opinion in Marandola bear on this issue.

In Marandola, 769 A.2d at 1274, two companies submitted bids for a subcontract for HVAC (Heating, Ventilation, and Air Conditioning) and plumbing work to be done in schools. The defendant received the contract, but, later that year, the Rhode Island Department of Labor

alleged that the defendant violated the state's prevailing wage law. Id. The defendant signed a consent order and paid unpaid overtime to twenty employees. Id. The plaintiff brought suit pursuant to the Statute. Id.

The trial justice granted summary judgment for the defendant. Marandola Bench Decision at 10. The court noted that there was "no evidence that the [contract manager] and the town, neither of which is endowed with prescience, would have awarded the contract to the plaintiff but for the defendant's bid." Id. at 9 (emphasis in original). Thus, there is a causation element to the cause of action, but it relates to the plaintiff's loss of the bid, rather than a direct connection to the defendant's subsequent violation of the prevailing wage laws. See id. Key for our consideration of the Statute, the Court stated that:

> Section 9-1-52 appears to be based on two underlying presumptions. First, that the successful bidder got the contract at issue because of its violation of the prevailing wage law. Second, that the second lowest qualified bidder loses the contract because of the successful bidder's violation of the law. The first presumption is irrebuttable because it is the basis for liability created by the statute as a matter of law. The second presumption, however, is rebuttable, otherwise, the statute would raise serious due process problems. Id. at 10.

The court went on to hold that "the defendant has shown from its affidavits without contradiction and uncontroverted [sic] that the plaintiff did not lose the contract because of the defendant's violation of the prevailing wage." Id. Finally, the court stated that "the plaintiff has not shown any evidence that it has been damaged by the statutory loss under that section." Id.

The Supreme Court began its analysis of the Statute by placing it in the context of the statutory scheme and divining its intent. The Court noted that the prevailing wage law requires contractors and subcontractors to pay their employees the prevailing wage and that a violation of that law is a misdemeanor. Marandola, 769 A.2d at 1275. The purpose of prevailing wage law

is "'to support the integrity of the collective bargaining process by preventing the undercutting of employee wages in the private construction sector.'" Id. (quoting J.A. Croson Co. v. J.A. Guy, Inc., 81 Ohio St. 3d 346, 691 N.E.2d 655, 659 (1998)). Placing the Statute at issue in that scheme, the Court stated that "[b]esides the penalties provided by the prevailing wage law, § 9-1-52 creates a private, third-party cause of action to recover damages against violating or non-complying employers for the next-lowest qualified bidder." Id. at 1276. Finally, the Court stated, "By enacting [§ 9-1-52], the Legislature provided employers an additional financial disincentive to violate the prevailing wage law." Id.

The Supreme Court next went on to discuss the meaning of a "qualified bidder," a term not defined by the Statute. Id. The Court questioned whether either the plaintiff or the defendant was a qualified bidder, but noted that the defendant's bid was accepted, "despite its deficiencies." Id. The Court employed the term "presumption" twice, but in a seemingly different way than the trial justice: "[T]he fact that mandatory requirements were overlooked in the awarding of the contract to Delta raises the presumption that [the plaintiff's] bid also may have been qualified. Like all presumptions, however, [the plaintiff's] status as the next lowest 'qualified bidder' was rebuttable." Id. at 1276-77. The Court concluded that "although [the defendant's] affidavits may constitute an attempt to rebut the presumption that [the plaintiff] was the next-lowest qualified bidder, they do not achieve that objective. A genuine issue of material fact still exists about whether the school committee would have rejected [the plaintiff's] bid." Id. at 1277. Thus, the Supreme Court did not address the larger statutory construction issues defining exactly what a plaintiff is required to prove regarding causation. See id. at 1275-77. Instead, the Court framed the issue as a question of fact as to whether the plaintiff was the next lowest qualified bidder. See id. at 1277.

Maron has alleged that it was the next lowest qualified bidder and, more specifically, that the bid it submitted to the State was for an amount lower than all other bidders except for Iron. (Compl. ¶¶ 11, 14.) Additionally, Maron has alleged that Iron won the contract. Id. ¶ 13. On a motion to dismiss, these allegations, which are accepted as true, are sufficient to allege that Maron was the next lowest qualified bidder under the Statute. Cf. Marandola, 769 A.2d at 1276-77. Furthermore, because Maron has alleged that it was the next lowest qualified bidder, it is presumed to have been harmed by its loss of the contract. See Marandola Bench Decision at 10 (rebuttable presumption that next lowest qualified bidder loses contract because of lowest bidder's wage violation). This does not mean that Maron has proven liability under the Statute merely by the allegations in the Complaint. The allegations are susceptible to factual attack as to whether Maron was, in fact, the next lowest qualified bidder (e.g., if there was a control budget, did Maron come in under it?), whether it was damaged by its loss of the bid (e.g., would Maron's bid actually have turned a profit?), and the amount of the damages.

2

Iron's Constitutional Arguments

This Court has previously held that the Statute was constitutional under both equal protection and due process. See O'Rourke, at *1-4. The arguments here seem to recouch ones previously made.

"It is well settled that a legislative enactment is presumed to be constitutional and that a party challenging the legislation has the burden of persuading the court otherwise." In re Advisory Opinion to the Governor (DEPCO), 593 A.2d 943, 946 (R.I. 1991). Furthermore, "[t]he challenging party must convince the court beyond a reasonable doubt that the act is

contrary to a provision either expressly stated in the State or the Federal Constitution or necessarily implied from language therein." Id.

Feigning an equal protection argument, the Defendant contends that the Statute "creates two classifications—the plaintiff class of second-lowest bidders and the defendant class of winning bidders who later violate the state's prevailing wage law." (Def.'s Mem. Supp. Def.'s Mot. to Dismiss 18.) To implicate equal protection, however, the law must actually treat classes differently. See Engquist v. Oregon Dept. of Agr., 553 U.S. 591, 601 (2008) ("Our equal protection jurisprudence has typically been concerned with governmental classifications that affect some groups of citizens differently than others."); Ross v. Moffitt, 417 U.S. 600, 609 (1974) ("'Equal Protection' . . . emphasizes disparity in treatment by a State between classes of individuals whose situations are arguably indistinguishable."). Here, the Statute treats everyone the same. The Statute merely regulates conduct, i.e., the winning and losing of a bid and the subsequent failure to pay the prevailing wage. See § 9-1-52. All companies that win a contract via a lowest qualified bid must comply with the state's prevailing wage laws. See § 37-13-3. The position that there is merely a "plaintiff's class" and a "defendant's class" would raise the equal protection concerns for every section of § 9-1-1 et seq. (and possibly much more of Rhode Island's General Laws).

The Defendant's due process argument seems to be premised upon the Statute being viewed as a punitive statute. See Def.'s Mem. Supp. Def.'s Mot. to Dismiss 19. This Court previously held and reasoned that the Statute is remedial, not punitive:

> Section 9-1-52 places economic liability on Defendant if it has violated the prevailing wage. Such an assessment of liability is remedial in effect as it seeks to make whole the second lowest bidder who was beaten out on a public works contract by the low bidder who subsequently did not comply with the prevailing wage

> law. A remedial statute does not exact punishment. See United States v. Monsanto Co., 858 F.2d 160, 175 (4th Cir. 1988). The State's objective of ensuring that prevailing wages are paid to public works employees is a nonpunitive purpose. O'Rourke, at *6-7.

Therefore, Iron's contention that the Statute is punitive fails.

Although the above reasons are sufficient to resolve the issues for this case, the Court will nonetheless address the rational basis for the Statute. "The general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest." City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 440 (1985). States have "wide latitude" when it comes to economic legislation. Id.; see O'Rourke, at *2 (noting the Statute's economic purpose).

As this Court has previously held, "the state's objective in 9-1-52 is to ensure the payment of 'prevailing wages' to employees who work on public works projects." O'Rourke, at *2. "Such an objective is a legitimate state goal." See id. After pointing out that the "primary purpose of the prevailing wage law is to support the integrity of the collective bargaining process by preventing the undercutting of employee wages in the private construction sector," the Supreme Court concluded that § 9-1-52 "provide[s] employers an additional financial disincentive to violate the prevailing wage law." Marandola, 769 A.2d at 1275-76. Thus, the financial disincentive is rationally related to the goal of ensuring payment of prevailing wages on public works projects. See id.; O'Rourke, at *2-3. Therefore, the Statute is not unconstitutional under either equal protection or due process.

IV

Conclusion

The Court concludes that the Statute does not require a plaintiff to prove that the defendant had a fraudulent intent at the time of the defendant's bid. Additionally, the Plaintiff has sufficiently pled a cause of action under the Statute because it has alleged that it was the next lowest qualified bidder, which carries a rebuttable presumption that it was harmed by its loss of the contract. Therefore, the Defendant's Motion to Dismiss is denied. Prevailing counsel shall present an order consistent herewith which shall be settled after due notice to counsel of record.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	Maron Construction Company, Inc. v. Iron Construction Group, LLC
CASE NO:	PB-12-5409
COURT:	Providence Superior Court
DATE DECISION FILED:	April 29, 2013
JUSTICE/MAGISTRATE:	Silverstein, J.
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