

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC.

SUPERIOR COURT

(FILED: March 4, 2014)

KAYAK CENTRE AT WICKFORD :
COVE LLC d/b/a KAYAK CENTRE :
OF RHODE ISLAND :

V. :

C.A. No. WC-13-0630

THE TOWN OF NARRAGANSETT; :
DONALD GOODRICH, in his capacity :
as FINANCE DIRECTOR FOR THE :
TOWN OF NARRAGANSETT; THE :
NARRAGANSETT TOWN COUNCIL; :
JAMES M. CALLAHAN, SUSAN :
CICILLINE-BUONANNO, GLENNA M.:
HAGOPIAN, MATTHEW M. MANNIX :
and DOUGLAS E. MCLAUGHLIN, in :
their capacity as MEMBERS OF THE :
NARRAGANSETT TOWN COUNCIL; :
and NARROW RIVER KAYAKS, LLC:

DECISION

K. RODGERS, J. Does the award of a concessionaire contract by a municipality fall within the statutory framework for the award of municipal contracts, and, if not, is a municipality granted unfettered discretion in rejecting all awards submitted in response to its invitation to bid? These are the issues raised in the instant Complaint filed by Kayak Centre at Wickford Cove LLC d/b/a Kayak Centre of Rhode Island (Kayak Centre or Plaintiff). Plaintiff’s Complaint seeks declaratory and injunctive relief with respect to two votes taken by the Narragansett Town Council (Town Council) on October 7, 2013, the first denying the award of the concessionaire contract to Kayak Centre, and the second rejecting all awards submitted and rebidding the contract to conduct a paddle

sports business concession on land owned by Defendant Town of Narragansett (Town) along Narrow River.

The matter was tried before the Court sitting without a jury on February 10, 2014, on Plaintiff's request for preliminary and permanent injunctive relief consolidated with a trial on the merits on all counts in accordance with Rule 65(b) of the Superior Court Rules of Civil Procedure. Jurisdiction is pursuant to G.L. 1956 §§ 9-30-1 and 8-2-13. For the reasons set forth herein, judgment shall enter for Defendants.

I

Findings of Fact

The parties stipulated to the following facts, which the Court adopts and sets forth herein. Notably, the parties have agreed that there are no disputed facts for the Court to resolve.

Kayak Centre is a Rhode Island limited liability company engaged in the paddle sports business and operates two locations in Rhode Island, one in Wickford and one in Charlestown. Narrow River Kayaks, LLC (Narrow River Kayaks) is a business competitor of Plaintiff also engaged in the paddle sports business. Over the past twenty-one years, Narrow River Kayaks has operated its Narragansett-based business at 94 Middlebridge Road in Narragansett, along Narrow River. In August 2012, however, the Town purchased the 9.5-acre parcel of land consisting of 94 and 95 Middlebridge Road (the Property).

In August 2013, the Town put the paddle sports concessionaire contract out to competitive bid. Specifically, the bidding would be for a five-year contract to operate a paddle sports business at the Property. Despite Narrow River Kayak's presence on the

Property, Robert O'Neill, Chairman of the Town's Land Conservancy Trust, stated: "It only makes good business sense to say, 'We'll see what other proposals [for the paddle sports concession at the Property] people will bring forward.'" Stmt. of Facts, ¶ 8. Toward that end, Susan Gallagher (Gallagher), the Town's Purchasing Agent, and Steven Wright, the Director of the Town's Parks and Recreation Department, prepared and advertised an Invitation for Bids. See id. at ¶ 9 and Ex. 2.

Four prospective bidders attended a pre-bid meeting to survey the Property. Out of those four, only Kayak Centre and Narrow River Kayaks submitted bids. Kayak Centre's bid proposed \$180,505 in payments to the Town over the five-year term while Narrow River Kayak's bid proposed \$100,500 in payments to the Town over the same term. Id. at ¶¶ 11-12 and Exs. 3-4. After reviewing the bids, Gallagher, on behalf of the Town's Parks and Recreation Department, issued a report to the Town Council concluding Kayak Centre was the best and most qualified bidder and recommending that the Town Council award the contract to Kayak Centre at an October 7, 2013 meeting. Id. at ¶ 13 and Ex. 5. Specifically, that report stated:

"The Kayak Centre has been in business for 18 years and presently operates at two locations within Rhode Island; Wickford and Charlestown. The Parks and Recreation Department is recommending this award based on the Kayak Centre's 18-year experience in the paddle sports business, references and total bid offering. An inspection of the Wickford operation was conducted by the Parks and Recreation Department to meet with the owner and staff to insure compatibility with the Middlebridge Property. In addition several vendor references were contacted via telephone, resulting in all positive comments regarding the Kayak Centre." Id. at ¶ 14 and Ex. 5.

In response, Narrow River Kayaks engaged in a social media campaign to build public support for its paddle sports business at the Property. Id. at ¶ 15. In addition to

starting an on-line petition, id. at ¶ 15 and Ex. 6, Narrow River Kayaks also encouraged its supporters to attend the October 7, 2013 Town Council meeting to speak against the recommended award. Id. at ¶ 16.

At the October 7, 2013 Town Council meeting, the Town Council entertained a motion to award the contract for the paddle sports concession to Kayak Centre.¹ After lengthy public comments and discussion among Town Council members and the Town Solicitor, the Town Council voted 3-1 to reject the motion to award the bid to Kayak Centre. Tr. 67-68, Oct. 7, 2013. The Town Council thereafter voted 3-1 to reject all bids and commence the bidding process again, with additional criteria and qualifications to be developed by staff to be included in the new bid package. Id. at 69-70.

On December 3, 2013, Kayak Centre filed a three count Complaint against the Town, various members of the Town Council, and Narrow River Kayaks. Count I seeks a declaration that the Town Council violated § 45-55-5 and § 70-306 of the Town's Code of Ordinances² by failing to award the bid to Plaintiff. Count II alleges the Town Council violated § 45-55-17. Count III seeks an injunction to enjoin the Town Council from commencing the bidding process again.

The merits of Plaintiff's allegations are readily resolved by addressing two issues: (1) whether the Town Council's actions fall within the statutory framework of §§ 45-55-1 et seq.; and (2) if not, whether the Town's decision to reject all bids and initiate a re-bid violated any common law rules regarding a municipality's ability to award municipal contracts. These issues will be addressed seriatim.

¹ Town Council President James Callaghan abstained from the Town Council discussion and votes. Tr. 2, Oct. 7, 2013.

² Plaintiff erroneously referenced § 70-306 as being in the Narragansett Town Charter.

II

Standard of Review

The Uniform Declaratory Judgments Act vests this Court with the “power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” G.L. 1956 § 9-30-1. In so doing, the Court strives “to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations. . .” Sec. 9-30-12; see also Capital Props., Inc. v. State, 749 A.2d 1069, 1080 (R.I. 1999) (citations omitted).

In a non-jury trial, the standard of review is governed by Rule 52(a) of the Superior Court Rules of Civil Procedure, which provides that “[i]n all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon.” Super. R. Civ. P. 52(a). In a non-jury trial, “the trial justice sits as a trier of fact as well as law.” Parella v. Montalbano, 899 A.2d 1226, 1239 (R.I. 2006) (quoting Hood v. Hawkins, 478 A.2d 181, 184 (R.I. 1984)). “When rendering a decision in a non-jury trial, a trial justice ‘need not engage in extensive analysis and discussion of all the evidence. Even brief findings and conclusions are sufficient if they address and resolve the controlling and essential factual issues in the case.’” Id. at 1239 (quoting Donnelly v. Cowsill, 716 A.2d 742, 747 (R.I. 1998) (citation omitted)). The trial justice need not “‘categorically accept or reject each piece of evidence in his [or her] decision for [the Supreme] Court to uphold it because implicit in the trial justices [sic] decision are sufficient findings of fact to support his [or her] rulings.’” Notarantonio v. Notarantonio, 941 A.2d 138, 147 (R.I. 2008) (quoting Narragansett Elec. Co. v. Carbone, 898 A.2d 87, 102 (R.I. 2006)).

III

Analysis

Plaintiff's Complaint is premised on the applicability of G.L. 1956 §§ 45-55-5 and 44-55-17 and § 70-306 of the Town's Code of Ordinances. Specifically, Plaintiff alleges in Count I:

“RIGL § 45-55-5 and Section 70-306 of the Town's [Ordinance]³ provide that municipal contracts shall be awarded by competitive bidding to the lowest responsible bidder.

....

“Pursuant to its powers under the Uniform Declaratory Judgments Act (RIGL §§ 9-30-1 *et seq.*), this Court should declare that the Town Council violated Rhode Island law and the Town's [Ordinance] by rejecting the Kayak Centre's bid and was required by law to award the municipal contract to the Kayak Centre.” Pl.'s Compl., ¶¶ 30, 32.

Count II alleges:

“Pursuant to RIGL § 45-55-5 and Section 70-306 of the Town's [Ordinance], the Town Council was required to award the municipal contract to operate the Town's paddle sports concession at the Property to the Kayak Centre.

“RIGL § 45-55-17 provides that any person who knowingly and intentionally violates any provision of this chapter shall be subject to a misdemeanor, punishable by a fine of not more than five hundred dollars (\$500), or by imprisonment for not more than one year, or both.

“Pursuant to RIGL §§ 9-1-2 and 45-55-17, Defendants are liable to the Kayak Centre for intentionally violating RIGL § 45-55-5.5.” *Id.* ¶¶ 34-36.

Finally, in Count III, Plaintiff contends that it is entitled to injunctive relief inasmuch as Plaintiff “has been and continues to be irreparably harmed (1) by the Town Council's illegal and wrongful decision to reject its bid and (2) by the Town Council's illegal and wrongful decision to commence the bidding process again with additional

³ See footnote 2, *supra*.

rules and criteria designed to protect [Defendant] Narrow River [Kayaks]” and Plaintiff “has no adequate remedy at law.” Id. ¶¶ 38-39.

A

Applicability of Statutory Framework for Award of Municipal Contracts

As a threshold matter, this Court must determine whether the statutory framework for awarding municipal contracts applies to the instant case. Section 45-55-4(4) of the General Laws defines “contract” as “all types of agreements, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item.” (emphasis added). While the definition goes on to include “awards,” “leases,” and “letter contracts,” *inter alia*, the clear language of the definition of “contract” strictly concerns a municipality’s expenditure of money, as opposed to its receipt of money. Moreover, the competitive bid process itself, set forth in § 45-55-5(e), provides that the “contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid is either the lowest bid price, or lowest evaluated or responsive bid price.” (emphasis added). To read the statute, as Plaintiff urges, to require the award of a concessionaire contract based upon the “highest bid price, or highest evaluated or responsive bid price” would require a drastically different reading of the clear language of the statute, an intolerable result.

Additionally, this Court is not persuaded by Plaintiff’s contention that the definition of “supplies” bootstraps concessionaire contracts, such as the subject contract, into the purview of § 45-55-5. Section 45-55-4 defines “supplies” as “all property, including, but not limited to, leases of real property, printing and insurance, except land or permanent interest in land.” While “supplies” may include lease agreements, which

Plaintiff contends this concessionaire contract really is, it is still necessary that the “contract” for such “supplies” be for “the purchase or disposal” thereof. Sec. § 45-55-4(4). The Town is neither purchasing nor disposing of a lease agreement, but rather seeks to receive funds as a result of a lease of its land to a paddle sports business. Indeed, the Town’s Purchasing Agent, Gallagher, noted in her report that “[t]his is a revenue-producing contract, with no cost to the Town.” Stmt. of Facts, Ex. 5 at 2. Applying the plain and ordinary meaning to the words in the statute, this revenue-generating concessionaire contract is neither a “contract” nor a “supply” as defined in § 45-55-4. Accordingly, this Court concludes that the procedures set forth in § 45-55-5 for competitive sealed bidding do not apply, and the entire state statutory framework governing the award of municipal contracts is inapplicable to the case at bar.

Similar to the state statute, § 70-306 of the Town’s Code of Ordinances governs competitive bidding for the purchase of goods, wares and merchandise for the Town.

That section provides in pertinent part:

“(a) Generally. The purchasing agent or other person making purchases of goods, wares or merchandise for the town, before making any such purchase or entering into a contract for the same, shall undertake the following procedure:

....

“(5) Any purchase or contract of more than \$4,000.00 shall be awarded to the lowest responsible bidder as selected by the town council. The purchasing agent shall advertise for the solicitation of sealed bids in a local newspaper prior to such awards.” Code Ord. § 70-306 (emphasis added).

This ordinance is also inapplicable to the instant case as there was no “purchase[] of goods, wares or merchandise for the [T]own” contemplated by the bid for a paddle

sports business concessionaire. Code Ord. § 70-306(a). Rather, the Town sought to receive a fee for allowing a paddle sports business to operate on its Property.

Having found that both the state and local statutory schemes are inapplicable to the bid for a paddle sports business concessionaire contract, it follows, then, that the remedies Plaintiff seeks under §§ 45-55-5, 45-55-17 and Ordinance § 70-306 also must fail. Section 45-55-17 provides for a misdemeanor penalty of up to one year imprisonment or up to a \$500 fine for any person who knowingly and intentionally violates any provision in title 45, chapter 55. Because the state statutory scheme for awarding municipal contracts is inapplicable to the concessionaire contract at issue here, Defendants cannot be criminally liable for any conduct associated with this contract. Likewise, the Town's Purchasing Agent was not required to approve, in writing, the rejection of the bids or to otherwise serve as the sole decision maker in rejecting such bids, as Plaintiff argues. See Pl.'s Pre-Trial Mem. at 9-10 (citing § 45-55-3(f) and Ord. § 7-306).

Accordingly, for all these reasons, and to the extent that Plaintiff's Complaint is wholly premised on the state and local statutory schemes, Plaintiff is not entitled to the relief sought in Counts I, II and III, and judgment shall enter for Defendants on each count.

B

Standard for Awarding Concessionaire Contracts

That this Court has found that the state statutory scheme is inapplicable to the bid for a paddle sports concessionaire contract is not the end of the analysis, however. Plaintiff argued before this Court that municipal officials are obligated to comply with

the standard enunciated in Gilbane Bldg. Co. v. Bd. of Trustees of State Colleges, 107 R.I. 295, 267 A.2d 396 (1970), regardless of whether § 45-55-5 applies.⁴ In support thereof, Plaintiff maintains that because the Gilbane standard had been established well before §§ 45-55-1 et seq. was enacted by the General Assembly in 1994, all conduct associated with municipal contracts must adhere to that standard. In Gilbane, the Court held:

“In the absence of any legislative requirement pertaining to competitive bidding, it is the duty of the appropriate public officials to act honestly and in good faith as they determine which bidder would best serve the public interest. The judiciary will interfere with an award only when it is shown that an officer or officers charged with the duty of making a decision has acted corruptly or in bad faith, or so unreasonably . . . as to be guilty of a palpable abuse of discretion.” 107 R.I. at 299-300, 267 A.2d at 399.

Other cases since Gilbane and before the enactment of §§ 45-55-1 et seq. reaffirm this standard. In Paul Goldman, Inc. v. Burns, 109 R.I. 236, 283 A.2d 673 (1971), our Supreme Court addressed whether the City of Pawtucket’s decision to award a contract for the purchase of new police vehicles to a higher bidder violated a provision of the Pawtucket Charter that required all contracts be awarded to the “lowest responsible bidder [.]” Id. at 237-39, 283 A.2d 674-75. There, the plaintiff, Paul Goldman Dodge, sought to enjoin the award of a public contract for the purchase of thirteen motor vehicles to another bidder, Pierce Chevrolet, because the plaintiff’s bid was \$526.98 lower than Pierce Chevrolet’s. Id. at 238, 283 A.2d at 675. Despite the higher cost, the City had decided to award the contract to Pierce Chevrolet, in part to keep the fleet uniform (all

⁴ The Court notes that Plaintiff’s Complaint does not contemplate this alternative argument, nor did Plaintiff seek to amend its Complaint to conform to the evidence or to otherwise formally include this common law argument as grounds for relief. Notwithstanding this procedural infirmity, Defendants did not object to the Plaintiff’s evident reliance on this common law ground.

existing vehicles were Chevrolets), and also because there would be increased costs and accessibility issues associated with Dodge parts. Id. Acknowledging an awarding authority’s prerogative to exercise “reasonable, good-faith discretion”—even in light of the seemingly mandatory language in the Charter that a contract must be awarded to the lowest bidder—the Supreme Court held that the City “honestly and in good faith” accepted the recommendation that Chevrolets were better suited to the department’s needs. Id. at 239, 283 A.2d at 675-76. In so holding, the Court reaffirmed the principle from Gilbane that a court “will not interfere with the award absent a showing that the board acted corruptly or in bad faith, or so unreasonably or arbitrarily as to be guilty of a palpable abuse of discretion.” Id. at 239, 283 A.2d at 676.

Our Supreme Court’s reticence to interfere with a municipality’s award of a municipal contract, however, is best exemplified in the later decision of Truk Away of R.I., Inc. v. Macera Bros. of Cranston, Inc., 643 A.2d 811 (R.I. 1994). There, the Court reversed a decision of the trial justice which granted an injunction to stop the award of a contract for municipal garbage services and ordered the rejection and resubmission of all bids. Id. at 812. In that case, the City of Warwick awarded the defendant, Macera Bros. of Cranston, Inc., a contract to remove the City’s garbage. Id. Truk Away of R.I., Inc., the plaintiff and an unsuccessful bidder, challenged the award. The trial justice granted Truk Away of R.I., Inc.’s injunction upon a finding that the bid specifications were “so confusing as to render the awarding of a bid pursuant thereto . . . a ‘palpable abuse of discretion.’” Id. at 815. The Supreme Court reversed, noting:

“[W]e do not accept the trial justice’s conclusion that the Warwick City Council committed a palpable abuse of discretion in awarding the contract to Macera. Modern state and municipal contracts are often complicated

Our review of the record indicates that the specifications of the Warwick sanitation contract were extensive and contained numerous provisions and alternatives as well as clarifying addenda. However, to hold that they were arbitrary or capricious in light of the standards of judicial review was unjustified. In effect, we are of the opinion that the trial justice substituted his judgment for that of the council In the absence of bad faith or corruption, a finding of palpable abuse of discretion should be approached with grave caution and be based upon much more compelling evidence of arbitrariness or capriciousness than may be found in mere complexity.” Id. at 816.

Under Rhode Island case law, then, the decision to award a concessionaire contract by a municipality is broad, but not limitless. When a determination is made “which bidder would best serve the public interest,” the awarding authority is obligated to “act honestly and in good faith.” Gilbane, 107 R.I. at 299-300, 267 A.2d at 399. This Court is allowed to “interfere with an award” only upon a showing that an officer or officers within the awarding authority “acted corruptly or in bad faith, or so unreasonably as to be guilty of a palpable abuse of discretion.” Id.

Plaintiff contends the Town Council’s overt actions, i.e., not awarding the contract to Kayak Centre, rejecting all bids and rebidding the contract with additional criteria to be developed, demonstrated such favoritism for Narrow River Kayaks as to constitute bad faith and a palpable abuse of discretion. Plaintiff argued before the Court that once the Town embarks on a competitive bid, then its conduct throughout the process—including the decision to reject all bids and commence a new bid—is governed by the Gilbane standard. Importantly, though, Plaintiff overlooks the fact that there has been no determination made by the Town Council as between Plaintiff and Narrow River Kayaks which of the two would best serve the public interest, and there has been no

award made with which this Court may interfere. The Gilbane standard has been applied only when a municipality has, in fact, selected one bidder over another. Here, there was no bidder selected at all, but rather a determination that all bids would be rejected and that the bidding process would commence again.

There is no authority upon which this Court can conclude, as Plaintiff suggests, that the Gilbane standard applies to all conduct by a municipality. To the contrary, Rhode Island cases have only applied the Gilbane standard when a determination has been made that one bidder is better suited than another. Here, the Town Council punted that very decision downfield when it voted to reject all bids and start the bid process anew.

Accordingly, to the extent Count I and Count III of Plaintiff's Complaint rely on the standard enunciated in Gilbane as a basis for declaratory and/or injunctive relief, the Town Council's actions, not awarding the contract to Kayak Centre, rejecting all bids and rebidding the contract, are not subject to the Gilbane standard. On this alternative basis, judgment shall enter for Defendants on Counts I and III.

C

Injunctive Relief

Finally, Plaintiff is not entitled to injunctive relief. This Court cannot, and will not, interfere with a municipality's decision to reject all awards and re-bid a contract. "[G]overnment by injunction save in the most compelling and unusual circumstances is to be strictly avoided." Truk Away of R.I., Inc., 643 A.2d at 816. Here, neither the statutory frameworks established by the General Assembly and the Narragansett Town Council nor case law precedent in this jurisdiction entitle Plaintiff to any injunctive relief,

as discussed supra, Sections III(A), (B). Moreover, no compelling or unusual circumstances exist that would justify this Court's interference with the Town's decision. Accordingly, Plaintiff's request for injunctive relief is denied. Judgment shall enter for Defendant on Count III.

IV

Conclusion

For all these reasons, judgment shall enter for Defendants on all counts in Plaintiff's Complaint.

Counsel for Defendants shall prepare a judgment consistent with this Decision.



RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: Kayak Centre at Wickford Cove LLC d/b/a Kayak Centre of Rhode Island v. Town of Narragansett, et al.

CASE NO: WC-2013-0630

COURT: Washington County Superior Court

DATE DECISION FILED: March 4, 2014

JUSTICE/MAGISTRATE: Kristin E. Rodgers

ATTORNEYS:

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