

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

[Filed: August 12, 2016]

LAGONDOLA, INC.

VS.

C.A. No. PB 15-1779

CITY OF PROVIDENCE, by and through its  
Treasurer, JAMES J. LOMBARDI; ROBERT  
F. MCMAHON, in his capacity as  
Superintendent, City of Providence Department  
of Parks & Recreation; WENDY NILSSON,  
in her capacity as Superintendent, City of  
Providence Department of Parks & Recreation;  
MAYOR JORGE O. ELORZA, in his capacity  
as Chairman, City of Providence Board of  
Contract and Supply; RHODE ISLAND  
ZOOLOGICAL SOCIETY and P.G.S., INC.

DECISION

SILVERSTEIN, J. Following a bench trial, this matter is before the Court for decision. The parties herein are Plaintiff, Lagondola, Inc., referred to as “Lagondola” or “Plaintiff,” which has been the concessionaire (operator) of the Boathouse boating concession at Roger Williams Park since 2008. The concession contract term was subject to two possible five-year extensions. The contract presently runs through May 16, 2021. The concession contract inter alia provides that Lagondola is “. . . the exclusive provider of all boating including amphibious, gondola, paddle boat, canoe, kayak and bumper boat concessions in Roger Williams Park and Zoo.” Lagondola, prior to its acquisition of the Boathouse concession, had established a relationship with the City of Providence (Defendant herein) through its Department of Parks & Recreation when Lagondola began operating a gondola concession at Waterplace Park in Downtown Providence, also within the purview of the City Department of Parks & Recreation.

The City owns Roger Williams Park and the individual Defendants sued in their capacities set forth in the caption of this case are various officials of the City involved in the management, operation, direction and contracting with respect to operations of and at the park as well as at its various amenities such as the boating concession, Carousel Village and the Roger Williams Zoo. Collectively, City and individual Defendants are referred to as “City.”

In 2005, Rhode Island Zoological Society (referred to as “RIZS” or “Zoo”) (also a Defendant herein) entered into a zoo lease and operating agreement with the City which by its terms inter alia provided for payments by the City to RIZS of substantial sums for salaries, benefits, utility costs, etc. The zoo lease and operating agreement also provided that its term would expire on the last day of June 2015. Further, it contained a provision for automatic five-year extensions unless either party gave the other written notice as to non-renewal not less than six months before the expiry of the initial or any renewal term.

In 2012, Lagondola began operating the so-called Carousel Village concession which had been theretofore operated by Lagondola’s predecessor, CLM Parks, Inc. The concession contract by its terms terminated on April 30, 2015; however, the term was subject to extension for an additional five-year term upon mutual agreement between the City and Lagondola including mutual agreement as to the payments to be made by Lagondola to the City during such extended period. The Carousel Village concession primarily contains or consists of a carousel, assorted vending and gaming machines, and space where parties or groups can be accommodated for birthday parties and like occasions. The Carousel Village also includes a food concession called the Depot.

The instant litigation stems from alleged bad faith solicitation by the City of new bids for the operation of Carousel Village and the award of the concession by the City to the RIZS; the

circumstances underlying the solicitation of bids and the propriety of the City's seeking such bids; the actions of RIZS in allegedly interfering with Plaintiff's economic opportunities and the propriety and meaning of a certain amendment purportedly granting Lagondola an exclusive right to operate a train ride and amusement rides in the park and the zoo so long as the Carousel concession contract and/or any other contract Lagondola then had with the City continued in existence.

Plaintiff seeks relief under six separate counts as set forth in its Third Amended Complaint as follows: Count I – Declaratory Judgment as to Selection of the Zoological Society as the Successful Bidder; Count II – A Writ of Mandamus; Count III – Declaratory Judgment With Respect to Train Rides in Roger Williams Park; Count IV – Declaratory Judgment With Respect to Lagondola's Boathouse Concession; Count V – Breach of Contract/Breach of the Duty of Good Faith and Fair Dealing; and Count VI – Intentional Interference with Prospective Contractual Relations.

Pursuant to the provisions of Rule 52 of the Rules of Civil Procedure, the Court hereinafter will set forth a) findings of fact with respect to the matters tried to it; b) findings with respect to the law applicable to the facts; and, c) its conclusions in connection therewith. The Court only will articulate those facts which are necessary to its final conclusion

### **General Facts**

For the purposes of this Decision, the Court finds by a preponderance of the evidence the following facts:

1. Roger Williams Park is located in the City of Providence.
2. The Roger Williams Park and Zoo includes several lakes, walkways, roadways, historic buildings, ball fields, a boathouse, and a Carousel Village.

3. A road separates the Carousel Village from the Boathouse grounds and the two facilities are visible to each other.
4. The Boathouse consists of two stories of offices and rooms, the “Warming Room,” an open space on the first floor historically used for public gatherings, back patio, east and west wings where boats are stored and rented, a dock, and ramps all located along Pleasure Lake. The Providence Parks Department’s offices are in the Boathouse.
5. Trial witnesses included:
  - a. For the Plaintiff: Robert McMahon, a 29-year City employee scheduled for retirement, who was the Superintendent of Parks; Alan Sepe, another long-term employee who was Mr. McMahon’s supervisor as Director of Operations, La Gondola President and owner Cynthia Days, her husband and employee Allen Days, and Executive Director of the Zoo, Dr. Jeremy Goodman.
  - b. For the Municipal Defendants: Current Superintendent of Parks Wendy Nilsson.
  - c. For RIZS: Wendy Nilsson and Dr. Goodman.
6. Mr. McMahon urged La Gondola to assume the Boating Concession in 2008 and recommended it to the Board of Park Commissioners.
7. Because La Gondola purchased an amphibious boat, per the Boating Concession contract, the term is for ten years, with two five-year options having been extended through action of the Board of Contract and Review through at least 2021.
8. Pursuant to the Boating Concession contract, La Gondola is leased “the concession facility” which is described in the RFP as follows:

“Behind the Dalrymple Boathouse has an existing concrete dock area with approx. 1,370 sq. ft. of dock space located on Pleasure lake. The west wing is used for storage of the existing paddleboats, canoes, life vests, and paddles during the winter months. The east wing of the Dalrymple Boathouse is used as the ticket purchasing area, office space and additional paddleboat slip storage. There is also a small concession stand area and access to public restrooms.” See Ex. 15 at 584.
9. La Gondola rents paddleboats, swan boats, canoes and kayaks from the boathouse and from another dock on Willow Lake located at the opposite side of its premises across from the Carousel Village.

10. La Gondola also sells snacks and drinks from the Boathouse and from a mobile cart.
11. Mr. McMahon recommended La Gondola to the Board of Park Commissioners to assume the Carousel Village concession upon the retirement of the previous concessionaire.
12. At that time, the Board of Park Commissioners also approved La Gondola's use of a trackless train along with the Carousel Village concession.
13. Mr. McMahon, who had some discretion over such routes in the Park and Zoo, approved the train route that operates outside of the Carousel Village.
14. La Gondola began operations at Carousel Village on November 5, 2012.
15. Paragraph 15 of La Gondola's Carousel Village Agreement states "La Gondola, Inc. and the City may amend, modify, and supplement or waive any provisions of the Agreement in such a manner as may be agreed upon by the Parties in a written instrument executed by both parties." Ex. 19.
16. La Gondola purchased a train engine and five (5) passenger cars in 2012 for delivery in April 2013 at a price of \$58,000.
17. La Gondola began operating the train in April 2013 and it grossed more than \$58,000 in 2013.
18. In 2014, the train grossed approximately \$100,000 and was on the same pace in 2015 until La Gondola vacated the premises on May 12, 2015. Overhead for the train is approximately \$3,000/year.
19. La Gondola currently stores the train in the Boathouse.
20. To prevent RIZS or any other competition from operating a train anywhere in Roger Williams Park or Roger Williams Park Zoo, La Gondola negotiated a so-called Amendment to Carousel Village Lease dated January 20, 2014 that purported to grant La Gondola an exclusive concession for train and other amusement rides throughout Roger Williams Park and Zoo (the "Amendment").
21. La Gondola asked Mr. McMahon for an exclusive train concession in the Park to protect La Gondola's investment in the trackless train.

22. Mr. McMahon asked La Gondola to draft language for the Amendment.
23. La Gondola submitted language to Karen Gomez, the Parks Department Fiscal Advisor, who typed it verbatim into the form of Exhibit 26. Exhibit 26 contains language and terms not specifically discussed between Plaintiff and Mr. McMahon.
24. Mr. McMahon was the sole signatory to the Amendment, despite the fact that the Carousel Village Agreement requires both parties sign amendments.
25. Mr. McMahon did not seek approval from the Board of Contract and Supply or any other administrative body or public official prior to signing the Amendment.
26. The language of the Amendment reads as follows:

“The lease between the City of Providence Parks Department and La Gondola, Inc. is hereby amended to reflect an addition to #6 as follows:

La Gondola, Inc. agrees to invest in a trackless train to enhance the visitor experience at Carousel Village and Roger Williams Park and Zoo. La Gondola, Inc. shall be the exclusive provider of all amusement rides within the boundaries of Roger Williams Park and Zoo.

La Gondola, Inc. will remain exclusive provider of all train rides within Roger Williams Park and Zoo under this or any other current contract with the City of Providence within Roger Williams Park and Zoo. La Gondola Inc. may purchase other attractions with the consent of the Superintendent of Parks and Recreation.

The use of any outside vendors on Carousel Village grounds shall also be approved by the Superintendent of Parks and Recreation.” See Ex. 26.
27. Mr. McMahon testified that he did not thoroughly review the document before signing it.
28. Mr. McMahon testified that he believed the scope excluded the Roger Williams Park Zoo premises, that term ended with the 2012 Carousel Village Management Agreement and that the exclusive right was for train rides, not all amusement rides.
29. La Gondola did not provide any payment or undertake any rent obligation or equivalents in exchange for the exclusive train concession.
30. La Gondola made the investment in a trackless train prior to the Amendment, which was set forth as the consideration for the five-year option La Gondola received from the Board of Contract and Supply in 2012. (See 16 above.)

31. La Gondola's Carousel Village lease contained a five-year option, to be exercised only if the parties mutually agreed upon rent for the option period before April 30, 2015. See Ex. 19.
32. On October 10, 2014, Karen Gomez of the Parks Departments emailed La Gondola requesting a rent proposal for the option period. See Ex. 49.
33. Subsequently, La Gondola arranged a meeting in November with Mr. McMahon.
34. At the November 2014 meeting, La Gondola and Mr. McMahon discussed a number of repairs that needed to be made to the Carousel Building including both roofs, painting, and window and door replacements. La Gondola proposed completing approximately \$250,000 in capital improvements to the Carousel Village in exchange for further extensions of their Carousel Village Agreement totaling 20 years.
35. La Gondola did not make a specific proposal until March 23, 2015. See Ex. 77.
36. Mr. McMahon informed La Gondola at the November 2014 meeting that, in view of the needed repairs to the Carousel Village, the concession would have to be the subject of a RFP bidding procedure.
37. Mr. McMahon prepared the RFP and issued it in December 2014.
38. The RFP set forth three criteria for selection – experience, bid amount and proposed operations.
39. Among other things, The RFP states “[t]he parks department reserves the right to accept or reject any or all proposals received as a result or to cancel in part of in its entirety this proposal if it is in the Parks Department best interest to do so.” Ex. 55, Section 1.3, bates page 449.
40. Section 6.7 of the RFP states, “[t]he city reserves the right to accept other than the highest value proposals, to reject any or all proposals, and to waive any of the requirements of the bid selection procedure explained in this document.” Id. at bates page 461.
41. The RFP originally included capital improvements for which an allowance was set at \$156,000.
42. The RFP capital improvements included structural work on the roof, windows, and bathrooms and construction of a new Clivus Multrum waterless toilet adjacent to the Carousel building.

43. After the City issued the RFP, La Gondola communicated with Mr. McMahon about changes Plaintiff requested in the RFP.
44. Mr. McMahon issued Addendum 1 to the RFP on December 22, 2014, which granted a request by La Gondola for new doors and an associated allowance increase, cosmetic bathroom improvements to the existing men's and women's rooms, and increased the allowance for capital improvements to \$241,000.
45. Mr. McMahon also agreed, pursuant to La Gondola's request, to waive a required bid bond and to make the Carousel Village Lease terminable only for cause.
46. Mr. McMahon issued Addendum 2 to the RFP on January 23, 2015, which La Gondola requested via email dated January 22, 2015. Mr. McMahon also extended the rent-free capital improvement period from two years to 3.5 years, and extended the term of the lease from 10 years to 20 years.
47. The Board of Contract and Supply publicly opened and read bids on February 13, 2015.
48. The Zoo bid \$241,000 for capital improvements and \$350,000.00 for rent for a total of \$591,000.00 with rent beginning in year 3 of the contract. However, the Zoo bid states that the Clivus Multrum toilet was not necessary and substituted other work in its place without changing the dollar value of the work to be performed.
49. La Gondola bid \$241,000 for capital improvements and \$284,596.00 for rent for a total of \$525,569.00 with rent beginning in year 11 of the contract. However, La Gondola's bid included a dollar for dollar rent abatement against the completed capital improvements.
50. Evidence indicated that previously Plaintiff had performed work both at the Boathouse and on the Carousel and had been permitted to abate the amount of payments otherwise to be made to the City by amounts incident to that work.
51. After the opening of the bids by the Board of Contract and Supply on February 13, 2015, Mr. McMahon reviewed the bids to determine who the successful bidder was.
52. Mr. McMahon ignored La Gondola's request for abatement and thereby treated the bid as responsive, and represented the entire \$525,569.00 to the Board of Contract and Supply.
53. Mr. McMahon testified that other capital improvements (doors, windows, roofing, and painting) were vital to the structure of the building.

54. Upon reviewing the bids, and a determination that RIZS had “substantially met” all the RFP requirements, Mr. McMahon submitted a recommendation to his supervisor Alan Sepe that RIZS be designated the successful bidder.
55. Subsequently, La Gondola met with Mr. Sepe to introduce themselves and lobby for the award.
56. Mr. Sepe suggested that La Gondola review RIZS’s bid and hire a lawyer.
57. On or about March 11, 2015, La Gondola wrote Mr. Sepe a lengthy email outlining alleged faults in RIZS’s bid, referring for the first time to the importance of the Clivus Multrum toilet, and reiterating La Gondola’s willingness to manage the \$241,000 in capital improvements.
58. Mr. Sepe apparently rejected this appeal and stated at trial that the substitution by RIZS was not a factor in the award because the bid amount included the full capital improvement allowance and a higher total bid.
59. On April 1, 2015, Mr. McMahon gave notice to La Gondola to quit the premises by the end of its lease on April 30, 2015.
60. On April 6, 2015, the Board of Contract and Supply approved the final award of the Carousel Village lease to the Zoo.
61. La Gondola’s operations at Carousel Village ceased as of May 12, 2015.
62. Currently, La Gondola operates a trackless train consisting of a train engine and five cars that currently operates between Willow Lake and the Boathouse. La Gondola operated the trackless train in Carousel Village while it operated the Carousel Concession.
63. The Superintendent of Parks subsequently approved a train route for La Gondola between Willow Lake and the Boathouse.
64. On August 21, 2015, the City and RIZS executed the RIZS’s Carousel Village Agreement.
65. Section 1.6 of RIZS’s Carousel Village Agreement prohibits the City from allowing competing concessions within 200 feet of Carousel Village, **except for** (1) existing boat rides or food concessions in the Boat House . . .”
66. During the same timeframe as the RFP process as to the Carousel Village, the City and RIZS were negotiating a new Zoo Agreement.

## The Zoo

The evidence before the Court discloses and the Court finds by a preponderance of the evidence that the City's declared intent to reduce payments to RIZS caused RIZS to urge the City to assist it in finding ways to increase RIZS' revenues. In that connection, RIZS inter alia specifically spotlighted other existing concessions located within Roger Williams Park, including the Carousel Village. Discussions between the Zoo's director (Dr. Goodman) and Mr. McMahon led to the Parks Department furnishing to the Zoo director copies of the existing concession contracts, together with a so-called spreadsheet containing pertinent information as to the various concession terms and conditions. An "out-clause" was identified in the Carousel Village Agreement, i.e., its term was soon to expire and the provisions with respect to extension for an additional five years required mutual agreement between the concessionaire (Plaintiff) and the City with respect to the "rent" to be paid during the five-year option.

In its discussions and communications with the Park superintendent, the Zoo pressed for the handing over to it of the Carousel Village Concession; indeed, even asking that it be included as part of the Zoo contract. Dr. Goodman in communications to the City even referred to alleged verbal commitments from City officials to hand over the Carousel Village Concession to the Zoo. Notably, there is no evidence of either an affirmation or denial by City officials of any such commitment in written communications between the City and the Zoo.

Ultimately, as indicated above, an RFP as to the Carousel Village concession was issued. Three bidders replied, and RIZS was ultimately designated as the successful bidder. On August 15, 2015, RIZS entered into a concession agreement with the City. Despite RIZS's request for a single agreement covering the Zoo and the Carousel Village, ultimately a new contract covering the Zoo was executed and it was separate and apart from the August 15, 2015

Carousel Village agreement with the City.

Prior to the actual execution of the agreement as between RIZS and the City covering Carousel Village, notice was given to Plaintiff to quit the premises and its operation of the Village ceased as of May 12, 2015.

Pursuant to the 2005 Zoo Contract referred to supra, the City was to pay RIZS \$471,000.00 annually. In 2014, the City by budget ordinance reduced the payment to Zoo by \$300,000 formalizing its prior statement to the Zoo as to such reduction and indicating the City's intention to terminate payments to the Zoo.

### **Discussion**

Turning now to the law applicable to the facts as found, the Court notes that neither the City, through its ordinances, rules and/or regulations, nor the State, through legislation applicable to the City, have specifically legislated or provided written direction with respect to the granting of concessions or licenses to operate concessions on municipal property. Recently, our Supreme Court had occasion to deal with the issue of whether G.L. 1956 § 45-53-5, entitled Competitive Sealed Bidding, pertains with respect to concession contracts with/from a municipality. The Supreme Court held that that specific section dealt with "procurements" and "purchases" and did not apply to the grant of concessions.

The Court, citing to its previous opinion in Gilbane Bldg. Co. v. Bd. of Trustees of State Colleges, 107 R.I. 295, 299-300, 267 A.2d 396, 399 (1970) reiterated that "[i]n the absence of any legislative requirement pertaining to competitive bidding, it is the duty of appropriate public officials to act honestly and in good faith as they determine which bidder would best serve the public interest." The Court continued, "there can be no dispute that this standard results in a certain amount of deference to government officials indeed, we have held that this Court will not

interfere with an 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.” Kayak Ctr. v. Town of Narragansett, 316 A.3d 250 (R.I. 2015).

Based upon the Court’s findings of fact, this Court cannot conclude that in any of the actions contested by Plaintiff has it identified corruption or bad faith as Plaintiff has defined those terms or as those terms generally are construed. There was neither a suggestion of corruption nor a scintilla of evidence suggesting corruption or bad faith in any testimony or exhibit admitted during the trial.

As stated above, the Gilbane and Kayak opinions, while granting a certain amount of deference to government officials, mandate that those actions be exercised free of corruption, bad faith and/or abuse of discretion. Having found neither corruption nor bad faith, the Court now turns to the issue of abuse of discretion.

### **Resistance to Pressure by Zoo in City**

The facts here demonstrate, among other things, that City officials were in a quandary. They were attempting to substantially reduce payments to RIZS while at the same time trying to accommodate RIZS’s request that a way be found to enhance the Zoo’s revenues.

The record does disclose that Mr. McMahon had attempted to divert the Zoo’s interest in the Carousel concession by reminding it that Plaintiff was a small, family business.

Ultimately, in the face of substantial necessary reparations to the Carousel Village, McMahon determined that an RFP was necessary. He informed Plaintiff of that course of action. While he did not inform Plaintiff that the Zoo had expressed a strong interest in taking over that concession, he was not legally obligated to do so. During the RFP pre-bidding process, on two

separate occasions, Plaintiff requested and obtained amendments to the RFP which it believed was to its benefit. These amendments applied, of course, not only to Plaintiff but to all bidders.

Plaintiff's proposed bid was sent to Mr. McMahon by Plaintiff prior to the bid opening on February 13, 2015. P.G.S. Inc.'s bid was not responsive in that it did not take into account the capital improvement aspect of the request for proposals. Plaintiff and RIZS filed bids which purported to be responsive to the RFP. The Zoo bid, \$241,000 for capital improvements and \$350,000 for rent to be paid starting in the third year through the end of the term, and Plaintiff's bid, \$241,000 for capital improvements and \$284,596 for rent, were the bids considered by the City. Because Plaintiff in its bid included a dollar for dollar rent abatement against contemplated capital improvement costs, its bid actually resulted in a substantially less number of dollars to the City with payments deferred beyond the time when the Zoo would start making payments. (Despite this fact, Mr. McMahon did not highlight this in his consideration of the bid).

While much has been made of the Zoo's declining to provide in its bid for the Clivus Multrum waterless toilet as set forth in the amended RFP, the Court notes that the essential deletion of that item did not result in a cost saving to the Zoo which suggested substituted work of the same value in its bid.

This Court finds neither bad faith nor indeed a palpable abuse of discretion on the part of the City and the pertinent public officials in their determination that the Zoo's bid under all of the circumstances was the "better bid." That is to say, the bid which would "best serve the public interest," Gilbane, 107 R.I. at 300.

Our jurisprudence certainly affords public officials involved in procurement (and by analogy) in the awarding of concessions a certain amount of discretion and does not tie their hands in legalistic knots. The RFP here announced to all the reservation of certain rights with

respect to the bidding procedures and process. Certainly, in the opinion of this Court, it permitted the determination by the City that despite the omission of the Clivus Multrum waterless toilet the Zoo's bid substantially met the RFP requirements and the ensuing determination that selection of the Zoo was in the best interest of the City. Accordingly, this Court does not find that the awarding of the bid with respect to the Carousel Village concession was a result of corruption, bad faith or a palpable abuse of discretion on the part of the City or any of the Defendants named in their representative capacities.

Predicated upon the foregoing, this Court determines that Plaintiff has failed to establish its entitlement to a declaratory judgment in its favor with respect to the claims asserted pursuant to Count I of Plaintiff's Third Amended Complaint (Complaint); that is to say, Plaintiff has not established by a preponderance of the evidence, or otherwise, that the selection of RIZS by the City resulted from corruption by any of the parties; by bad faith on the part of any of the parties; or, by a palpable abuse of discretion on the part of the City or of any of the Defendants named in their representative capacities. The Court recognizes and reaffirms that our jurisprudence accords great discretion (so long as that discretion does not result from the wrongs aforesaid) to government officials when dealing with bid procedures and resulting awards. Our Supreme Court has admonished trial court judges not to substitute their judgment for that of the officials charged with municipal contracting. This Court notes that here, the City apparently benefits from Plaintiff's failure expeditiously to respond to the City's request seeking an early agreement with respect to the request for a "rental" proposal for the ensuing five year extension. (The Court of course notes that the City and Plaintiff at the time it sought an early response had a seven or eight month period until the original term expired and any extension was to commence. Further the Court is aware that Plaintiff was not required to respond to the City's request by any stated

date or indeed ever. The Court also is aware that there is no assurance that even with good faith bargaining and negotiations on both sides that an agreement ever would have been reached with respect to rental for an ensuing five year period.)

Plaintiff, through Count 2 of the Complaint, seeks the issuance of mandamus directing the City to award Lagondola the Carousel concession which was the subject of the 2015 RFP. The predicate for this extraordinary relief is a finding by the Court that as a matter of right, Plaintiff is entitled to the action sought and that Defendant had no discretion but to have awarded such relief to the Plaintiff. Based on the Court's holding with respect to the Plaintiff's demand for relief under Count 1, this Court must deny mandamus. The Court not only found that the City and its named officials did not wrongfully award the concession to RIZS but it found such award and action by the City to be free of corruption, bad faith or of a palpable abuse of discretion on the part of the officials involved in the award. Plaintiff's response to the RFP which required a dollar for dollar abatement against sums due to the City by Plaintiff made its bid substantially less than the sums that would be paid to the City under the Zoo's bid. Further, Plaintiff's bid deferred any cash payments to the City for a significant longer period of time than under the successful bid of the Zoo. This Court could not find under these circumstances that Plaintiff is entitled to mandamus where inter alia the best interest of the City is a factor to be taken into consideration.

Plaintiff, in Count 3 of the Complaint, seeks declaratory relief to the effect that the Carousel concession amendment (Ex. 26) which purports to grant Plaintiff an exclusive with respect to train and amusement rides within Roger Williams Park and Zoo for so long as the Plaintiff had a contractual relationship with the City either under the Carousel concession contract or any other agreement is validly binding upon the City.

**The 2014 Amendment to the Carousel Village Lease**  
**Re Trackless Train and Amusement Rides**

Testimony and evidence before the Court demonstrate that while Mr. McMahon enjoyed certain prerogatives in his official capacity, such as approving the original route for the trackless train purchased and operated by Plaintiff, his authority stemmed from the original contract approved by the Board of Contract and Supply. Nowhere in the original documents can be found, nor has anything been brought to the Court's attention, which would lead to the conclusion that Mr. McMahon had the authority to grant an exclusive right to a concessionaire to be the sole operator either of a trackless train or of any other specific amusement ride or rides.

The Court is satisfied that such a major decision could only be the subject of approval by the Board of Park Commissioners and/or the Board of Contract and Supply. Testimony indicated that with respect to such major decisions (even absent specific statutory or regulatory authority), that is the policy that the Park had been operating under for many years.

While the Court notes that argument has been advanced by the City that Mr. McMahon did not realize what it was that he was signing when he signed the amendment, this Court declines to rest its conclusions on that argument noting that parties generally are bound by the documents they sign. Argument further is advanced by the City that although the Carousel Village lease provided that amendments (which the document at issue here purports to be) had to be executed both by the City and by the concessionaire, and that the amendment here in question was executed only by Mr. McMahon and not by Plaintiff. That argument concludes, of course, that the amendment thus is non-operative. Further, the City also argues that the amendment was without consideration because no new purchase of a trackless train was contemplated and as indicated above, Plaintiff had long prior to the claimed amendment purchased in 2012 the

trackless train. The Court notes of course that the stated consideration for the 2014 amendment was the purchase of that trackless train.

Accordingly, the Court concludes that the 2014 amendment is not binding upon the City and is without force or effect.

As set forth in General Finding of Fact No. 8, “La Gondola is leased ‘the concession facility’ is described . . .” The description of the facility further is set forth in Fact No. 8. See also Exs. 15, 16.

An issue here has arisen because the City claims entitlement to use the described facility on a non-exclusive basis along with the Plaintiff for “. . . community programs and special events . . .” (See ¶ 1.6 Concessions, Rides and Amusements of the Zoo Carousel Village Agreement; see also email from Park Superintendent Nilsson to La Gondola, Ex. 90). The Court notes that neither the request for proposals, Ex. 15 nor the Concession Agreement, Ex. 16 reserved any right in favor of the City to use of the concession facility—the Court further notes that the warming room, so-called, in the Dalrymple Boathouse is not included within the concession facility as that term is used in the documents before the Court—accordingly, the City may not utilize (without the consent of Plaintiff) the concession facility but has an unrestricted right to use the warming room, so-called.

Based upon all of the foregoing, the Court further holds that Plaintiff is not entitled to relief with respect to its claim relative to intentional interference with prospective contractual relations.

## **Conclusion**

Based upon the findings above, the Court declines to render the declaratory relief sought by Plaintiff in Count I of its Third Amended Complaint; declines to order the issuance of a writ of mandamus as prayed for by Plaintiff in Count II; declines to render the declaratory judgment sought by Plaintiff in Count III of its Complaint; enters judgment for Defendant City of Providence with respect to Count V; enters judgment for Defendant Roger Williams Zoological Society with respect to Count VI; and, declares that Plaintiff La Gondola is entitled to exclusive use of the concession facility as defined herein. Further, the Court finds that RIZS has failed to prove by a preponderance of the evidence its counterclaim against La Gondola and accordingly judgment may enter thereon in favor of La Gondola.

An order consistent with the foregoing shall be presented. If the parties are unable to agree on a proposed order, competing orders may be presented.



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

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**TITLE OF CASE:** Lagondola, Inc. v. City of Providence, et al.

**CASE NO:** PB 15-1779

**COURT:** Providence County Superior Court

**DATE DECISION FILED:** August 12, 2016

**JUSTICE/MAGISTRATE:** Silverstein, J.

**ATTORNEYS:**

For Plaintiff: Carl S. Levin, Esq.; Gabriella G. Gaal, Esq.

For Defendant: Harris K. Weiner, Esq.; Jillian H. Barker, Esq.