

DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

Baxter's Asphalt & Concrete, Inc. v. Liberty County

406 So. 2d 461 (Fla. 1st DCA 1981) · No. No. VV-370 · Decided November 18, 1981

SUMMARY

The Florida First District Court of Appeal held that a county could not waive a bidder's material failure to submit a required bid for one of two specified alternatives in a public-works solicitation. Although the court initially directed the county to readvertise the contract, rehearing established that remedy was moot because construction had been completed. The court permitted the disappointed bidder to pursue limited promissory-estoppel damages against the county, including reliance damages and qualifying litigation expenses and attorney's fees, but not lost profits.

CASE DETAILS

COURT	District Court of Appeal of Florida, First District
WRITING FOR THE COURT	Ervin, J.; Booth, J.; Joanos, J.
JURISDICTION	Florida
DECIDED	November 18, 1981
DOCKET	No. VV-370
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a final judgment dismissing Baxter's complaint, dissolving a temporary injunction that had prevented Liberty County from awarding a road-resurfacing contract to Gulf Asphalt, and denying Baxter's motion to amend its complaint. On rehearing, the court addressed the mootness of the original equitable remedy and the availability and measure of damages.
STANDARD OF REVIEW	The opinion does not expressly state a formal standard of review. The appellate court reviewed the dismissal, denial of leave to amend, and equitable remedy issues de novo as legal questions.
PRECEDENTIAL VALUE	Published precedential opinion of the Florida First District Court of Appeal
PARTIES	Baxter's Asphalt & Concrete, Inc. v. Liberty County, L.B. Arnold, Jack E. Summers, Jimmy Johnson, Richard Phillips, Donnie Gene Tharpe, Gulf Asphalt Corporation of Panama City

TOPICS

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QUESTIONS PRESENTED

1. Whether Gulf Asphalt's failure to bid on a mandatory alternative was a material deviation from the published bidding specifications and a violation of Florida's competitive-bidding statute.
2. Whether injunctive relief or amendment of the complaint was available without proof of fraud, favoritism, or misconduct by the county.
3. Whether, after completion of the public-works contract rendered readvertisement moot, Baxter could pursue promissory-estoppel damages.
4. Whether Baxter's recovery could include reliance and consequential damages, litigation expenses, and attorney's fees, but exclude anticipated lost profits.

HOLDINGS

1. A bid that materially deviates from published specifications is not a satisfactory bid under sections 336.44(2) and (3), Florida Statutes (1979), and the governmental entity may not waive a mandatory bidding requirement when the deviation can confer a competitive advantage or impair bid comparison.
2. Proof of fraud, favoritism, or misconduct is ordinarily required to enjoin a public-contract award, but injunctive relief may also be granted when the complaint alleges a clear violation of a competitive-bidding statute.
3. A rejected bidder may pursue promissory-estoppel relief when a governmental entity's solicitation of bids implies a promise to comply with competitive-bidding statutes, the bidder reasonably and detrimentally relies on that promise, and the requested equitable remedy becomes unavailable because the contract has been completed.
4. Recovery for promissory estoppel in this public-bidding context is limited to consequential and reliance damages, which may include reasonable litigation expenses and attorney's fees incurred because of the governmental entity's wrongful conduct, but does not include expected profits from the unawarded contract.

KEY QUOTATIONS

"There is little doubt that Pacio's [the successful bidder] failure to bid on all options was not a minor irregularity which could be waived, [citations omitted] but rather was a substantial departure which could not be overlooked." (464)

"Bids on public contracts must conform closely with the published specifications provided in Section 336.44, Florida Statutes, as a prophylactic measure." (465)

“Persuaded by these principles, we hold that the doctrine of promissory estoppel applies to the facts of this case.” (466)

“However, we will not allow appellant's recovery to extend to its purported loss of profits that it expected to receive from the public contract.” (468)

FACTUAL BACKGROUND

Liberty County solicited bids for road resurfacing using two alternatives, and its instructions expressly required bidders to bid on both alternatives for a valid bond. Because the county inadvertently failed to send Gulf Asphalt the final page containing that requirement, Gulf bid only on the less expensive alternative and submitted the lowest bid for that alternative. Baxter submitted the next-lowest bid on that alternative and the lowest bid on the other alternative, but the county waived Gulf's omission and awarded Gulf the contract. Gulf completed the roadway during the appeal.

PROCEDURAL HISTORY

Liberty County awarded a road-resurfacing contract to Gulf Asphalt even though Gulf failed to bid on one mandatory alternative because the county inadvertently omitted the final page of the bidding instructions sent to Gulf. Baxter sought injunctive relief, challenging the nonconforming bid, and later sought to amend its complaint to allege violations of Chapter 336, Florida Statutes, and an unfair bidding process. The trial court found no fraud, favoritism, or misconduct, dismissed the action, dissolved the injunction, and denied amendment. The appellate court initially reversed and remanded for readvertisement; on rehearing, it held that readvertisement was moot because the roadway had been completed, and remanded for amendment to allege permissible damages and for a damages hearing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court was directed to allow Baxter to amend its complaint to allege damages consistent with the opinion and to conduct a hearing to determine the proper amount of damages recoverable against Liberty County. Recovery was limited to permissible consequential and reliance damages, including supported litigation expenses and attorney's fees, and excluded anticipated lost profits.

CASES CITED

- Wester v. Belote, 103 Fla. 976, 138 So. 721 (1931)
- Wood-Hopkins Contracting Co. v. Roger J. Au & Son, Inc., 354 So. 2d 446 (Fla. 1st DCA 1978)
- Harry Pepper & Assoc. v. City of Cape Coral, 352 So. 2d 1190 (Fla. 2d DCA 1977)
- City of Miami Beach v. Klinger, 179 So. 2d 864 (Fla. 3d DCA 1965)
- L. Pucillo & Sons v. Mayor & Council, 73 N.J. 349, 375 A.2d 602 (1977)
- Terminal Construction Corp. v. Atlantic County Sewerage Authority, 67 N.J. 403, 341 A.2d 327 (1975)

- Robinson's, Inc. v. Short, 146 So. 2d 108 (Fla. 1st DCA 1962)
- Department of Business Regulation, Division of Alcoholic Beverages and Tobacco v. Provende, Inc., 399 So. 2d 1038 (Fla. 3d DCA 1981)
- Winn & Lovett Grocery Co. v. Saffold Bros. Produce Co., 121 Fla. 833, 164 So. 681 (1935)
- Beavers v. Conner, 258 So. 2d 330 (Fla. 3d DCA 1972)
- Allen v. A.G. Edwards & Sons, Inc., 606 F.2d 84 (5th Cir. 1979)
- Mount Sinai Hospital of Greater Miami, Inc. v. Jordan, 290 So. 2d 484 (Fla. 1974)
- William A. Berbusse, Jr., Inc. v. North Broward Hospital District, 117 So. 2d 550 (Fla. 2d DCA 1960)
- Swinerton v. Walberg Co. v. City of Inglewood, 40 Cal. App. 3d 98, 114 Cal. Rptr. 834 (1974)
- Signal Hill Aviation Co. v. Stroppe, 96 Cal. App. 3d 607, 158 Cal. Rptr. 178 (1979)
- Port Everglades Authority v. R.S.C. Industries, Inc., 351 So. 2d 1148 (Fla. 4th DCA 1976)
- Canadian Universal Insurance Co. v. Employer's Surplus Lines Insurance Co., 325 So. 2d 29 (Fla. 3d DCA 1975)
- Milohnich v. First National Bank of Miami Springs, 224 So. 2d 759 (Fla. 3d DCA 1969)
- Circle Finance Co. v. Peacock, 399 So. 2d 81 (Fla. 1st DCA 1981)
- Milton v. Marianna, 107 Fla. 251, 144 So. 400 (1932)
- Southeastern Sales & Service Co. v. T.T. Watson, Inc., 172 So. 2d 239 (Fla. 2d DCA 1965)
- Department of Business Regulation, Division of Alcoholic Beverages and Tobacco v. Provende, Inc., 399 So. 2d 1038 (Fla. 3d DCA 1981)