No. 73647-7 I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

FILED
January 12, 2016
Court of Appeals
Division I
State of Washington

INTEGRATED FACILITIES MANAGEMENT, LLC, A Washington Limited Liabilities Corporation dba SUN LIGHTING, fka PARTNER MERCHANT SERVICES, INC.

Appellant,

v.

CITY OF MERCER ISLAND, a municipal corporation in the State of Washington.

Respondent.

REPLY BRIEF OF APPELLANT

Appeal from the Superior Court of King County
No. 14-2-22169-0 SEA
The Honorable William Downing, Presiding

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LAW AND ARGUMENT

ESTOPPEL: ONE COMPANY'S ACTIONS ESTOP ANOTHER COMPANY?

The City makes an absurd claim that since Robert Folgedalen is the principal for two different companies, that whatever he has done on behalf of two separate entities that he is a principal for, that both companies are responsible for that. They have the gall with this absurd argument to claim that Appellant hasn't provided any authority for this when it is the type of thing where no authority is required because it is so obvious.

SEPARATE COMPANY = SEPARATE PERSON

Let's look at an example of someone who is a principal of multiple entities, similar to Robert Folgedalen. Let's look at a prominent figure, Donald Trump. Donald Trump has had numerous successful, as well as numerous unsuccessful businesses, each of which are separate entities and to a large extent, sister corporations. Just because one or more of Trumps' companies do whatever act that they do, in no way would that allow for liability for a sister company. If so, Trump wouldn't have been able to bankrupt those ventures that failed while maintaining the highly successful businesses irrespective of the failures of the other sister companies. With the City's now strained analysis, each legally separate entity is not really separate. They would not be individual persons as

separate corporations legally are. First Nat'l. Bank of Boston v. Bellotti, 435 U.S. 765, 771, 98 S.Ct. 1407, 1413, 55 L.Ed.2d 707 (1978). The City's argument on this point is not well taken.

DIFFERENT COMPANY BID IRRELEVANT

The fact that a different company that Folgedalen is the principal for engaged in the bid process is irrelevant as to the company that contracted with the City wherein the city breached the contract. Cf. CP 313-14.

APPELLANT ATTEMPTED TO AVOID RESPONDENT'S BREACH

Appellant made every effort it conceivably could to try to encourage the city to not breach its contract and to honor it. CP 324-29; CP 208-13; CP 313-14. Rather than doing so, the City in violation of the contract decided that it would engage in a bid process and act as if the valid contract had not been executed. As has been previously thoroughly been set forth, Appellant repeatedly in multiple ways contacted the City in an attempt to have them honor their contract to no avail.

BREACH NOT REVERSIBLE BY APPELLANT: NO LACHES

Appellant's attorney repeatedly contacted the City, but unfortunately they didn't have even the courtesy to respond to him. CP 210-11. Appellant filed this action before the statute of limitations ran.

There is nothing else that Appellant could have done to remedy the situation. There was no prejudice in any delay in filing the complaint. Cf. Brost v. L.A.N.D., 37 Wn.App. 372, 375-6, 680 P.2d 453 (1984) ("so long as parties are in the same condition, it matters little whether one presses a right promptly or slowly"). The City bid out the already contracted for project and it was its own doing entirely. Nothing Appellant could have done would have saved the City any money whatsoever given they had elected their course of action in breach of the signed contract.

APPELLANT NOT RESPONSIBLE TO PROTEST BID PROCESS

How could a non-bidding entity protest a bid? That's not how it works. One company is not bound by its sister company's bid. The fact that a separate entity that Mr. Folgedalen is the principal for also didn't engage in a bid protest process is irrelevant. That is not the company that the City breached a contract with. CP 313-14. That sister corporation had no issue with the bidding process. Appellant made every effort to convince the Respondent to abide by its signed contract, to no avail. Respondent in blatant violation of the contract, bid the work out. Appellant had a valid contract and no reason to bid on a project that it already had contracted for. Since the contract pre-dated the bid process, the Appellant had no obligation to bid against its own valid contract, and

no requirement or basis to contest the bid award that Appellant did not bid on. Respondent is claiming Appellant should have presented a bid contest for a project it did not bid on (due to already having a valid contract). Further, they claim that Appellant is estopped from its claims because it didn't engage in a bid protest. This is ridiculous. Appellant had no reason to bid and it didn't bid. Appellant cannot be estopped for not engaging in a bid protest. That would be tantamount to pretending it didn't have a valid contract, which it did.

CONCLUSION

For the reasons set forth, this matter should be reversed and the matter should be remanded to arbitration.

Respectfully submitted this 12th day of January, 2016.

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