

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-000577-MR

HANEN ELECTRIC, INC.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE DENISE CLAYTON, JUDGE
ACTION NO. 98-CI-005276

CITY OF LOUISVILLE and
PARKING AUTHORITY OF RIVER CITY

APPELLEES

OPINION
AFFIRMING
** **

BEFORE: BAKER, GUIDUGLI, AND KNOPF, JUDGES.

KNOPF, JUDGE: Hanen Electric, Inc., appeals from a judgment of the Jefferson Circuit Court, entered February 21, 2002, directing a verdict in favor of the defendants, the City of Louisville and its agent the Parking Authority of River City (PARC). Claiming that the defendants wrongfully awarded a contract to a third party when Hanen had made the lowest bid, Hanen seeks monetary damages for what it alleges was the defendants' bad faith and for their alleged violation of the

City's Procurement Code. The trial court erred, Hanen contends, by finding that Hanen failed to meet its burden of proof.

Because Hanen did not certify the trial transcript as part of the record on appeal and thus afforded us no means to review the alleged error, we affirm.

In the spring of 1998, the City and PARC published proposal number P-21975 for the design, procurement, and installation of "parking revenue control systems" at certain Louisville parking facilities. The bids were opened May 4, 1998. Hanen's proposal bore a price of about 1.6 million dollars, that of CTR Systems, the next lowest bidder, was about 2.2 million. The consultant to whom PARC submitted the bids for evaluation recommended CTR's proposal, notwithstanding its higher price. After interviewing CTR's officials and visiting its Pennsylvania headquarters, PARC and the City adopted the consultant's recommendation and in early August 1998 the City announced that it would award the contract to CTR.

Hanen promptly protested to the City Attorney, but its protest fell on deaf ears. It filed suit against the City and PARC on September 18, 1998. It sought to enjoin the City's contract with CTR and to be awarded the contract, or, in the alternative, to be awarded damages for lost profits and other alleged losses. The trial court denied Hanen's motion for a restraining order on October 1, 1998. Hanen then allowed its

motion for an injunction to lapse, CTR commenced performance of the contract, and Hanen's case settled into one for damages only.

Hanen asserts alternative causes of action. First, it notes that this state's courts have long recognized a disappointed bidder's right to seek injunctive relief barring a public contract the award of which is tainted by fraud, collusion, or dishonesty.¹ Hanen alleges, essentially, that the bid evaluation process in this instance was not carried out in good faith but was intended to disguise the predetermined and arbitrary rejection of its bid.

Hanen also claims a right to relief under the City's Code of Ordinances. The City's Code is much like the State's Model Procurement Code, it contends, and in Pendleton Bros. Vending, Inc. v. Commonwealth Fin. & Admin. Cabinet,² our Supreme Court held that injunctive relief was potentially available to a disappointed low bidder under the State Code. In 1998, the City's Code required bidders on relatively large projects to bond their bids, and Hanen alleges that CTR violated this requirement.

¹ Healthamerica Corporation v. Humana Health Plan, Inc., Ky., 697 S.W.2d 946 (1985).

² Ky., 758 S.W.2d 24 (1988).

The trial court agreed with Hanen that the City's Code gives it a cause of action. Even if that ruling was correct, it is not clear that either of the causes of action Hanen asserts gives it standing to seek damages as opposed to injunctive relief.³ The trial court apparently ruled that both causes do permit damages, although it limited the potential recovery to the cost of preparing and submitting Hanen's bid.

The matter came to trial before a jury in February 2002. At the close of Hanen's proof, the trial court directed a verdict for the City and PARC. The court found that "Hanen Electric, Inc., failed to meet its burden of proof with respect to its claims." Hanen asserts that the court erred, but in designating the record for appeal it did not include the transcript of the trial. It obviously failed, therefore, to refer us to evidence the trial court may have misconstrued or overlooked, and we thus have nothing upon which to base our review. In the absence of a transcript, we must presume that the evidence supports the trial court's judgment.⁴

³ Cf. Marbucco Corporation v. City of Manchester, 632 A.2d 522 (N.H. 1993) (permitting a damages remedy), with Peerless Food Products, Inc. v. The State of Washington, 835 P.2d 1012 (Wash. 1992) (limiting relief to an injunction against the unauthorized contract).

⁴ Teamsters Local Union No. 783 v. Coca-Cola Bottling Co., Ky., 418 S.W.2d 228 (1967); Dillard v. Dillard, Ky. App., 859 S.W.2d 134 (1993).

Because Hanen is entitled to no relief, we need not address its contentions concerning the viability of, or the particular types of relief available under, either of its asserted causes of action. Accordingly, we affirm the February 21, 2002, judgment of the Jefferson Circuit Court.

ALL CONCUR.

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