

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

V-TECH SERVICES, INC. : CIVIL ACTION
: :
v. : :
: : No. 04-4457
THOMAS MILTON STREET, et al. :

MEMORANDUM

Ludwig, J.

October 4, 2005

This is a RICO action, 18 U.S.C. § 1962(c) and (d). Three sets of defendants¹ move to dismiss the complaint for failure to state a claim on which relief can be granted, Fed. R. Civ. P. 12(b)(6).² The complaint alleges that plaintiff V-Tech Services, Inc., a certified minority-owned janitorial, cleaning, and landscaping company, was prevented from obtaining service contracts at the Philadelphia International Airport by defendants acting together in concert. Their conduct, according to the complaint, violated the RICO statute, Counts I and II, and supports state claims of common law fraud, promissory estoppel, breach of contract and unjust enrichment, Counts III through VII. After careful consideration, the motions to dismiss the RICO claims will be granted for lack of standing. Jurisdiction over the state law

¹ Separate motions were filed by (1) Philadelphia Airport Services, Affiliated Building Services, LLC and General Asphalt Paving Company; (2) American Environmental Cleanup Corp. and Barbara Brown; and (3) U.S. Facilities, Inc. Defendants Thomas Milton Street, Sr., Notlim, Incorporated and John H. Velardi, Sr. answered the complaint.

² In deciding a motion to dismiss under Rule 12(b)(6), “all factual allegations and reasonable inferences [are regarded] as true and view[ed] . . . in the light most favorable to” the plaintiff. In re Schering Plough Corp. ERISA Litigation, – F.3d –, –, 2005 WL 1993990, at *3 (3d Cir., Aug. 19, 2005) (citation omitted). The complaint is properly dismissed only where plaintiff can prove no set of facts entitling relief. Id.

claims will be relinquished, and the action will be dismissed.³ The remaining allegations against defendants Street, Notlim and Velardi are insufficient by themselves to set forth a RICO claim.

1. The RICO Scheme

The following is alleged. In April 2001, the City of Philadelphia requested bids for a variety of services at the Philadelphia International Airport. Defendant PAS, a joint venture comprised of ABS, GAP, and USF, sought to obtain the contract through political connections, including the influence of defendant Thomas Milton Street,⁴ brother of Mayor John Street, and the late Ronald White, Esquire. RICO Case Statement, at 6.⁵ The airport contract, funded by federal, state and local governments, required participation by disadvantaged business enterprises (“DBE”). Specifically, minority DBEs were to receive 20-25% of the subcontracts and women DBEs were to receive 10-15%. The Minority Business Enterprise Council and the Department of Aviation, both federal agencies, determine whether an entity is qualified as a DBE. Id. at 7.

³ Although discretionary, a decision to exercise pendent jurisdiction “should be declined where the federal claims are no longer viable, absent ‘extraordinary circumstances.’” Shaffer v. Bd. of School Directors, 730 F.2d 910, 913 (3d Cir. 1984) (citations omitted).

⁴ Milton Street is alleged to have received a monthly \$30,000 consulting fee, beginning in or about April 2001, for assistance rendered to PAS. Mayor Street is not involved in this lawsuit.

⁵ “A RICO Case statement may be considered in ruling on a 12(b)(6) motion.” Werther v. Rosen, 2002 WL 31955983, at *1 n.4 (E.D. Pa., Oct. 30, 2002), citing Lorenz v. CSX Corp., 1 F.3d 1406, 1412 (3d Cir. 1993).

The bid submitted by PAS named two participating DBEs: Lowe Engineering (20.7%) for baggage handling and American Environmental (3.67%) for landscaping.

Plaintiff contends that PAS was aware that Lowe was not qualified to perform the baggage handling. It also contends that PAS did not intend to have American Environmental do the landscaping and included that company only as camouflage for All Seasons, which was not a DBE. Id. American Environmental was made part of the PAS bid at White's request. Id. at 9.

The baggage and landscaping subcontracts were renewed annually, and in 2002, American Environmental's contract was renewed. Lowe, however, was not offered the baggage contract. Instead, FMC Technologies contracted with PAS to perform the work through September 30, 2002. Id. at 12. At that time, PAS contracted with Notlim, Inc., a company formed and owned by defendant Street. Notlim, like American Environmental, was a facade in that PAS intended to handle the baggage services itself, retaining a portion of the fees and paying a portion to Street. Notlim is alleged to have qualified as a DBE through Street's political connections - and, further, its approval by the DOA was as a result of USF's assistance. In this way, PAS and the other defendants continued to retain the airport contract, allegedly without satisfying the DBE requirements.⁶ Id. at 12-14.

In sum: the alleged threefold goal of defendants' conduct was to ensure PAS's

⁶ The airport contract does not require PAS to satisfy its DBE participation goals with the landscaping or baggage subcontracts. See "Subcontract for Services," Complaint, Exhibit "F" (stating that participation goal of contract as a whole was between 32% and 40%). The landscaping and baggage subcontracts account for just over 24%. RICO Case Statement, at 7.

retention of the lucrative airport contract without satisfying the DBE requirements. This in turn enabled PAS to obtain substantial moneys for itself, defendants Street and White, and to distribute fees to favored subcontractors and consultants. Defendants used mail and wire services to advance these purposes. Id. at 22-32. Defendants also constituted an association-in-fact enterprise - comprised of PAS (ABS, GAP, and USF), defendant Street, White, American Environmental, Brown, Notlim and All Seasons.⁷ Id. at 35.

2. Plaintiff's Efforts to Obtain The Landscaping Contract

In 2001, at the time PAS originally bid for the airport contract, plaintiff's principal, Thahn H. Nguyen, met with defendant John Velardi, Sr., Facilities Director of PAS, to express V-Tech's interest in becoming the landscaping subcontractor. Id. at 9-10. After the airport contract was awarded to PAS, plaintiff learned that the landscaping subcontract had been awarded to American Environmental, owned by defendant Brown.⁸ Complaint, ¶ 49.

Plaintiff persisted in its unsuccessful efforts to obtain the landscaping contract. In November 2002, Nguyen communicated with Craig R. Baclit, vice-president of Business Development at USF. Baclit suggested to PAS that plaintiff be awarded the contract so that

⁷ According to the RICO Case Statement, "The association-in-fact was created to obtain the Airport Contract and to run it to the benefit of its members and others for years thereafter." Id. at 38.

⁸ The complaint alleges that American Environmental supplied environmental cleanup services, but not landscaping. While it was itself a minority-owned company capable of satisfying PAS' requirements, it did not perform landscaping services, but subcontracted them to a non-minority-owned company. Complaint, ¶¶ 50, 51.

PAS could comply with minority participation requirements. Id. at ¶¶ 41, 42. In May 2003, Nguyen met with Baclit and Velardi. Id. at ¶ 48. Velardi subsequently mailed specifications for the contract to plaintiff. Id. at ¶ 53. In November 2003, about the time of a second meeting, Nguyen was informed that plaintiff would not be awarded the landscaping contract, but that the baggage contract might be available. Id. at ¶¶ 55, 73.

3. Plaintiff's Efforts to Obtain The Baggage Handling Contract

In the fall of 2003, the baggage handling contract - a no-bid contract - was held by Notlim Incorporated, the entity created by defendant Street. Id. at ¶¶ 60, 61, 66. At about that time, Nguyen attended a meeting with Velardi and Street and was told PAS would give V-Tech the baggage handling contract if V-Tech obtained (1) MBE certification from the MBEC; (2) an approved union contract; and (3) Street's approval of the assignment of the contract from Notlim. Id. at ¶ 73.

On September 22, 2003, Notlim and V-Tech entered into a contract assigning Notlim's interest in the baggage contract to plaintiff. Notlim received from plaintiff \$50,000 cash upon execution of the contract, and Nguyen made a personal loan to defendant Street of \$30,000. Id. at ¶¶ 82-87. Plaintiff undertook preparations to proceed with the contract, including increasing its credit line and purchasing new financial reporting systems, expending, in all, more than \$350,000. Id. at ¶¶ 90-94. On April 20, 2004, plaintiff obtained

the MBE certification, *id.* at ¶ 97, and contacted Velardi to determine a start date.⁹ On July 9, 2004, Velardi and PAS advised plaintiff that PAS would continue to service the baggage handling contract itself because it was so financially advantageous. *Id.* at ¶ 104.

After the baggage contract was not assigned, plaintiff requested that defendant Street repay the \$30,000 loan, which he has not done (Counts VII and VIII). *Id.* at ¶ 113. Notlim has not repaid the \$50,000 advance (Counts V and VI). PAS continue to perform the baggage handling at PIA. *Id.* at ¶ 116.

4. Injury

The RICO Case Statement describes plaintiff's injury as follows: "V-Tech was injured in its business in that (1) it should have been awarded the landscaping contract on which it would have profited beginning in 2001 through the present; and (2) V-Tech expended the following sums on the baggage maintenance contract: \$50,000 toward the contract price as payment to Notlim and approximately \$350,000 in costs and expenses to prepare for undertaking the baggage maintenance contract." RICO Case Statement, at 5.

5. Standing

For a claim to be actionable, it is essential that plaintiff have standing. "Plaintiff must have suffered an injury in fact, an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual and imminent, not conjectural or hypothetical."

⁹ The complaint is silent as to whether plaintiff obtained an approved union contract, as required by PAS.

Belitskus v. Pizzigrilli, 343 F.3d 632, 639 (3d Cir. 2000) (citations omitted). There must be a “causal connection between the injury and the conduct complained of [and] it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” Id.

Here, as to the landscaping contract: even if defendants were found to have violated the RICO statute, it does not follow that plaintiff is entitled to relief. It was a no-bid contract, and plaintiff was not the sole DBE qualified to perform it.¹⁰ Moreover, the airport contract does not require that the landscaping subcontract be awarded to a DBE, only that overall DBE participation goals are met. There was no assurance that plaintiff would have been awarded the landscaping subcontract had it not been given to American Environmental. See Bonavitacola Elec. Contractor, Inc., v. Boro Developers, Inc., 2003 WL 320145, at *12 (E.D. Pa., filed Feb. 12, 2003).

As to the baggage contract: here, again, even assuming a RICO violation, it also was no-bid. Perhaps more significantly, it is not alleged that plaintiff satisfied all of the requirements outlined by PAS as prerequisite to assignment of the contract from Notlim to plaintiff. Plaintiff obtained defendant Street’s approval of the assignment of the contract to plaintiff in September 2003, and obtained MBE certification from the MBEC in April 2004.

¹⁰ In this vein, American Environmental and Brown note that PAS needed to satisfy participation goals with both women and minority-owned DBEs. Defendants’ memorandum at 10-11. American Environmental is a woman-owned DBE; plaintiff is a minority-owned DBE. While plaintiff may have qualified for the landscaping business, its performance of that contract may not have advanced PAS’ efforts to satisfy the airport contract’s overall participation goals.

Complaint, ¶¶ 104. Plaintiff did not have a legally protectable interest in either contract.

Moreover, the RICO injury must have been “a direct target of the alleged scheme.” Brokerage Concepts, 140 F.3d 494, 521 (3d Cir. 1998). Here, according to the RICO Case Statement, the “target” of the RICO scheme was to obtain the airport contract and keep it in the hands of PAS and the other members of the association-in-fact, not to withhold the contract from or deprive plaintiff. RICO Case Statement at 38.

While the complaint’s allegations, if true, portray conduct that may well be actionable, both civilly and criminally, they do not set forth RICO standing. The action must therefore be dismissed.

Edmund V. Ludwig, J.