

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO.: CACE19-008041 (21)
JUDGE: RAAG SINGHAL

FXE FUTBOL, LLC, a Florida limited liability
company,
Plaintiff,

v.

CITY OF FORT LAUDERDALE, a Florida
municipal corporation, and **MIAMI BECKHAM
UNITED, LLC**, a Florida limited liability company,
Defendants.

**ORDER ON PLAINTIFF'S EMERGENCY MOTION FOR TEMPORARY INJUNCTION
AND PLAINTIFF'S REQUEST FOR EMERGENCY RELIEF**

THIS CAUSE came before this Court on Plaintiff's, FXE Futbol, LLC ("Plaintiff"), Emergency Motion for Temporary Injunction, filed April 23, 2019; Defendant's, City of Fort Lauderdale (the "City"), Response in Opposition to Plaintiff's Emergency Motion for Temporary Injunction, filed April 29, 2019; Defendant's, Miami Beckham United, LLC ("Beckham"), Response in Opposition to Plaintiff's Emergency Motion for Temporary Injunction, filed April 30, 2019; Plaintiff's Request for Emergency Relief, filed April 30, 2019; the City's Verified Response to Request for Emergency Relief, filed April 30, 2019; and Beckham's Response in Opposition and Notice of Adoption, filed April 30, 2019. This Court, having considered the motions and responses, having heard argument of counsel, having reviewed the court file, and being otherwise duly advised in the premises, makes the following findings of facts and conclusions of law:

I. FINDINGS OF FACT

A. Factual Background

On January 28, 2019, the City received an unsolicited proposal from Beckham, pursuant to section 255.065, Florida Statutes, to design, construct, occupy, and maintain Lockhart and Fort Lauderdale Stadiums (“Lockhart Stadium”), which is owned by the City of Fort Lauderdale. On February 5, 2019, the City Commission adopted Resolution No. 19-25¹ stating its intent to enter into a Comprehensive Agreement² and published notice in the Florida Administrative Register and the Sun-Sentinel in accordance with section 255.065(3)(b), Florida Statutes.³ Following such public notice, which stated that the City had received an unsolicited proposal from Beckham and would accept other proposals for the same project, Plaintiff timely submitted its own proposal, pursuant to section 255.065(3)(c), Florida Statutes, to restore and redevelop Lockhart Stadium.

On March 19, 2019, the City Commission held its Commission Conference Meeting and considered both proposals for Lockhart Stadium, heard presentations from Plaintiff and Beckham, received comments from the public, and thereafter voted, unanimously, to rank Beckham’s unsolicited proposal as the first-ranked preferred proposal pursuant to section 255.065(5)(c), Florida Statutes. Thereafter, at a Regular Meeting on April 2, 2019, the City Commission unanimously approved the motion for the City to enter into an Interim Agreement with Beckham, pursuant to section 255.065(6), Florida Statutes. *See* FT. LAUDERDALE, CITY COMM’N, Res. 19-

¹ *See* FT. LAUDERDALE, CITY COMM’N, Res. 19-25 (Feb. 5, 2019) (describing the property at issue in this claim as follows: “Parcels 19B, 25, 26, and 27 at the Fort Lauderdale Executive airport in the City of Fort Lauderdale, Florida, commonly known as the site of Lockhart and Fort Lauderdale Stadiums”).

² *See* § 255.065(7), Fla. Stat. (explaining that a public entity must enter into a comprehensive agreement before beginning the qualifying project described in the chosen proposal).

³ Such public notice was not provided to the Court by the parties, however, Plaintiff and Plaintiff’s counsel admitted that such notice was properly given. *See also* FT. LAUDERDALE, CITY COMM’N, Res. 19-25 (Feb. 5, 2019) (directing the City Clerk to publish notice in the Florida Administrative Register and a newspaper of general circulation).

0365 (Apr. 2, 2019). On April 18, 2019, the City and Beckham entered into an Interim Agreement, pursuant to section 255.065(6), Florida Statutes.

B. Procedural History

On April 15, 2019, Plaintiff filed a five-count Emergency Complaint and Petition (“Complaint”) against Defendants, the City and Beckham (collectively the “Defendants”), seeking: (1) a writ of mandamus (count I – against the City); and (2) declaratory and injunctive relief (count II – against the City and to enjoin Defendants); and alleging, (3) violations of section 8.09 of the City’s Charter (count III – against the City); (4) tortious interference (count IV – against Beckham); and (5) injurious falsehood (count V – against Beckham). Next, Plaintiff filed on April 23, 2019, its Emergency Motion for Temporary Injunction seeking to enjoin the City from demolishing Lockhart Stadium until all its claims in this action are adjudicated. On April 29, 2019, the City filed its verified response, which Beckham adopted on April 30, 2019.

On May 1, 2019, this Court heard arguments from counsel on Plaintiff’s Emergency Motion for Temporary Injunction. At the contested hearing, Plaintiff presented the testimony of John Paul Reynald (“Mr. Reynald”), the managing partner of FXE Futbol, LLC, and proffered several documents as evidence, including: a Property Condition Assessment Report from 2013, which estimated the cost of asbestos abatement at \$1,200.00 for the Lockhart Stadium facility (Table 2A) and \$83,780.00 for the Fort Lauderdale Stadium facility (Table 2B). Defendants had the opportunity to cross-examine the witness, challenge the allegations in the complaint, and present its own evidence to oppose the motion, including: (1) the meeting minutes from the Commission Conference Meeting held March 19, 2019, which include copies of both proposals; and (2) records from Florida’s Division of Corporations relating to Mr. Reynald’s businesses: FXE Futbol, LLC and OnSide Entertainment, LLC. Defendants presented no testimony after Plaintiff

rested, arguing instead that Plaintiff failed to meet its burden. This Court, having been presented at the hearing with materials and authority to review, took the matter under advisement.

C. Summary of Arguments

In support of the issuance of a temporary injunction, Plaintiff acknowledges the four elements required as a matter of proof and argues it is entitled to injunctive relief because irreparable harm would result if Lockhart Stadium were demolished as such demolition would render its second-ranked proposal moot and Plaintiff would have no adequate remedy at law. Additionally, Plaintiff argues it has a substantial likelihood of success on the merits if the City were required to comply with the statutory requirements of section 255.065, Florida Statutes. Finally, Plaintiff alleges the entry of the temporary injunction will serve the public interest because the public interest is served by a robust and competitive bidding for the development of its public lands, in accordance with applicable law.

In opposition, Defendants argue that, as a threshold matter, Plaintiff fails to demonstrate a prima facie right to the relief requested. First, Defendants maintain Plaintiff does not have standing to assert a claim as the statute does not confer any legal right or interest in the manner in which the City may dispose of or develop its own property. Second, Defendants argue Plaintiff fails to satisfy any of the requisite elements for injunctive relief as its allegations are purely speculative and unsupported by evidence. Defendants claim Plaintiff's Complaint and Emergency Motion for Temporary Injunction fails to allege how it is irreparably harmed by the City's decision to enter into an Interim Agreement with Beckham. Moreover, Defendants highlight that Plaintiff has already sought to redress this purported harm by seeking damages in the underlying complaint. Defendants contend Plaintiff has failed to demonstrate it has a substantial likelihood of prevailing on the merits because the City fully complied with the requirements of section 255.065, Florida

Statutes, and further, has broad discretion when ranking such proposals. *See* § 255.065(5)(c), Fla. Stat. Defendants argue that Plaintiff has failed to allege any facts to support its argument that the issuance of an injunction will serve the public interest because the public's interest is better served by allowing the City to take action and return its property, Lockhart Stadium, to productive condition for public use. Finally, Defendants argue Plaintiff has no legal rights or interest in Lockhart Stadium authorizing it to enjoin the City from exercising its discretionary functions of government of its own property.

II. LEGAL STANDARDS

A. Injunctive Relief

“For temporary injunctive relief, a movant must demonstrate: (1) irreparable harm would result if the relief is not granted; (2) an adequate remedy at law is unavailable; (3) a substantial likelihood of success on the merits; and (4) entry of the temporary injunction will serve the public interest.” *Dubner v. Ferraro*, 242 So. 3d 444, 447 (Fla. 4th DCA 2018) (citing *Univ. Med. Clinics, Inc. v. Quality Health Plans, Inc.*, 51 So. 3d 1191, 1195 (Fla. 4th DCA 2011)). However, a “movant must also show a clear legal right to the injunction.” *Id.* (citing *McKeegan v. Ernst*, 84 So. 3d 1229, 1230 (Fla. 4th DCA 2012)). “The party seeking the injunction ‘has the burden of providing competent, substantial evidence’ to satisfy each of these elements.” *Concerned Citizens for Jud. Fairness v. Yacucci*, 162 So. 3d 68, 72 (Fla. 4th DCA 2014) (quoting *SunTrust Banks, Inc. v. Cauthon & McGuigan, PLC.*, 78 So. 3d 709, 711 (Fla. 1st DCA 2012)). “Finally, a trial court must make ‘clear, definite, and unequivocally sufficient factual findings’ supporting each of the required elements before entering an injunction.” *Jouvence Ctr. for Advanced Health, Ltd. Liab. Co. v. Jouvence Rejuvenation Ctrs., Ltd. Liab. Co.*, 14 So. 3d 1097, 1099 (Fla. 4th DCA 2009) (quoting *Net First Nat'l Bank v. First Telebank Corp.*, 834 So. 2d 944, 949 (Fla. 4th DCA 2003));

see also Eldon v. Perrin, 78 So. 3d 737 (Fla. 4th DCA 2012) (reversing “the order granting the temporary injunction because the order is facially deficient in failing to contain sufficient factual findings to support each prong of the four-part injunction test and in failing set an appropriate bond.”). The Fourth District Court of appeals has consistently held that strict compliance with Florida Rule of Civil Procedure 1.610 is required. *See, e.g., Baldwin v. Willet*, 259 So. 3d 891, 891 (Fla. 4th DCA 2018); *Dubner v. Ferraro*, 242 So. 3d 444, 447–48 (Fla. 4th DCA 2018); *Eldon v. Perrin*, 78 So. 3d 737, 738 (Fla. 4th DCA 2012).

B. Section 255.065, Florida Statutes

The polestar of a statutory interpretation and construction analysis is legislative intent. *See Borden v. E.-European Ins. Co.*, 921 So. 2d 587, 595 (Fla. 2006). “The Legislature’s intent must be determined primarily from the language of the statute.” *Palm Beach Gardens Police Pension Fund Bd. of Trs. v. Mitchell J. Beers, P.A.*, 842 So. 2d 911, 913 (Fla. 4th DCA 2003). To discern legislative intent, a court looks first to the plain and obvious meaning of the statute’s text, “which may be ascertained by reference to a dictionary definition.” *Robinson v. State*, 205 So. 3d 584, 590 (Fla. 2016) (citing *Rollins v. Pizzarelli*, 761 So. 2d 294, 298 (Fla. 2000)).

“It is an elementary principle of statutory construction that significance and effect must be given to every word, phrase, sentence, and part of the statute if possible, and words in a statute should not be construed as mere surplusage.” *Hechtman v. Nations Title Ins.*, 840 So. 2d 993, 996 (Fla. 2003). Even “[t]he title is more than an index to what the section is about or has reference to; it is a direct statement by the legislature of its intent.” *State v. Webb*, 398 So. 2d 820, 825 (Fla. 1981); *see also Gulfstream Park Racing Ass’n v. Tampa Bay Downs, Inc.*, 948 So. 2d 599, 605 (Fla. 2006).

III. CONCLUSIONS OF LAW

Simply put, the issue before this Court is whether Plaintiff is entitled to injunctive relief. “As an extraordinary remedy, a temporary injunction should be sparingly granted and only after the moving party has **alleged and proved facts** entitling it to relief.” *Yacucci*, 162 So. 3d at 72. However, Plaintiff’s claim for injunctive relief is predicated on the assertion that the City failed to comply with section 255.065, Florida Statutes, when ranking the proposals for Lockhart Stadium. Without reaching the merits of Plaintiff’s underlying complaint, this Court will address each allegation of purported non-compliance in turn.

First, Plaintiff claims it has standing to contest the City’s decision to rank Beckham’s proposal as its preferred proposal because it was as an ‘actual bidder’ for the same project. Plaintiff, mistakenly relies on the Fourth District Court of Appeal’s decision in *Pandya v. Israel*, for the proposition that the court ruled a ‘potential bidder’ had standing to contest. *See generally Pandya v. Israel*, 761 So. 2d 454 (Fla. 4th DCA 2000). In *Pandya v. Israel*, the county entered into contract for the sale of property it did not yet own, as such, any ‘potential bidder’ was precluded from bidding on the property before the property interest properly transferred to the county. Furthermore, the holding in *Pandya v. Israel* does not address the issue of standing, instead, the Fourth District Court of Appeal specifies “any property sold by the county must ‘belong to’ the county.” *Id.* at 458. Here, there is no question that the City is the proper owner of Lockhart Stadium, accordingly, the City is the proper party to effect any sale, lease, rental, or developmental plan of the property. *See FT. LAUDERDALE, FLA., CODE ch. 19, art. IV, § 19-71 (2018)* (“Lockhart Stadium and Fort Lauderdale Stadium are **municipally owned** stadiums”) (emphasis added). Additionally, Plaintiff is not a ‘bidder’ as nothing in section 255.065, Florida Statutes, contemplates a competitive bidding process.

Second, Plaintiff asserts that by failing to ensure a “professional review and evaluation of the design and construction proposed” was conducted on Beckham’s unsolicited proposal, Plaintiff suffered an irreparable harm because its proposal was ranked second. § 255.065, Fla. Stat. (3)(a)5., Fla. Stat. However, the statute provides that “[s]uch review shall be performed . . . through the completion of the design and construction of the project.” *Id.* Furthermore, Plaintiff fails to provide evidence of the likelihood its proposal would have been ranked first if any such “professional review” had been performed on the proposals. Nor does Plaintiff proffer any point of law which would entitle it to a “do-over” if not satisfied with the results of the City’s ranking.

Third, Plaintiff argues that Beckham’s proposal did not meet the standard requirement of section 255.065(3)(c), Florida Statutes, because it “must include a design criteria package.” § 255.065(3)(c), Fla. Stat. However, Plaintiff’s reliance on this section of the statute to support its argument is misplaced because section 255.065(3)(c), Florida Statutes, applies to “solicited proposals” not “unsolicited proposals.” Here, the parties are in agreement that Beckham’s proposal was an “unsolicited proposal” under section 255.065(3)(a), Florida Statutes. § 255.065(3)(a), Fla. Stat.; *see* (Pl.’s Compl. ¶ 10); *see also* (Pl.’s Mot. Inj. Relief ¶ 2). Moreover, Plaintiff agreed that its proposal was comparable to that of Beckham’s unsolicited proposal.⁴

Fourth, while Plaintiff agrees that the City provided the required public notice under section 255.065(3)(b), Florida Statutes,⁵ Plaintiff claims it was harmed by the proposal procurement procedure because the notice did not provide a design criteria for a competing ‘bidder,’ like Plaintiff, to know what the City desired in a ‘competing’ proposal for the project.

⁴ *See* (Def.’s Resp. in Opp., Ex. A., Apr. 29, 2019).

⁵ Mr. Reynald testified he found out Beckham submitted an unsolicited proposal after seeing an ad in the newspaper. *See* § 255.065(3)(b), Fla. Stat. When questioned about the contents of the notice, Mr. Reynald testified it stated that the City had received a proposal for Lockhart Stadium and would accept other proposals for the same project to be submitted within twenty-one days. *Id.*; *see also supra*, fn. 3.

Specifically, Plaintiff argues it would have submitted a different, more comparable proposal if it had known Beckham proposed to demolish Lockhart Stadium.⁶ At the hearing, however, Mr. Reynald testified Plaintiff proposed to restore Lockhart Stadium in reliance on restoration discussions had in prior negotiations with the City. When asked to elaborate, Mr. Reynald explained that in 2017 he was part of negotiations with the City of Fort Lauderdale and a third party for the lease and development of Lockhart Stadium under section 287.057, Florida Statutes.⁷ This purported reliance is groundless for the reasons that follow.

First, FXE Futbol, LLC was not and could not be part of any negotiations with the City of Fort Lauderdale in 2017, as it was not formed until January 24, 2019, for the purpose of submitting a 'bid' against Beckham.⁸ On cross-examination, Mr. Reynald clarified his prior involvement in the competitive bidding process for Lockhart Stadium occurred by and through his other company, OnSide Entertainment, LLC, not Plaintiff, FXE Futbol, LLC; nonetheless, those prior negotiations fell through and ownership interests in Lockhart Stadium remained vested in the City. Furthermore, OnSide Entertainment, LLC is not a party to this cause of action nor did it submit a proposal for the same project under section 255.065, Florida Statutes. Additionally, Plaintiff may not claim injury from an unsuccessful negotiation controlled by different statutory process in this cause of action. Second, section 255.065, Florida Statutes, does not require the public notice to include some desired design criteria for the same project. Instead, the statute provides a public entity the opportunity to consider different proposals and choose which would best serve a public purpose.

⁶ In his testimony, Mr. Reynald agreed that its proposal was comparable to Beckham's. *See* (Def.'s Resp. in Opp., Ex. A., Apr. 29, 2019).

⁷ Section 287.057, Florida Statutes, involves procurement of commodities or contractual services by "[t]he competitive solicitation" of specifically defined work. In contrast, section 255.065, Florida Statutes, operates as an alternate method for "the construction or upgrade of facilities that are predominantly for public purposes."

⁸ *See* DIV. OF CORP., Sunbiz.org.

Plaintiff has failed to sustain its burden to support the issuance of a temporary injunction. Plaintiff has not proffered competent, substantial evidence it has a substantial likelihood of success on the merits. *See Yacucci*, 162 So. 3d at 72 (Fla. 4th DCA 2014) (citations omitted). Specifically, as to count I – against the City, seeking a writ of mandamus, Plaintiff did not establish it has “a clear legal right to performance of the act requested, an indisputable legal duty, and no adequate remedy at law.” *Chandler v. City of Greenacres*, 140 So. 3d 1080, 1083 (Fla. 4th DCA 2014) (quoting *Smith v. State*, 696 So. 2d 814, 815 (Fla. 2d DCA 1997)). As to count II – against the City and to enjoin Defendants, seeking declaratory and injunctive relief, Plaintiff will not suffer irreparable harm if the temporary injunction is denied because it has an adequate remedy at law and has already availed itself of such redress by seeking damages in the underlying complaint. Furthermore, the public interest is not served by imposing upon the discretionary functions of the City with regards to its municipally-owned property. As to count III – against the City, alleging violations of section 8.09 of the City’s Charter, Plaintiff’s reliance is incorrect. Section 8.09 of the City’s Charter sets out procedures enabling the City to lease its municipally-owned properties to a private entity for private use. Conversely, section 255.065, Florida Statutes, sets forth procedures related to municipally-owned properties used to serve a public purpose.

As to count IV – against Beckham, alleging tortious interference, despite the allegation it “had an actual prospective advantageous business relationship[sic] with the City,” Plaintiff cannot prove the existence of a relationship between itself and the City under section 255.065, Florida Statutes. (Pl.’s Compl. ¶ 59). Section 255.065, Florida Statutes, does not obligate a public entity to enter into a contractual agreement with a private entity just because it submitted a proposal, solicited or unsolicited. In fact, “the responsible public entity **may reject all proposals at any point in the process** until a contract with the proposer is executed.” § 255.065(5)(c), Fla. Stat.

(emphasis added). Finally, as to count V – against Beckham, alleging injurious falsehood, Plaintiff makes purely speculative allegations that Beckham knowingly made false statements regarding the presence of asbestos in Lockhart Stadium in order to harm Plaintiff’s reputation and negatively affect its’ ranking. However, section 255.065, Florida Statutes, provides the City broad discretion in reviewing proposals, including: what factors to consider and the timeframe in which to make its decision.

The discretionary nature of section 255.065(a), Florida Statutes, bolsters the City’s contention that this Court does not have unfettered control over a power properly vested in another branch of government. This Court must recognize one of the structural pillars of this great nation, the doctrine of separation of powers, wherein, one branch of government must not interfere with the discretionary functions of other branches. Art. II, § 3, Fla. Const.; *see also* The Federalist No. 47 (James Madison) (“The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.”). Accordingly, it is:

ORDERED AND ADJUDGED that Plaintiff’s Emergency Motion for Temporary Injunction, filed April 23, 2019, is hereby **DENIED**. Additionally, Plaintiff’s unverified Request for Emergency Relief, filed April 30, 2019, is hereby **DENIED**. Furthermore, this Court **GRANTS** Defendants’ request for reasonable attorney’s fees in defending against Plaintiff’s unverified Request for Emergency Relief, pursuant to section 57.105, Florida Statutes. *See also* Admin. Order 2014-32-Civ(c)(6) (Sept. 30, 2014).

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida on May 3, 2019.



RAAG SINGHAL
Circuit Court Judge

CC: All persons listed on e-Portal Service List