

IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

RAZE INTERNATIONAL, INC.,
an Ohio corporation,
Plaintiff,

v.

Civil Action No. 23-C-119 MJO

WHEELING HOSPITAL, INC.,
a West Virginia nonprofit corporation,
CITY OF WHEELING,
a West Virginia municipal corporation, and
WHEELING MUNICIPAL BUILDING
COMMISSION, a West Virginia public
corporation,
Defendants.

ORDER

On the 21st day of August, came the parties for an initial hearing regarding Plaintiff's *First Amended Complaint for Injunction, Declaratory Judgment and Writ of Mandamus*. Upon inquiry, Plaintiff suggested that for the sake of efficiency the Court should consider first the Defendants' *Motions to Dismiss (Motions)* for failure to state a claim upon which relief can be granted. After having reviewed the *Motions*, Plaintiff's *Response* and the relevant law and after hearing oral argument, this Court determined to **GRANT** the *Motions* and dismissed this matter.

The pertinent facts of this matter are not in dispute. The at-issue demolition bid is the first in a series of bids that will culminate in the construction of a new cancer center within WVU Medicine's health system. WVU Medicine recently acquired Defendant Wheeling Hospital as part of its statewide integration strategy. The Municipal Defendants (the City of Wheeling and the Wheeling Municipal Building Commission) have very little involvement in the grand scheme of the cancer center project. At this time, the Municipal Defendants own the land that will be used for construction and plan to execute a long-term lease agreement with Defendant Wheeling Hospital. Each Municipal Defendant agreed to donate a relatively small portion of funds for the

project in order incentivize the cancer center's construction in Wheeling, West Virginia.

Otherwise, the Municipal Defendants played no role in the project to this point. Defendant Wheeling Hospital advertised the contract bid and the advertisement named themselves as the owner of the project. Wheeling Hospital, along with their project architect and engineer, determined what two bidders were the finalists. Wheeling Hospital, along with their project architect and engineer, conducted a scope review with each finalist and ultimately elected not to award the bid Plaintiff, one of the two finalists.

When appraising the sufficiency of a complaint upon motion pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure, the trial court should only dismiss the complaint if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Owen v. Board of Educ.*, 190 W.Va. 677 (1994). For the purposes of the motion to dismiss, the complaint is construed in the light most favorable to the plaintiff, and its allegations are to be taken as true. *John W. Lodge Distrib. Co. & Texaco Inc.*, 161 W.Va. 603 (1978). Parties agreed that the *Motions* hinge on two issues: 1) whether the fact that the land remains titled to the City of Wheeling controls ownership of the project, and 2) whether Defendant Wheeling Hospital is subject to the bidding requirements of the West Virginia Fairness in Competitive Bidding Act or whether Defendant Wheeling Hospital is statutorily exempted from the requirements of the Act by West Virginia Code §§ 18-11C-1.

Regarding the first issue, this Court does not believe ownership of the land itself makes the government the de facto owner of the project. Nor are the use of public funds similarly determinative. To that end, Plaintiff avers the following in the *First Amended Complaint*:

"14. Upon information and belief, the OVMC property will eventually be transferred to the Wheeling Municipal Building Commission to accommodate

financing the Project with public funds.

15. Upon information and belief, the Wheeling Municipal Building Commission will then enter into a lease agreement with Wheeling Hospital, Inc. or an affiliate for the financing, construction and operation of a comprehensive cancer center.”

Complaint, ¶ 14-15. While the City of Wheeling is in fact providing funds in support of the project, the Ohio County Commission was not named as a party despite similarly providing capital to incentivize the cancer center’s placement within Ohio County. The intended cancer center may benefit the community, but it is not being built specifically for community use. Therefore, this Court does not find ownership of the land or the provision of capital imputes ownership of the project on the Municipal Defendants.

Moving on to the second issue, the West Virginia Fairness in Competitive Bidding Act requires that the state and its subdivisions solicit bids for every construction project exceeding \$25,000, and that following the submission of bids, the construction contract be awarded to the lowest qualified bidder. W.Va. Code §§ 5-22-1(c),(d). Clearly, the Municipal Defendants are subdivisions of the state and would typically be subject to the bidding requirements if they owned the project. It is not so clear cut if the project is owned by Wheeling Hospital. Plaintiff argues that the monetary contributions provided by the Municipal Defendants to the demolition project further muddies the water. However, this point is moot if the project is exempted from the state bidding requirements contained in W.Va. Code § 18-11C-5.

Article 11C, Chapter 18 handles West Virginia University Hospital and the West Virginia Health System. While constructing Article 11C, the West Virginia Legislature saw fit to exempt the health system from “bidding and public sale requirements” in order to incentivize the expansion of the budding health system. W.Va. Code § 18-11C-5. Parties mainly disagree on the

scope of that exemption: whether the exemption merely applies to projects occurring in Monongalia County or to the entire state of West Virginia. § 18-11C-5 does not contain any language limiting the exemption to a specific geographical area of West Virginia. Yet in support of the the Monongalia County interpretation, Plaintiff bases their argument on a single definition contained in W.Va. Code § 18-11C-1(l): “‘New facilities’ means a new hospital facility and outpatient clinics, appurtenant facilities, equipment and necessary services to be acquired, built, operated or contracted for by the corporation *on property leased from the board within Monongalia County, West Virginia*, pursuant to the agreement”.

Parties agree there is no guiding case law concerning a private bidding project that receives a portion of its funds from municipal entities, one of which still holds title to the private entity’s project site, and whether fairness and bidding requirements apply to projects of that nature. Therefore, this Court must turn to the rules of statutory construction “to ascertain and give effect to the intention of the Legislature.” Syl. Pt. 8, *Vest v. Cobb*, 138 W.Va. 660 (1953). In addition, “[w]here a particular construction of a statute would result in an absurdity, some other reasonable construction, which will not produce such absurdity, will be made.” Syl. Pt. 2, *Newhart v. Pennybacker*, 120 W.Va. 774 (1938). Further, “[a] statute is open to construction only where the language used requires interpretation because of ambiguity which renders it susceptible of two or more constructions or of such doubtful or obscure meaning that reasonable minds might be uncertain or disagree as to its meaning.” *Sizemore v. State Farm Gen. Ins. Co.*, 202 W.Va. 591, 596 (1998). Here, while the language of each statute appears clear, application of both the definition of “New Facilities” and the exemption renders a result with doubtful meaning that could cause reasonable minds to be uncertain and disagree on the meaning.

If this Court were to apply Plaintiff's strict reading of the §§ 18-11C-1, only new facilities to be acquired, built, operated, or contract built within Monongalia County, West Virginia, would be exempt from bidding requirements. Read as a whole, Article 11C does not appear to intend that the financial exemption stop at the borders of Monongalia County. In fact, the Legislature clearly intends to establish a statewide health system for the benefit of the citizens of the state, not merely the citizens of Monongalia County, as evidenced by one of their specific findings regarding the West Virginia health system:

"The *citizens of the state* are best served by the creation of a coordinated, integrated, efficient and effective health science and health care delivery system which is accountable to the *citizens of the state*, responsive to the health care and health science education needs of the *citizens of the state*, and responsible to the pressures of a dynamic healthcare environment."

W.Va. Code § 18-11C-2(b)(4) (emphasis added). In addition, "This article, being necessary for the health, safety, convenience and welfare of the people of the state shall be liberally construed to effectuate the purposes hereof." W.Va. Code § 18-11C-10 (emphases added). Having reviewed the entirety of §§ 18-11C-1, it is apparent that the Legislature envisioned and intended that WVU Medicine become a statewide integrated health system to provide more convenient healthcare access to the citizens of the entire state. Aside from the isolated mention of Monongalia County in a definition contained in W.Va. Code § 18-11C-1(l), Article 11C does not otherwise confine the operation or construction or any function of relevant facilities to a specific geographical corner of West Virginia. This would be an outright disincentive to expanding the health system outside the borders of Monongalia County, and therefore, such an interpretation is expressly against the purposes of Article 11C. Plaintiff's proposed interpretation would surely produce an absurd result if WVU Medicine is only exempt from bidding requirements within Monongalia County.

Following oral argument, the Court made the following findings:

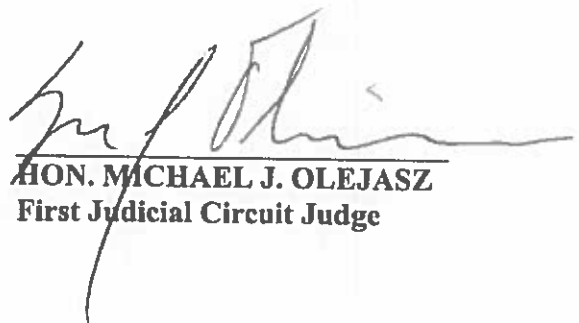
1. That Defendant Wheeling Hospital, Inc., owns the demolition project and
2. That W.Va. Code § 18-11C-1's definition of "New facilities" does not limit the § 18-11C-5's exemption from bidding requirements to only new facilities built and operated in Monongalia County, West Virginia.

Therefore, because Defendant Wheeling Hospital, Inc., is exempt from the West Virginia Fairness in Competitive Bidding Act, the Defendants did not act inappropriately by failing to award the demolition bid to Plaintiff. Accordingly, for the forgoing reasons, the *Motions* are hereby **GRANTED**, and it is **ORDERED** that this matter be **DISMISSED** and **STRICKEN** from the court docket.

It is so **ORDERED**.

It is further **ORDERED** that the Circuit Clerk provide attested copies of this *Order* upon entry to all counsel and parties of record.

ENTERED this 25th day of August 2023.



HON. MICHAEL J. OLEJASZ
First Judicial Circuit Judge