

1991-7C(I)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) CASE NO. 91-CP-40-3238

Buford Goff & Associates,
Petitioner,

-vs-

Division of Information Resource
Management, Division of General
Services, and the South Carolina
Procurement Review Panel,

Respondents.

IN RE: APPEAL OF BUFORD GOFF
& ASSOCIATES

O R D E R

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This matter came before the Court on a timely Petition for Judicial Review of a Final Order of the South Carolina Procurement Review Panel, dated June 6, 1991, relevant to the above-named parties.

I find that this Court has jurisdiction over this matter pursuant to S. C. Code Ann. §1-23-380 (1986).

A hearing was set in this matter on August 11, 1992. Counsel for the Petitioner Buford Goff & Associates (hereinafter "Petitioner"), Respondent Division of Information Resource Management (hereinafter "DIRM"), and the Respondent South Carolina Procurement Review Panel (hereinafter "Panel") were present. Respondent Division of General Services sought and received a dismissal as a party and did not appear. Written briefs were received from the Petitioner, DIRM and the Panel. Reply briefs were received from the Petitioner and DIRM. Counsel for the Petitioner, DIRM and the Panel were heard in oral argument. The entire

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record before from the Panel was received and acknowledged along with the Panel's order.

STANDARD OF REVIEW

The Court finds the proper scope of review in this appeal to be governed by S. C. Code Ann. §1-23-380(G) (1986), as interpreted by the Supreme Court in Lark v. Bi-Lo, Inc., 267 S.E.2d 304, 306 (1981). Specifically:

This court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

ISSUES

This appeal presented the following three issues to this Court for consideration:

1. Whether the Panel's findings of fact are supported by the reliable, probative and substantial evidence on the whole record;
2. Whether the Panel's conclusion that Petitioner's claim is barred by laches is affected by error of law; and

3. Whether the Panel's conclusion that Petitioner's claim of oral modification of contract is barred by the contract provision requiring all amendments to the contract be in writing is affected by error of law.

Because the Court's decision on the last two issues is dispositive only those issues are addressed.

FINDINGS

As a second assignment of error, the Petitioner contends that laches was improperly interposed by the Panel and that the law requires two elements to be proved - delay and prejudice.

While I make no finding on whether laches was improperly interposed by the Panel, I find Arceneaux v. Arrington, 284 S.C. 500, 327 S.E.2d 357, 358 (S.C. App. 1985) to apply. In Arceneaux I find the proper element of laches to be delay plus prejudice. I further find that that determination of laches should be made in light of the specific facts of each case. Wall v. Hugenin, et al., 301 S.C. 94, 390 S.E.2d 372 (S.C. App. 1991).

Accordingly, on the specific facts of this case, I find the affirmative defense of laches should not apply. While the first element of laches, delay, may have been present, no witness testimony or substantial evidence was provided alleging the second element, prejudice. I find that it was an error in law for the Panel to interpose laches for the Respondents, simply because it was not proved.

Therefore, I find the Panel's application of laches to be an error of law which makes its decision founded on unlawful procedure.

Petitioner's third assignment of error is that the Panel erroneously concluded that the law forbids oral modification of a contract in the face of a contract provision requiring all amendments to be in writing. I find that the Panel did err in this conclusion in that the law in this State is to the contrary. See, Lazer Construction Company, Inc. v. Long, 296 S.C. 127, 370 S.E.2d 900, 902 (S. C. App. 1988).

The Panel's errors of law, as described above, require this Court to reverse the unfavorable decision to the Petitioner because the Panel clearly relied upon its erroneous legal conclusions in reaching its decision. See Tolk v. Weinsten, et al., 220 S.E.2d 239 (1975).

CONCLUSIONS OF LAW

This Court concludes that the Panel's order of June 6, 1991, relevant to the parties herein, must be reversed as it is made upon unlawful procedure and affected by other error of law.

THEREFORE, IT IS ORDERED that the decision of the Panel of June 6, 1991, as related to the parties herein, is reversed.

IT IS FURTHER ORDERED, that this matter be remanded to the Panel for a new decision not inconsistent with this Order, the record, and existing South Carolina law.

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IT IS FURTHER ORDERED, that the Panel's decision be based on the testimony and record as it now stands and no additional evidence or testimony is to be taken or considered.

AND IT IS SO ORDERED.



Luke N. Brown Jr.
Presiding Judge
Fifth Judicial Circuit

Ridgeland, S.C.
Oct. 7, 1992

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