

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

Case No.: 2007-CP-40-1589

Pee Dee Regional Transportation Authority, versus

The South Carolina Procurement Review Panel, South Carolina Department of Health and Human Services, South Carolina Procurement Materials Management Office and LogistiCare Solutions,

Plaintiff(s)

Defendant(s)

CHECK ONE

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.
- DECISION BY COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. nonsuit) Rule 43(k), SCRCP(Settled); Other -
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRCP; Bankruptcy; Binding Arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by Court

This matter is an appeal from the South Carolina Procurement Review Panel ("the Panel"). A hearing was held on May 2, 2007, pursuant to Plaintiff's Motion to Stay Award.

Plaintiff Pee Dee Regional Transportation Authority ("PDRTA") requests an order from the court staying the implementation of the South Carolina Material Management Office's award of contract for the provision of non-emergency transport services to Medicaid beneficiaries for the South Carolina Department of Health and Human Services to LogistiCare. On May 1, 2007, LogistiCare began providing services under the contract. PDRTA requests a stay until it can resolve its appeal of the Chief Procurement Officer ("CPO")'s decision to award a contract to LogistiCare and the Panel's dismissal of its appeal challenging the award as untimely.

"For a preliminary injunction to be granted, the plaintiff must establish that: (1) it would suffer irreparable harm if the injunction is not granted; (2) the party seeking injunction will likely succeed in the litigation; and (3) there is an inadequate remedy at law." Strategic Resources Co. v. BCS Life Ins. Co., 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006).

PDRTA argues it will suffer irreparable harm without a stay as its review process will be unfairly prejudiced and implementation of a contract with LogistiCare during the appeal process will cause PDRTA to suffer substantial loss of business. PDRTA alleges there is no adequate remedy at law because without a stay, if PDRTA is successful in its appeal, there is no legal remedy for the loss it will sustain to its business during the pendency of its appeal. PDRTA argues that even if monetary damages were available they would not be sufficient to remedy the loss of business or business goodwill. PDRTA asserts it will likely be successful on the merits of this case.

LogistiCare argues PDRTA will suffer no irreparable harm if the court denies the injunction as the customers served under this state contract will require service from whoever is awarded the contract. LogistiCare alleges PDRTA has an adequate remedy under the law, resolicitation of the subject contract. LogistiCare further alleges the harm to LogistiCare far outweighs the inconvenience to PDRTA if the temporary injunction is granted. LogistiCare asserts PDRTA is barred from equitable relief by the doctrine of laches because of its own negligence in failing to act sooner

to seek injunctive relief, PDRTA is unlikely to succeed on the merits of its underlying claim as the Panel has the authority to adopt its own procedures, and the court should give deference to the Panel's interpretation of its own rules.

Courts have upheld injunctive relief to prevent the loss of business or business goodwill. See Peek v. Spartanburg Regional Healthcare System, 367 S.C. 450, 626 S.E.2d 34 (Ct. App. 2005); See also Levine v. Spartanburg Regional Services Dist., Inc., 367 S.C. 458, 626 S.E.2d 38 (Ct. App. 2005). However, "the sole purpose of a temporary injunction is to preserve the status quo...." MailSource, LLC v. M.A. Bailey & Associates, 356 S.C. 363, 368, 588 S.E.2d 635, 638 (Ct. App. 2003). "A temporary injunction is used to preserve the subject of controversy in the condition which it is at the time of the [o]rder until opportunity is offered for full and deliberate investigation and to preserve the existing status during litigation." Peek, 367 S.C. at 457, 626 S.E.2d at 37. In this matter PDRTA has already suffered a loss of the award of the contracts at issue. Preserving the status quo will only ensure that LogistiCare could continue with the contract.

"In deciding whether to grant an injunction, the court must balance the benefit of an injunction to the plaintiff against the inconvenience and damage to the defendant, and grant an injunction which seems most consistent with justice and equity under the circumstances of the case." Strategic Resources, 367 S.C. at 544, 627 S.E.2d at 689. In this matter the harm to LogistiCare outweighs that of PDRTA, as LogistiCare has already incurred substantial non-recoverable costs and will lose additional money and time that will be wasted in the furtherance of its current contract while PDRTA's only liability would be the denial of a contract it has already lost and for which it has other remedies. Additionally, Plaintiff has already appealed this issue of laches and the court finds that it would be more appropriate for the judge hearing the matter on the merits to decide that issue.

For the above reasons, and the additional reasons outlined by all Defendants to the court, both orally and in writing, Plaintiff is not entitled to an injunction in this matter. Additionally, as it has not demonstrated it would suffer irreparable harm or that there is an inadequate remedy at law, the court sees no need to address whether Plaintiff is likely to succeed on the merits of this case or to address Defendant's assertion that Plaintiff is barred from equitable relief by the doctrine of laches because of its own negligence in failing to act sooner to seek injunctive relief.

Petitioner's Motion to Stay Award is hereby **DENIED**.

Counsel for Defendant LogistiCare is to draft a more formal order within ten (10) days.

IT IS SO ORDERED.

Dated at Columbia, South Carolina,

June 8, 2007
Date

J. Michelle Childs
Judge

This judgment was entered on the _____ Day of _____, 20____, and a copy mailed first class this _____ Day of _____, 20____, to attorneys of record or to parties (when appearing pro-se) as follows:

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State of South Carolina
The Circuit Court of the Fifth Judicial Circuit

J. MICHELLE CHILDS
JUDGE

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FAX MEMORANDUM/COVER SHEET

Via Fax Only

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FROM: Judge J. Michelle Childs (Paula Jackson Blandshaw) - 803-576-1770

RE: Pee Dee Regional v. SC Procurement Review Panel, et. al - 2007-CP-40-1589

DATE: June 8, 2007

TOTAL NUMBER OF PAGES BEING FAXED INCLUDING MEMO: 3

MESSAGE:

For your convenience, we are faxing you a copy of the form order Judge Childs has signed in this case. The original will be filed with the Clerk of Court.

-pjb

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