

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 34625

LYNN LEANY, JAMES BRENT, AND
HAROLD FOSTER,

Appellants,

vs.

CITY OF HENDERSON, A NEVADA
MUNICIPAL CORPORATION,

Respondent.

FILED

AUG 17 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Reynolds*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order dismissing appellants' complaint on the basis that respondent's conduct was immune from suit under NRS 41.032(2).

In 1990, respondent requested that the Bureau of Land Management (BLM) sell to it, under a non-competitive direct sale, a federally-owned, forty-acre parcel of land. The BLM declined to sell the parcel directly to respondent, but in 1995, the BLM agreed to sell the parcel under a modified competitive bid sale. Under this process, the BLM advertised the sale in accordance with its regulations, noting that respondent would be given an opportunity to meet the highest bid received at public auction. The BLM accepted sealed bids, and after opening the bids, discovered that appellants had submitted the highest bid. Subsequently, respondent held a public council meeting and voted to match appellants' bid and purchase the parcel.

Appellants filed suit against respondent alleging that respondent intentionally interfered with a prospective economic advantage that appellants had secured with the BLM regarding the parcel at issue. Respondent, in turn, filed a motion to dismiss for lack of jurisdiction pursuant to NRCP 12(b)(1) because it was immune from suit pursuant to NRS

41.032(2). Respondent also contended that appellants' complaint should be dismissed pursuant to NRCF 12(b)(5) for failure to state a claim upon which relief can be granted because appellants alleged in their complaint that they were entitled to punitive damages, which are not allowed under 41.035(1). Respondent also argued that appellants' request for recovery of the parcel would require respondent to sell the property to appellants in contravention of the modified competitive bid process established by federal law. Lastly, respondent contended that dismissal of appellants' complaint under NRCF 12(b)(5) was warranted under the doctrine of res judicata based upon appellants' unsuccessful appeal of the BLM sale to the United States Department of the Interior.

The district court granted respondent's motion to dismiss, determining that respondent's decision to match the highest bid for the purchase of the BLM parcel was a discretionary act and thus, it was immune from suit under NRS 41.032(2). We agree. NRS 41.032 provides that no action may be brought against an officer or employee of the state or any of its agencies or political subdivisions that is based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty. We have defined discretionary acts as "those which require the exercise of personal deliberation, decision and judgment." *Travelers Hotel v. City of Reno*, 103 Nev. 343, 345-46, 741 P.2d 1353, 1354 (1987).

We conclude that, in 1995, when the BLM agreed to sell the parcel under a modified competitive bid sale, respondent still had to decide whether it wanted to match the highest bid and purchase the parcel. After conducting a public council meeting and considering comments from the public, respondent approved the purchase. These acts indicate that respondent's decision to purchase the BLM parcel was a

discretionary one, and thus respondent is immune from suit pursuant to NRS 41.032(2). Consequently, the district court did not err in dismissing the complaint. Accordingly, we

ORDER this appeal dismissed.

Maupin, J.
Maupin

Shearing, J.
Shearing

Becker, J.
Becker

cc: Hon. Gary L. Redmon, District Judge
Henderson City Attorney
Lybarger, Bunin & Bunin
Clark County Clerk