

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARDSON CONSTRUCTION, INC.,
A NEVADA CORPORATION,
Appellant,
vs.
CITY OF LAS VEGAS, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA; AND LAS VEGAS CITY
COUNCIL,
Respondents.

No. 37712

SEP 25 2002

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JANET F. M. BLOOM
CLERK OF SUPREME COURT
BY: *J. Richard*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Richardson Construction sued the City of Las Vegas and the Las Vegas City Council (hereinafter "Las Vegas"). Richardson sought injunctive relief, declaratory relief, a writ of mandamus and damages for breach of contract, breach of the implied warranty of good faith and fair dealing, constructive fraud and promissory estoppel. In this case, Richardson was the second lowest bidder on a construction project for Las Vegas. Las Vegas moved for and was granted summary judgment. Richardson now appeals. We affirm the district court's order.

Citing our decision in Gulf Oil Corp. v. Clark County,¹ the district court found that the public works project bid submitted by Richardson merely constituted an offer, and therefore, Richardson lacked standing to sue. In Gulf Oil, we concluded that a construction bid merely constitutes an offer, rather than a contract.² While the decision in Gulf Oil may nullify Richardson's contract claims, Richardson still has standing to assert its other claims against Las Vegas. We conclude the district

¹94 Nev. 116, 575 P.2d 1332 (1978).

²Id. at 118, 575 P.2d at 1333.

court's order erred in its determination that Richardson lacked standing to assert claims other than those based in contract.

Though Richardson has standing, the district court correctly granted summary judgment in favor of Las Vegas because Las Vegas did not improperly award the construction contract to Korte. NRS 338.145 requires a general contractor to provide to the local government an acceptable subcontractor before the award of the contract. On January 10, 2000, Korte informed Las Vegas in writing that it would substitute a licensed and qualified subcontractor, Lewis Landscaping, without changing its bid should Sunworld's application for a one-time license increase be denied. On January 11, 2000, Sunworld's application was denied, and the next day Las Vegas approved Korte's bid with Lewis Landscape replacing Sunworld. As required, Korte provided an acceptable subcontractor before the award of the contract, as NRS 338.145 requires.

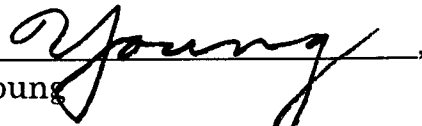
Additionally, Richardson alleges that Las Vegas violated its own bid documents, which required a bidder to be licensed and qualified to undertake a project, and NRS 624.3015(3), which makes it unlawful for a contractor to submit a bid in excess of a license limit. Both apply only to general contractors. Korte was licensed to complete a project for the amount designated for the soccer complex project, and had properly substituted Lewis Landscaping, a fully licensed subcontractor, as its landscaping contractor. Therefore, Las Vegas was in compliance with its bid documents and with NRS 624.3015(3) when it awarded the contract to Korte.

Richardson next asserts that the district court is precluded from granting Las Vegas's motion for summary judgment due to the doctrine of the law of the case, where an appellate court has enunciated a principle or rule of law, it must be followed both in the lower courts and on

subsequent appeals.³ Richardson argues that the district court previously ruled that there was an adequate remedy in the form of compensatory damages, yet it granted Las Vegas's motion for summary judgment, thereby denying damages. However, only appellate decisions may serve as the basis for the law of the case.⁴ The law of the case doctrine does not apply. Further, the district court did not intend its statement to be a final determination as to whether Richardson would be able to maintain an action for damages.

Because Las Vegas properly awarded the contract to Korte, we conclude that there were no genuine issues of material fact remaining for trial. Therefore, the district court's order of summary judgment was appropriate. Accordingly, we do not reach the issue of damages.

Accordingly, we ORDER the judgment of the district court AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Ronald D. Parraguirre, District Judge
Parker Nelson & Arin, Chtd.
Las Vegas City Attorney
Clark County Clerk

³Geissel v. Galbraith, 105 Nev. 101, 103, 769 P.2d 1294, 1296 (1989).

⁴Id. at 103-04, 769 P.2d at 1296.