

NOT DESIGNATED FOR PUBLICATION

**THE ROYAL STREET FOOD
STORE, INC., D/B/A JACKSON
SQUARE CAFE'**

VERSUS

**THE BOARD OF DIRECTORS
OF THE LOUISIANA STATE
MUSEUM**

NO. 2001-CA-1052

COURT OF APPEAL

FOURTH CIRCUIT

STATE OF LOUISIANA

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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2000-9016, DIVISION "K-14"
Honorable Louis A. DiRosa, Judge Pro Temp

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Judge David S. Gorbaty

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(Court composed of Judge Miriam G. Waltzer, Judge Michael E. Kirby,
Judge David S. Gorbaty)

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AFFIRMED

In this appeal, The Royal Street Food Store, Inc., d/b/a Jackson Square Café (“Jackson Square Café”) contends that the trial court erred in granting the motion for summary judgment filed by the Board of Directors of the Louisiana State Museum (“Museum Board”). For the reasons set forth below, we affirm.

FACTS AND PROCEDURAL HISTORY

Plaintiff leased the property located at 801 Decatur Street for fifteen years, where it operated the Jackson Square Café. The lease expired, and pursuant to La. R.S. 25:349, the Museum Board adopted a Comprehensive Plan of Usage and solicited proposals for a new lease of the property. R.S. 25:349 grants the Museum Board the absolute right to reject any and all commercial lease proposals as long as there is compliance with the procedure described in the statute.

Two proposals were received in response to the initial Request for Proposals of December 1, 1999: plaintiff's bid to pay \$5,211.00 in monthly base rent, plus percentage rent of six percent and eight percent; and a bid from the Gumbo Shop for \$7,000.00 in monthly base rent, plus a six percent percentage rent. The Gumbo Shop's proposal was for a five-year lease instead of the advertised two-year lease, so it was rejected as being defective under the Request for Proposals. Plaintiff's proposal was also rejected as being defective, since the required financial statements were not provided.

The Museum Board advertised a second request for proposals. Two were again received: one for a bid of \$13,500.00 in monthly base rent from plaintiff, with percentage rent of six percent; and another proposal for \$10,000.00 in monthly base rent from the Smith Organization, L.L.C. ("Smith"), proprietors of Pere Antoine, Inc., with ten percent percentage rent on gross sales. The Museum Board again rejected plaintiff's bid as defective, finding that the financial statements submitted were still inadequate. Smith's bid was also rejected as defective, since their attorney attempted to orally amend their proposed bid at the board meeting.

Once more, the Museum Board advertised a request for proposals. Plaintiffs again bid \$13,500.00 in monthly base rent, with percentage rent of eight percent of gross sales and ten percent of gross sales that exceeded

\$2,750,000.00 during the first five years of the lease. Smith's proposal provided for \$18,000.00 in monthly base rent, with a fifteen percent percentage rent in gross sales, with a credit against base rent, and with substantial improvements to be made to the property. The Museum Board unanimously voted to grant the lease to Smith and to issue a thirty-day notice to vacate to plaintiffs.

The Jackson Square Café filed this lawsuit for Injunctive Relief and Damages. After a hearing, the trial court denied the preliminary injunction sought. Plaintiffs took a writ to this court, which was denied. Defendants then filed a motion for summary judgment, which was granted. Plaintiffs subsequently filed this appeal.

DISCUSSION

Plaintiffs assert that clearly identified contested issues of fact precluded the granting of the motion for summary judgment.

Appellate courts review summary judgments *de novo*, using the same criteria applied by trial courts to determine whether summary judgment is appropriate. *Guy v. McKnight*, 99-2284 (La.App. 4 Cir. 2/16/00), 753 So.2d 955, 957, writ denied, 2000-0841 (La. 6/16/00), 764 So.2d 963; *Reynolds v. Select Properties, Ltd.*, 93-1480 (La. 4/11/94), 634 So.2d 1180, 1182.

Summary judgment is properly granted only if the pleadings and evidence show that there is no genuine issue of material fact, and that the mover is entitled to judgment as a matter of law. La. C.C.P. Art. 966 (C). Article 966 has recently been amended; the burden of proof remains with the mover to show that no genuine issue of material fact exists. Now, however, once the mover has made a prima facie showing that the motion should be granted, the burden shifts to the non-moving party to present evidence demonstrating that material factual issues remain. Once the motion for summary judgment has been properly supported by the moving party, the failure of the non-moving party to present evidence of a material factual dispute mandates the granting of the motion. See *Hayes v. Autin*, 96-287 (La. App. 3 Cir. 12/26/96), 685 So.2d 691. We must review the summary judgment with reference to the substantive law applicable to the case. To affirm summary judgment, we must find that reasonable minds would inevitably conclude that the mover is entitled to judgment as a matter of the applicable law on the facts before the court. *Washington v. State, Dept. of Transp. & Development*, 95-14 (La. App. 3 Cir. 7/5/95), 663 So.2d 47.

Plaintiffs argue that the rejection of their proposals on the first two rounds of bidding was arbitrary. They aver that their proposals met all of the requirements and, furthermore, were the most attractive bids received.

Citing the testimony of Mr. James Sefcik, they contend that the monthly sales reports they provided to the Museum Board during their lease were sufficient financial statements.

All leasing must be in conformity with La. R.S. 25:349, which requires compliance with the Comprehensive Plan of Use and the determination of the financial qualifications of applicants by La. R.S. 25:349 (B)(4)(a). The “financial statements” submitted by Jackson Square Café in the first round of bidding consisted merely of a letter from Roy Guste. It stated that the corporation had few assets, and that he did not wish to be responsible for the obligations of the lease but would if required. It also described his personal assets, but emphasized that he was not the lessee. This personal letter does not constitute an independently audited or certified financial statement of the bidder applicant. In the second round of bidding, Jackson Square Café submitted only a personal financial statement of Stephen Bruno, a new owner of the café. Again, no financial statement whatsoever was submitted by the corporation. Ultimately, the Museum Board accepted the bid of Smith that was submitted after the third Request for Proposals. They considered it to be far superior to plaintiffs’ proposal from a business and financial standpoint.

The Museum Board has a fiduciary duty to maximize revenues from

their real estate assets. Further, it enjoys the statutory right to reject all bids. It was well within their discretion to reject all bids that they perceived to be inadequate. As such, we find that their rejection of the bids submitted by Jackson Square Café was not arbitrary or capricious.

CONCLUSION

We find no genuine issues of material fact. Accordingly, for the foregoing reasons, the judgment of the trial court is affirmed.

AFFIRMED