

[Cite as *Russell Standard Corp. v. Ohio Dept. of Transp.*, 2017-Ohio-8080.]

RUSSELL STANDARD CORP.

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2016-00852-AD

Clerk Mark H. Reed

MEMORANDUM DECISION

{¶1} On November 21, 2016, plaintiff Russell Standard Corp (hereinafter “RSC”) filed a complaint against defendant Ohio Department of Transportation (hereinafter “ODOT”). On March 6, 2017, defendant filed an investigation report.

{¶2} In the complaint, RSC alleges that on March 29, 2016, ODOT accepted RSC’s bid 101L-17 and thereby entered into an agreement for RSC to provide ODOT with liquid asphalt products. On May 9, 2016 and May 13, 2016, RSC provided liquid asphalt to ODOT. According to RSC, both these orders fell below the agreed upon minimum for orders, 23 tons. As a result, RSC charged ODOT shipping charges for the orders. RSC alleges that ODOT has refused to pay for the charges, which totals \$824.60.

{¶3} On March 6, 2017, ODOT filed an investigation report. It is ODOT’s position that the 23 ton minimum should have been noted by RSC when ODOT made the material request. Moreover, ODOT states that it never agreed to pay any shipping costs pursuant to the invitation to bid (ITB). ODOT attached ITB number 101L-17 as Exhibit A and the bid pricing sheet as Exhibit B to its investigation report.

{¶4} Contract interpretation is a matter of law for the court. *City of St. Marys v. Auglaize Cty. Bd. of Comm’rs*, 115 Ohio St.3d 387, 2007-Ohio-5026, 875 N.E.2d 561, ¶ 18. When interpreting a contract, the court’s main objective is always to give effect to the intent of the parties as expressed in the written contract itself. *Hamilton Ins. Servs. v. Nationwide Ins. Cos.*, 86 Ohio St.3d 270, 273, 714 N.E.2d 898 (1999). The intent of

the parties is always presumed to reside in the precise language and terms they employed and set forth in the agreement. *Kelly v. Med. Life Ins. Co.*, 31 Ohio St.3d 130, 132, 509 N.E.2d 411 (1987). And, in determining the intent of the parties, a court must read the contract as a whole and attempt to give effect to every part and term of the contract. *Foster Wheeler Enviresponse v. Franklin Cnty Conv. Facilities Auth.*, 78 Ohio St.3d 353, 361, 678 N.E.2d 519 (1997).

{¶5} Most important for the court is the admonition from the Supreme Court of Ohio that “[i]t is not the responsibility or function of this court to rewrite the parties’ contract in order to provide for a more equitable result. *Id.* at 362. A contract “does not become ambiguous by reason of the fact that in its operation it will work a hardship upon one of the parties thereto.” *Ohio Crane Co. v. Hicks*, 110 Ohio St. 168, 172, 143 N.E. 388 (1924).

{¶6} Also important to the court’s review, is the long accepted tenet in contract interpretation that, if there are ambiguities in a contract, the document will be strictly construed against the party who drafted it or selected its language. *Graham v. Drydock Coal Co.*, 76 Ohio St.3d 311, 314, 667 N.E.2d 949 (1996); *Central Realty Co. v. Clutter*, 62 Ohio St.2d 411, 413, 406 N.E.2d 515 (1980). ODOT drafted the contract in dispute in this matter. With this well-settled law in mind, the court turns to the written contract between the parties.

{¶7} Upon review, the core of the parties’ disagreement lies with the interpretation of two separate sections of the ITB 101L-17.

{¶8} Section 13 of the “Standard Terms and Conditions” states:

CREATION OF THE CONTRACT: A contract is created between the Vendor and the Ohio Department of Transportation when the Director of Transportation accepts the competitive bid and acknowledges the acceptance in writing. The contract shall become operational only when either a purchase order has been issued or the Department’s payment card is presented to the awarded Vendor. The contract shall contain all the terms and conditions of this ITB, as well as the accepted responses in the bid proposal, except that no responses may change or later the terms of conditions of this ITB.

{¶9} Section 16 of the “Standard Terms and Conditions” states:

DELIVERY/FREIGHT CHARGES: Unless otherwise stated, ODOT shall not be responsible for freight or delivery charges. Prices are to be based upon the products or services being offered F.O.B. destination, freight prepaid by the Vendor to the location set forth in the ITB or as listed on the purchase order issued pursuant to any contract awarded. Any shipment marked C.O.D. shall be rejected and returned at the Vendor’s expenses.

{¶10} Upon review of the contract, the clerk finds that the contract between RSC and ODOT is unambiguous upon its face. Section 16 of the ITB clearly states that ODOT “shall not be responsible for freight or delivery charges.” Moreover, pursuant to Section 13, the contract between RSC and ODOT included the terms of conditions of the ITB, “as well as the accepted responses in the bid proposal, **except that no responses may change or alter the terms of conditions of this ITB.**” (Emphasis added.) Here, in the last page of Exhibit B, the bid pricing sheet for the ITB, RSC noted “[r]ate based on minimum 23 ton loads.” Through this notation, RSC essentially provided a response that it required a minimum liquid asphalt order of 23 tons and ODOT accepted this response through its acceptance of the ITB with the bid pricing sheet. However, pursuant to Section 13, this acceptance could not change any contract term, namely Section 16, which provides that ODOT will not pay for delivery charges. RSC has not indicated if the ITB Sections in question are vague, such that the contract should be construed against ODOT because it is the drafter of the contract. Consequently, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff.

RUSSELL STANDARD CORP.

Plaintiff

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v.

OHIO DEPARTMENT OF
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Defendant

ENTRY OF ADMINISTRATIVE
DETERMINATION

Having considered all the evidence in the claim file, and for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff.

MARK H. REED
Clerk