

**IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI**

K. ASAMOAH-BOADU)	
d/b/a Sam's Janitorial Service)	
)	
Plaintiff,)	
)	
v.)	Case No. 07AC-CC000983
)	
STATE OF MISSOURI, OFFICE OF)	
ADMINISTRATION, et al.,)	
)	
Defendants.)	

JUDGMENT

Now on this 25th day of November, 2009, the Court takes up this matter for the purpose of entering its final judgment. This lawsuit is a breach of contract action by the Plaintiff claiming that the State unlawfully voided his janitorial service contracts for the cleaning of certain state office buildings. The case was tried on October 19, 2009. The Court now finds in favor of Plaintiff.

K. Asamoh-Boadu (Plaintiff) is a United States citizen doing business as Sam's Janitorial Services and provided cleaning services for both private businesses and state government. Plaintiff was awarded nine separate contracts by the Office of Administration (hereinafter OA) for the cleaning State office buildings. Because State office buildings presented certain security issues, Plaintiff was also required to seek approval from OA for each employee of Plaintiff that would work in a State office building.

The evidence showed that Plaintiff rejected some job applicants because of insufficient identification. Of those job applicants that passed Plaintiff's initial screening, Plaintiff was required to pay for criminal record checks by the State Highway Patrol. Plaintiff then provided OA copies of the criminal record checks along with Social Security and Alien Registration cards for each employee who was not a United States citizen. OA and the Capitol Police would review the documentation, and only those applicants approved by OA were allowed to work in State office buildings.

In early 2007, the Capitol Police with the aid of federal authorities and federal data banks began to more closely scrutinize Plaintiff's employees and discovered irregularities in some of the paperwork. This new information would not have been available without the assistance of federal law enforcement and was not available to Plaintiff. On March 6, 2007, federal and state law enforcement agencies raided the State office buildings where Plaintiff's employees were working and arrested or detained 25 of Plaintiff's employees (8 were eventually charged) for suspicion of having falsified immigration documents. Simultaneously with the raid, OA terminated all nine of Plaintiff's contracts. The Plaintiff had no knowledge of nor was he complicit in any falsified documentation. The evidence showed that Plaintiff shared all information that he possessed about his employees with the State. Despite the fact that all 25 detainees had been approved by the State, no state employee was disciplined for the failure to earlier discern that any of the documents had been falsified¹; Plaintiff alone was singled out for punishment by the

¹ The Court does not intend to suggest that any discipline was warranted.

cancellation of his contracts. Sadly, one can only conclude that the need for scapegoats is imbedded in our society just as deeply as the need for heroes.

The Court adopts the above findings and makes the following formal findings of fact and conclusions of law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The parties stipulated that Plaintiff was awarded various contracts with OA to perform certain janitorial services at various State of Missouri buildings. The contracts described in the stipulation were provided to the court.

2. One of the requirements of these contracts was that Plaintiff provide OA and the Missouri Capital Police with identification documents for each employee working under the contracts who was not a United States citizen. Plaintiff was further required to purchase from the Missouri Highway Patrol a criminal background check for all employees for which he submitted paperwork to Defendants. Plaintiff followed all protocols and followed all instructions of OA in regard to providing documentation for all employees who were not United States citizens.

3. State law prohibits contractors from employing aliens who are unauthorized to work in the United States. **Mo. Rev. Stat. § 8.283 (2000)** (repealed 2008). Section two of the statute provided a penalty when it was determined that the contractor knowingly violated the Immigration Reform and Control Act of 1986 by employing unauthorized aliens. “. . . [T]he agency may cause up to twenty percent of the total amount of the contract . . . to be withheld from payment to the employer in violation of such statute.”

Mo. Rev. Stat. § 8.283.2. Further, this section provided for debarment of the contractor when: “Any contractor or subcontractor from whom payment is withheld under subsection 2 or 3 of this section shall be ineligible to perform other contracts or subcontracts for the state of Missouri for a period of two years from the date of such action.” **Mo. Rev. Stat. § 8.283.4.**

4. On March 6, 2007, federal and state law enforcement personnel entered state buildings where Plaintiff was performing janitorial services and detained approximately 25 of Plaintiff’s employees for suspicion of having falsified documentation.

5. On that same day, Governor Blunt issued Executive Order 07-13. That Order states in part:

If the state determines that a current contractor employs any persons who are not eligible to work in the United States in violation of federal law, the contractor shall be in breach of contract and the state may lawfully terminate the contract and suspend or debar the contractor from doing business the state of Missouri.

6. Federal law requires that Plaintiff “knowingly” employ illegal aliens in order to incur liability.

7. Plaintiff did not knowingly employ illegal aliens.

8. On March 6, 2007, OA terminated Plaintiff’s contracts and debarred him for two years because of alleged “. . . violation of the Illegal Immigration Reform and Immigration Responsibility Act” (hereinafter “IIRIRA.”).

9. Of the 25 employees of Plaintiff that were arrested on March 6, 2007, eight were charged. In June, July and August, 2007, four of the eight pleaded guilty or were found guilty of having forged documents that showed they could legally work in the United States.

10. In 2009, Plaintiff applied to OA for removal of the debarment. Defendants refused Plaintiff's application to remove debarment. Plaintiff continues to be the only contractor ever debarred by OA for employing illegal aliens.

11. After, March 6, 2007, Defendants failed to pay Plaintiff, under all but one of the contracts, for the first week of March 2007 under which he had performed on all the contracts. Plaintiff was overpaid by Defendants on one of the contracts in the amount of \$5,000.00 (five thousand dollars).

12. Plaintiff's profit history was that he realized a 12.7% profit on the gross proceeds on all of the contracts. That is a reasonable profit. Plaintiff's gross revenue from March 1, 2007 through the remaining term of the contracts would have been \$1,234,509.20 (one million, two hundred and thirty four thousand, five hundred and nine dollars and twenty cents). Plaintiff's profit on this amount would have been \$156,782.67 (one hundred and fifty six thousand, seven hundred and eighty two dollars and sixty seven cents). This amount should be reduced by the overpayment made by Defendant of \$5,000.00 (five thousand dollars), leaving lost profits of \$151,782.67 (one hundred fifty one thousand, seven hundred and eighty two dollars and sixty seven cents.)

13. Governor Blunt's action in issuing Executive Order 07-13 did not preempt, repeal, or limit provisions of Mo. Rev. Stat. § 8.283. A Governor does not have the power to repeal a law properly passed by the legislature in 2000, and signed by a previous Governor.

14. All the contracts at issue contain a 30-day termination clause. Defendants claim that this 30-day cancellation clause is a "cancellation for convenience" clause which limits their damages under the contracts at issue to a 30-day period. Defendants did not terminate Plaintiff's contracts based upon any 30-day provision. Defendant's produced no evidence indicating that they would have terminated Plaintiff's contracts for any reason other than the charge that he violated Federal employment law.

15. Defendants terminated Plaintiff's contracts on the unproven allegation that Plaintiff knowingly violated any state or federal employment law.

16. Generally, in a breach of contract action, the goal in awarding damages is to put the nonbreaching party in as good a position as they would have been in had the contract been performed. *Gee v. Payne*, 939 S.W.2d 383, 385 (Mo. App. W.D. 1997). These damages give Plaintiff the "benefit of the bargain." *Inauen Packaging Equip. Corp. v. Integrated Indus. Services, Inc.*, 970 S.W.2d 360, 368 (Mo. App. W.D. 1998). As with other elements of contract damages, lost profits are recoverable where they may be fairly and reasonably considered to be the natural and probable result of the breach. *Nemela v. Coca-Cola Bottling Company of St. Louis*, 104 S.W.2d 773, 776 (Mo. App. E.D. 1937). In this case, the benefit of the bargain is Plaintiff's lost profits which have

been established through well documented earnings based upon relatively certain and predictable contract payments.

Judgment

Defendants State of Missouri, Office of Administration and its divisions breached their contracts with Plaintiff on March 6, 2007. Defendants unlawfully debarred Plaintiff from bidding on contracts with the State of Missouri. This Court finds that Defendants are liable to Plaintiff for damages due to breach of contract in the amount of \$151,782.67. This Court further orders Defendants to take all necessary steps to remove the debarment of Plaintiff, and Defendants are directed to correct their records to reflect that Plaintiff was never properly debarred from bidding on state contracts. All other claims are denied. SO ORDERED.

Richard G. Callahan
Circuit Court Judge, Division II