Cases



Civil Rights

Equal Protection and Bidding

After the City of Atlanta solicited bids for a five-year contract to manage the advertising displays at its international airport, the plaintiff, Corey Airport Services, Inc., submitted a bid. However, when the City awarded the contract to the incumbent advertising contractor, Clear Channel Outdoor, Inc., Corey brought a 42 U.S.C. § 1983 action. It claimed that the bidding process was "rigged;" that the City and City employees conspired to ensure that Clear Channel, "a political elite," would get the contract; and that this discriminatory "classification between political insiders and outsiders" denied Corey equal protection of the laws. Specifically, the request for proposals (RFP) required bid proponents to project their gross receipts for the five-year term and to commit to a monthly rent payment of at least 60 percent of those receipts. The RFP also provided for a minimum annual guaranteed payment to the City if a contractor failed to attain the projected revenues, and each month, the contractor would pay the City the rent payment, or one-twelfth the minimum annual guaranteed payment (whichever was greater). The first payment would be due 31 days after execution of the contract. Corey alleged that, because Clear Channel was awarded the new contract, it could continue to receive revenue from advertisements it had installed under its old contract for the first month of the new contract, and the provision making the first rental payment due 31 days after execution of the contract offered Clear Channel a potential windfall equal to one month's advertising revenue. A new contractor would not likely generate any revenue during the first month; thus, the 31-day provision was evidence of a bias in favor of Clear Channel, built into the RFP. Corey also argued that Clear Channel's proposal included inflated revenue projections, projections that airport officials knew were inflated, and that his bid was treated less favorably. The City argued it evaluated bids by awarding points based on various criteria, including projected fees, past performance, the proponent's financial condition, and experience in airport advertising.

The district court denied the defendants' motion for summary judgment. It found that Corey had presented evidence showing that the general structure of the RFP and the overall selection process were "biased and manipulated by the City to the benefit of Clear Channel and to the detriment of any non-incumbent bid proponents," and that "the individual City defendants had fair notice that their alleged conduct and treatment of Corey would be unconstitutional." The defendants appealed.

The U.S. Court of Appeals for the Eleventh Circuit concluded that the defendants did not violate a clearly established constitutional right and were, therefore, entitled to qualified immunity. It was not disputed that the defendants acted within the scope of their discretionary authority. Applying *Pearson v. Callahan*, 129 S. Ct. 808 (2009), the court concluded that the examination of the "clearly established law" question alone would "best facilitate the fair and efficient disposition" of this case, and limited its inquiry to only this prong of the qualified immunity analysis. To hold that the defendants violated Corey's clearly established constitutional rights required a finding that the recitation of a "highly general principle" (the unequal application of facially neutral law with the intent to discriminate could violate the equal protection clause), in and of itself, offered the defendants "fair warning that their [treatment of Corey] was unconstitutional." The court declined to reach this far, noting that "we cannot conclude that [the cited] decisions made it clear that the conduct at issue here violated the Constitution. Nor are we aware of any other relevant cases decided prior to 2002 finding a violation of a constitutional right based on facts similar to those in this case." Given the finding that the defendants did not violate a clearly established constitutional right, they were entitled to qualified immunity. *Corey Airport Servs., Inc. v. DeCosta*, 587 F. 3d 1280 (11th Cir. 2009).

Due Process and Emergencies

Gary and Susan Clarke owned an old hotel through their company, WWBITV, Inc. Shortly after midnight on June 06, 2006, the building caught fire. Although firefighters from the Village of Rouses Point responded, the building was badly damaged. Later that morning, the Village Board of Trustees held a special meeting to discuss the situation, particularly because the public roads next to the hotel had to be closed because of the danger of falling debris. A notice of the meeting had been posted in the Village offices, but the Clarkes were not separately notified. The Board approved a motion, pursuant to its local code, authorizing the fire chief to take measures to stabilize the building's remains and to make the street and sidewalk safe, and hired a contractor to demolish the portion of the building most damaged by the fire. The burned portion of the building was torn down on June 06. Susan Clarke learned from a friend that the hotel was being demolished. She immediately attempted to stop the demolition, but was unsuccessful. The Clarkes brought a 42 U.S.C. § 1983 suit against the Village and Village officials, alleging a violation of their substantive and procedural due process rights, as well as their rights against unlawful seizure under the Fourth Amendment and against an unlawful taking of their property. The district court, finding that there was enough evidence for Village officials to believe that an emergency