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5th Circ. Widens RICO Reach In Houston Schools Contract Suit

Share us on: By **Michael Macagnone**

Law360, Washington (May 19, 2015, 8:54 PM ET) -- A Fifth Circuit panel applied a broad interpretation of federal racketeering claims Monday in reviving contract bribery allegations against a former Houston Independent School District trustee and several contractors.

The decision overturned a 2013 grant of summary judgment in a suit by construction contractor George Ramirez Group Inc. alleging that school district trustee Lawrence Marshall and several contractors participated in a “pay-to-play” scheme for school construction contracts.

GRG’s suit now heads back to the district court to consider the racketeering and state tortious interference claims under a broader view of the Racketeer Influenced and Corrupt Organizations Act and the facts in the case.

“That HISD retained discretion to award fewer contracts, or no contracts at all, does not prohibit GRG from demonstrating that but for corruption, it would have continued to receive awards,” Circuit Judge Edith Jones wrote in the decision.

GRG saw a steep dropoff in work from the school district in 2009. The panel ruled that GRG did not have to show at the summary judgment stage that the district was legally obliged to give it work, just that it would have received that work if not for the alleged corruption.

Martin Siegel, attorney for GRG, said he was glad the RICO and state tortious interference claims were allowed to proceed. “RICO can be a powerful weapon against corruption in government contracting, and this decision ensures it will continue to serve that vital role,” Siegel said in a statement.

The judges jettisoned the school district from the RICO and state law claims but denied Marshall immunity as a district employee. The judges said Marshall, as a trustee, was not a paid employee or, if the allegations are true, acting within the scope of his duties.

“He was allegedly defiling his position and wholly outside the legitimate scope of a trustee’s duties if he accepted bribes in exchange for advancing the interests of certain contractors,” the court said.

GRG alleges that Marshall, through a consulting company run by Joyce Moses Clay, received consulting fees from several other contractors who were chosen for work over GRG after a 2008 bidding process. GRG says that after it refused to participate in the scheme, it received considerably less work in 2009 while other contractors received more.

“The confluence of events in August 2009 ... would allow a jury to infer that undue influence on and by Marshall harmed GRG’s business,” the court said.

The judges held that the alleged actions fell well outside Marshall’s duties as a school trustee and outside the qualified immunity offered by Texas law.

“Marshall’s rationalization that getting involved with contracting and procurement decisions is ‘minimally’ within the scope of his duties, particularly when he served as HISD board president in 2009, cannot stand against GRG’s detailed evidence of the pay-to-play scheme,” the court said.

However, it was not a complete win for GRG. In addition to nixing claims against the school district, the panel also booted claims of constitutional violations by Marshall.

Marshall, along with Clay and several contractor defendants, now face RICO, civil conspiracy and state tortious interference claims at the trial court related to the 2009 contract work.

Counsel for the defendants could not be immediately reached for comment Tuesday.

Circuit Judges Thomas Reavley, Edith Jones and Jennifer Elrod sat on the panel.

GRG and Gil Ramirez Jr. are represented by Chad Wilson Dunn of Brazil & Dunn and Martin Jonathan Siegel.

The school district is represented by Arturo Garcia Michel, John M. Hopkins and Brandon Scott Winchester of Thompson & Horton LLP.

Marshall and Marshall & Associates are represented by Richard Alan Morris and Paul A. Lamp of [Rogers Morris & Grover LLP](#).

Defendants Eva Jackson and RHJ-JOC Inc. are represented by Michael John Stanley of Stanley Frank & Rose LLP.

Fort Bend Mechanical, Ltd., FBM Management LLC and David L. Medford are represented by Brooks T. Harrison.

Joyce Moses Clay and JM Clay Associates are represented by Wendle Van Smith of Anderson & Smith PC.

The case is [Gil Ramirez Group LLC et al. v. Houston Independent School District et al.](#), case number [13-20753](#), in the U.S. Court of Appeals for the Fifth Circuit.

--Editing by Brian Baresch.

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