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Order on Cross Motions for Summary Judgment (ADI FINANCIAL SERVICES, INC.)

Elizabeth E. Long
Superior Court of Fulton County

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

FILED IN OFFICE
APR 29 2010
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

ADI FINANCIAL SERVICES, INC.,

Plaintiff,

v.

CITY OF ATLANTA, GEORGIA,

Defendant,

Civil Action File No. 2009-CV-163299

ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT

In June 2007, Plaintiff ADI Financial Services, Inc. ("ADI") entered into a one-year contract with Defendant City of Atlanta ("the City") to provide audit services in order to identify possible duplicate payments made by the City ("the Contract"). ADI was to be compensated by 20% of amounts returned to the City. ADI alleges that two weeks after execution, the Contract was modified to allow ADI also to identify lost revenues due to the City and to collect those monies for the City.

ADI was successful in identifying a source of lost revenue due to the City. Specifically, ADI discovered that the Clerk of Fulton Superior Court had been miscalculating the intangible recording tax and real estate transfer tax allocations owed to the City. ADI was also successful in explaining the error to the Clerk of Fulton Superior Court who corrected the error on a going forward basis, starting in September 2007. This correction by the Clerk of Fulton Superior Court resulted in an increase in revenue to the City of approximately $120,000.00 per month. ADI was compensated by the City with 20% of the additional revenues collected between September 2007 and June 2008, totaling $240,442.46. The Contract ended in June 2008.

Based on the same miscalculation discussed above, ADI has identified approximately $11.5 million that should have been allocated to the City from 2001 through 2007 but, instead,

was allocated to other political subdivisions such as the Atlanta Public Schools. The City has not pursued the collection of any of these monies and refuses to do so.

ADI has filed suit against the City for (1) breach of contract, (2) unjust enrichment, (3) specific performance, (4) equitable accounting, and (5) bad faith under O.C.G.A. 13-6-11. In support of these claims, ADI alleges that the City has prevented it from performing its duties under the Contract to collect the amounts "owed" to the City from these other political subdivisions.

The City has counterclaimed for money had and received in the amount of $240,442.46 alleging that the Contract was never amended to increase the scope of the services to be performed to include the identification of lost revenues. Therefore, the City alleges that ADI should not be allowed to keep the compensation paid to it for lost revenues recouped from September 2007-June 2008.

Both parties have moved for summary judgment. Summary judgment should be granted when no dispute exists as to any material fact and the moving party is entitled to a judgment as a matter of law. O.C.G.A. 9-11-56. The construction of a contract is a question of law for the court unless, after the application of the rules of construction, the contract remains ambiguous. Sagon Motorhomes, Inc. v. Southtrust Bank of Georgia, N.A., 225 Ga.App. 348, 349 (1997).

The Contract authorized ADI to audit accounts payable vendor files to identify duplicate payments. ADI was to be compensated by 20% of all identified duplicate payments. "Further service...will require an amendment to this [Contract] and allocations of additional funds by the City." The City argues that the Contract was never amended by the proper City officials and therefore ADI was only authorized to find duplicate payments by the City, not monies that had not been properly allocated by the County Clerk.

ADI does not contend that the two parties to the Contract amended the Contract; rather it argues that a document entitled "Recovery of Payment Form" was signed by Gary Donaldson, the City's chief revenue collector and Charlotte Daniely, the City's accounts payable manager authorizing ADI to explore erroneous tax allocation payments by the Clerk of Fulton Superior Court.

City Ordinance 2.1292 (d) allows modifications of city contracts "involving no additional cost to the city" to be executed by the "head of the affected using agency or his designee." This document coupled with the fact that the City did in fact receive approximately $120,000.00 each month from the County Clerk and did in fact pay ADI 20% of those monies, indicates that the City also treated the Contract as modified.

Nothing, however, in the Contract or the Recovery of Payment Form requires the City to pursue past lost revenues. The Recovery of Payment Form talks in terms of persuading the County Clerk to "change its method of calculating the City's percentages of taxes due; thereby, causing an increase in <u>future</u> allocations." (emphasis added)

The Contract ended in June 2008. ADI was properly compensated for its services. It is not entitled to anything more. The City paid ADI for the services it received; it is not entitled to the monies it paid to ADI under the Contract.

Summary Judgment on ADI's claims is granted in favor of the City of Atlanta. Summary Judgment on the City's counterclaim is granted in favor of ADI.

So ORDERED this 28th day of April 2010.

ELIZABETH E. LONG, Senior Judge
Fulton County Superior Court, Business Case Division
Atlanta Judicial Circuit

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