IN THE COURT OF APPEALS OF TENNESSEE

FILED

October 19, 1995

Cecil Crowson, Jr.
Appellate Court Clerk

OAK RIDGE SCHOOLS,	) C/A NO. 03A01-9507-CH-00212
	) ANDERSON COUNTY CHANCERY COURT
Plaintiff-Appellee,	)
v.	) HONORABLE JAMES B. SCOTT, JR.,
	) JUDGE, By Interchange
THE ASSURANCE CENTER,	) REVERSED
	) COMPLAINT DISMISSED
Defendant-Appellant.	) REMANDED

JULIA S. HOWARD of HODGES, DOUGHTY & CARSON, Knoxville, for Appellant

JAMES M. WEBSTER, Oak Ridge, for Appellee

O P I N I O N

Susano, J.

This is a suit brought by the Oak Ridge Schools against The Assurance Center, an insurance broker, for damages arising out of an alleged breach of contract to procure insurance.[1] Following a bench trial, the court below awarded the plaintiff $70,000 in damages. The Assurance Center appeals, raising one issue that presents the following question: does the evidence preponderate against the trial court's finding that the appellant insurance agency agreed to procure insurance for a three year term at a guaranteed fixed premium for each of the three years? The appellee also raises issues, but they are subsumed in the appellant's issue.

This case is before us for a *de novo* review. It comes to us accompanied by a presumption of correctness that we must honor unless the evidence preponderates against the trial court's findings of fact. T.R.A.P. 13(d).

On May 22, 1984, the appellee school system issued a "Request for Bid" on its standard form. The "product" upon which it sought bids was generally described as follows:

> FOR FURNISHING SELECTED INSURANCE COVERAGE AND SERVICES
> Effective date is to be July 1, 1984. Term of policy is to be three (3) years, through June 30, 1987.

In another part of the bid solicitation form, the appellee

[1]On an earlier appeal, we held that there was a contract between the parties whereby the appellant agreed to procure insurance for the appellee. We vacated a grant of summary judgment to The Assurance Center because we found disputed material facts. *See* ***Oak Ridge Schools v. The Assurance Center***, C/A No. 03A01-9110-CH-00364 (February 26, 1992).

described, with specificity, the coverages desired. The four page Request for Bid concluded with the following language under the heading "POLICY PERIOD":

> The effective date is to be July 1, 1984. Term of the policy is to be three (3) years through June 30, 1987. The Premium is to be paid on each anniversary commencing July 1, 1984.

On June 15, 1984, the appellant submitted its one page bid. Its quote for "Property--Including Glass" with a "$1,000 Deductible" was an annual premium of $14,962 with coverage through Birmingham Fire Insurance Company (Birmingham Fire). This quoted premium of $14,962, which was subsequently accepted by the appellee, was set forth in the appellant's bid under the following heading:

> 3 Year Policy
> <u>Annual Installments</u>

A policy of insurance containing the appropriate coverages was issued by Birmingham Fire for the period July 1, 1984, to July 1, 1987. The three year premium was stated as $44,886, payable annually at the rate of $14,962. The policy was received by the appellee in September or October of 1984. It included the following provision:

> This policy is subject to annual rerate which means that the present annual premium is subject to change at anniversary.

In May, 1985, Birmingham Fire notified the appellee

that due to an "underwriting reason," it would not renew the policy after the first year of coverage. The company's election was pursuant to a provision of the policy. The appellant subsequently obtained insurance for the appellee from another company for the period July 1, 1985, to July 1, 1987, but at a substantially higher rate. The judgment in this case represents the difference between the rate as quoted by Birmingham Fire and that ultimately paid by the appellee under the substitute coverage.

In any contract case, our goal is to ascertain the intent of the parties. ***Pinson & Associates, Ins. v. Kreal***, 800 S.W.2d 486, 487 (Tenn. App. 1990). The trial judge concluded that the intent of the parties in this case was that the appellant *guaranteed* that the annual premium for the appellee's coverage would be $14,962 for three years. The documents before us that bear on the parties' contract do not use the words, "guarantee" or "guaranteed," or words of similar import. We do not believe that the appellee's solicitation of bids for a three year policy with the premium to be paid annually implies that the successful bidder will be guaranteeing the premium rates quoted. We cannot reach this conclusion without giving the parties' contract language a strained construction, and this we cannot do. ***Hillsboro Plaza Enterprises v. Moon***, 860 S.W.2d 45, 47 (Tenn. App. 1993).

The testimony before the trial court also does not support the appellee's position. Peter Cohan, the appellee's assistant superintendent for planning and finance at the time of

this contract, testified that he intended for the solicitation of bid form to call for a guaranteed annual premium; but it is clear from his testimony that he did not express this intent to the appellant's representative, James Efurd. Pertinent portions of Mr. Cohan's testimony follow:

> Q: Mr. Cohan, nowhere in Exhibit 1, the Request for Bid, did the Schools require as a condition that the premium must remain the same for the entire three years, is that right?
>
> A: That was not stipulated, that's correct.
>
> * * *
>
> Q: You never told The Assurance Center outside of the bid specifications that it must guarantee the price for three years, is that right?
>
> A: To the best of my recollection, I don't recall any conversation of that nature.
>
> * * *
>
> Q: You didn't tell them that they had to guarantee it for three years?
>
> A: No.
>
> * * *
>
> Q: Mr. Cohan, no one from The Assurance Center, Mr. Efurd specifically, ever told you that they were guaranteeing Birmingham Fire's premium would not change, did they?
>
> A: No, they did not.
>
> * * *
>
> Q: Mr. Cohan, let me ask briefly. You're telling Mr. Webster that your concern was that you get a fixed premium for three years. If that was of such grave concern, why wasn't it put into the bid specifications?
>
> A: I think the basic motivation at the time was to keep our bid specifications as simple as possible to encourage as many people as possible to bid on those specifications.

> Q: So, while that may have been of a concern to you, and an interest to you, that was never conveyed in your bid specifications to potential bidders. You'll agree with that statement?
>
> A: I don't think it was conveyed in written documents. I think it may have been discussed, or at least reviewed orally, during our discussions relative to insurance.
>
> Q: Are you--
>
> A: That was our motivation. We didn't hide our motivation from those who were bidding.
>
> Q: Are you testifying under oath that you told Mr. Efurd that he needed guaranteed premiums?
>
> A: No. I didn't say that.

Mr. Efurd, testifying for The Assurance Center, denied that the appellee ever indicated to the appellant that the successful bidder would be guaranteeing the premium rate for three years. He further testified that the appellant would not have bid on the coverage on those terms.

The appellee's reliance on ***Bell v. Wood Ins. Agency***, 829 S.W.2d 153 (Tenn. App. 1992),and ***Massengale v. Hicks***, 639 S.W.2d 659 (Tenn. App. 1982), is misplaced. Those cases stand for the proposition that

> . . .an agent or broker of insurance who, with a view to compensation for his services, undertakes to procure insurance for another, and unjustifiably and through his fault or neglect, fails to do so, will be held liable for any damage resulting therefrom.

Id. at 660. The appellant contracted to secure insurance coverage for the appellee for three years. In fact, it did

secure that coverage. Those cases do not support the appellee's position that the parties in this case contracted for guaranteed annual premiums for the three years of coverage.

The evidence preponderates against the trial court's finding that the appellant agreed to guarantee an annual premium of $14,962 for three years. In the absence of such a guarantee, there is no showing that the appellant breached its contract with the appellee.

The judgment of the trial court is reversed. The appellee's suit is dismissed with costs below taxed to the appellee. Costs on appeal are also taxed to the appellee. This case is remanded to the trial court for the collection of costs below.

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Charles D. Susano, Jr., J.

CONCUR:

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Herschel P. Franks, J.

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Don T. McMurray, J.