VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

CHARLOTTESVILLE AREA FITNESS CLUB OPERATORS ASSOCIATION, et al.	)	
Plaintiffs	)	
	)	
v.	)	**Case No. CL10-165**
	)	
CHARLOTTESVILLE CITY COUNCIL and MAURICE JONES, in his official capacity,	)	
Defendants	)	

ORDER

This matter was before the Court on April 1, 2011 for a hearing on the Defendants Charlottesville City Council's and Maurice Jones' (hereinafter collectively "City") Demurrer in response to the Complaint filed by Plaintiffs, Charlottesville Area Fitness Club Operators Association, Atlantic Coast Athletic Clubs of Virginia, Inc., Gym Quest, NC. d/b/a Gold's Gym Charlottesville and Total Performance Sport and Fitness, LLC (hereinafter collectively Plaintiffs). Counsel of record for the City was S. Craig Brown, City Attorney and Allyson Manson-Davies, Deputy City Attorney. Counsels of record for the Plaintiffs were Edward B. Lowry, Esquire, and David W. Thomas, Esquire.

Upon consideration of the allegations contained in the Complaint, the memoranda of law filed by the parties and upon the argument of counsel, the Court FINDS as follows:

The City's Demurrer is granted. The Court finds in granting the Demurrer that, considering the facts in the light most favorable to the Plaintiffs, the City demonstrated a rational basis to distinguish between for profit and nonprofit facilities in the bidding process. The Court's ruling is based upon the following:

1. The Plaintiffs' allegations that the YMCA first approached the City about leasing the City's property, and that the City's request for lease proposals was drafted to favor the YMCA, is not a determinative factor in the analysis of whether there was a rational basis for the City's action, or whether there was a violation of due process.
2. While there is no specific state law that empowers the City to differentiate between profit and nonprofit businesses, in other contexts, courts have recognized a rational basis for distinguishing between for profit and nonprofit businesses. See, *e.g.*, Miller v. Ayers, 231 Va. 251, 265, 191 S.E.2d 261 (1972). The same rationale

underlying those cases applies when the City is making a determination about how it will allocate its land, money and services.

3. Based on the logic of those cases, the City articulated a rational basis for distinguishing between profit and nonprofit businesses in the use of its property, and no additional detail or justification is necessary. The Court does not find that the City was attempting to manipulate the bidding process, or that the purpose of the distinction was to limit the number of bids.
4. Under Virginia law a municipality has broad discretion to ensure that the lease of its property will benefit its citizens.
5. In the exercise of its discretion, the City is not limited in prescribing the terms and conditions of a lease of its property. It was appropriate for the Lease and Use Agreement to set forth what the membership rates and discounts for low income families would be.
6. Though the Court agrees that the language of the advertisement, running the way that it did on the bidding process, practically guaranteed that the YMCA would be the only entity to bid, the Court does not find that the City was trying to manipulate the system in order for the YMCA to be the only entity that would place a bid. As such, the Court does not find the advertisement to be violative of Virginia Code sections 15.2-2100 *et seq.*
7. The Court further adopts its earlier reasoning in the case of Charlottesville Area Fitness Club Operators Association, et al. v. Albemarle Coutny Board of Supervisors, et al, Case No. CL10-365, and finds that the Use Agreement was not an attempt to procure fitness services for the citizens of Charlottesville, and the City was not required to follow the Virginia Public Procurement Act, Virginia Code sections 2.2-4300 *et seq.*, to secure a Use Agreement. A municipality has discretion for scribing terms and conditions and the Use Agreement set terms and conditions designed to benefit the citizens of Charlottesville.

The Court also finds that Plaintiffs Atlantic Coast Athletic Clubs of Virginia, Inc., Gym Quest, NC. d/b/a Gold's Gym Charlottesville and Total Performance Sport and Fitness, LLC have legal standing to pursue these claims against the Defendants.

The CLERK IS DIRECTED to send certified copies of this Order to each attorney whose endorsement appears below.

ENTERED this 8 day of August, 2011

JUDGE: Cheryl V. Higgins

Hon. Cheryl V. Higgins

We ask for this, except as noted below:
CHARLOTTESVILLE CITY COUNCIL and MAURICE JONES

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Defendants Charlottesville City Council and City Manager Maurice Jones object to the Court's conclusion that the Atlantic Coast Athletic Clubs of Virginia, Inc., Gym Quest, NC. d/b/a Gold's Gym Charlottesville and Total Performance Sport and Fitness, LLC have legal standing to pursue the claims asserted against the Defendants.

Seen and objected to as to the ruling on the Demurrer for the reasons stated in the memorandum in opposition and at oral argument:

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ASSIGNMENTS OF ERROR

1. The trial court erred in holding that the Respondent City of Charlottesville pled facts which demonstrated a rational basis to distinguish between for-profit and non-profit fitness facilities in advertising a lease and inviting bids pursuant to Code 15.2-2100 et seq., particularly where the price of entry to the facility is fixed by the lease.[1]

2. The trial court erred in finding, on Demurrer, that there was no evidence that the City's restriction of the lease to non-profit businesses was for the purpose of manipulating the bidding process.[2]

3. The trial court erred in holding that the Use Agreement was an appropriate restriction on a lease advertised under Code 15.2-2100.[3]

4. The trial court erred in holding that a City may procure services pursuant to Code 15.2-2100, and that the City was not required to follow the Virginia Public Procurement Act for such procurement.[4]

5. The trial court erred in holding that the Use Agreement was not an attempt to procure fitness services for the citizens of Charlottesville.[5]

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[1] This assignment of error was preserved based on Plaintiffs argument at pages 6 and 7 of their Response to Demurrer and subsequent objection to the entry of the trial court's order granting the demurrer. (Order, pg. 4)

[2] This assignment of error was preserved based on Plaintiffs argument at pages 6 and 7 of their Response to Demurrer and subsequent objection to the entry of the trial court's order granting the demurrer. (Order, pg. 4)

[3] This assignment of error was preserved based on Plaintiffs argument at pages 6 and 7 of their Response to Demurrer and subsequent objection to the entry of the trial court's order granting the demurrer. (Order, pg. 4)

[4] This assignment of error was preserved based on Plaintiffs argument at pages 6 and 14 of their Response to Demurrer and subsequent objection to the entry of the trial court's order granting the demurrer. (Order, pg. 4)