

STUART CONSTRUCTION CO., INC.,	:	
a corporation,	:	
	:	IN THE CIRCUIT COURT
Plaintiff,	:	
	:	TWENTY-EIGHTH JUDICIAL CIRCUIT
vs.	:	
	:	BALDWIN COUNTY, ALABAMA
VULCAN LIFE INSURANCE COMPANY,	:	
a corporation, FRED RENNEKER,	:	CASE NO. 10,304
JR. & ASSOCIATES, INC., a	:	
corporation, and BRASFIELD &	:	
GORRIE, INC., a corporation,	:	
	:	
Defendants.	:	

C O M P L A I N T

Now comes the plaintiff and amends the Complaint by striking the words and figures appearing therein and substituting in the place thereof, the following:

The plaintiff, Stuart Construction Co., Inc., an Alabama corporation having its principal place of business at Bay Minette in Baldwin County, Alabama, and licensed by the State of Alabama to do business as a general contractor, claims the sum of \$50,000.00, as damages from the defendants Vulcan Life Insurance Company, a corporation (hereinafter referred to as "Vulcan"), Fred Renneker & Associates, Inc., a corporation organized under the laws of the State of Alabama for the purpose of rendering architectural services (hereinafter referred to as "The Architects"), and Brasfield & Gorrie, Inc., an Alabama corporation having its principal place of business at Birmingham, Jefferson County, Alabama, and licensed by the State of Alabama to do business as a general contractor (hereinafter referred to as Brasfield & Gorrie) for that:

On or about December 15, 1970, Vulcan's executive committee approved the purchase of and Vulcan did acquire a building site for location of an office in Homewood, Alabama.

Sometime after March 31, 1971, Vulcan engaged the services of the Architects to design and to prepare plans and specifications for the proposed office building and, at a meeting on or about December 22, 1971, Vulcan's executive committee and representatives of the Architects, decided to issue invitations to business firms licensed by the State of Alabama to do business as general contractors, to submit bids to Vulcan on or before January 25, 1972, stating the amount of money each bidding contractor would require for the construction of the office building.

Coincident with the decision to issue invitations to bid on the construction of the office building, on some date in the year 1971 prior to December 22, 1971, which date is unknown to the plaintiff, Vulcan and the Architects entered into a conspiracy with Brasfield & Gorrie wherein it was agreed that Brasfield & Gorrie would be one of the contractors that would bid on the construction of the office building and further agreed that Vulcan would award the contract for the construction of the office building to Brasfield & Gorrie without regard to the amounts bid by the other bidding contractors and without regard to whether the bid submitted by Brasfield & Gorrie would be the lowest bid submitted for the building.

Pursuant to the conspiracy, on or about December 23, 1971, through the Architects, it was made known to the general contracting industry and to the plaintiff that Vulcan was accepting bids from general contractors, and the plaintiff, being unaware of the conspiracy to award the contract to Brasfield & Gorrie, contacted the Architects for the purpose of obtaining an invitation

to bid. Thereafter, in furtherance of the conspiracy, the conspirators did wrongfully and with malice interfere with the plaintiffs' business by issuing to plaintiff an invitation to submit a bid, all the while knowing of the time, expense and effort that the plaintiff would incur in preparing and submitting a bid.


Unaware of the conspiracy and with the expectation that Vulcan would fairly and honorably award the construction contract to the low bidder, the plaintiff instructed its employees to perform the work necessary for the preparation and submission of a bid and did submit its bid on the building, within the time specified, in the amount of \$1,549,405.00. The bids of the plaintiff and the other four invitees, including Brasfield & Gorrie, were opened and examined on January 25, 1972, at a meeting of Vulcan's board of directors, which meeting was also attended by Vulcan's executive and building committees. After the bids were opened, Vulcan instructed its building committee to study the bids and award the building contract to the lowest qualified bidder.

On or about February 2, 1972, pursuant to the conspiracy, Vulcan's building committee awarded the contract to construct the building to Brasfield & Gorrie, although Brasfield & Gorrie's bid, in the amount of \$1,557,630.00, was \$8,225.00 higher than the bid submitted by the plaintiff and although the plaintiff's bid was deficient in no respect whatsoever, and conformed in all respects to the plans and specifications for the building supplied to the plaintiff by the Architects. The plaintiff alleges that its qualifications

to construct the building on which it bid in the manner described above equal or exceed those of Brasfield & Gorrie, and that the contract was awarded to Brasfield & Gorrie solely in furtherance of the conspiracy described above.

WHEREFORE, plaintiff demands judgment against the defendants for its damages, and for punitive damages, in the aggregate sum of \$50,000.00.

JOHNSTON & SHORES

By   
James L. Shores, Jr.  
A Member of the Firm  
Attorneys for the Plaintiff  
1142 Brown-Marx Building  
Birmingham, Alabama 35203  
Telephone Number: 251-1261

Certificate of Service

I hereby certify that a copy of the foregoing Complaint has been served on Tolbert M. Brantley, Esquire, Wilters & Brantley, Bay Minette, Alabama, 36507; Edward S. Allen, Esquire, Balch, Bingham, Baker, Hawthorne, & Williams, 600 North 18th Street, Birmingham, Alabama, 35210; and James J. Duffy, Jr., Esquire, Inge, Twitty, Duffy & Prince, P.O. Box 1109, Mobile, Alabama, 36101, by mailing the same to each by First Class United States mail, properly addressed and postage prepaid.

This the 27th day of September, 1972.

**FILED**

SEP 29 1972

EUNICE B. BLACKMON CIRCUIT  
CLERK

- 4 -

  
James L. Shores, Jr.

70-459

NOV 15 1973

THE STATE OF ALABAMA - - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1973-74

Stuart Construction Co., Inc., A Corp.

S. C. 387

v.

Vulcan Life Insurance Co., a Corp.  
Fred Renneker, Jr. & Associates, Inc., a Corp.  
and Brasfield & Gorrie, Inc., a Corp.

Appeal from Baldwin Circuit Court

FAULKNER, JUSTICE.

This is an appeal from a judgment of nonsuit entered by  
the Circuit Court of Baldwin County on motion of Stuart

2.

Construction Co., Inc., after the court sustained demurrers to the amended complaint.

The amended complaint is as follows:

"The plaintiff, Stuart Construction Co., Inc., an Alabama Corporation having its principal place of business at Bay Minette in Baldwin County, Alabama, and licensed by the State of Alabama to do business as a general contractor, claims the sum of \$50,000.00, as damages from the defendants Vulcan Life Insurance Company, a corporation (hereinafter referred to as 'Vulcan'), Fred Renneker & Associates, Inc., a corporation organized under the laws of the State of Alabama for the purpose of rendering architectural services (hereinafter referred to as 'The Architects'), and Brasfield & Gorrie, Inc., an Alabama corporation having its principal place of business in Birmingham, Jefferson County, Alabama, and licensed by the State of Alabama to do business as a general contractor (hereinafter referred to as 'Brasfield & Gorrie') for that:

"On or about December 15, 1970, Vulcan's executive committee approved the purchase of and Vulcan did acquire a building site for location of an office in Homewood, Alabama.

3.

Sometime after March 31, 1971, Vulcan engaged the services of the Architects to design and to prepare plans and specifications for the purposed office building and, at a meeting on or about December 22, 1971, Vulcan's executive committee and representatives of the Architects, decided to issue invitations to business firms licensed by the State of Alabama to do business as general contractors, to submit bids to Vulcan on or before January 25, 1972, stating the amount of money each bidding contractor would require for the construction of the office building.

"Coincident with the decision to issue invitations to bid on the construction of the office building, on some date in the year 1971 prior to December 22, 1971, which date is unknown to the plaintiff, Vulcan and the Architects entered into a conspiracy with Brasfield & Gorrie wherein it was agreed that Brasfield & Gorrie would be one of the contractors that would bid on the construction of the office building and further agreed that Vulcan would award the contract for the construction of the office building to Brasfield & Gorrie without regard to the amounts bid by the other bidding contractors and without regard to whether the bid submitted

by Brasfield & Gorrie would be the lowest bid submitted for the building.

"Pursuant to the conspiracy, on or about December 23, 1971, through the Architects, it was made known to the general contracting industry and to the plaintiff that Vulcan was accepting bids from general contractors, and the plaintiff, being unaware of the conspiracy to award the contract to Brasfield & Gorrie, contacted the Architects for the purpose of obtaining an invitation to bid. Thereafter, in furtherance of the conspiracy, the conspirators did wrongfully and with malice interfere with the plaintiff's business by issuing to plaintiff an invitation to submit a bid, all the while knowing of the time, expense and effort that the plaintiff would incur in preparing and submitting a bid.

"Unaware of the conspiracy and with the expectation that Vulcan would fairly and honorably award the construction contract to the low bidder, the plaintiff instructed its employees to perform the work necessary for the preparation and submission of a bid and did submit its bid on the building, within the time specified, in the amount of \$1,549,405.00. The bids of the plaintiff and the other four



invitees, including Brasfield & Gorrie, were opened and examined on January 25, 1972, at a meeting of Vulcan's board of directors, which meeting was also attended by Vulcan's executive and building committees. After the bids were opened, Vulcan instructed its building committee to study the bids and award the building contract to the lowest qualified bidder.

"On or about February 2, 1972, pursuant to the conspiracy, Vulcan's building committee awarded the contract to construct the building to Brasfield & Gorrie, although Brasfield & Gorrie's bid, in the amount of \$1,557,630.00, was \$8,225.00 higher than the bid submitted by the plaintiff and although the plaintiff's bid was deficient in no respect whatsoever, and conformed in all respects to the plans and specifications for the building supplied to the plaintiff by the Architects. The plaintiff alleges that its qualifications to construct the building on which it bid in the manner described above equal or exceed those of Brasfield & Gorrie, and that the contract was awarded to Brasfield & Gorrie solely in furtherance of the conspiracy described above.

"Wherefore, plaintiff demands judgment against the defendants for its damages, and for punitive damages, in the aggregate sum of \$50,000.00."

The issue before us is whether Stuart's amended complaint alleged conduct by Vulcan, Renneker, and Brasfield which amounted to an interference with business expectancy pursuant to a civil conspiracy. We agree with the lower court. The demurrers should be sustained.

All parties here are private corporations. There is no statute or body of case law in this State requiring private corporations to engage in competitive bidding. When a private corporation invites contractors to submit bids for the construction of a building, that corporation is under no duty to award the contract to the lowest qualified bidder, unless a statute or ordinance so requires. Mitchell v. Walden Motor Co., 235 Ala. 34, 177 So. 151 (1937).

From the allegations of the amended complaint it does not appear that Vulcan was under a duty to award the contract to Stuart or any other bidder. There is no allegation that Vulcan did not have the right to reject Stuart's bid. Indeed, all that Stuart alleges in this regard is that it expected Vulcan would "fairly and honorably award the construction contract to the low bidder." There is a further allegation that "Vulcan instructed its building committee to study the bids and award the building contract to the lowest qualified bidder." There is a difference between low bidder and

lowest qualified bidder. It was Vulcan's right to decide for itself who was the lowest qualified bidder. In examining the complaint further we do not find that Stuart was even the lowest bidder. All that is alleged is that Stuart's bid was lower than Brasfield's bid. Stuart does not allege that any promise or inducement was made by Vulcan to Stuart to get it to submit a bid. There was not alleged any business relationship between Stuart and Vulcan. Boiled down to its practical situation, it was, "You pays your money, and you takes your choice."

This court has defined conspiracy as a combination to accomplish an unlawful end or to accomplish a lawful end by unlawful means. Barber v. Stephenson, 260 Ala. 151, 69 So.2d 251 (1954); Gaines v. Malone, 244 Ala. 490, 13 So.2d 870 (1943).

We have never held that there is any civil liability for a conspiracy unless there is an actionable wrong. This court in O'dell v. State, 270 Ala. 236, 117 So.2d 164 (1959) said:

"Where civil liability for a conspiracy is sought to be enforced, the conspiracy itself furnishes no cause of action. The gist of the action is not the conspiracy alleged but the wrong committed."

The complaint failed to allege any actionable wrong, and since there appears to be no actionable wrong committed against Stuart in this case, an action for civil conspiracy

8.

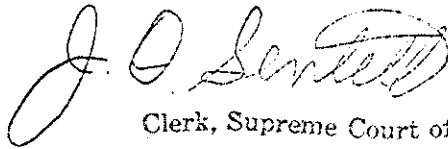
standing alone will not lie.

AFFIRMED.

Coleman, Harwood, McCall, and Jones, JJ., concur.

I, J. O. Sentell, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said Court.

Witness my hand this 15 day of Nov 19 73

A handwritten signature in cursive script, appearing to read "J. O. Sentell".

Clerk, Supreme Court of Alabama

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19<sup>73-74</sup>

Div. No. SC 387

To the Clerk ~~Register~~ of the Circuit Court,

Baldwin County—Greeting:

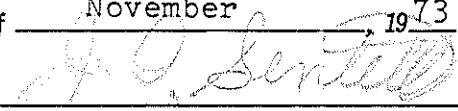
Whereas, the Record and Proceedings of the Circuit Court of said county, in a certain cause lately pending in said Court between Stuart Construction Co., Inc., a Corporation, Appellant, and Vulcan Life Insurance Company, a Corp., et al, Appellee, wherein by said Court it was considered adversely to said appellant, were brought before the Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant:

NOW, IT IS HEREBY CERTIFIED, That upon consideration thereof the Supreme Court, on the 15th day of November, 19<sup>73</sup>, affirmed said cause, in all respects, and ordered that appellant, Stuart Construction Company, Inc.

James L. Shores, Jr. and Janie L. Shores  
and

sureties for the costs of appeal, pay the costs of appeal in this Court and in the Court below

It is further certified that, it appearing that said parties have waived their rights of exemption under the laws of Alabama, it was ordered that execution issue accordingly.

Witness, J. O. Sentell, Clerk of the Supreme Court of Alabama, this the 15 day of November, 19<sup>73</sup>  
  
Clerk of the Supreme Court of Alabama.

THE SUPREME COURT OF ALABAMA

October Term, 1973-74

SC 387  
Div., No. \_\_\_\_\_  
Stuart Const. Co., Inc.

Appellant,

vs.

Vulcan Life Ins. Co., et al

Appellee.

Baldwin Circuit  
From No. 10,304 Court.

CERTIFICATE OF  
AFFIRMANCE

The State of Alabama,

County.

} Filed

this day of 19

FILED

NOV 16 1973

EUNICE D. BLACKMON, CLERK  
JAMES P. HARRIS CO. MONTGOMERY 1969