IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

INTERNATIONAL FIBER SYSTEMS, INC., and JOANNE F. HART,	: OCTOBER TERM, 2001
	: No. 0968
Plaintiffs,	:
v.	: Commerce Program
CITY OF PHILADELPHIA, DIVISION OF AVIATION, SEIMENS BUILDING TECHNOLOGIES, INC., d/b/a F/K/A SECURITY TECHNOLOGY GROUP and BROWN & ROOT SERVICES	:
Defendants.	: Control No. 122034

O R D E R

AND NOW, this 27th day of June 2002, upon consideration of defendant, City of Philadelphia, Division of Aviation's Preliminary Objections to the Complaint, the plaintiffs' response in opposition, the respective memoranda, all matters of record and in accord with the contemporaneous Opinion, it is **ORDERED** that:

(1) the Objections as to Count I premised on failure to join indispensable parties are **Sustained Without Prejudice;**

(2) the Objections to Counts I and II asserting that plaintiff, IFS, lacks standing to assert these claims against the City are **Sustained,** and the claims of IFS against the City in Count I and II are **Dismissed**;

(3) the Objections seeking to dismiss Count II as to plaintiff, Hart, are **Overruled;**

(4) the Objections seeking to dismiss Count III based on the City's immunity under the Political

Tort Claims Act are **Sustained,** and Count III is **Dismissed,** and;

(5) the Objections to the Complaint for failure to attach writings under Pa.R.C.P. 1019(i) are **Overruled.**

Plaintiffs may file an Amended Complaint joining indispensable parties within twenty (20) days.

BY THE COURT,

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ALBERT W. SHEPPARD, JR., J.

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O P I N I O N

Albert W. Sheppard, Jr., J. ..... June 27, 2002

Before the court are the Preliminary Objections ("Objections") of the City of Philadelphia, Division of Aviation (the "City") to the Complaint of International Fiber Systems, Inc. ("IFS") and Joanne Hart ("Hart") which challenges the City's rejection of IFS' fiber optic products in the construction of the new international Terminal One and in the upgrades of the security system at the Airport.

Defendant, City, asserts that plaintiffs have failed to join indispensable parties. It contends that plaintiff, IFS, lacks standing to assert the taxpayer-type claims set forth in Counts I and II that allege violations of the Home Rule Charter and certain bidding requirements. It asserts that the specifications for the contract for the security upgrade project do not violate the Home Rule Charter. It argues that it is immune from suit for the claim of tortious interference with contract set forth in Count III. Finally, it asserts

that the Complaint should be stricken for failure to attach writings.

For the reasons discussed, the court will issue a contemporaneous Order, as follows:

(1) the Objections as to Count I premised on failure to join indispensable parties are **Sustained Without Prejudice;**

(2) the Objections to Counts I and II asserting that plaintiff, IFS, lacks standing to assert these claims against the City are **Sustained,** and the claims of IFS against the City in Count I and II are **Dismissed**;

(3) the Objections seeking to dismiss Count II as to plaintiff, Hart, are **Overruled;**

(4) the Objections seeking to dismiss Count III based on the City's immunity under the Political Tort Claims Act are **Sustained,** and Count III is **Dismissed,** and;

(5) the Objections to the Complaint for failure to attach writings under Pa.R.C.P. 1019(i) are **Overruled.**

Plaintiffs may file an Amended Complaint joining indispensable parties within twenty (20) days.

BACKGROUND

Plaintiff, IFS, is a manufacturer of fiber optic equipment. Complaint, ¶ 3. Plaintiff, Joanne Hart, is a Philadelphia County resident, owner of real property, and taxpayer. Id., ¶ 4. Plaintiffs claim that defendants, the City and Brown & Root, the City's engineering consultants, unreasonably, capriciously, and arbitrarily rejected the use of IFS products in two projects at the Airport. Id., ¶¶ 9, 34-35.

Plaintiffs allege that the City executed a development lease ("Development Lease") with U.S. Airways, in or about 1998, for the construction of an international terminal ("Terminal One") at Philadelphia International Airport (the "Airport").[1] Id., ¶ 10. It is further alleged that U.S. Airways engaged an architectural firm, who then engaged a contractor, Turner Construction Company ("Turner"), to build the terminal. Id., ¶ 11. Turner, in turn, hired Carr & Duff, Inc. ("Carr & Duff") for the electrical work, who subcontracted with defendant Siemens Technology Group ("STG").[2] Id., ¶¶ 11, 13-14.

The architectural firm's specifications for Terminal One recommended IFS' products, or their approved equal. See Complaint, Exh. A. Defendant STG submitted a proposal to Carr & Duff for the security system at Terminal One based on the use and installation of IFS fiber optic equipment. Id., ¶ 14. IFS had submitted a quotation to STG, which was included in STG's proposal to Carr & Duff, and which plaintiffs claim represents a contract between IFS and STG. Id. On February 20, 2001, the City and Brown & Root sent an interoffice memorandum to the Airport's project managers, advising that IFS products were not approved for use on the Terminal One project, where the security system would be an extension of the existing Airport security system. The memorandum further stated that the Airport then used fiber optic devices procured from another firm, Fiber Options. Id., ¶ 15, Exh. C. STG, presumably as a result of this memorandum, advised IFS that it intended to revise its proposal for the Terminal One project to include Fiber Options products. Id., ¶ 16

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[1] In fact, the City leased the grounds upon which Terminal One was to be built to the Philadelphia Authority for Industrial Development ("PAID"), who entered into the Development Lease with U.S. Airways. Defendant's Preliminary Objections, p. 2, n.1; plaintiffs' Response to the Objections, pp. 5-8.

[2] Defendant STG later became Siemens Building Technologies, Inc. Id., ¶ 6.

In addition to the construction of Terminal One, the City engaged in May 2001 in a project to upgrade the security access and surveillance systems at the Airport (the "Airport Upgrades"). Id., ¶ 17. The product specifications for the Airport Upgrades state that the new equipment must be compatible with existing Airport equipment. Id., ¶¶ 18-19. Further, the specifications call for transmitter/receiver devices made by Fiber Options, whereas the Airport Upgrades specifications for other aspects of the security system permit approved equals. Id., ¶¶ 20-22.

IFS contacted the City's Department of Aviation (the "DOA") to inquire about the reasons for the rejection of IFS products. Id., ¶¶ 23-24. The DOA told IFS that they had no issue with the technical quality of IFS equipment but that it would not be compatible with the existing equipment at the Airport and would, therefore, impose a burden on the City in terms of maintaining inventory and training the maintenance staff. Id., ¶¶ 25-26. Another reason compatibility was important was the limited existing equipment rack space, which was compatible with Fiber Options equipment. Id., ¶ 26. IFS claims that the burden would be the same whether IFS or Fiber Options products were used because either company's product would be next generation equipment, and thus not compatible with existing Airport equipment. Further, either would require training Airport staff. Id., ¶ 27. Further, IFS argues that "space constraints are not an issue at Terminal One" which has not yet been built, and, as far as the Upgrades, IFS equipment could be made and warranted for life by IFS to be compatible with existing Fiber Options racks. Id., ¶ 28.

The Complaint sets forth claims under the Home Rule Charter against the City for both the Terminal One (Count I) and the Airport Upgrades (Count II) projects, claims of tortious interference with contract against the City and Brown & Root (Count III), and a claim for Breach of Contract against defendant STG

(Count IV). Plaintiffs seek injunctive relief and damages.

The City objects to all claims as legally insufficient. Further, it objects to the Complaint in its entirety for failure to join necessary parties and for failure to conform to law.

DISCUSSION

The City under 1028(a)(5) seeks dismissal of the Complaint for non-joinder of necessary parties, and alternatively, under 1028(a)(2) for failure to conform to law or rules of court. The City also demurs to all Counts under Pa. R.C.P. 1028 (a)(4).[3]

I. Failure to Join Indispensable Parties

As a threshold issue, the City raises the objection that plaintiffs have failed to join certain necessary and indispensable parties which it identifies as U.S. Airways and U.S. Airways' contractors and subcontractors. City's Preliminary Objections ¶ 9; 12/31/2002 Memorandum at 7. The City stresses that the "development lease" at issue in Count I of the Complaint was entered into by the Philadelphia Authority for Industrial Development ("PAID") and not by the City. PAID, the City notes, is not a party to this action. City's Preliminary Objections ¶ 3 & n.1.

The issue of failure to join an indispensable party is crucial because it goes to subject matter jurisdiction. As our Commonwealth Court recently observed, "failure to join an indispensable party to a lawsuit deprives the court of subject matter jurisdiction" and is an issue that may be raised at any time and

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[3] Additionally, the City objects to the request for injunctive relief and to the demand for attorneys' fees. Objections, pp. 6, 8. However, neither of those Objections are briefed and could, therefore, be considered waived. See Foster v. Peat Marwick, 138 Pa. Cmwlth. 147, 155, 587 A.2d 382, 386 (1991).

Nevertheless, because the request for injunctive relief and for attorneys' fees are incorporated in Counts I, II, and III, this court's ruling addresses them.

sua sponte. Polydyne, Inc. v. City of Philadelphia, 795 A.2d 495, *496 (Pa. Cmwlth. 2002). Moreover, under the Pennsylvania Rules of Civil Procedure, failure to join an indispensable party is a non-waivable defense. Pa.R.C.P. 1032 (a).

In determining whether a party is indispensable, the focus is on the party that has not been joined. As our Superior Court observed, a "party is to be considered indispensable when its rights are so connected with the claims of the litigants that no decree can be made without impairing its rights, and it must be made a party to protect such rights." Grimme Combustion, Inc. v. Mergentime Corporation, 406 Pa. Super. 620, 629, 595 A.2d 77, 81 (1991), app. denied, 530 Pa. 644, 607 A2d 254 (1992). If , however, "no redress is sought against a party, and its rights would not be prejudiced by any decision in the case, it is not indispensable with respect to the litigation." Id. Pennsylvania courts have outlined the following guidelines for determining whether a party is indispensable:

1. Do absent parties have a right or interest related to the claim?
2. If so, what is the nature of the right or interest?
3. Is that right or interest essential to the merits of the issue?
4. Can justice be afforded without violating due process rights of absent parties?

E-Z Parks, Inc.v. Philadelphia Parking Authority, 103 Pa. Cmwlth. 627, 631, 521 A.2d 71, 73 (1987), app.denied, 517 Pa. 610, 536 A.2d 1334 (1987).

The Complaint is complex with distinct counts relating to plaintiffs' claims concerning the construction of Terminal One pursuant to a "development lease" (Count I) and the security Upgrades ("Upgrades") to the Airport (Count II). In Count III plaintiff asserts a tortious interference with contractual relationships claim against the City and Brown & Root in the execution of the development lease. See

Complaint ¶ 51.[4] When confronted with a similarly complex complaint, our Superior Court in Grimme Combustion Inc. v. Mergentime Corp., 406 Pa. Super. 620, 595 A.2d 77 (1991), found it useful to analyze each count in terms of the objection that an indispensable party had not been joined. This methodology is especially applicable here.

In Count I, plaintiffs assert that a development lease entered into between the City and US Airways was a "sham" and a "mechanism employed by the City to avoid or circumvent its procurement and bidding obligations under the Philadelphia Home Rule Charter and the Commonwealth Procurement Code." Complaint, ¶ ¶ 41 & 10. These allegations go to the core of the claim in Count I where plaintiffs allege that the City improperly rejected the products of IFS by avoiding competitive bidding. Id. ¶¶ 43-44. The City's Objections and the parties' subsequent memoranda, however, make clear that the Complaint is mistaken in its identification of the parties to the development lease. Although the Complaint alleges that in "or about 1998, the City of Philadelphia and US Airways, Inc. executed a development lease for the construction of an international terminal at the Airport,"[5] the City in its Preliminary Objections denies that it entered into the development lease and asserts instead that it was entered into by the nonparty PAID.[6] Plaintiffs likewise concede in their subsequently filed memorandum that the development lease was, in fact, executed between PAID and US Airways. Moreover, they suggest in their memorandum that other leases (i.e., the

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[4] Count IV, which involves plaintiff 's breach of contract claim against defendant STG, is not at issue.

[5] Complaint ¶10.

[6] City's Preliminary Objections ¶ 3 & n.1.

Ground lease and the Terminal lease) may also be relevant to their claims.[7] The plaintiffs also elaborate on the nature of their claims in their memorandum where they assert that "the Development lease provides that US Airways must obtain PAID's approval of all design and construction document submissions, shop drawings, plans and any change orders." Plaintiffs' 2/15/2002 Memorandum at 6.

The practical problem, of course, is that these allegations concerning the role of both PAID and US Airways in this dispute are not set forth in the Complaint which must be the focus of any analysis of preliminary objections. The Complaint must therefore be amended to reflect the new facts that have come to the parties' attention as well as the roles and interests of US Airways and PAID, both of which should be joined as indispensable parties. The interests of US Airways and PAID, for instance, would be directly affected by a determination, as plaintiffs assert, that the bidding requirements of the Philadelphia Home Rule Charter apply to the development lease that they executed. See Complaint, ¶ 41. In contrast, the City asserts that PAID "is a body politic and corporate separate and distinct from the City." City's 12/31/32002 Memorandum at 3. This issue needs to be fleshed out by all parties. To protect its interests, therefore, PAID should be joined.[8]

The City is less convincing, however, in its claim that the contractors and subcontractors to US Airways must be joined as indispensable parties. See Preliminary Objections ¶ 9. The City's memorandum merely provides a conclusory imperative that these contractors and subcontractors should be joined without

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[7] Plaintiffs 2/15/2002 Memorandum of Law at 2, n. 1 & 5-8.

[8] The City argues, for instance, that PAID is not subject to the requirements of competitive bidding pursuant to the Economic Development and Financing Law, 72 P.S. § 371 et seq. See City's 3/14/2002 Supplemental Memorandum at 3-5. It is, however, an argument that is best asserted and developed by the interested party itself.

any explanation. Admittedly, it cites cases to support the proposition that parties to a contract must be joined as parties to disputes involving that contract [9] See Xpress Truck Lines, Inc. v. Pennsylvania Liquor Control Bd., 503 Pa. 399, 410-411, 469 A.2d 1000, 1006 (1983)(successful bidder who was party to a contract challenged by unsuccessful bidder should have be joined as indispensable party); Zurenda v. Commonwealth, 46 Pa. Cmwlth. 67, 405 A.2d 1124 (1979)(successful bidder who was awarded group site maintenance contract was indispensable party to action challenging that award). An analysis of the Complaint, however, does not support the City's suggestion that plaintiffs have a contractual relationship with any of the contractors or subcontractors other than Siemens Building Technologies, Inc. f/k/a Security Technology Group ("STG") which is already named as a defendant. Indeed, the exact nature of plaintiffs' contractual claims are somewhat tenuous but to the extent that IFS is asserting such a claim, it appears to be against defendant STG.

The plaintiff alleges, for instance:

> Defendant STG is the security system subcontractor to Carr & Duff, Inc. and it submitted its proposal based on the Architect's specifications, including the use and installation of IFS's fiber optic equipment, and a quotation submitted (the "Quotation") by IFS on or about December 1, 2000 in the amount of $315,852.50. This Quotation was accepted by STG. Complaint, ¶ 14 (emphasis added).

This "contract" was subsequently interfered with, plaintiff alleges, when defendants DOA and Brown & Root by a memorandum dated February 20, 2001 rejected the STG specification for plaintiffs' products. Id. ¶ 15. Thus, it is this inclusion by STG of the Architect's specifications for IFS' products that is the crux of plaintiff's contract claim or, as the plaintiff suggests, "at least its prospective contractual relation."

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[9] City's 12/31/2001 Memorandum at 8.

Complaint, ¶ 52.

There is, however, no allegation in the Complaint that provides a comparable contractual link between IFS and the other contractors and subcontractors identified in the Complaint. Instead, the Complaint merely states that U.S. Airways, pursuant to its agreement with the City, engaged Turner Construction Company to construct Terminal One. Turner, as prime contractor, then contracted with Carr & Duff, Inc. for electrical work, including installation of the Security System. Carr & Duff, according to the Complaint, contracted with defendant, subcontractor STG, as the security system contractor. See, e.g., Complaint ¶¶ 11, 13-14. While the Complaint suggests the existence of a contract, or prospective contract,[10] between plaintiff, IFS, and defendant, STG, created by STG's proposal that included the Architect's specifications for the use of IFS's fiber optic products, the allegations concerning the other contractors and subcontractors do not demonstrate their potential interest in this action. Unless more facts or clear allegations are set forth, the present Complaint does not support the City's claim that the contractors and subcontractors should be joined as indispensable parties.

For these reasons, the City's Objection asserting failure to join indispensable parties is sustained. Plaintiffs are directed to join PAID and US Airways in an Amended Complaint. See Pa.R.C.P. 1032(b)("[w]henever it appears . . . that there has been a failure to join an indispensable party, the court shall order that . . . the indispensable party be joined, but if that is not possible, then it shall dismiss the action").

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[10] See Complaint ¶ 52 (focusing on "IFS's contractual relations with defendant STG (or, at least, its prospective contractual relations")(emphasis added)

II. The Demurrer Objections

A. Legal Standards For A Demurrer

In reviewing preliminary objections in the form of a demurrer, all well-pleaded material, factual averments and all inferences fairly deductible therefrom are presumed to be true. Tucker v. Philadelphia Daily News, 757 A.2d 938, 941-42 (Pa. Super. 2000) (citations omitted). When presented with preliminary objections in the nature of a demurrer, a court should sustain the objections where "it is clear and free from doubt from all the facts pleaded that the pleader will be unable to prove facts legally sufficient to establish [its] right to relief." Bourke v. Kazaras, 746 A.2d 642, 643 (Pa. Super. 2000). Furthermore,

> [I]t is essential that the face of the complaint indicate that its claims may not be sustained and that the law will not permit recovery. If there is any doubt, it should be resolved by the overruling of the demurrer. Put simply, the question presented by demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible.

Bailey v. Storlazzi, 729 A.2d 1206, 1211 (Pa. Super. 1999) (citations omitted).

B. The Preliminary Objection to Dismiss Count II of the Complaint

Plaintiffs claim damages and injunctive relief under the Home Rule Charter with regard to the City's acts in rejecting the use of IFS products in Terminal One (Count I) and the Airport Upgrades (Count II).[11] As alleged, the City would be violating the competitive bidding requirements of the Home Rule Charter, merely because it is limiting bidders to one manufacturer's products in the specifications section of the

[11] Plaintiffs also alleged claims under the Commonwealth Procurement Code. The City of Philadelphia is not a Commonwealth agency thus the Commonwealth Procurement Code is not implicated. See Commonwealth Procurement Code - General Provisions, 62 Pa. C.S. §§ 102-103.

Upgrades Project's manual. Complaint, ¶¶ 20-22.[12] The pertinent section of the Home Rule Charter, provides , in part:

> Section 8-200. Contracts.
> (1) Except in the purchase of unique articles or articles which for any other reason cannot be obtained in the open market, *competitive* bids shall be secured before any purchase, by contract or otherwise is made or before any contract is awarded for construction, alterations, repairs or maintenance or for rendering any services to the City other than professional services and the purchase shall be made from or the contract shall be awarded to the lowest responsible bidder.

351 Pa. Code § 8.8-200 (emphasis added). The City responds that even if it were specifying one manufacturer's product, it does so for legitimate reasons, and its decision is not reviewable by this Court.

Defendant raises two further Objections to Counts I and II, which can be disposed of summarily. First, defendant objects to IFS' standing to sue under the Home Rule Charter. IFS does not allege Philadelphia taxpayer status. Nor does it allege that it does any business in Philadelphia. This Court cannot reasonably infer from the Complaint that IFS is asserting taxpayer status, without which it has no standing against the City under the Home Rule Charter. See American Totalisator Co., Inc. v. Seligman, 489 Pa. 568, 414 A.2d 1037 (1980); C.O. Falter Constr. Corp. v. Towanda Mun. Authority, 149 Pa. Cmwlth. 74, 614 A.2d 328 (1992); General Crushed Stone Co. v. Caernarvon Twp., 146 Pa. Cmwlth. 306, 605 A.2d 472 (1992); J.P. Mascaro & Sons, Inc., v. Bristol Twp., 95 Pa. Cmwlth. 376, 505 A.2d 1071 (1986). Plaintiff IFS' claims against the City under the Home Rule Charter are, therefore, dismissed.

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[12] It is important to note that the Court does **not** reach the issue of violation of the Home Rule Charter in the Terminal One project because it is not able to address whether the Terminal One project is in reality a public project implicating the Home Rule Charter, without the joinder of certain necessary parties.

Thus, only plaintiff, Hart, has standing to sue the City under the Home Rule Charter.

Second, defendant objects to Count I under the doctrine of laches. The doctrine of laches is applicable when two conditions are satisfied: "[t]he complaining party must be guilty of a want of due diligence in failing to assert his rights and the failure must have worked to the prejudice of the party seeking its application." Gray v. Gray, 448 Pa. Super. 456, 464, 671 A.2d 116, 1170 (Pa. Super. 1996). The facts alleged do not show either of these conditions to have been met. Therefore, the doctrine of laches does not dispose of Count I.

As a preliminary matter, the Court notes that its scope of review of the City's rejection of the IFS products and specification of Fiber Options products is limited. It is fundamental that courts will not review the acts of discretion of governmental bodies in the absence of bad faith, fraud, capricious action, or abuse of power. American Totalistar Co., Inc. v. Seligman, 489 Pa. 568, 575, 414 A.2d 1037, 1040-41 (1980). "[C]ourts, absent proof of fraud, collusion, bad faith or abuse of power, do not inquire into the wisdom of municipal actions and judicial discretion should not be substituted for Administrative discretion." Weber v. City of Philadelphia, 437 Pa. 179, 183, 262 A.2d 297, 299 (1970)(citation omitted). Nonetheless, "[a] court may enjoin the award of a public contract when irregularities are shown in the bidding process." American Totalisator, 489 Pa., at 576-77. Additionally, a trial court may determine that the City was acting in a purely arbitrary manner. Kimmel v. Lower Paxton Township, 159 Pa. Cmwlth. 475, 481, 633 A.2d 1271, 1274 (1993). Indeed, our Supreme Court has noted that when the City limits the purchases of products to those made by one manufacturer or puts conditions on bidders which effectively limit their choices to one manufacturer, the City stifles competition. See Pearlman v. City of Pittsburgh, 304 Pa. 24, 155 A. 118 (1931); Kratz v. City of Allentown, 304 Pa. 51, 155 A. 116 (1931).

More recently, this court has reiterated that principle. Clarkies, Inc. v. City of Philadelphia, 67 Pa. D. & C. 2d 68, 77 (Pa. Com. Pl. 1973). The statutory requirements for competitive bidding on public contracts do not exist solely to secure work at the lowest possible price, but also to invite "competition, to guard against favoritism, improvidence, extravagance, fraud and corruption in the award of municipal contracts." Conduit and Foundation Corp. v. City of Philadelphia, 41 Pa. Cmwlth. 641, 646-47, 401 A.2d 376, 370 (1979). Thus, this court cannot subscribe to defendant's statement that "the Home Rule Charter does not prohibit the City from excluding in its contract specifications the use of certain products or devices." Preliminary Objections, p. 4.

The City next claims that its reasons for limiting products are legitimate and beyond this court's review. The court may interfere, however, where competition is stifled or where the City is acting arbitrarily. American Totalisator, 489 Pa., at 576-77; Kimmel v. Lower Paxton Township, 159 Pa. Cmwlth, at 481, 633 A.2d, at 1274 (1993); Conduit and Foundation Corp. v. City of Philadelphia, 41 Pa. Cmwlth., at 646-47, 401 A.2d, at 370 (1979). That is precisely what plaintiffs allege. Complaint, ¶ 48-49. Furthermore, at this stage of the proceedings, where defendant's reasons are factually conflicting with the allegations, this court must allow plaintiffs discovery on the facts contested by the City. According to the Complaint, the reasons for the City's rejection were, in brief: 1) a greater burden in maintaining inventory and training the maintenance staff; 2) incompatibility with existing equipment; and 3) incompatibility with existing storage space. Complaint, ¶ 26. Plaintiffs claim to the contrary. Id., ¶ 27-28.

In Weber, on which the City relies, plaintiffs claimed that the reasons for rejecting one bidder were arbitrary and capricious. Weber v. City of Philadelphia, 437 Pa. 179, 182-183, 262 A.2d 297, 299 (1970). Plaintiffs and defendant disagreed on factual issues over the validity of the reasons offered by the

City. Weber, at 184-185, 300. The trial court allowed "voluminous testimony" before dismissing the complaint. Id., at 182, 299. Accordingly, this court finds that the plaintiffs should be permitted to present evidence going to whether the City's reasons are factually justified. The Objection to dismiss Count II of the Complaint is overruled. However, as noted, only plaintiff, Hart, has standing to sue the City under the Home Rule Charter. See p. 12, supra.

C. The Preliminary Objection to Dismiss Count III of the Complaint

In Count III, plaintiffs aver that the conduct of the City and Brown & Root tortiously interfered with IFS' contract or potential contractual relations with STG, resulting in STG declining to use IFS equipment for the construction of Terminal One. The City objects under the Political Subdivision Tort Claims Act ("Tort Claims Act"). 42 Pa. C. S. §§ 8541-2. The Act provides:

> § 8541. Governmental immunity generally
> Except as otherwise provided in this subchapter, no local agency shall be liable for any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person.

42 Pa. C. S. § 8541. Plaintiffs respond that defendant's conduct falls within one of the enumerated exceptions to governmental immunity, that is, the exception pertaining to the care, custody or control of real property. 42 Pa. C.S. § 8542(b)(3).

The real property exception has been interpreted by our Supreme Court to shield the City solely in cases where the condition of the real property itself causes an injury. See Kilgore v. City of Philadelphia, 553 Pa. 22, 717 A.2d 514 (1998); Kiley by Kiley v. City of Philadelphia, 537 Pa. 502, 645 A.2d 184 (1994); Snyder v. Harrison, 522 Pa. 424, 562 A.2d 307 (1989). Here, the condition of the property is irrelevant to the alleged injury. Thus, the decisions involving allegations of defective conditions on land

owed or controlled by the City which caused or contributed to the injury are not applicable.

Furthermore, plaintiffs ignore Sub-Section (a) of the statute despite the intended cumulative effect of both Sections (a) and (b) for the waiver of the immunity. 42 Pa. C.S. § 8542. Sub-Section (a) provides:

> (a) Liability imposed.– A local agency shall be liable for damages on account of an injury to a person or property within the limits set forth in this subchapter if ***both*** the following conditions are satisfied ***and*** the injury occurs as a result of the acts set forth in subsection (b):
>
> > (1) The damages would be recoverable under common law or a statute creating a cause of action if the injury were caused by a person not having available a defense under section 8541 (relating to governmental immunity generally) or section 8546 (relating to defense of official immunity; ***and***
> > (2) The injury was caused by the ***negligent*** acts of the local agency or an employee thereof acting within the scope of his office or duties with respect to one of the categories listed in subsection (b). As used in this paragraph, "negligent acts" shall not include acts or conduct which constitutes a crime, actual fraud, actual malice or willful misconduct.

42 Pa. C.S. § 8542(a)(emphases added).

It is clear that the Act pertains only to negligent acts. There is no exception for intentional torts. 42 Pa. C.S. § 8542(a)(2). See Lory v. City of Philadelphia, 544 Pa. 38, 42, 674 A.2d 673, 675 (1996)("The Tort Claims Act . . . waives governmental immunity only with respect to 'negligent acts'"). In Pennsylvania, tortious interference with contract is an intentional tort. Hennessy v. Santiago, 708 A.2d 1269, 1273, 1278 (Pa. Super. 1998) (a claim of tortious interference with contract must allege intent on the part of the defendant to harm the plaintiff by interfering with that contractual relationship). See also Ruffing v. 84 Lumber Co., 410 Pa. Super. 459, 600 A.2d 545 (Pa. Super. 1991).

Accordingly, Count III of the Complaint is dismissed.

III. The Objection For Failure To Conform To Rules Of Court

The City objects to plaintiffs' failure to conform to the Rules of Court. Rule 1019(i) requires that "[w]hen any claim . . . is based upon a writing, the pleader shall attach a copy of the writing, or the material part thereof . . ." The City objects to the failure to attach (a) the letter IFS sent to the City addressing the reasons for the City's rejection of IFS products (Exhibit E), and (b) the Development lease entered into by the City and U.S. Airways for construction at the Airport.[13] Objections, p. 9.

The record reflects that Exhibit E, which includes a warranty of IFS products, is attached to the Complaint. As for the Development Lease, plaintiffs attached it to their response to the Objections. The Court finds that the dismissal of the Complaint on grounds of lack of attachment of a document, which now is part of the record and in the possession of all parties, would be an inefficient use of the judicial system. See Mickens-Thomas v. Commonwealth Bd. of Probation and Parole, 699 A.2d 792, 795 n.2 (Pa. Cmwlth. 1997)(court overruled preliminary objections to defective verification and service where plaintiff subsequently corrected the alleged defects); Lewis v. Erie Ins. Exchange, 281 Pa. Super. 193, 199, 421 A.2d 1214, 1217 (1980)(citations omitted)("Courts should not be astute in enforcing technicalities"). See also Pa.R.C.P. 126.

The Objection for failure to attach writings under 1019(i) is overruled.

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[13] In fact, the parties to the Development Lease were the Philadelphia Authority for Industrial Development ("PAID") and U.S. Airways. The City had a "grounds and improvement" lease with PAID. Both these agreements were attached to plaintiffs' response to the Objections.

CONCLUSION

For the reasons discussed, this court will enter a contemporaneous Order sustaining, in part, and overruling, in part, the City's Objections.

BY THE COURT,

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ALBERT W. SHEPPARD, JR., J.