

## **NRT Bus, Inc. v. City of Lynn**

Suffolk Superior Court Action No. 2184CV00500-BLS1

### **Decision and Order on Defendant’s Motion for Judgment on the Pleadings (Docket Entry No. 7):**

#### **Factual and Procedural Background**<sup>1</sup>

This is a breach of contract case brought about by the COVID-19 pandemic. Plaintiff NRT Bus, Inc. (“NRT”) provides school bus and other related services to defendant City of Lynn, Massachusetts (the “City”) under two written, multi-year contracts: (1) one entitled “Transportation of Desegregation, Bilingual, Regular Students, High School Athletics, Middle School Athletics, and the Lynn School Band Commencing School Year 2018-2019 for the City of Lynn School Department,” entered into on May 11, 2018 (the “Big Bus Contract”); and (2) another entitled “Transportation of Special Needs Students within Lynn,” entered into on June 12, 2019 (the “Special Needs Contract” or, collectively with the Big Bus Contract, the “Contracts”). Compl., Exhibit C (Big Bus Contract) and Exhibit D (Special Needs Contract). Both Contracts resulted from competitive bidding contests and both incorporate, by reference, the associated “invitation for bid” documents. Compl., ¶¶ 22-23. Each contract provides that NRT will receive “aggregate payment amounts” from the City “in the form of daily rates on bus routes run....” Plaintiff NRT’s Opposition to Defendant City of Lynn’s Motion for Judgment on the Pleadings (“NRT Opp.”) at 16. See also Compl., Exhibit C, Bid Specifications – Terms and Conditions, Section J, “Billing” (“Payments will be made once a month for each year of the contract, if the invoice is presented promptly on the first of each month.... The invoice for the Regular, Bilingual and Desegregation [services] are to be billed directly to the Transportation Department on a single invoice per month. The detail will show that number of days serviced, the rate per bus and the number of buses.”) & Exhibit D, Scope of Services, Section entitled “Billing” (“Payments will be made once a month for each year of the contract, if the invoice is presented promptly on the first of each month.... The prices accepted for the term of this contract will be firm.”). Consistent with this understanding, each contract includes a binding “bid form” or “price sheet” that sets out the “price” to be charged by NRT for school bus runs provided on the City’s behalf on a “per bus, per day” basis. Compl., Exhibit C, City of Lynn Bid Form – Transportation of Regular Education Student, and Exhibit D, Summary Unit Price Sheet – Special Education Transportation – Inside Lynn.

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<sup>1</sup> The facts recited in this Decision and Order are taken primarily from plaintiff NRT Bus, Inc.’s Complaint (“Compl.,” Docket Entry No. 1), defendant City of Lynn’s Answer to Plaintiff’s Complaint and Counterclaims and Demand for Jury Trial (“Answer,” Docket Entry No. 5), and the exhibits attached thereto.

Then the COVID-19 pandemic hit. The pandemic caused the City to close its public schools for in-person learning for significant portions of the 2019-2020 and 2020-2021 school years (the “School Closure”). Compl., ¶¶ 5-7, 51-52. As a further result of the School Closure, NRT was not called upon to, and did not provide, any bus transportation services to the City’s school students for the duration of the School Closure. *Id.*, ¶¶ 51-52. NRT nonetheless continued to own and maintain a fleet of school buses throughout the School Closure in order to ensure that it would be able to provide transportation services to the City’s students as soon as the School Closure ended. *Id.*, ¶ 36. NRT invoiced the City for its ongoing expenses incurred during the period of the School Closure, but the City ultimately declined to pay NRT’s invoices on the ground that no bus transportation services had been provided under the Contracts, and therefore, no payment was due.<sup>2</sup> *Id.*, ¶¶ 1, 37-39. When negotiations between the parties proved to be unfruitful, NRT commenced this action in the Superior Court on March 4, 2021.

To be clear, NRT does not contend in its Complaint that it is entitled to payment from the City for any bus transportation services that it was not called upon to provide because of the City’s School Closure. *Id.*, ¶ 1. Rather, NRT asserts that it is entitled to payment from the City for the related, *non-transportation* “services” that it continued to provide during the School Closure period, including the maintenance of school buses, the training of bus drivers, the provision of required safety equipment, and keeping in force adequate insurance (collectively, “Non-Transportation Services”). *Id.*, ¶¶ 26-33. Count I of NRT’s Complaint alleges that the City breached the Big Bus Contract and the Special Needs Contract by failing to pay NRT’s invoices for the Non-Transportation Services provided to the City under those Contracts during the School Closure. *Id.*, ¶¶ 56-61. Count II alleges that, “[i]rrespective of any contractual obligation,” NRT is entitled to recover the value of the Non-Transportation Services that it provided to the City during the School Closure under the theory of *quantum meruit*. *Id.*, ¶¶ 62-67.

The City has filed an answer denying any liability to NRT, and asserting counterclaims for, *inter alia*, breach of contract, fraud, and violation of G.L. c. 93A based upon what the City describes as NRT’s wrongful conduct in “sen[ding] a series of invoices to the City of Lynn stating that transportation services have been provided which had not been provided.” Answer, ¶ 99.

The case came before this Court most recently on the City’s Motion for Judgment on the Pleadings under Mass. R. Civ. P. 12(c) (the “Motion”). According to the City, the pleadings establish that NRT’s breach of contract claim is based upon “a contractual obligation to pay that the contracts do not support.” Motion at 1. The City also argues

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<sup>2</sup> It is undisputed that the City resumed utilizing some of NRT’s bus transportation services in or about February 2021, and that the City has paid NRT in full for those transportation services in accordance with the terms of the Contracts. See Compl., ¶ 53.

that, because “the contracts’ express provisions include and define the extent of NRT’s right to compensation, [NRT’s] quantum meruit claim must fail, too.” *Id.* NRT opposes the City’s Motion, arguing, in short, that the Contracts “make very clear that the amounts the City is obliged to pay [to NRT] include the amounts required to maintain a ready taskforce and fleet” of school buses. NRT Opp. at 1.

The Court conducted an in-person hearing on the City’s Motion on August 27, 2021. Both sides appeared and argued. Based upon the written submissions of the parties and the oral arguments of counsel, the City’s Motion is **ALLOWED** for the reasons summarized, briefly, below.

### Discussion

A motion for judgment on the pleadings under Rule 12(c) filed by a plaintiff should be granted only if “the movant establishes that there are no issues of material fact, and that he is entitled to judgment as a matter of law.” *Allstate Prop. & Cas. Ins. Co. v. Squires*, 667 F.3d 388, 390 (3d Cir. 2012) (internal quotation marks and citation omitted). See J.W. Smith & H.B. Zobel, *Rules Practice* § 12.18 (2d ed. Oct. 2019 update) (“A plaintiff, as well, may move for judgment on the pleadings, asserting that the answer fails to controvert any material issue in the complaint and that none of the declarative averments states a legally sufficient affirmative defense.”). In deciding a Rule 12(c) motion, a court must accept all of the allegations in the pleadings of the non-moving party as true and draw all reasonable inferences in favor of that party. See, e.g., *Minaya v. Massachusetts Credit Union Share Ins. Corp.*, 392 Mass. 904, 905 (1984). Allegations the Court may consider include “not only the facts that appear on the face of the complaint but also those contained in related pleadings and all attached exhibits.” *Scafuri v. Lumenis, Ltd.*, 64 Mass. App. Ct. 1103, 2005 WL 1828814, \*1 (2005) (Rule 1:28). If the issues presented involve the interpretation of a written agreement, the Court may look to extrinsic evidence when the agreement “is in any respect uncertain or equivocal in meaning....” *Robert Indus., Inc. v. Spence*, 362 Mass. 751, 753-754 (1973). Where the parties’ agreement or agreements are shown to be unambiguous, however, they “must be enforced according to ... [their] terms.” *Schwanbeck v. Federal-Mogul Corp.*, 412 Mass. 703, 706 (1992) (“*Schwanbeck*”).

NRT argues here that the Big Bus Contract and the Special Needs Contract “clearly require the City to pay” for the Non-Transportation Services that NRT allegedly provided during the School Closure period or, “at a minimum, are ambiguous as applied to the [COVID-19] pandemic, and NRT’s reading of their terms is the only logical and equitable interpretation.” NRT Opp. at 2. In making this argument, NRT relies heavily on language in both Contracts that requires NRT to maintain buses in operating condition. NRT asserts that the requirement that NRT maintain buses necessarily means that the Contracts require the City to pay for the maintenance of its bus fleet regardless of whether NRT ever is called upon

to provide transportation services to any of the City's school students. NRT Opp. at 6-7. NRT also relies on two provisions that appear in both Contracts, which state,

[c]ompensation under this contract will be paid only for such days that schools are actually in session, and the cessation of sessions in any school or schools will relieve the City from payment for transportation for the day or days and the school or schools involved.

No charge will be made for transportation services on "no school" days or on stormy days requiring the cancellation of school.

Compl., ¶¶ 44-45 & Exhibit C, at 15 (Section J, entitled "Billing") & (Section I, entitled "Restrictions"). NRT asserts, among other things, that these provisions effectively define the universe of circumstances under which the City can refuse to compensate NRT under the Contracts and that neither applies in the circumstances of this case because the City's schools operated remotely during the majority of the School Closure period and, therefore, officially remained "in session" and not "cancelled" throughout most of pandemic. NRT Opp. at 6-7.

The problem with NRT's arguments is that they overlook other provisions of the Contracts that explicitly define when and how NRT is to be paid for any services that it renders under those agreements, and they ignore language in the Contracts that gives the City the express right to reduce, or totally eliminate, its purchases under those agreements in the City's sole discretion.<sup>3</sup>

First, by NRT's own admission, the only compensation it is entitled to receive from the City under the Big Bus Contract and the Special Needs Contract consists of "aggregate payment amounts in the form of daily rates on bus routes run...." NRT Opp. at 16. NRT acknowledges that the Contracts "do not price out the underlying services individually." *Id.* This means that NRT and the City agreed that NRT's compensation under the Big Bus Contract and the Special Needs Contract is to be determined based upon the number of buses that NRT actually runs on City school bus routes each day, at the rates set out in those agreements.<sup>4</sup> Or, put another way, it means that if NRT's school buses do not roll, then neither do payments from the City to NRT. It also means that the "aggregate payments amounts" the City must provide to NRT are NRT's sole compensation for *all* of its underlying

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<sup>3</sup> The Court makes no ruling, and offers no guidance, on the long-term wisdom of the City's decision to pay no compensation to NRT in the circumstances of this case.

<sup>4</sup> For example, the Big Bus Contract requires the City to pay NRT \$333.00 "per bus, per day" for standard school bus routes, and \$275.00 "per bus, per round trip," for any trips "within [a] 50 mile radius beyond school hours...." Compl., Exhibit C, Big Bus Contract Bid Form.

business costs and expenses, including, explicitly, all costs associated with NRT's "vehicles, drivers, fuel, tolls etc." See Compl. Exhibit C, Big Bus Contract Bid Form ("Proposals to include vehicles, drivers, fuel, tolls etc."). Such costs and expenses are (or were intended to be) built into the "daily rates" that NRT is permitted to charge the City for any "bus routes run" on any given day.

NRT argues that the City, by refusing to pay for anything other than bus transportation services actually rendered, "brazenly attempts to shift the entire burden of maintaining this transportation system onto NRT even though the City continues to enjoy benefits from NRT's efforts." NRT Opp. at 1. There is nothing "brazen" or unusual about the City's position, however. Many, if not most, service providers are compensated for their capital and operating expenses largely, if not exclusively, through payments for services actually rendered to their customers. People generally do not expect to pay a service provider simply to ensure that the provider "maintain[s] a ready taskforce and fleet" that is capable of providing the relevant services at some later point in time. *Id.* The provider's cost of providing its services (or, alternatively, of staying afloat during times when customers are not buying its services) typically are built into the prices that the provider charges on the sales that it actually makes. Thus, the Court finds nothing "brazen," unusual, or improper in the City's decision to compensate NRT, as it expressly is permitted to do under the Contracts, only for actual "bus routes run" by NRT. See *Schwanbeck*, 412 Mass. at 706.

Second, NRT's assertion that the City must pay for the Non-Transportation Services allegedly rendered by NRT during the School Closure is contrary to provisions in the Big Bus Contract and the Special Needs Contract that explicitly give the City the right to reduce, or totally eliminate, its purchases of services under those agreements. For example, the section of the Big Bus Contract titled "Cost Computation" states,

[s]chool commences and terminates at different times in the day for different grades and the time schedule is not the same each day. Transportation must meet the varying schedules. Lynn Public Schools reserves the right to change the length of the school day, the number of school days per week, and the number of days per school year on which any of these routes will be utilized. Payment will be made only for services actually rendered to the Lynn Public Schools.

Compl., Exhibit C, Section H. See also *id.*, Exhibit D, Section entitled "Cost Computation" (similar).

In the same vein, both the Big Bus Contract and the Special Needs Contract contain provisions that reserve, to the City or its agents, the right to "increase and decrease" the number of bus routes "throughout the duration of the contract" (*id.*, Exhibit C, Bid Form), as

well as the “authority ... to make such changes as are deemed necessary in adjusting routes, times and dates, [and] prices....” (*id.*, Exhibit D, Scope of Services, General Guidelines, ¶ 3).

To the extent that the foregoing provisions are at all uncertain, both Contracts also expressly provide that,

[t]he City of Lynn makes no guarantee that any purchases will take place from any contract resulting from this procurement nor does the City of Lynn guarantee any minimum quantity of purchases resulting from this procurement. Any estimates or past procurement volumes referenced in this procurement are included only for the convenience of the bidder and are not to be relied on as an indication of future procurement levels.

*Id.*, Exhibit C, Section entitled “Standard Bid Requirements,” and Exhibit D, General Terms and Conditions, ¶ 32.

The language of the Contracts, read in their entirety, is clear and unambiguous. Even if the parties did not anticipate the current COVID-19 pandemic and the precise effect that it would have on the City’s school system, they did anticipate, and plan for, circumstances under which it might be necessary for the City to adjust its purchases of services from NRT under both the Big Bus Contract and the Special Needs Contract. In such an event, the Contracts give the City the absolute right to “decrease” the number of school bus routes serviced by NRT, including the right to decrease them -- at the City’s discretion -- to zero. See *id.*, Exhibit C, section entitled “Standard Bid Requirements,” and Exhibit D, General Terms and Conditions, ¶ 32 (the City makes no “guarantee [of] any minimum quantity of purchases resulting from this procurement....”).

That is precisely what happened in this case. In light of the pandemic, the City elected to eliminate all bus routes and not make “any purchases” from NRT, under either the Big Bus Contract or the Special Needs Contract, for the duration of the School Closure. In doing so, the City simply exercised its contractual rights in accordance with the express terms of

the parties' agreements.<sup>5</sup> The City was fully entitled to proceed as it did.<sup>6</sup> It can have no liability to NRT for breach of contract as a result.<sup>7</sup>

NRT's *quantum meruit* claim fails no better. "It is well settled that quantum meruit relief may not be granted where an express contract covering the matter exists." *York v. Zurich Scudder Investments, Inc.*, 66 Mass. App. Ct. 610, 620 (2006) ("York"). Here, the City and NRT's respective rights and obligations as to one another are set out in considerable detail in the Big Bus Contract and the Special Needs Contract. Compl., ¶¶ 22-23. The existence of those Contracts means that "quantum meruit relief may not be granted" to NRT. *York*, 66 Mass. App. Ct. at 620. No further analysis is required.

### Order

For the foregoing reasons, defendant City of Lynn's Motion for Judgment on the Pleadings (Docket Entry No. 7) is **ALLOWED**. Plaintiff NRT Bus, Inc.'s Complaint is dismissed, in its entirety, with prejudice.

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Brian A. Davis  
Associate Justice of the Superior Court

Date: September 29, 2021

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<sup>5</sup> The City references another similar case brought by NRT against the City of Lowell, Massachusetts, *NRT Bus, Inc. v. City of Lowell*, Civil Action No. 2084CV01814-BLS2, 2021 WL 3355333 (Mass. Super. Ct. June 4, 2021) (Salinger, J.) (the "Lowell Case"). See City's Memo at 6 n.1. In the Lowell Case, Judge Salinger largely dismissed NRT's claims against Lowell. The Lowell Case, however, was unique to that municipality and involved different contractual provisions and language, and, therefore, has little precedential value in this case. See NRT Opp. at 10-11.

<sup>6</sup> NRT's additional argument that the City cannot rely upon the *force majeure* provisions of the Contracts because those provisions protect only NRT, not the City, misses the point. See NRT Opp. at 12-13. In refusing to pay NRT, the City relies upon other express language in the Contracts that permits it to do so, not the *force majeure* provisions.

<sup>7</sup> The implied covenant of good faith and fair dealing does change this outcome. A party cannot be held liable for breach of the implied covenant for doing something that it is expressly permitted to do under its contract. See *Shenandoah Life Ins. Co. v. Valero Energy Corp.*, CIV. A. No. 9032, 1988 WL 63491, at \*8 (Del. Ch., June 21, 1988) ("The mere exercise of one's contractual rights, without more, cannot constitute such a breach [of the implied covenant of good faith and fair dealing].").