

**IN THE CIRCUIT COURT OF JACKSON COUNTY**  
at Kansas City

**KANSAS CITY LIFE INSURANCE CO.,**

**Plaintiffs,**

**Case No. 0816-CV38703**

**vs.**

**Division Three**

**KANSAS CITY, MISSOURI**  
**SCHOOL DISTRICT, et al.,**

**Defendants.**

**JUDGMENT AND ORDER**

On the dates of January 27<sup>th</sup>, 2009, January 28<sup>th</sup>, 2009, and February 17<sup>th</sup>, 2009, the Court called the above case for hearing on Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction as well as the Defendants' opposition thereto. Additionally, the Court considered and said hearing included the Motions to Dismiss filed by Defendants Kansas City, Missouri School District, Block & Company, Inc. Realtors, and Del Hedgepath, as well as Plaintiff's opposition thereto.

Plaintiff Kansas City Life Insurance Company ("Kansas City Life") appeared through counsel Jerome T. Wolf. Defendant Kansas City, Missouri School District ("School District") appeared through counsel Michael E. Norton. Defendant Kansas City, Missouri School District Building Corporation ("School District Building Corporation") appeared through counsel Herbert E. Hardwick. Defendant Del Hedgepath ("Hedgepath") appeared personally and through counsel Michael Arnone. Defendant Block & Company, Inc. Realtors ("Block") has filed pleadings in this case by

attorney Lauren E. Tucker McCubbin. However, at the hearings referenced above, Block was represented by Michael E. Norton.

By way of history, on January 5<sup>th</sup>, 2009, the Honorable John R. O'Malley entered an Order in this case approving an agreement between the parties to effectively maintain the status quo until a full hearing of the factual issues. Additionally pursuant to said Order, Kansas City Life was ordered to post a \$10,000.00 bond with the Court, which bond was posted and paid into the Court on January 5<sup>th</sup>, 2009. On January 16<sup>th</sup>, 2009, said Order was Amended by agreement of the parties so as to continue to maintain the status quo pending the hearing and the Court's ruling on Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction.

Testimony and evidence was heard and submitted to the Court by multiple parties over the three day period identified above. Additionally, the parties have filed numerous pleadings with the Court setting forth their positions regarding this matter.

During the hearing of this matter, conflicting testimony was submitted by the parties. The Court has heard, reviewed and duly considered the testimony and evidence submitted at the hearing, has viewed the witnesses, and has carefully evaluated and weighed the credible evidence and testimony presented by the parties. The Court has also reviewed the pleadings filed by the parties hereto.

As a result thereof and as hereinafter set forth, the Court **DENIES** Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction. As a result thereof and as hereinafter set forth, the Motion to Dismiss filed by Defendant Kansas

City, Missouri School District is **SUSTAINED**. The Motions to Dismiss filed by Defendants Block & Company, Inc. Realtors, and Del Hedgepath are **DENIED AS MOOT** as a result of this Order Sustaining the Motion to Dismiss filed by Defendant Kansas City, Missouri School District.

#### Memorandum

Kansas City Life lacks standing to bring its claim. Standing is a threshold requirement and prerequisite to the Court having power or authority to grant relief. *See generally* Querry v. State Highway and Transportation Commission, 60 S.W.3d 630 (Mo. App. W.D. 2001) and Metcalf & Eddy Services, Inc. v. City of St. Charles, Missouri, 701 SW2d 497 (Mo. App. E.D. 1985).

The general rule in Missouri is an unsuccessful bidder has no standing to challenge the rejection of its bid because an unsuccessful bidder has no private, pecuniary right or interest in the matter which the law will recognize and enforce by declaratory judgment or otherwise. *See generally* State ex rel. Johnson v. Sevier, 98 S.W.2d 677 (Mo. banc 1936). However, there are exceptions to this general rule. In Metropolitan Express Services, Inc. v. City of Kansas City, Missouri, 23 F.3d 1367 (8<sup>th</sup> Cir. 1994) (which Kansas City Life relies upon herein), the court held Plaintiff, a potential bidder, had standing to raise its claims where Defendant negotiated changes to the contract with the successful bidder *after* the bidding process was complete. However, Metropolitan is distinguishable from the case at hand.

Defendant School District has not negotiated changes with the successful bidder, Defendant Hedgepath. No additional information was given to Defendant Hedgepath nor was there a change in the scope of the project after Defendant School District determined whose bid would be accepted. Further, testimony and evidence elicited during the hearings established that Defendant School District reserved the right, in its sole discretion and at any time, to reject or disapprove any and all proposals, bids, and/or bidders. Therefore, it did not disregard its bidding procedures. Thus, Metropolitan is inapplicable.

Kansas City Life also relies on Hillside Securities Co. v. Minter, 254 S.W. 188 (Mo. 1923), to provide an exception to the general rule regarding standing. The Missouri Supreme Court in Hillside found that a contract was void because the exclusive method for letting of contracts, which was prescribed by statute, was not followed. However, this Court believes Hillside is distinguishable from the present case. In this case, the method prescribed by statute for selling real estate was, in fact, followed.

All parties herein agree that the operative statute describing the method/procedure for Defendant School District to sell property (herein real property) is R.S.Mo. §177.073. According to the plain language of that statute, there are two authorized methods/procedures for selling property belonging to a school district. First, “[R]eal property may be sold or leased by listing the property with one or more real estate brokers licensed by the state of Missouri and paying a commission upon such sale or lease”. R.S.Mo. §177.073(3). Second, “[R]eal property not sold or leased through

a real estate broker [ie. method one] . . . shall be sold or leased to the highest bidder . . .".  
R.S.Mo. § 177.073(3).

In this case, Defendant School District entered into a contract with Defendant Block, a real estate broker licensed in the State of Missouri, to list and sell the property in question. That contract provided for the payment of a commission to Defendant Block upon the sale of the property. Thus, Defendant School District has utilized the first method/procedure for selling real property and the requirements of R.S.Mo. §177.073 have been satisfied.

Kansas City Life claims Defendant School District effectively chose the second method/procedure for selling property and was therefore required to sell the real property to it because it was the highest bidder. However, the second method/procedure and requirement to sell to the highest bidder applies only if Defendant School District did not sell the property by the first method/procedure stated in the applicable statute. Because the School District chose the first method/procedure above by entering into a contract with Block, it was not required to sell to the highest bidder. Therefore, in this case Defendant School District followed the method/procedure prescribed by statute for selling real estate. Consequently, Hillside is inapplicable.

Finally, Kansas City Life contends it has standing to pursue this action as a taxpayer of Jackson County, Missouri. This argument is without merit. Kansas City Life cites State ex rel. Stricker v. Hanson, 858 S.W.2d 771 (Mo. App. W.D. 1993) to

support its argument. In Stricker, reference was made to Eastern Missouri Laborers District Council v. St. Louis County, 781 S.W.2d 43 (Mo. banc 1989) and asserted “the Missouri Supreme Court established the right of a taxpayer to bring an action to enjoin the illegal expenditure of public funds . . . when the taxpayer can demonstrate ‘a direct expenditure of funds generated through taxation’”. (emphasis added) Id. at 775. However, this case does not involve an *expenditure* of funds - rather Defendant School District would *receive* funds from the sale of its property.

Kansas City Life argues that because Defendant School District would receive an additional \$5,000.00 if Kansas City Life’s bid was accepted, all taxpayers of School District would benefit financially, thereby requiring the acceptance of Kansas City Life’s bid. Credible testimony and evidence was provided that Kansas City Life was uncertain when it would begin development of the property at issue whereas Defendant Hedgepath plans to start development immediately, thereby leading to the generation of more tax revenues in a quicker time frame. Thus, credible evidence was provided to support the claim that accepting Defendant Hedgepath’s bid would benefit the School District financially in the long run. Therefore, the testimony and evidence elicited was not conclusive or persuasive in support of this argument submitted by Kansas City Life.

Additionally, merely being a taxpayer is not alone enough to confer standing. Pace Construction Co. v. Mo. Highway & Transportation Comm., 759 S.W.2d 272 (Mo. App. W.D. 1988). Missouri law imposes prerequisites which must be shown before a

taxpayer may challenge the actions of a governmental unit. Id. at 275. "In order to assert a taxpayer claim based on illegal or improper expenditure of funds plaintiff must allege facts showing special injury in the form of an increased tax burden." Id. at 275 (citing Brock v. City of St. Louis, 724 S.W. 721, 725 (Mo. App. E.D. 1987)). Here, Kansas City Life did not provide evidence of an increased tax burden.

As a result of the foregoing, Kansas City Life does not have standing to bring its claim.

As noted above, Kansas City Life was required to post (and did post) a \$10,000.00 bond in order to cover the expenses of Defendant Hedgepath. While there was some non-specific testimony that expenses have been incurred by Defendant Hedgepath, such evidence and testimony was limited - no specific amounts or expenditures were provided, recited, or proven. Therefore, the \$10,000.00 bond shall be released to Kansas City Life.

Finally, Defendant Hedgepath's Answer filed on January 23, 2009 included a Counterclaim. Said Counterclaim is unaffected by this Order and remains as a pending claim.

Pursuant to Missouri Rule 74.01(b), the Court is hereby entering a judgment as to fewer than all of the claims in this action. However, given the nature of the claims asserted herein and the dismissal of all of Plaintiff's claims pursuant to the Motion to Dismiss, there is no just reason for delay in making said judgment and the Court therefore declares its judgment to be final for purposes of appeal.

Leave is hereby granted to all parties to withdraw their respective exhibits marked, offered, and received into evidence. Said parties are to contact the Court and arrange to pick up said exhibits. Said parties are to maintain said exhibits for future use by the Court.

**IT IS SO ORDERED.**

\_\_\_\_\_  
Date

\_\_\_\_\_  
**HONORABLE DAVID M. BYRN**

CERTIFICATE OF MAILING

Copies of the foregoing were mailed/faxed to the foregoing on this \_\_\_\_\_ day of March, 2009, to:

Jerome T. Wolf, Esq.  
Mark Bryant, Esq.  
Melissa S. Lockton, Esq.  
4520 Main Street, Suite 1100  
Kansas City, MO 64111  
**Attorneys for Plaintiff**

Lauren E. Tucker McCubbin, Esq.  
700 W. 47<sup>th</sup> Street, Suite 1000  
Kansas City, MO 64112  
**Attorney for Block & Company**

Mike Arnone, Esq.  
3906 Indiana Ave, 2<sup>nd</sup> Floor  
Kansas City, MO 64103  
**Attorney for Del Hedgepath**

Michael E. Norton, Esq.  
Haley E. Hanson, Esq.  
4801 Main Street, Suite 1000  
Kansas City, MO 64112  
**Attorneys for Kansas City,  
Missouri School District**



Herbert E. Hardwick, Esq.  
1125 Grand Blvd. Suite 1200  
Kansas City, MO 64106  
**Attorney for Kansas City, Missouri  
School District Building Corporation**

**S. Snyder, Judicial Administrative Assistant**