

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CA 1086

JB JAMES CONSTRUCTION, L.L.C.

VERSUS

LOUISIANA DEPARTMENT OF
TRANSPORTATION AND DEVELOPMENT
and JAMES CONSTRUCTION GROUP, L.L.C.

Judgment Rendered: December 21, 2011.

* * * * *

On Appeal from the
19th Judicial District Court,
In and for the Parish of East Baton Rouge,
State of Louisiana
Trial Court No. 597,598

The Honorable Janice G. Clark, Judge Presiding

* * * * *

David C. Voss
E. Allen Graves, Jr.
David W. Carley
Baton Rouge, La.

Attorneys for Plaintiff/Appellant,
JB James Construction, L.L.C.

Murphy J. Foster, III
Steven B. Loeb
Baton Rouge, La.

Attorneys for Defendant/Appellee,
James Construction Group, L.L.C.

Darhlene Major
Richelle N. Moore
Baton Rouge, La.

Attorneys for Defendant/Appellee,
Louisiana Department of
Transportation and Development

* * * * *

BEFORE: CARTER, C.J., PARRO AND HIGGINBOTHAM, JJ.

Higginbotham, J. concurs.

CARTER, C. J.

This suit arises from a public bid dispute over a thirty-six million dollar construction project (“the project”) for the State of Louisiana, Department of Transportation and Development (“DOTD”).

JB James Construction, L.L.C. (“Appellant”), instituted suit against DOTD and James Construction Group, L.L.C. (“JCG”), seeking to enjoin DOTD from awarding the contract for the project, to have the award of the project remanded to DOTD for a determination of the lowest responsive bidder, and alternatively, for a judgment declaring the nullity of the contract. Appellant did not seek a temporary restraining order and, after suit was filed, DOTD awarded the contract to JCG, and JCG began work on the project. The sole issue in this appeal is whether the trial court correctly sustained a dilatory exception raising the objection of unauthorized use of a summary proceeding and dismissed a rule for injunction when the act sought to be enjoined (the award of the contract for the project) had been accomplished.¹

After reviewing the record and applicable law, we find no error in the decision of the trial court. Once the act sought to be enjoined had occurred (i.e., the contract was awarded), the injunctive relief sought by Appellant was rendered moot, and Appellant’s recourse was

¹ Appellant contends JCG failed to meet its burden on the dilatory exception, because it did not introduce evidence. However, the fact that the contract had been awarded to JCG was undisputed, leaving only the legal issue of whether the award of the contract warranted dismissal of Appellant’s rule for injunctive relief.

by ordinary proceeding.² See La. Rev. Stat. Ann. § 38:2220B; *Benson Const. Co., Inc. v. City of Shreveport*, 592 So. 2d 1307 (La. 1992);³ *Bristol Steel and Iron Works, Inc. v. State, Dept. of Transp. and Development*, 507 So. 2d 1233, 1235 (La. 1987).

For the foregoing reasons, the judgment of the trial court is affirmed in accordance with Uniform Court of Appeal Rule 2-16.2A(2) and(6). Costs of this appeal are assessed to Appellant, JB James Construction, L.L.C.

MOTION DENIED; JUDGMENT AFFIRMED.

² JCG and DOTD have filed a joint motion to dismiss this appeal as moot, contending that the project has substantially progressed and continues to do so during the appeal process, and that there is no practical way to re-bid the work. While we agree with the trial court that the injunctive relief sought by Appellant was rendered moot, we find no merit to the contention that this appeal is also moot. Accordingly, the motion to dismiss the appeal is denied.

³ Appellant argues that *Benson* is inapplicable here, as the Louisiana Supreme Court cited as authority Louisiana Revised Statutes Annotated section 38:2220B, and since then, the Legislature has enacted bid laws (Louisiana Revised Statutes Annotated section 48:250, *et seq.*) governing DOTD contracts which contain no similar provision specifying the use of summary proceeding to enjoin the award of a contract or to seek injunctive relief. We find no merit to this argument as DOTD remains bound by laws relating to obligations and to DOTD, when those laws are not in conflict with the DOTD bid laws; we find no conflict here. For this reason, we find no merit in JCG and DOTD's joint motion to dismiss this appeal as moot, which we have denied in a separate action.