

703 So. 2d 1133, *; 1997 Fla. App. LEXIS 13543, **;
22 Fla. L. Weekly D 2725

THE ARTEC GROUP, INC., a Florida corporation, and LOUIS SANCHEZ, Appellants, v. CITY OF TAMPA, a municipal corporation, Appellee.

Case No. 96-05151

COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

703 So. 2d 1133; 1997 Fla. App. LEXIS 13543; 22 Fla. L. Weekly D 2725

December 3, 1997, Opinion Filed

SUBSEQUENT HISTORY: [**1] Released for Publication January 13, 1998.

PRIOR HISTORY: Appeal from the Circuit Court for Hillsborough County; Edward H. Ward, Judge.

This Opinion Substituted on Grant of Motion for Rehearing and Clarification for Withdrawn Opinion of October 15, 1997, Previously Reported at: *1997 Fla. App. LEXIS 11530*.

DISPOSITION: Affirmed in part, reversed in part, and remanded.

COUNSEL: Marcus A. Castillo of Haas & Castillo, P.A., Clearwater, for Appellants.

James D. Palermo, City Attorney, and Jerry M. Gewirtz, Assistant City Attorney, Tampa, for Appellee.

JUDGES: DANAHY, ¹ A.C.J., and ALTENBERND and WHATLEY, JJ., Concur.

1 Judge Danahy has been substituted for Judge Lazzara, who was on the original panel.

OPINION

[*1133] *ORDER*

Upon consideration of the appellants' motion for rehearing and clarification, it is

ORDERED that the motion is granted and the attached opinion is substituted for the opinion filed October 15, 1997.

PER CURIAM.

The Artec Group, Inc. (Artec), and Louis Sanchez appeal the dismissal with prejudice of their second amended complaint against the City of Tampa. We affirm dismissal of counts two through four, but reverse the dismissal of count one and remand for further pro-

ceedings in which Artec should be permitted [**2] to file an amended pleading.

After a controversy involving the adequacy of its bid, Artec obtained a contract from the City of Tampa to relocate and renovate the City's cable communications offices. The project, identified as City Project No. 6121, suffered many difficulties and delays. Ultimately, Artec filed this lawsuit against the City for breach of contract. Mr. Sanchez is alleged to be the "principal" behind Artec. He maintains that the City treated his corporation unfairly because he is Hispanic. In counts two and three he attempts to transform the contractual dispute between the municipality and the corporation into a civil rights violation, and count four alleges missing documentation relating to counts two and three.

We conclude that the trial court correctly dismissed counts two through four with prejudice because Artec and Mr. Sanchez failed to allege any cause of action for violation of a constitutionally protected right. This attempt to allege a civil rights violation, however, clouded the pleadings on the breach of contract issue, and probably caused the trial court to give inadequate attention to the basic cause of action. For example, the order of dismissal purports [**3] to rely on all forty-four of the arguments contained in the City's motion to dismiss without further explaining its reasoning.

This court has allowed contractors to sue governmental bodies for delay damages under similar circumstances. See *Southern Gulf Utils., Inc. v. Boca Ciega Sanitary Dist.*, 238 So. 2d 458 (Fla. 2d DCA 1970). The Florida Supreme Court's recent decision in *Brevard v. Miorelli*, 703 So. 2d 1049, 1997 Fla. LEXIS 1811, 22 Fla. L. Weekly S 665 (Fla. Oct. 23, 1997), approving, *Southern Roadbuilders, Inc. v. Lee County*, 495 So. 2d 189 (Fla. 2d DCA 1986), may make it very difficult for Artec to allege a cause of action for breach of contract. Nevertheless, given the length of the contract and the complexity of the factual claims, we cannot conclude at this stage that Artec is without a cause of action. On remand, Artec should be given a final opportunity to allege specific breaches of the contract that resulted in damage.

703 So. 2d 1133, *; 1997 Fla. App. LEXIS 13543, **;
22 Fla. L. Weekly D 2725

[*1134] Affirmed in part, reversed in part, and
remanded.

DANAHY, ¹ A.C.J., and ALTENBERND and
WHATLEY, JJ., Concur.

1 Judge Danahy has been substituted for Judge
Lazzara, who was on the original panel.

[**4]