DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

CORRECTIONS CORPORATION OF AMERICA, a foreign corporation,
Appellant,

v.

CITY OF PEMBROKE PINES, a municipal corporation, and
CCA PROPERTIES OF AMERICA, LLC, a Tennessee limited liability company,
Appellees.

No. 4D14-4815

[July 27, 2016]

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Carol-Lisa Phillips, Judge; L.T. Case No. 12-007337 CACE (25).

Leonard K. Samuels, Paul S. Figg and Ashley Dillman Bruce of Berger Singerman LLP, Fort Lauderdale, for appellant.

Usher L. Brown and Victor Kline of Greenspoon Marder, P.A., Orlando, for appellee City of Pembroke Pines.

Alfredo Marquez-Sterling and Keith M. Poliakoff of Arnstein & Lehr LLP, Fort Lauderdale, for Amicus Curiae the Town of Southwest Ranches.

KLINGENSMITH, J.

Corrections Corporation of America ("CCA") appeals an order ruling that the City of Pembroke Pines did not have a duty to provide water and sewer services to CCA's site, as well as a final order dismissing CCA's counterclaims. CCA contends that Pembroke Pines is bound to provide those services because of the adoption of two agreements between Pembroke Pines and the Town of Southwest Ranches. CCA claims that these agreements demonstrated Pembroke Pines' expressed intention to provide water and sewer services to the CCA site, which is located just outside Pembroke Pines' corporate boundaries in the adjacent Southwest Ranches. For the reasons set forth below, we affirm the trial court's orders.

Pembroke Pines operates potable water and sewer systems that service properties within its boundaries, as well as some properties outside of those boundaries. Southwest Ranches does not have potable water or sewer systems to service its residents, and Pembroke Pines is the only provider in the area. The CCA site is surrounded by four other properties, all of which are, or were at one time, serviced by Pembroke Pines' water or sewer systems (or both). Only one of these properties is actually located within the boundaries of Pembroke Pines,[1] and those services provided outside of the boundaries extend to only a limited number of residential and commercial properties. At all times relevant to this dispute, Pembroke Pines admitted that it had the capacity to provide water and sewer services to the CCA site through its systems that abut the site.

In 2005, CCA and Southwest Ranches entered into an agreement concerning the development of a correctional facility on the CCA site. The agreement provided that "all required water, sewer and other utility services were available" at the CCA site. CCA was advised that while a water and sewer agreement with Pembroke Pines would be required, it was unclear whether the Pembroke Pines City Commission would grant those services.

Later that year, Pembroke Pines and Southwest Ranches entered into an Interlocal Agreement regarding local roadways and other matters (the "Roadways ILA"), which was approved by the City Commission. The Roadways ILA provided:

> Jail Facility. [Pembroke Pines] shall not interfere with [CCA]'s, or its successors or assigns, development and/or operation of the jail facility, or with [Southwest Ranches'] Agreement with [CCA] concerning the development of same.
>
> . . . .
>
> THIRD PARTY BENEFICIARIES: Neither [Pembroke Pines] nor [Southwest Ranches] intend to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to

[1] One of the properties was a women's prison, which is no longer operational. Another property is a future county jail site. Pembroke Pines also provides water and sewer services to Everglades National Park, which is located outside of the boundaries, and near the CCA site.

> assert a claim against either of them based on this Agreement. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

Soon thereafter, CCA began the process of obtaining permits for the CCA site infrastructure.

In 2011, Immigration and Customs Enforcement ("ICE") tentatively selected the CCA site to build a new detention facility. A few days later, Pembroke Pines and Southwest Ranches entered into a second Interlocal Agreement concerning emergency medical and fire services (the "EMS ILA") that provided:

> Jail Facility: [Pembroke Pines] acknowledges that it has sufficient capacity to deliver emergency medical protection and fire prevention services to [Southwest Ranches'] future 2,500 bed detention/corrections facility, located on property currently owned by [CCA]. [*Pembroke Pines*] *agrees to timely provide Broward County, upon request, any documentation that Broward County may require to acknowledge that Pembroke Pines has the capacity, ability, and the willingness to service this facility* under the terms and conditions contained herein. . . . Further, [Pembroke Pines] agrees that it has sufficient capacity to provide water and sewer service to [Southwest Ranches'] future 2,500 bed detention/ corrections facility (approximately 500,000 gross square feet of floor area), *and that it will expeditiously approve a water/ waste water utility agreement to provide such service, at* [*Pembroke Pines'*] *then prevailing rate, in accordance with state law* ([Pembroke Pines'] rate + surcharge).

(Emphasis added).[2]

Further, the EMS ILA contained the same third-party beneficiary provision found in the Roadways ILA:

> Third Party Beneficiaries: Neither [Southwest Ranches] nor [Pembroke Pines] intended [sic] that any person shall have a cause of action against either of them as a third party beneficiary under this Agreement. Therefore, the parties

[2] Pembroke Pines later voted to terminate the EMS ILA in 2012 pursuant to a nine-month termination provision therein.

> agree that there are no third party beneficiaries to the Agreement and that no third party shall be entitled to assert a claim against either of them based upon the Agreement. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under the Agreement.

CCA then submitted to Pembroke Pines a proposed Water and Sewer Installation and Service Agreement (the "W&S Agreement") for a 1,500-bed facility, and requested that the matter be considered at the first available City Commission meeting. The city attorney and the city manager for Pembroke Pines engaged in negotiations with CCA's counsel regarding the terms and conditions of the W&S Agreement, but while the negotiators eventually agreed on the contractual terms, the City Commission never voted on whether to approve the agreement for services with CCA. Instead, Pembroke Pines formally adopted a resolution expressing its opposition to erecting the ICE detention center next-door in Southwest Ranches.

Pembroke Pines brought an action for declaratory judgment, seeking a determination that it was not required to provide CCA with water and sewer services. CCA maintained that Pembroke Pines had assumed a duty to provide the CCA site with those services by acts or omissions, manifesting an expression of desire or intent to provide the services. Following trial, the court entered a thorough order determining that Pembroke Pines did not have a duty to provide water and sewer services to CCA. The court also entered a separate order dismissing the counterclaims asserted by CCA. This appeal followed.

CCA maintains that the evidence established that Pembroke Pines' actions, by way of its conduct and contracts, created a duty to provide utilities. As such, the court's rulings concerned a question of fact that "must be sustained if supported by competent substantial evidence." *Bellino v. W & W Lumber & Bldg. Supplies, Inc.*, 902 So. 2d 829, 832 (Fla. 4th DCA 2005) (quoting *State v. Glatzmayer*, 789 So. 2d 297, 301 n.7 (Fla. 2001)). We hold that the evidence presented supports the court's finding that Pembroke Pines had no duty to provide utility services to the CCA site. There was never a guarantee of service or a binding expression of intent to provide it, as demonstrated by the language of the Roadways ILA and the EMS ILA, and the testimony of CCA representatives reflects that CCA knew there were unresolved issues with Pembroke Pines prior to the time it attempted to obtain service.

As a general rule, "a municipality has no duty to supply services to areas outside its boundaries." *Allen's Creek Props., Inc. v. City of Clearwater*, 679 So. 2d 1172, 1174 (Fla. 1996). A city may provide services to non-residents, but such extensions of service are not mandated. *See* § 180.191(1), Fla. Stat. (2012) (providing the guidelines under which a municipality may charge consumers outside its boundaries with certain rates, fees, and charges, but not requiring the municipality to provide such services outside its boundaries).

In *Allen's Creek*, the Florida Supreme Court recognized exceptions to this general rule where: (1) a municipality has agreed to extend its services by contract; and (2) a municipality has assumed a duty to provide such services through its conduct, by "hold[ing] itself out as a public utility for a particular area outside its city limits." *See* 679 So. 2d at 1175–76. In this case, neither exception applies.

It is clear from the record that no contract between CCA and Pembroke Pines was ever in force. The Roadways ILA and the EMS ILA created no contractual obligation between CCA and Pembroke Pines, as CCA was neither a party to those ILAs nor a third-party beneficiary under the plain terms.

With regard to when the conduct exception applies, the court in *Allen's Creek* explained:

> We agree that through its conduct a municipality may assume the legal duty to provide reasonably adequate services for reasonable compensation to all of the public in an unincorporated area. *See City of Winter Park v. Southern States Utilities, Inc.*, 540 So. 2d 178, 180 (Fla. 5th DCA 1989) (city's passage of ordinance requiring property owners outside the city but within a zone designated by the ordinance to connect to the city's sewer service when available was conduct sufficient to bring into effect law applicable to public utilities). *We add however that the conduct must expressly manifest the municipality's desire or intent to assume that duty.* A municipality's decision to provide service without restriction in an area outside its boundaries would meet this requirement.

679 So. 2d. at 1176 (emphasis added).

As we interpret *Allen's Creek*, a clear manifestation of affirmative expression requires some conduct by the local government equivalent to

an action taken pursuant to a formal enactment of an ordinance or resolution. In other words, more than mere acquiescence or neutrality is needed — there must be some unequivocal action by a municipality's legislative body that creates reasonable expectations for inducing justifiable reliance. Here, Pembroke Pines' actions did not constitute an affirmative expression of intent sufficient to bind it to an obligation to provide services. Any such intent on the part of Pembroke Pines was only *implicitly* expressed, not *affirmatively* expressed, as prescribed by *Allen's Creek*. *See id.*

CCA knew that any water and sewer connection for the CCA site would ultimately require approval by a vote of the City Commission, which did not occur. In fact, the applicable provision of the Pembroke Pines Code of Ordinances states that "property located outside the city limits shall not be allowed to connect to a city utility system unless the connection is authorized by the City Commission." Pembroke Pines, Fla., Code of Ordinances § 50.10(B) (2012). This authorization can only occur as provided by the Charter of the City of Pembroke Pines, which states that "[n]o action of the Commission . . . shall be valid or binding unless adopted by the affirmative vote of three (3) members of the Commission." *Id.* § 3.07(e). As no vote by the City Commission on this matter ever took place, a connection to the CCA site was never properly sanctioned.

Although Pembroke Pines had previously provided some utility services to customers outside its boundaries, it did so only in limited situations. In light of the fact that CCA was aware that compliance with the applicable provisions of the Code of Ordinances was required, these circumstances on the whole did not amount to an affirmative expression of Pembroke Pines' intent to serve all prospective utility consumers in that specific geographic area outside its boundaries.

The EMS ILA expressed only a nascent willingness to service some future facility. The stated desire to "expeditiously approve a water/waste water utility agreement" was insufficient to constitute an affirmative, express manifestation of Pembroke Pines' unreserved intent. Such a statement is best described as nothing more than an "agreement to make an agreement," which is unenforceable under Florida law. *Irby v. Mem'l Healthcare Grp., Inc.*, 901 So. 2d 305, 306 (Fla. 1st DCA 2005). As explained in *Jacksonville Port Authority, City of Jacksonville v. W.R. Johnson Enterprises, Inc.*, 624 So. 2d 313, 315 (Fla. 1st DCA 1993):

> While it is not necessary that all details of an agreement be fixed in order to have a binding agreement between parties, if there has been no agreement as to essential terms,

> an enforceable contract does not exist. *Williams v. Ingram,* 605 So. 2d 890, 893 (Fla. 1st DCA 1992); *Blackhawk Heating and Plumbing Co., Inc. v. Data Lease Financial Corp.,* 302 So. 2d 404 (Fla. 1974).
>
> > So long as any essential matters remain open for further consideration, there is no completed contract. In order to create a contract it is essential that there be reciprocal assent to a certain and definite proposition.
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> *Mann v. Thompson*, 100 So. 2d 634, 637 (Fla. 1st DCA 1958). Failure to sufficiently determine quality, quantity, or price may preclude the finding of an enforceable agreement. *See Blackhawk Heating and Plumbing Co., Inc.* at 408, citing *Truly Nolen, Inc. v. Atlas Moving and Storage Warehouse, Inc.,* 125 So. 2d 903 (Fla. 3d DCA 1961), *cert. discharged,* 137 So. 2d 568 (Fla. 1962).

The Code of Ordinances clearly contemplates that "[p]rior to receipt of a permit for any construction, the developer shall have entered into a contract with the city for the connection." § 50.02(B)(1). Here, CCA (as the developer of the site) never succeeded in securing a contract with Pembroke Pines for the use of its utility main.

In short, Pembroke Pines' Code of Ordinances imposes requirements on developers for the connection of utility services. It conditions the connection of utilities outside of Pembroke Pines' boundaries on City Commission approval, requiring a developer to enter into a contract for utilities that is then approved by a vote. In this case, there was no City Commission approval, no vote, and no contract for utilities.

CCA proceeded on the incorrect assumption that Pembroke Pines could not change its collective mind on its willingness to provide utility services, failing to consider the fact that it is not uncommon for a municipality to embark on a prospective plan of action, only to reverse course because of the disapproval of its citizens. Respect for the separation of powers precludes us from substituting our own collective judgment for that of Pembroke Pines' elected leaders who are, and must remain, accountable to their citizens for any policy decisions they make.

We agree with the trial court that the bare statement of future intent contained in the EMS ILA, without a formal vote operating as a clear expression of intent to provide such services, created no reasonable

expectation that Pembroke Pines intended to assume the duties of a public utility, thus obligating it to provide water and sewer services to the CCA site.

Affirmed.

CIKLIN, C.J., and TAYLOR, J., concur.

* * *

Not final until disposition of timely filed motion for rehearing.