STATE OF MICHIGAN

COURT OF APPEALS

VILLAGE OF BURR OAK,

Plaintiff-Appellee,

v

CITY OF STURGIS,

Defendant-Appellant.

UNPUBLISHED
May 25, 1999

No. 209414
St. Joseph Circuit Court
LC No. 96-000444 CK

Before: Sawyer, P.J., and Murphy and Talbot, JJ.

PER CURIAM.

In 1993, plaintiff and defendant entered into a contract by which defendant agreed to accept plaintiff's sewage and charge plaintiff at a set rate per one thousand gallons of sewage that plaintiff transported to defendant's sewage treatment plant. Defendant subsequently renovated its plant and in 1996 adjusted its rate structure to accommodate the renovation expense. Under its new rate structure, defendant charged plaintiff a "service readiness charge" and "debt service charge" in addition to the previously established per-gallon charge to treat plaintiff's sewage. Plaintiff refused to pay the additional charges and filed a complaint for injunctive and declaratory relief, while defendant filed a counterclaim for the unpaid charges and to terminate the contract. The trial court concluded that the parties' contract was ambiguous as to future rate structures and relied upon parol evidence to conclude that the parties intended to treat plaintiff as a single customer for billing purposes. The trial court concluded that defendant could not collect the service readiness charge or debt service charge as calculated against plaintiff and dismissed defendant's counterclaim. Defendant appeals the trial court's order as of right. We affirm.

First, defendant contends that the trial court erred when it relied upon parol evidence to interpret the parties' contract. We disagree. The question whether the trial court properly allowed parol evidence presents a mixed question of law and fact. *UAW-GM Human Resource Center v KSL Recreation Corp*, 228 Mich App 486, 491; 579 NW2d 411 (1998). The initial question whether the contract language is ambiguous presents a question of law. *Id.* "If the contract language is clear and unambiguous, its meaning is a question of law. Where the contract language is unclear or susceptible to multiple meanings, interpretation becomes a question of fact." *Port Huron Ed Ass'n v Port Huron*

Area Sch Dist, 452 Mich 309, 323; 550 NW2d 228 (1996). We review questions of law de novo and the trial court's findings of fact for clear error. *Stajos v City of Lansing*, 221 Mich App 223, 226; 561 NW2d 116 (1997); *Hertz Corp v Volvo Truck Corp*, 210 Mich App 243, 246; 533 NW2d 15 (1995); MCR 2.613(C).

The trial court concluded that the phrase "the rate structure adopted by the City of Sturgis for its other customers" as it appears in ¶ B. 1 of the parties' agreement was ambiguous. [1] We agree. "A contract is ambiguous if 'its words may reasonably be understood in different ways.'" *UAW-GM*, *supra* at 491, quoting *Raska v Farm Bureau Ins Co*, 412 Mich 355, 362; 314 NW2d 440 (1982). In the present case, we conclude that when the parties entered into the contract in 1993, the phrase expressed an intent to treat plaintiff as a single customer. The contract provided that plaintiff would send its sewage to defendant's city limits in a single sewage main with a single meter to a maximum of 50,000 gallons per day, and defendant would send plaintiff a single monthly bill for treating the sewage. However, defendant's rate structure adopted in 1996 billed plaintiff for the additional charges calculated on the basis of "equivalent units" used by its residents as if each of plaintiff's residents had a separate meter and plaintiff was merely a billing conduit for its individual residents. We agree with the trial court that the phrase "the rate structure adopted" is ambiguous because it can be interpreted to mean the rate structure applied to plaintiff as a single customer or the rate structure applied to plaintiff as a customer billed for the sewage generated by individual users. Because the term is ambiguous, the trial court properly allowed parol evidence to interpret the parties' intent in setting plaintiff's rates.

After reviewing the parol evidence admitted at trial, we conclude that the trial court's interpretation of the contract was not clearly erroneous. Both Carol Ankey, a member of plaintiff's village council, and Paul Nabozny, plaintiff's president, testified that during pre-contract negotiations in 1992, defendant's representatives stated that plaintiff would be treated as one customer. In addition, the language of other portions of the parties' contract is consistent with their testimony. For example, the contract was between plaintiff and defendant, not plaintiff's individual users and defendant. Furthermore, under the terms of the contract, plaintiff agreed to deliver its sewage to a specific point of delivery, in a single eight-inch main with a single meter, and to be billed on a monthly basis. Defendant did not agree to accept sewage from any particular resident of plaintiff, bill any resident, or calculate plaintiff's bill based upon the number of its residents. Accordingly, the trial court did not err when it found that the parties intended that plaintiff be billed as a single customer.

Defendant also contends that the trial court clearly erred in finding that plaintiff was entitled to be treated for sewage billing purposes in the same manner as a local industrial user, Ross Laboratories.[2] We disagree. Ankey testified that the parties intended to treat plaintiff like Ross Laboratories. In addition, the stipulated testimony of Jeannette Fenner, superintendent of defendant's wastewater treatment plant, established that both plaintiff and Ross Laboratories owned and maintained their water meters. Fenner further testified that plaintiff is the only customer of defendant with either a water meter or a sewage flow meter that is not charged for debt service expenses based upon the meter size and the maximum gallons per minute that flowed through the meter. Accordingly, we conclude that the trial court's finding that plaintiff should be billed as a single customer like Ross Laboratories is not clearly erroneous.

Finally, defendant contends that the trial court committed error by dismissing its counterclaim for plaintiff's unpaid charges. We disagree. Plaintiff has paid its "commodity charge" for each gallon of sewage treated. The only charges it disputes are the readiness to serve charge and the debt service charge. The trial court dismissed defendant's counterclaim for plaintiff's unpaid charges because the rate structure applied to plaintiff was arbitrary and unsupported by the parties' contract or negotiations. In reviewing these charges, we must presume that defendant's sewage rates are reasonable in the absence of a showing that the rates are capricious, arbitrary, or unreasonable. *Oakland Co v Detroit*, 81 Mich App 308, 311; 265 NW2d 130 (1978). Defendant billed each metered customer except plaintiff $1.85 per month for the readiness to serve charge, but billed plaintiff $740 per month, the charge equivalent to 400 meters, even though plaintiff owns only one meter. Because plaintiff has a single meter, and the parties intended to treat plaintiff as a single customer, we conclude that defendant's $740 charge per month is arbitrary, capricious, and unreasonable.

Likewise, we conclude that defendant's debt service charge, in which it bills plaintiff for the equivalent of 400 users discharging sewage into defendant's treatment plant through separate 5/8-inch pipes, is arbitrary, capricious, and unreasonable. Although Fenner testified that plaintiff accounted for a mere 2.4 percent of the daily sewage treated in defendant's plant, Jerome Kisscorni, defendant's city manager, testified that plaintiff paid 11.6 percent of the total plant's debt service charge per month. We find defendant's rates contrary to the parties' intent under their contract as well as disproportionate to the benefits that plaintiff receives from the treatment plant. Accordingly, we hold that the trial court did not err when it dismissed defendant's counterclaim to collect these charges.

Affirmed.

/s/ David H. Sawyer
/s/ William B. Murphy
/s/ Michael J. Talbot

[1] Paragraph B. 1 of the contract provides as follows:

> B. The Village of Burr Oak Agrees:
>
> 1. (Rates and Payment Date, Pollutants) To pay to the City of Sturgis, not later than the 15th day of each month following the month of blling [sic], the sum of $.98 [sic] per thousand gallons of sewage collected, or at such other rates as may be applicable under the rate structure adopted by the City of Sturgis for its other customers.

[2] Throughout trial, the industrial user was referred to as both Abbott Laboratories and Ross Laboratories. We will refer to the user as Ross Laboratories, the name which appears in defendant's question presented.