STATE OF MICHIGAN

COURT OF APPEALS

COUNTY OF WEXFORD,

Plaintiff-Appellant/Cross-Appellee,

v

CITY OF CADILLAC,

Defendant-Appellee/Cross-Appellant.

UNPUBLISHED
July 2, 1999

No. 205933
Wexford Circuit Court
LC No. 96-011991 CK

Before: Griffin, P.J., and McDonald and White, JJ.

PER CURIAM.

In this suit for specific performance of a wastewater treatment facility contract and for a declaratory ruling, plaintiff appeals as of right the trial court's judgment that defendant is only required to accept wastewater from plaintiff that emanates from specified service districts within three townships. Defendant cross-appeals, asserting that it should not be required to accept sewage from districts other than those initially targeted to benefit from a pollution control project. We affirm.

I

The instant suit arose following defendant's refusal to accept wastewater from a proposed development in Cherry Grove Township, on the basis that the development was not within the boundaries of sewer service districts 1, 2 or 4.

Plaintiff first argues that the trial court erred as a matter of law in focusing its inquiry on the term "county system," without regard for key provisions of the parties' 1977 agreement that address the central issue of expansions and additions to the system. We disagree.

We review de novo claims for specific performance and rulings with regard to declaratory judgments, and review findings of fact for clear error. *Samuel D Begola Services, Inc v Wild Bros*, 210 Mich App 636, 639; 534 NW2d 217 (1995); *Auto-Owners Ins Co v Harvey*, 219 Mich App 466, 469; 556 NW2d 517 (1996).

The initial question whether contractual language is ambiguous is a question of law. *Port Huron Ed Ass'n v Port Huron Area School Dist*, 452 Mich 309, 323; 550 NW2d 228 (1996). If the contract language is unclear or susceptible to multiple meanings, interpretation becomes a question of fact. *Id.*

The term "county system" is undefined in the contract. Without an understanding of that term's intended meaning, the contractual provisions that plaintiff argues expressly grant it the sole and exclusive right to expand and add to the "county system" are themselves unclear and lacking in context. The trial court recognized this dilemma and properly focused on the intended meaning of the term, as it was at the heart of the instant dispute. The court properly set about ascertaining the parties' intent, in order to enforce the agreement according to that intent, *SSC Associates Ltd Partnership v General Retirement Systems of Detroit*, 210 Mich App 449, 452; 534 NW2d 160 (1995), and it did not ignore plain terms that would have dictated a contrary result.

II

Plaintiff next asserts that the trial court erred in considering parol evidence to interpret what plaintiff argues were plain terms of the contract. We disagree.

In cases of contractual ambiguity, parol evidence is admissible to explain the terms of the contract. *Stefanac v Cranbrook Educational Community*, 435 Mich 155, 171-172; 458 NW2d 56 (1990). The court may consider preliminary negotiations to a written contract, not to vary or contradict the contract's plain terms, but to aid the court in determining the intent with which such words were used. *Keller v Paulos Land Co*, 5 Mich App 246; 146 NW2d 93 (1966), aff'd 381 Mich 355 (1968).

To ascertain the parties' intent, the trial court found it necessary to consider the "entire history and the purpose of the project" which consisted of items already admitted into evidence, including the 1975 Facilities Plan and the parties' 1975 and 1977 agreements. The trial court properly construed the contract against its drafter, in this case, plaintiff. *Raska v Farm Bureau Mutual Ins Co of Michigan*, 412 Mich 355, 362; 314 NW2d 440 (1982); *Rohlman v Hawkeye-Security Ins Co (On Remand)*, 207 Mich App 344, 350; 526 NW2d 183 (1994).

As noted above, the provisions that plaintiff argues clearly and unambiguously give it the right to expand the county system, are not clear until the meaning of "county system" is ascertained. The trial court's determination that the parties intended "county system" to mean the service districts identified by the 1975 Facilities Plan, which the parties jointly prepared, was well-supported by the record. The parol evidence was properly admitted.

We do not agree with defendant's argument on cross-appeal that the trial court erred in ruling that defendant must accept sewage not only from districts 1, 2 and 4, but also from districts 3, 5, and part of 11. The trial court's determination was not clearly erroneous as there was ample evidence that the 1975 Facilities Plan contemplated service to all the above mentioned districts. Moreover, it is apparent from the record that plaintiff purchased future capacity in an amount based on projected

service needs in those areas. A comparison of the final 1977 agreement and an earlier draft demonstrate that the 360,000 gallon limit was purposefully negotiated into the contract, and testimony from those representing both parties supports that the parties were aware that this figure was based on projected flows from areas other than districts 1, 2 and 4. The trial court properly determined that in order to effectuate the parties' intent at the time the contract was made, defendant must accept wastewater from all the districts listed above.

Affirmed.

/s/ Richard A. Griffin
/s/ Gary R. McDonald
/s/ Helene N. White