

STATE OF MICHIGAN
COURT OF APPEALS

BURTCHVILLE TOWNSHIP,

Plaintiff/Counter Defendant/Appellee,

v

NOEL BUCKNER, d/b/a INDIAN TRAIL NORTH,

Defendant-Appellant,

and

FORT GRATIOT TOWNSHIP,

Defendant,

and

ST. CLAIR COUNTY,

Defendant/Counter Plaintiff.

Before: White, P.J., and Hood and Jansen, JJ.

PER CURIAM.

Defendant Noel Buckner, doing business as Indian Trail North, appeals as of right from the trial court's judgment in favor of plaintiff. The judgment, following a bench trial, required defendant to disconnect from its water supply arrangement with Fort Gratiot Township and connect to plaintiff's water supply system at defendant's cost. The practical implication of requiring Indian Trail to connect to the township's water system is a cost of between \$600,000 and \$800,000 to the residents of Indian Trail. We reverse.

Indian Trail North is a manufactured housing community located in Burtchville Township that was developed by Noel Buckner. Initially, Indian Trail was supplied water from wells. By 1980, the

amount of water from the wells was insufficient to meet the needs of the community. Burtchville Township, however, did not have a water system in place at that time to meet the needs of the community. Consequently, Indian Trail entered into negotiations with neighboring Fort Gratiot Township, Burtchville Township, and St. Clair County so that Indian Trail could obtain water from Fort Gratiot Township. St. Clair County created Fort Gratiot water district I - extended, which was a new water district which included service to Indian Trail. Fort Gratiot Township and Indian Trail then entered into a fifteen-year water transmission agreement on February 20, 1980 for Fort Gratiot Township to provide water to Indian Trail. Further, the agreement required Noel Buckner to construct and install a water transmission main and water meter at his own expense. On June 20, 1980, Burtchville Township passed a resolution granting permission to the St. Clair County Department of Public Works, as the supplier of Fort Gratiot Township's water system, to supply water to Indian Trail.

In 1994, St. Clair County passed several resolutions which recommended the establishment of St. Clair County Water Supply System No. IX - Burtchville Township. However, because the water transmission agreement between Indian Trail and Fort Gratiot Township expired on February 20, 1995, those two parties entered into a new fifteen-year water transmission agreement on May 17, 1995. In December 1995, Indian Trail filed a petition with the Michigan Tax Tribunal challenging its inclusion in the special assessment district. Burtchville Township assessed an amount of \$598,775, representing a special assessment of \$34,400 and an indirect connection fee of \$564,375.¹

On August 20, 1996, Burtchville Township passed a resolution withdrawing its consent of allowing Indian Trail to receive water from Fort Gratiot Township. In another resolution dated September 17, 1997, Burtchville Township again withdrew its consent of allowing Indian Trail to receive water from Fort Gratiot Township. In the meantime, on January 14, 1997, Burtchville Township filed a complaint for declaratory judgment seeking to compel Indian Trail to cease using Fort Gratiot Township's water supply system and to use its water supply system once that system became fully operational.

Following a bench trial, the trial court issued its opinion on December 15, 1997. The trial court found initially that Burtchville Township and Indian Trail entered into a binding contractual agreement in 1980, relying on the June 12, 1980 resolution, and an indemnity agreement signed the same day as constituting the contract. The trial court went on to conclude that this contract was ambiguous and used parol evidence to interpret the parties' agreement. Taking all of this evidence, the trial court ruled that the contract required Indian Trail to tap into Burtchville Township's water supply system upon its completion. Alternatively, the trial court further found that Burtchville Township was statutorily authorized under MCL 123.739; MSA 5.570(9) to withdraw its initial consent to allow St. Clair County and Fort Gratiot Township to supply Indian Trail with water and that this statute required St. Clair County to discontinue supplying water to Indian Trail.

Defendant Noel Buckner first argues that plaintiff was not entitled to a declaratory judgment based on an alleged contract because such a contract was not alleged in plaintiff's pleadings. We need not address the propriety of whether an alleged contract was properly pleaded in plaintiff's complaint because we find that the trial court erred in finding that there was a contract between plaintiff and defendant.

The trial court first found that there was a contract between plaintiff and defendant which required defendant to disconnect from Fort Gratiot Township's water supply system and connect to plaintiff's water supply system. However, there is no "contract" here. Rather, there is a resolution, adopted by Burtchville Township, and an indemnity agreement. The June 12, 1980 resolution granted permission to defendant to construct and install, at defendant's expense, a water main under Metcalf Road and granted permission to the St. Clair County Department of Public Works to supply water to the residents of Indian Trail. The resolution further states in pertinent part:

3. The permissions granted are without prejudice to the right of the Township of Burtchville to cause the said Indian Trail North Mobile Home Park to be included in any water supply district that may be hereafter established in the Township of Burtchville and without obligation to allow any credit for expenditures made by any person or entity pursuant to such permissions.

The indemnity agreement, dated June 12, 1980 and signed by Noel Buckner, states:

In consideration of the Township of Burtchville, St. Clair County, Michigan granting permission for the construction of a water line on Metcalf Road within the limits of the Township of Burtchville to serve the Indian Trail North Mobile Home Park, the undersigned hereby covenants and agrees to indemnify, protect and hold harmless the said Township of Burtchville and its officers and agents from all claims, action and demands which may be asserted against it or them arising out of the granting of such permission or the construction, operation and maintenance of the said water line for 6 months from today.

The resolution and indemnity agreement, even if taken together, do not create a contract between plaintiff and defendant. These documents are what they purport to be and no more. Further, both the resolution and indemnity agreement are clear and unambiguous. The indemnity agreement says nothing about requiring Indian Trail to disconnect from Fort Gratiot Township's water supply system to connect to Burtchville Township's water supply system. Moreover, the language in the resolution only states that Burtchville Township was reserving the right to "cause" Indian Trail to be *included in any water supply district* that may later be established in Burtchville Township. This does not translate to requiring Indian Trail to connect to Burtchville Township's water supply system.² If Burtchville Township wanted to require Indian Trail to connect to its own water supply system at some point in the future, it should have explicitly stated so in the resolution. However, the resolution only states that Burtchville Township could require Indian Trail to be included in any water supply district and this is a material difference from requiring Indian Trail to connect to Burtchville Township's water supply system at Indian Trail's expense.

It cannot really be contended that the resolution, adopted by plaintiff, constitutes a contract.³ Contracts are created by parties and require mutual assent on all essential terms. *Kamalnath v Mercy Memorial Hosp Corp*, 194 Mich App 543, 548-549; 487 NW2d 499 (1992). The resolution does not contain the essential elements of a contract: offer, acceptance, and consideration. Thus, it is not

appropriate to apply contract principles to the resolution and the trial court should not have considered parol evidence. Our Supreme Court has stated:

When the law requires municipal bodies to keep records of their official action in the legislative business conducted at their meetings, the whole policy of the law would be defeated in they could rest partly in writing and partly in parol, and the true official history of their acts would perish with the living witnesses, or fluctuate with their conflicting memories. No authority was found, and we think none ought to be, which would permit official records to be received as either partial or uncertain memorials. That which is not established by the written records, fairly construed, cannot be shown to vary them. They are intended to serve as perpetual evidence, and no unwritten proofs can have this permanence. [*Ferrario v Escanaba Bd of Ed*, 426 Mich 353, 371; 395 NW2d 195 (1986); *Tavener v Elk Rapids Rural Agricultural School Dist*, 341 Mich 244, 251-252; 67 NW2d 136 (1954); *Alcona Co v Alcona Probate Judge*, 311 Mich 131, 142; 18 NW2d 399 (1945); *Derosia v Loree*, 158 Mich 64, 73; 122 NW 357 (1909); *Stevenson v Bay City*, 26 Mich 44, 45 (1872)].

St. Clair County was required to obtain Burtchville Township's consent before supplying water to Indian Trail and the township provided that consent through a resolution. Moreover, as has been stated, we do not find the resolution or indemnity agreement to be ambiguous. Thus, it is not proper to consider parol evidence in this case where the resolution speaks for itself.

Accordingly, the trial court erred in finding that there was any contract between plaintiff and defendant requiring plaintiff to disconnect from Fort Gratiot Township's water supply system and requiring it to connect to Burtchville Township's water supply system because the resolution and indemnity agreement do not create any contract so requiring.

Next, we find that the trial court erred in relying on certain statutes to require Indian Trail to disconnect from Fort Gratiot Township's water supply system and connect to Burtchville Township's water supply district. The trial court relied on MCL 123.739; MSA 5.570(9), which provides in relevant part: "[n]o county shall have the power to furnish water service, sewage disposal service or refuse service to the individual users within any municipality without its consent." Although this statute clearly requires the consent of a township before the township's residents can be supplied water from another county, the statute says nothing about withdrawing that consent and certainly does not compel a finding that defendant is required to connect to plaintiff's water supply system.

Accordingly, we reverse the trial court's order requiring Indian Trail to disconnect from the Fort Gratiot Township water supply district and connect to Burtchville Township's water supply district at Indian Trail's expense in the absence of any contractual or statutory authority to do so.

Reversed.

/s/ Helene N. White

/s/ Kathleen Jansen

¹ Interestingly, Burtchville Township asserted in the Tax Tribunal that the indirect connection fee was a *voluntary fee* paid by those residents who wished to connect to the township's water system and was not a special assessment.

² We note that the trial court acknowledged in its opinion that the resolution does not require Indian trail to disconnect from Fort Gratiot Township's water supply system.

³ The trial court acknowledged this too in its opinion when it stated that Indian Trail was not a party to the resolution and thus could not be contractually bound by the resolution itself.