STATE OF MICHIGAN

COURT OF APPEALS

CITY OF MANISTIQUE,

Plaintiff/Counter Defendant-Appellant,

v

TOWNSHIP OF DOYLE, TOWNSHIP OF GERMFASK, TOWNSHIP OF HIAWATHA, TOWNSHIP OF MANISTIQUE, TOWNSHIP OF INWOOD, TOWNSHIP OF MUELLER, TOWNSHIP OF SENEY, TOWNSHIP OF THOMPSON, SCHOOLCRAFT COUNTY, and SCHOOLCRAFT COUNTY-WIDE DEPARTMENT OF PUBLIC WORKS,

Defendants-Appellees,

and

SCHOOLCRAFT COUNTY ROAD COMMISSION and MANISTIQUE RENTAL, INC.,

Defendants/Counter-Plaintiffs-Appellees.

UNPUBLISHED
June 5, 2001

No. 217913
Schoolcraft Circuit Court
LC No. 95-002379-NZ

Before: Sawyer, P.J., and Smolenski and Whitbeck, JJ.

PER CURIAM.

Plaintiff appeals as of right from a bench trial decision in favor of defendants. Also disputed are decisions granting summary disposition to defendant townships and denying plaintiff's motion to file a second amended complaint. This case arises from a dispute between plaintiff and defendants regarding an alleged agreement to share the costs of closing a landfill in the city of Manistique that was used by the townships, with the DPW acting as the collector of refuse. We affirm.

Plaintiff first argues that the trial court erred when it found defendants not liable for landfill closure costs. We disagree.

We review contract interpretation issues de novo, and a trial court's determination of facts for clear error. *Sands Appliance Services, Inc v Wilson*, 463 Mich 231, 238; 615 NW2d 241 (2000).

Plaintiff argues that language from a 1982 agreement between plaintiff and the DPW requires the DPW to pay for closure costs as part of agreed upon licensing costs. The contract language provides:

> [T]he total costs of operation of the landfill, that is to say: maintenance, operational, administrative, licensing, and other costs, not enumerated herein, shall be the total responsibility of the city and department, based on the per capita pro rata shares of each party to this contract, as their respective populations relate to the total population of Schoolcraft County.

The doctrine of ejusdem generis states that if a provision contains general words following an enumeration of particular subjects, those general words are presumed to include only things of the same kind, class or character. *Sands Appliance, supra* at 242. The language of the contract enumerates specifics after a generality. We find that the extensive closure costs were too dissimilar to the operating or licensing costs to be included in the specifics of the contract. Further, provisions of the contract are construed against the drafter. *State Farm Ins Co v Enterprise Leasing Co*, 452 Mich 25, 38; 549 NW2d 345 (1996).

Plaintiff next argues that the trial court erred when it granted summary disposition to defendant townships pursuant to MCR 2.116(C)(10) because there was no material question of fact with respect to plaintiff's implied contract theory. We disagree.

We review a trial court's grant or denial of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Summary disposition of all or part of a claim or defense may be granted when there is no genuine issue of material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. MCR 2.116(C)(10). Affidavits, depositions, admissions, and other documentary evidence must be viewed in the light most favorable to the nonmoving party. *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999).

Express contracts and implied contracts are exclusive, the existence of an express contract precludes seeking recovery on an implied contract. *Superior Ambulance Service v Lincoln Park*, 19 Mich App 655, 662-663; 173 NW2d 236 (1969). Viewing the record in the light most favorable to plaintiff, we find that there was an express contract in 1982 for waste services, with defendant DPW acting as a conduit between plaintiff and defendant townships. The townships paid the express remuneration requested by plaintiff for those services. Therefore, plaintiff is estopped from seeking damages under an implied contract theory. *Id.*

Plaintiff argues last that the trial court abused its discretion when it denied plaintiff's motion to file a second amended complaint. We disagree.

This Court will not disturb a trial court's grant or denial of a motion to amend absent an abuse of discretion. The trial court's discretion is limited, however, in that, prior to denying a motion to amend, the judge must find that justice would not be served by an amendment to the pleadings. *Matulewicz v Governor of Michigan*, 174 Mich App 295, 303; 435 NW2d 785 (1989).

Courts may deny amending complaints if doing so would be unduly prejudicial to the parties. *Traver Lakes Community Maintenance Ass'n v Douglas Co*, 224 Mich App 335, 343; 568 NW2d 847 (1997). In civil cases, an abuse of discretion is found only in extreme cases where the ruling is so grossly violative of fact and logic that it shows a perversity of will, a defiance of judgment, or the exercise of passion or bias. *Dacon v Transue*, 441 Mich 315, 328-329; 490 NW2d 369 (1992). We find that the trial court had sufficient reason to find that the timing of the motion, three years into litigation and one week before the discovery cut-off date, would be prejudicial to defendants. Therefore, the trial court did not abuse its discretion.

Defendants may tax costs as the prevailing party pursuant to MCR 7.219.

Affirmed.

/s/ David H. Sawyer
/s/ Michael R. Smolenski
/s/ William C. Whitbeck