STATE OF MICHIGAN

COURT OF APPEALS

MILFORD TEN, LLC, and FIFTY EIGHT LIMITED LIABILITY COMPANY, Plaintiffs-Appellants, v LYON TOWNSHIP, Defendant-Appellee.	UNPUBLISHED March 20, 2008 No. 276748 Oakland Circuit Court LC No. 2006-073896-CK

Before: Murray, P.J., and Bandstra and Fort Hood, JJ.

PER CURIAM.

Plaintiffs Milford Ten, LLC, and Fifty Eight Limited Liability Company appeal as of right the trial court order granting defendant Lyon Township's motion for summary disposition, in this dispute over the establishment of special assessment districts for, and the construction of, sanitary sewer and water main improvements. We affirm.

On November 30, 2004, defendant, plaintiffs, two other property owners, and Giffels-Webster Engineers (GWE)[1] entered into a "short form" agreement "concerning certain engineering and related services to be provided by [GWE] in relation to the Project known as the Southwest Sanitary Sewer Special Assessment District." This agreement set forth a description of the investigative, preparation and design services to be provided by GWE for the sanitary sewer project, and set completion dates and fees for those services. The agreement also provided that

> [GWE] will submit copies of each invoice to the Township. The Township shall pay [GWE] from the established escrow account.
>
> In accepting this agreement, Fifty Eight, L.L.C., Milford Ten, L.L.C., Aspen Group/Lyon L.L.C., Lyon Associates, L.L.C. agree to establish an escrow

[1] Plaintiffs refer to GWE as the township's engineers; defendant does not disagree but asserts that GWE was acting as an independent entity, and not as defendant's agent, in connection with the short form agreements. Plaintiffs have not named GWE as a party to the instant action.

> account with the Charter Township of Lyon for all costs outlined in this Short Form Agreement. . . . If a Special Assessment District is formed to complete this project, the property owners listed in this agreement will have their assessments lowered by the amount of monies they deposited into the escrow account. If a Special Assessment District is not created, once the design and scope of work listed in this agreement has been completed, all remaining monies, with the exception of the lump sum items, will be refunded to the property owners listed in this Agreement.
>
> If the proposed Southwest Sanitary Sewer [SAD] is not approved by the Township Board: an [SAD] will be established with one or more of these property owners who are party to this agreement to pay for the construction costs, to be presented to the Township Board by April 1, 2005.

On January 10, 2005, these same parties signed a "short form" agreement identical in all pertinent respects for the Southwest Ten Mile Road Water Main Special Assessment District. The water main agreement also provided for a refund of remaining monies if the water main SAD were not created, and stated that "[i]f the proposed Southwest Ten Mile Road Water Main [SAD] is not approved by the Township Board: an [SAD] will be established with one or more of these property owners who are party to this agreement to pay for the construction costs, to be presented to the Township Board by April 1, 2005."

As noted, each of the agreements set forth a schedule by which GWE was to complete the contracted-for investigative, preparation and design services; the agreements did not provide any timeline for the acquisition of easements or for the construction of the improvements. Defendant presented the sewer and water main SADs to the township board on February 7, 2005. After tabling the matter at a series of meetings to permit various property owners, including a signatory to the agreements, further time to determine whether they wished to participate in, or opt out of, the SADs, defendant established the SADs on July 5, 2005.

Plaintiffs argue that the trial court erred by concluding that the agreements did not impose on defendant the obligation to establish the sewer and water main SADs by April 1, 2005. We disagree.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003); *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998); *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 30; 651 NW2d 118 (2002). This Court also reviews the construction and interpretation of a contract de novo. *Bandit Industries, Inc v Hobbs Int'l Inc (After Remand)*, 463 Mich 504, 511; 620 NW2d 531 (2001); *Morley v Automobile Club of Michigan*, 458 Mich 459, 465; 581 NW2d 237 (1998); *Chestonia Twp v Star Twp*, 266 Mich App 423, 429; 702 NW2d 631 (2005). When "ascertaining the meaning of a contract, [courts] give the words used in the contract their plain and ordinary meaning that would be apparent to a reader of the instrument." *Rory v Continental Ins Co*, 473 Mich 457, 464; 703 NW2d 23 (2005). Where the language of the document is clear and unambiguous, interpretation is limited to the actual words used. *Burkhardt v Bailey*, 260 Mich App 636, 656; 680 NW2d 453 (2004). "An unambiguous contract must be enforced according to its terms." *Id.* Merely because the parties ascribe different meanings to it does not render the contract ambiguous. *Henderson v State Farm Fire and*

Casualty Co, 460 Mich 348, 355 n 3; 596 NW2d 190 (1999). Rather ambiguity must arise from the language of the contract itself. *Meagher v Wayne State Univ*, 222 Mich App 700, 721-722; 565 NW2d 401 (1997).

Plaintiffs assert that the agreements clearly obligated defendant to establish the SADs by April 1, 2005. However, the plain language of the agreements clearly contemplates that the proposed SADs may not be created at all; the agreements provide specific instructions for returning any remaining monies deposited with defendant in such circumstances. The agreements do provide that if the proposed SADs are not approved by the township board, SADs "will be established with one or more of the property owners" who are party to the agreements, "to be presented to the [t]ownship [b]oard by April 1, 2005." At most, then, the agreements required that SADs be *presented* to the township board by April 1, 2005; the agreements nowhere require that SADs be *established* by that date. Plainly read, the agreements simply do not set any deadline for the establishment of the SADs.

Defendant presented the board with the proposed Southwest Sanitary Sewer and proposed Southwest Ten Mile Road Water Main SADs at the board's February 7, 2005 meeting. The necessary resolutions to establish those SADs were tabled at the request of property owners, including a signatory to the agreements, who commented that the agreements could be amended if necessary and that the process needed to "be done right." Others concurred; there were no objections. Plaintiffs acknowledge that, after it was noted at that February meeting that changing or truncating the SADs would result in further delays in the process, they opted to continue with the process then in place, for approval of the SADs proposed by defendant; at no time did they present, or request that defendant consider or present, alternate SADs. Having completed the statutorily required process for establishing SADs to the satisfaction of the property owners, defendant established the SADs on July 5, 2005. Defendant thus fully complied with its obligations relating to the establishment of the SADS under the agreements, and there is no basis in those agreements for plaintiffs' assertions otherwise.

Plaintiffs also assert that, because special assessment districts can only be formed with the consent of a percentage of affected property owners, MCL 41.723 implies that an SAD is a contractual agreement between the township and the property owners, which subjects the township to an implied obligation to timely install public utility improvements. Plaintiffs cite no authority for this proposition, and indeed we find none. Certainly, the statutory provisions governing the establishment of special assessment districts for public improvements, MCL 41.721 *et seq*, set forth a process to be followed and requirements, including notice and hearing requirements, to be met by the township. Plaintiffs do not contend that defendant failed to meet these requirements. Plaintiffs' complaint is that defendant did not timely construct the sewer and water main improvements as implicitly required by statute when it established the SADs. However, while the statute provides for repeated adjournments of hearings by the board, see MCL 41.724(3) ("At the hearing, or any adjournment of the hearing which may be without further notice . . .") and MCL 41.726(2) ("A hearing under this section may be adjourned from time to time without further notice."), nowhere in the statute is any requirement relating to the timeliness of the installation or construction of improvements set forth or implied. Nor was any timeline for construction of the improvements set forth in the agreements. Plaintiffs may have hoped that the improvements would be completed sooner, and certainly would have preferred that the SADs be established more quickly. However, plaintiffs point this Court to no document

or no legal authority, and we find none, imposing on defendant any obligation to construct the sewer and water main improvements in a shorter timeframe than that in which the project was completed.

Because the agreements did not require defendant to establish the SADs by April 1, 2005, and did not set forth any timeline for construction of the improvements,[2] and because no such timeline is set forth or can be implied from the statutory provisions governing the establishment of SADs for public improvements, we conclude that the trial court did not err by granting defendant's motion for summary disposition.

We affirm.

/s/ Christopher M. Murray
/s/ Richard A. Bandstra
/s/ Karen M. Fort Hood

[2] We acknowledge that the short form agreements established completion dates for certain investigative, preparatory and design services to be provided by GWE. However, nowhere in those agreements is any deadline provided or suggested for the acquisition of easements and the actual construction of the sewer and water main improvements.