STATE OF MICHIGAN

COURT OF APPEALS

ROBERTA STANEK, NANCY NYKAMP, DAVID JORDAN, STUART JORDAN, and DELBERT JORDAN,

Plaintiffs-Appellees,

v

ARROWASTE, INC., d/b/a PRIORITY ARROWASTE SERVICES,

Defendant/Cross-Plaintiff/Cross-Defendant-Appellant,

and

NOTIER-VER LEE-LANGELAND CHAPEL, INC.,

Defendant/Cross-Defendant/Cross-Plaintiff-Appellee.

UNPUBLISHED
November 25, 2008

No. 277385
Ottawa Circuit Court
LC No. 06-054774-NO

ROBERTA STANEK, NANCY NYKAMP, DAVID JORDAN, STUART JORDAN, and DELBERT JORDAN,

Plaintiffs-Appellees,

v

ARROWASTE, INC., d/b/a PRIORITY ARROWASTE SERVICES,

Defendant/Cross-Plaintiff/Cross-Defendant-Appellant,

and

NOTIER-VER LEE-LANGELAND FUNERAL HOME,

No. 277875
Ottawa Circuit Court
LC No. 06-054774-NO

Defendant/Cross-Defendant/Cross-Plaintiff-Appellee.

Before: Hoekstra, P.J., and Whitbeck and Talbot, JJ.

PER CURIAM.

In Docket No. 277385, defendant Arrowaste, Inc., appeals by leave granted the trial court's order denying its motion for summary disposition with respect to plaintiffs' negligence claim. In Docket No. 277875, Arrowaste appeals by leave granted the trial court's order granting defendant Notier-Ver Lee-Langeland Chapel, Inc.'s (Notier) motion for reconsideration and denying Arrowaste's motion for summary disposition on its cross-claim against Notier. The appeals have been consolidated for this Court's consideration. Because plaintiffs did not allege that Arrowaste owed them a duty separate and distinct from Arrowaste's contractual duties to Notier, we reverse the trial court's denial of summary disposition in Docket No. 277385 and remand for entry of judgment in favor of Arrowaste with respect to plaintiffs' negligence claim. In Docket No. 277875, because a genuine issue of fact exists regarding whether Arrowaste knew or should have known that the cremation container was waste, we affirm the trial court's order granting reconsideration and denying Arrowaste's summary disposition motion with respect to Arrowaste's cross-claim.

I. Relevant Facts and Procedural History

This case arises from the unfortunate disposal of decedent Erwin Jordan's remains in the Autumn Hills landfill in Ottawa County.

Defendant Notier is a funeral establishment in the city of Holland. Defendant Arrowaste is a company that provides trash collection services. Notier and Arrowaste entered into a service agreement for the collection of Notier's recyclables and solid waste. The service agreement provided in relevant part:

> CONTRACTOR'S DUTIES: Arrowaste, Inc. dba Priority Arrow Waste Service (Contractor) shall collect and dispose of or recycle all waste materials (garbage, trash and other solid refuse including marketable recyclables) of the Customer at the service address and location or relocation address. Customer shall be responsible for placing all waste into containers provided by Contractor. Contractor shall assess an extra yardage charge for all waste placed outside container or stacked above a full container.
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> SERVICE STANDARD: All work will be done in good workmanlike manner . . . .
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> WASTE MATERIAL: The waste material to be collected and disposed of by Contractor pursuant to this Agreement is solid waste generated by Customer excluding radioactive, volatile, highly flammable, explosive, toxic or hazardous material. . . . Customer warrants that the waste materials delivered to Contractor

> will not contain hazardous, toxic, potentially infectious or radioactive waste or substances as defined by applicable federal, state or local laws or regulations. Contractor shall acquire title to the waste materials when loaded into Contractor's vehicle; provided, that title to and liability for the waste materials excluded from this agreement shall remain with the Customer, and Customer agrees to indemnify, defend and hold harmless Contractor against all claims, damages, suits, penalties, fines and liabilities, arising out of the breach of the above warranties, including liabilities for violations of laws and regulations, for injury or death to persons or for loss or damage to property or the environment.

Plaintiffs are Erwin Jordan's relatives. After Jordan died on December 20, 2005, the family arranged to have Notier handle the cremation of Jordan's remains. Jordan's body was transferred to Holland Hospital for organ harvesting, and then transferred back to Notier's funeral home on December 21, 2005. The remains were initially placed in Notier's refrigeration unit for storage.

By December 22, 2005, Notier had not yet received the cremation authorization and needed additional space in its refrigeration unit, so it moved Jordan's remains to a garage on its premises, to await the authorization to cremate. Jordan's remains were inside a body bag in a cremation container, a wooden tray with a cardboard cover, and the container was placed on a gurney. The words "JORDAN" and "HEAD" and Notier's name were written on the container. The cremation container was six feet, four inches long and 20 inches wide. Notier estimated that the garage area was 8 by 6-1/2 or 7 by 7 feet. Notier also kept in that garage its garbage dumpster, two bins for recyclables, and various maintenance tools and supplies.

Nate Charon, the Arrowaste employee responsible for picking up Notier's recyclables, testified that he had been instructed by the person who trained him to pick up any crates (i.e., shipping containers) that were there. John Sterenberg, a Notier representative, testified that the cremation containers and shipping containers were similar in appearance and that a layperson could have difficulty distinguishing them. Paul Sterenberg stated that the collapsed shipping containers were placed on the right wall of the garage until there were several to be picked up. He stated that Notier called Arrowaste when they needed to be picked up. John Sterenberg testified that the containers were usually four to six feet from the dumpster on the right wall, but he had seen intact collapsed shipping containers up against the dumpster.

On December 29, 2005, Charon arrived at Notier's garage to pick up the recyclables. He noticed the cremation container and called his boss, Chris Greendyke, because he was not sure if he should remove it because it was on a gurney and against the opposite wall from the recyclables bins. Greendyke told him to leave it there. On January 4, 2006, Warren Disselkoen, who picked up Notier's solid waste for Arrowaste, saw the cremation container two inches from the recyclables bins. On January 5, 2006, around 6:30 a.m., Charon removed the cremation container, along with the decedent's remains, from Notier's garage.[1] He stated that he believed it

[1] Jordan's remains had yet to be cremated because Notier had not received the necessary paperwork from his family.

was to be taken because it was a couple inches from the recyclables bins. Charon did not remember calling Greendyke the day he removed the cremation container, but Greendyke testified that Charon called him that morning. Charon told him that the container was near the recyclables bins, and he told Charon to take the container. Greendyke did not recall Charon describing the cremation container to him during either telephone call other than calling it a crate.

Charon wheeled the gurney with the cremation container to his truck. When he lifted one end of the container onto his truck, a bag fell out. Charon shoved the bag into a recyclables bin and dumped the bag into the back of his truck. He estimated that the bag weighed 70 pounds. Its contents felt squishy. He did not believe it contained a body because it was folded up and was only about three feet long. Charon thought the bag contained soaked rags. He returned the gurney and recyclables bin to Notier's garage. Jordan's remains were ultimately disposed of in the Autumn Hills landfill. Notier discovered that Jordan's remains were missing on January 6, 2006. The landfill was searched, but the search was called off at the family's request and the remains were never found.

Plaintiffs subsequently filed this action against Arrowaste and Notier. Only plaintiffs' negligence claim against Arrowaste is at issue in this appeal. Plaintiffs alleged that Arrowaste had a duty to use due care and caution when removing items from Notier's premises to avoid removing human remains. Plaintiffs alleged that Arrowaste breached this duty when it removed Jordan's remains from the garage (1) without inspecting the cremation container to determine whether it held human remains, (2) without questioning Notier whether the container held the remains of a human body, and (3) without obtaining permission from Notier to remove the container. Arrowaste filed a cross-claim against Notier seeking indemnification and alleging that Notier had a duty to defend it under the parties' contract because plaintiffs' claims arose from Notier's breach of warranty that it would not deliver hazardous, toxic or potentially infectious waste.[2]

Arrowaste filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10), arguing that it did not owe a legal duty to plaintiffs. Arrowaste asserted that no statute, special relationship, or contract established a legal duty owed to plaintiffs. Specifically, it asserted that plaintiffs were not third-party beneficiaries to its contract with Notier and that plaintiffs failed to allege any duty separate and distinct from its contractual duties under the waste removal contract with Notier. In response, plaintiffs argued that Arrowaste created a new hazard, the endangerment to plaintiffs' mental and emotional health upon learning that a landfill was the final resting place for Jordan, when Charon removed the cremation container from the garage and knew or should have known that the container held the remains of a human body. According to plaintiffs, because Arrowaste created this new hazard, the duties owed to them by Arrowaste were separate and distinct from Arrowaste's contractual duty to Notier to pick up and

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[2] Notier also filed a cross-claim against Arrowaste alleging breach of contract for collecting materials that were not in prescribed trash or recyclables containers and for common-law indemnification. The trial court denied Notier's motion for summary disposition of its cross-claim and that decision is not at issue on appeal.

dispose of trash and recyclable materials. The separate and distinct duties Arrowaste owed to plaintiffs were (1) to determine whether the cremation container held the remains of a human body, (2) to inquire with Notier before removing the container, and (3) to obtain Notier's permission before removing the container.[3]

Arrowaste also filed a motion for summary disposition of its cross-claim against Notier pursuant to MCR 2.116(C)(8) and (C)(10), arguing that the contract was unambiguous and clearly provided that Notier was not to deliver hazardous materials as defined by law, which included human remains. It asserted that Notier clearly breached the contract by placing the cremation container within two inches of the recyclables bins and, therefore, it was entitled to indemnification under the contract. In response, Notier argued that, because it never placed the cremation container in or on top of the dumpster or recyclables bins, it never "delivered" the container to Arrowaste. Notier further argued that, given the differences between the cremation container and the shipping containers that Arrowaste previously collected as waste, Arrowaste was negligent in collecting and disposing of the cremation container.

With respect to plaintiffs' negligence claim, the trial court found that Arrowaste owed plaintiffs a duty separate and distinct from its contract with Notier because it "arguably created a 'new hazard,' which was an exposure of Plaintiffs' decedent's remains to the risk of injury, damage, or loss when the remains were put in the landfill." The trial court found that there was an issue of fact whether Arrowaste "knew, or should have known or anticipated, that there was a body in the cremation container." Thus, it denied Arrowaste's motion for summary disposition of plaintiffs' negligence claim because the existence of a duty depended on a factual issue to be decided by the trier of fact.

With respect to Arrowaste's cross-claim against Notier, the trial court found that the contract clearly contemplated that Arrowaste would remove waste placed outside the trash containers. It stated that although Jordan's remains were placed on the opposite side of the garage from the waste containers when Arrowaste's employee first saw them, it was undisputed that the cremation container was within two inches of the recyclables bins when it was removed from the garage. Thus, a "trier of fact could find from this evidence that Arrowaste was justified in concluding, on the second visit, that the decedent's body was 'waste placed outside container' and it was therefore contractually obligated to remove it." The court found that Notier breached the contract by delivering Jordan's remains, which by law were hazardous material, to Arrowaste, and it granted Arrowaste's motion for summary disposition. On Notier's motion for reconsideration, however, the trial court agreed that it did not consider the testimony of Notier's employees regarding the location of Jordan's remains. It found that, giving Notier the benefit of reasonable doubt, the testimony of Notier's employees was sufficient to create an issue of fact whether Notier "delivered" Jordan's remains to Arrowaste. Therefore, the court granted Notier's

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[3] Notier opposed Arrowaste's motion for summary disposition on plaintiffs' negligence claim. Notier argued that, because the common law imposes a duty upon a party engaged in any undertaking to use due care so as not to unreasonably endanger persons or property, Arrowaste owed plaintiffs a duty to use due care in disposing Notier's trash so as not to unreasonably endanger plaintiffs.

motion for reconsideration and denied Arrowaste's motion for summary disposition of its cross-claim.

II. Plaintiffs' Negligence Claim

Arrowaste argues that the trial court erred in concluding that it "arguably" owed plaintiffs a duty and in denying its motion for summary disposition on this basis. We agree.

A. Standards of Review

We review de novo a trial court's determination of the existence of a duty. *Brown v Brown*, 478 Mich 545, 552; 739 NW2d 313 (2007). We also review de novo a trial court's decision regarding a motion for summary disposition. *Feyz v Mercy Mem Hosp*, 475 Mich 663, 672; 719 NW2d 1 (2006).

Arrowaste moved for summary disposition under MCR 2.116(C)(8) and (C)(10). Summary disposition may be granted under MCR 2.116(C)(8) when a party fails to state a claim on which relief can be granted. *Henry v Dow Chem Co*, 473 Mich 63, 71; 701 NW2d 684 (2005). A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone. *Feyz, supra* at 672. All factual allegations in support of the claim are accepted as true and are construed in a light most favorable to the nonmoving party. *Adair v Michigan*, 470 Mich 105, 119; 680 NW2d 386 (2004). A motion under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). A court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the nonmoving party. *Id.* Summary disposition is proper under MCR 2.116(C)(10) if "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law."

B. Analysis

To establish a prima facie case of negligence, a plaintiff must prove four elements: (1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, (3) causation, and (4) damages. *Fultz v Union-Commerce Assoc*, 470 Mich 460, 463; 683 NW2d 587 (2004). "The threshold question in a negligence action is whether the defendant owed a duty to the plaintiff." *Id*. "'Duty' is defined as the legal obligation to conform to a specific standard of conduct in order to protect others from unreasonable risks of injury." *Lelito v Monroe*, 273 Mich App 416, 419; 729 NW2d 564 (2006). Absent a duty owed by the defendant to the plaintiff, there is no tort liability. *Fultz, supra* at 463.

Plaintiffs do not contend that any duty owed by Arrowaste arises from statute or ordinance, nor do plaintiffs contend that they are third-party beneficiaries to the Arrowaste-Notier contract. Rather, plaintiffs argue that Arrowaste owed them a duty to determine whether the cremation container held human remains and to contact Notier and obtain Notier's permission before removing the cremation container. However, it is only by virtue of Arrowaste's contract with Notier that Arrowaste was present in Notier's garage and removed the cremation container it believed to be waste. Arrowaste did not voluntarily undertake this action.

A duty "may and frequently does arise out of a contractual relationship, the theory being that accompanying every contract is a common-law duty to perform with ordinary care the thing agreed to be done, and that a negligent performance constitutes a tort as well as a breach of contract." *Fultz, supra* at 465, quoting *Clark v Dalman*, 379 Mich 251, 261; 150 NW2d 755 (1967). A duty can be owed to a specific plaintiff or the general public of which the plaintiff is a member. *Fultz, supra* at 465. In this case, any duty owed by Arrowaste to plaintiffs arose from the Arrowaste-Notier contract and was to plaintiffs as members of the general public. There is no dispute that plaintiffs and Arrowaste were strangers before this action.

Where a plaintiff's negligence action is based on a contract to which the plaintiff is not a party, "the threshold question is whether the defendant owed a duty to the plaintiff that is separate and distinct from the defendant's contractual obligations." *Id*. at 467. Plaintiffs argue that, because Arrowaste conceded in its motion for summary disposition that it had no duty under its contract with Notier to inspect waste or to contact Notier to obtain Notier's permission before removing any waste, they clearly alleged a duty separate and distinct from the contract. Under the contract, however, Arrowaste had a duty to remove Notier's waste in a "good workmanlike manner." An implicit corollary to this duty is the duty not to remove nonwaste. Arrowaste had a duty to use reasonable care in performing its contractual duties, which is the duty plaintiffs, in their complaint, alleged was breached by Arrowaste.

Items placed in the dumpster or recyclables bins were presumed waste. As the trial court observed, however, Arrowaste's contract also contemplated that items placed outside those receptacles could constitute waste. It is undisputed that Notier stored maintenance tools and other nonwaste items in the garage and that Arrowaste never removed these items. Thus, Arrowaste was required to make decisions regarding what items outside the waste receptacles were properly considered waste. In other words, in exercising due care in the performance of its contractual obligations, Arrowaste was required to inspect the items outside the waste receptacles and make a determination as to their character.

A common-law duty to a third party may arise from a contract if the contracting party creates a new hazard that was not part of the original contract; such a duty is separate and distinct from the contract. *Fultz, supra* at 469; *Osman v Summer Green Lawn Care, Inc*, 209 Mich App 703, 710; 532 NW2d 186 (1995), overruled in part on other grounds in *Smith v Globe Life Ins Co*, 460 Mich 446; 597 NW2d 28 (1999). In *Osman*, the plaintiff alleged that the defendant

> breached its duty by negligently, carelessly, and recklessly removing snow from the premises and placing it on a portion of the premises when it knew, or should have known or anticipated, that the snow would melt and freeze into ice on the abutting sidewalk, steps, and walkway, thus posing a dangerous and hazardous condition to individuals who traverse those areas. [*Osman, supra* at 704.]

The Court held that the defendant owed the plaintiff, who could foreseeably be injured as the result of the defendant's negligent acts, a common-law duty to perform its contractual services with ordinary care. *Id*. at 708, 710.

This case is markedly different from *Osman*. The hazard or peril here is the removal of nonwaste, its subsequent placement in the landfill, and the attendant risk of loss or damage to the nonwaste, all of which is contemplated by the contract. Thus, in performing its contractual

duties, Arrowaste created no new hazard to plaintiffs. Moreover, unlike the plaintiffs in *Osman*, plaintiffs were not foreseeable plaintiffs. No duty is owed to an unforeseeable plaintiff. *Id.* at 708; *Balcer v Forbes*, 188 Mich App 509, 512; 470 NW2d 453 (1991). Arrowaste picked up Notier's waste from a locked garage, which housed the waste receptacles, maintenance tools and supplies, and other like items. It was not foreseeable, even at a funeral home, that a dead body awaiting burial or cremation would be stored in such a location. It is also undisputed that Notier never informed Arrowaste that it was storing human remains in the garage.

For these reasons, we conclude that the trial court erred in finding that Arrowaste arguably created a new hazard and, therefore, owed plaintiffs a duty separate and distinct from the contract. If there is no duty, summary disposition is proper. *Beaudrie v Henderson*, 465 Mich 124, 130; 631 NW2d 308 (2001). Accordingly, the trial court erred in denying Arrowaste's summary disposition motion with respect to plaintiffs' negligence claim.

III. Arrowaste's Cross-Claim

Arrowaste argues that, because Notier failed to set forth any admissible evidence to contradict the testimony of its employees regarding the location of the cremation container on January 4 and 5, 2006, the trial court erred in granting Notier's motion for reconsideration and in denying its motion for summary disposition on its cross-claim.

A. Standards of Review

We review for an abuse of discretion a trial court's decision on a motion for reconsideration. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000). An abuse of discretion occurs when the trial court chooses an outcome that falls outside the principled range of outcomes. *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006). We review de novo a trial court's decision on a motion for summary disposition and whether a contract is ambiguous. *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 353; 596 NW2d 190 (1999).

B. Analysis

In granting Notier's motion for reconsideration, the trial court stated that it failed to consider the deposition testimony of Paul and John Sterenberg. The court found that their testimony created a genuine issue of material fact regarding the location of the cremation container inside Notier's garage and, thus, it concluded there was a question of fact whether Notier "delivered" Jordan's remains to Arrowaste. We agree with Arrowaste, however, that the Sterenbergs' testimony did not create a question of fact concerning the location of the cremation container on the day it was removed from the garage.

When moving for summary disposition under MCR 2.116(C)(10), the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. *AFSCME v Detroit*, 267 Mich App 255, 26; 704 NW2d 712 (2005). The party opposing the motion then has the burden of showing by evidentiary materials that a genuine issue of fact exists. *Id.* Speculation and conjecture are insufficient to create a factual dispute. *Ghaffari v Turner Constr Co (On Remand)*, 268 Mich App 460, 464; 708 NW2d 448 (2005).

Arrowaste's employees Disselkoen and Charon testified that the cremation container was two inches, or a couple of inches, from the recyclables bins on January 4 and 5, 2006, respectively. Notier's employee, Paul Sterenberg, stated that he last saw the container near where the newspapers were at the back wall on "probably" January 3 or 4, 2006. John Sterenberg testified that when he was in the garage between December 20, 2005, and January 6, 2006, the cremation container was near the back wall. However, he could not recall specifically when during this timeframe he saw the container in the garage. Because neither Sterenberg could say for certain that he saw the container on January 4 or 5, 2006, their testimony did not contradict the testimony of Arrowaste's employees regarding the location of the container on the day it was removed. Thus, the trial court erred in concluding that there was a genuine issue of material fact regarding this issue.

However, we affirm the trial court's decision because we conclude that it reached the right result, albeit for a different reason. In *Henderson*, *supra* at 353, our Supreme Court stated:

> It is axiomatic that if a word or phrase is unambiguous and no reasonable person could differ with respect to application of the term or phrase to undisputed material facts, then the court should grant summary disposition to the proper party pursuant to MCR 2.116(10). *Moll v Abbott Laboratories*, 444 Mich 1, 28, n 36; 506 NW2d 816 (1993). Conversely, if reasonable minds could disagree about the conclusions to be drawn from the facts, a question for the factfinder exists.

The issue in that case was whether the phrase "in the care of" in an insurance contract was ambiguous. The Court stated:

> While the meaning of the phrase "in the care of" is not ambiguous, this is not to say that application of the phrase to a given set of facts will always be easy. This is the case here. While the facts are not in dispute here, reasonable persons could disagree about the conclusions to which they lead. Said another way, individual factfinders could reasonably give different weight to the same facts, causing them to reach opposite conclusions regarding whether Mysierowicz was "in the care of" Mrs. Twitchell at the time of the stabbing. Thus, it was improper to grant summary disposition to either party in this case. [*Id*. at 357-358 (footnote omitted).]

In this case, the portion of the contract at issue provided that "Customer warrants that the waste material delivered to Contractor will not contain hazardous, toxic, potentially infectious or radioactive waste or substances as defined by applicable federal, state or local laws or regulations." "Waste" was defined in the contract as "garbage, trash and other solid refuse including marketable recyclables." We conclude that there is a material factual question whether Notier delivered "waste" material to Arrowaste. The contract was for the removal of waste only. Thus, only "waste" placed outside the waste receptacles was eligible for removal. Accordingly, Arrowaste must have used some method to determine whether an item outside the waste receptacles qualified as "waste" for removal. Proximity to the waste receptacles could not have been the sole factor in determining whether an item qualified as "waste," as is apparent from the fact that Arrowaste did not take the gurney on which the cremation container sat.

The parties presented competing evidence regarding whether Arrowaste knew or should have known that the cremation container was not waste. It is undisputed that Notier did not notify Arrowaste that it was storing Jordan's remains in the garage. Paul Sterenberg testified that the shipping containers were placed to the side of the garage until there were several to be picked up. He then called Arrowaste to notify them that the shipping containers needed to be removed. Conversely, Charon testified that he was trained to pick up the containers if they were in the garage. After he finished training, Charon picked up a shipping container almost every week. Also, although John Sterenberg testified that a layperson might have a difficult time distinguishing between a shipping container and a cremation container, the appearance of the cremation container in this instance was different than the shipping containers that Charon had previously picked up. Most significantly was the weight of the container, that it contained a bag, and that the container was not collapsed. Reasonable minds could differ regarding whether Arrowaste knew or should have known that the cremation container was waste based on its appearance and Arrowaste's past practice of removing shipping containers. Therefore, we affirm the trial court's decision denying Arrowaste's motion for summary disposition with respect to its cross-claim against Notier. *Hess v Cannon Twp*, 265 Mich App 582, 596; 696 NW2d 742 (2005) (affirmance is proper where the lower court reaches the right result, albeit for the wrong reason).

IV. Conclusion

In Docket No. 277385, we reverse the trial court's order denying Arrowaste's motion for summary disposition with respect to plaintiffs' negligence claim and remand for entry of judgment in favor of Arrowaste on that claim. In Docket No. 277875, we affirm the trial court's denial of Arrowaste's motion for summary disposition of its cross-claim against Notier.

Affirmed in part, reversed in part, and remanded. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ William C. Whitbeck
/s/ Michael J. Talbot