STATE OF MICHIGAN

COURT OF APPEALS

CITY OF WHITEHALL,

Plaintiff-Appellant,

v

COUNTY OF MUSKEGON,

Defendant-Appellee,

and

WHITE LAKE LANDFILL COMPANY and TOWNSHIP OF WHITEHALL

Intervening Defendants-Appellees

UNPUBLISHED
October 20, 1998

No. 202429
Muskegon Circuit Court
LC No. 95-032591 CZ

Before: Corrigan, C.J., and Doctoroff and Fitzgerald, JJ.

PER CURIAM.

The instant case concerns the use of a wastewater treatment facility in the County of Muskegon. Plaintiff filed an action against the County, alleging that that County improperly allowed a transfer of wastewater treatment capacity from Genesco, Inc., a private company, to the Township of Whitehall, for use by the White Lake Landfill Company, that the County improperly allowed the discharge of leachate into the system, and that the County breached the 1988 bond contracts entered into to finance improvements to the system, by failing to guarantee plaintiff a certain percentage of capacity. The Township of Whitehall and the White Lake Landfill Company intervened as defendants. Plaintiff now appeals as of right from the trial court's order granting summary disposition of plaintiff's claims pursuant to MCR 2.116(C)(10). [1] We affirm.

Plaintiff first argues that the trial court erred in granting summary disposition pursuant to MCR 2.116(C)(10) with respect to plaintiff's claim that the transfer of wastewater treatment capacity from Genesco, Inc. to Whitehall Township was improper. We disagree.

A grant or denial of a motion for summary disposition is reviewed de novo on appeal. *Michigan Mutual Ins Co v Dowell,* 204 Mich App 81, 86; 514 NW2d 185 (1994). A motion for summary disposition pursuant to MCR 2.116(C)(10) tests whether there is factual support for a claim. *Michigan Mutual, supra,* 204 Mich App 85. The trial court must consider the pleadings, affidavits, admissions, and other documentary evidence submitted by the parties and, giving the benefit of reasonable doubt to the nonmoving party, must determine whether a record might be developed that would leave open an issue upon which reasonable minds might differ. *Id.*

Plaintiff first argues that the transfer was improper because the 1989 Capacity Allocation Contract (CAC), pursuant to which the transfer was made, was not binding on plaintiff. Specifically, plaintiff asserts that it was not bound by the CAC because the CAC was never signed by plaintiff or approved by plaintiff's city manager or city attorney.

The essential elements of a contract are 1) parties competent to contract, 2) a proper subject matter, 3) legal consideration, 4) mutuality of agreement, and 5) mutuality of assent. *Koenig v City of South Haven,* 221 Mich App 711, 722; 562 NW2d 509 (1997). The purpose of a signature is to show mutuality or assent. *Ehresman v Bultnyck & Co, PC,* 203 Mich App 350, 354; 511 NW2d 724 (1994), quoting 17 CJS, Contracts, § 62, pp 731-733. However, mutuality or assent may be shown in other ways, and a signature is not always essential to the binding force of an agreement. *Ehresman, supra,* 203 Mich App 354. Whether a writing constitutes a binding contract even though it is not signed depends on the intentions of the parties. *Id.* Here, plaintiff's conduct indicated an intent to be bound by the 1989 CAC. Defendants presented evidence that, since 1990, plaintiff guaranteed bonds and paid debt service based on a formula set forth in the 1989 CAC. Furthermore, in July, 1994, plaintiff's city council adopted a resolution that specifically referred to the terms of the 1989, rather than the 1988, CAC. Therefore, although the 1989 CAC was never formally signed or approved by plaintiff's city attorney and city manager, based on the documentary evidence submitted by the parties, we conclude that there existed no genuine issue with respect to the fact that plaintiff's conduct indicated an intent to be bound by the 1989 CAC.

Plaintiff further argues that, even if it was bound by the 1989 CAC, the transfer of capacity from Genesco, Inc. to Whitehall Township breached the CAC because Genesco, Inc. did not make the transfer through plaintiff, which was Genesco Inc.'s local unit. Paragraph 6 of the 1989 CAC provides that service agreement industries "shall transfer and receive allocated capacity through their Local Unit." However, paragraph 6 also clearly provides that the "use of the Local Unit as the transferring vehicle does not affect the rights of a Service Agreement Industry to transfer and receive capacity allocations." Therefore, assuming paragraph 6 applies to temporary transfers, because the language of the contract clearly and unambiguously provides that a local unit cannot prevent a service agreement industry from transferring capacity, we agree with the trial court's conclusion that Genesco Inc.'s failure to transfer the capacity through plaintiff was a harmless breach.

Plaintiff next argues that the trial court erred in granting summary disposition of its claim that the capacity transfer was improper because the transfer was made to Whitehall Township for use by White Lake Landfill Company, and White Lake Landfill Company was located outside of Whitehall Township's service area. However, the transfer of capacity is governed by the CAC, which makes no

reference to service areas. Furthermore, the Access Rights Agreement and the CAC provide for the alteration and expansion of service areas. Accordingly, we conclude that the trial court properly granted summary disposition of plaintiff's claim that the transfer was improper pursuant to MCR 2.116(C)(10).

Plaintiff next argues that the trial court erred in granting summary disposition pursuant to MCR 2.116(C)(10) with respect to plaintiff's claim that the County breached the bond contracts by failing to provide plaintiff with a guaranteed capacity in proportion to the share of debt service plaintiff was obligated to pay under the bond contracts. We disagree.

The bond agreement provides:

> The LOCAL UNITS shall also have allocated to each of them certain percentages of the flow capacity of the System, subject to further agreement between the parties hereto in a Capacity Allocation Contract dealing with reserved capacity, guaranteed capacity, sale of capacity between LOCAL UNITS and related matters.

We agree with the trial court that the language of the bond agreement does not guarantee plaintiff a certain percentage of capacity. The bond agreement clearly states that any capacity allocated to a local unit pursuant to the bond agreement is subject to the agreements in the CAC relating to reserved capacity, guaranteed capacity, and sale of capacity. We therefore conclude that the trial court's grant of summary disposition was proper.

Finally, plaintiff argues that the trial court erred in granting summary disposition pursuant to MCR 2.116(C)(10) with respect to plaintiff's claim that the County improperly permitted the discharge of leachate into the system. We disagree.

Plaintiff asserts that the discharge of leachate into the system was improper because leachate is groundwater, and the county adopted an ordinance prohibiting new or additional discharges of groundwater into the system after February 4, 1992. Groundwater is defined as "the water beneath the surface of the ground, the source of spring and well water." *Random House Webster's College Dictionary* (1995). Leachate is defined as "a solution resulting from leaching, as of soluble constituents from soil, landfill, etc., by downward percolating ground water." *Random House Webster's College Dictionary* (1995). Leachate results when water mixes with waste in a landfill, and leachate can contaminate groundwater. *South Macomb Disposal Authority v American Ins Co (On Remand)*, 225 Mich App 635, 643, n 1; 572 NW2d 686 (1997); *City of Bronson v American States Ins Co*, 215 Mich App 612, 617; 546 NW2d 702 (1996). Therefore, we do not believe that leachate and groundwater are one and the same. Furthermore, because leachate can be a pollutant, there is a rational basis for allowing the discharge of leachate into the wastewater treatment system while prohibiting groundwater, and the County's ordinance was not arbitrary or capricious. We therefore conclude that the trial court properly granted summary disposition of plaintiff's claim that the County improperly permitted the discharge if leachate into the system. Because further discovery did not stand a fair chance of uncovering factual support for plaintiff's claim, the grant of summary disposition was not premature. *State Treasurer v Sheko*, 218 Mich App 185, 190; 553 NW2d 654 (1996).

Affirmed.

/s/ Maura D. Corrigan
/s/ Martin M. Doctoroff
/s/ E. Thomas Fitzgerald

[1] Count II of plaintiff's amended complaint, which alleged that the County failed to properly meter plaintiff's discharge into the system, and Count III of plaintiff's amended complaint, which requested that the court issue a writ of mandamus ordering the installation of metering devices, proceeded to trial, and are not at issue in this appeal.