

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Borough of Bath,	:	
Appellant	:	
	:	
v.	:	No. 584 C.D. 2008
	:	Argued: November 13, 2008
Colonial Regional Police	:	
Commission and Lower Nazareth	:	
Township and The Board of	:	
Supervisors of Lower Nazareth	:	
Township, in their capacity as	:	
representatives of Lower	:	
Nazareth Township and Hanover	:	
Township and The Board of Supervisors	:	
of Hanover Township, in their capacity as	:	
representatives of Hanover Township	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Judge (P.)  
HONORABLE ROBERT SIMPSON, Judge**

**OPINION NOT REPORTED**

**MEMORANDUM OPINION BY  
PRESIDENT JUDGE LEADBETTER**

**FILED: December 30, 2008**

This declaratory judgment action was brought by Appellant, the Borough of Bath (Bath), in order to determine, *inter alia*, whether Lower Hanover Township (Hanover) was entitled to rescind its Notice of Intent to Withdraw (Notice) from participation in the Colonial Regional Police Department (CRPD). The Court of Common Pleas of Northampton County (common pleas) entered declaratory judgment in favor of Appellees, Hanover, Lower Nazareth Township

(Lower Nazareth) and the Colonial Regional Police Commission (the Commission) finding that Hanover was permitted to rescind its Notice. This appeal followed.

On May 10, 1995, Bath, Hanover, and Lower Nazareth entered into the Articles of Agreement (the Agreement) in order to establish the CRPD. Article IX of the Agreement established the Commission to govern the CRPD.<sup>1</sup> From its inception, the CRPD operated from headquarters situated in the basement of Bath's municipal building. However, in 2006, the municipalities began exploring the possibility of relocating the headquarters to newer and larger facilities in order to accommodate the growth the CRPD had experienced in the ten years since its inception. On August 15, 2006, Hanover purchased 248 Broadhead Road with the intent that this facility would become the new CRPD headquarters. The three municipalities then commenced negotiations concerning ownership of 248 Broadhead Road as well as the ability of Lower Nazareth and Bath to own real property situated outside their respective boundaries.

On November 28, 2006, Hanover sent the Notice of Intent to Withdraw from the CRPD to the Commission pursuant to Article XII, Section A of the Agreement. The November 28 letter reads in relevant part:

Please let this certified letter serve as notice pursuant to Article XII Section A. of the Articles of Agreement dated May 10, 1995, that Hanover Township shall withdraw from the Colonial Regional Police Commission (C.R.P.C.) as of January 1, 2008.

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<sup>1</sup> Section 5 of the Pennsylvania Constitution and Section 2303(a) of Intergovernmental Cooperation Act, 53 Pa. C.S. § 2303(a), authorize the formation of intergovernmental units by two or more local governments in the exercise or in the performance of their respective governmental functions, powers or responsibilities.

This action is necessitated by the uncertainty of resolving the ownership issue of 248 Broadhead Road and Hanover Township's responsibility to continue police protection for its resident and business community.

It is our strong desire to remain a member of the C.R.P.D. by coming to an amicable solution regarding 248 Broadhead Road.

See Reproduced Record (R.R.) at 145a.

At the December 18, 2006 meeting, the Commission discussed whether it was required to take any action regarding the November 28 letter, *i.e.* note receipt, accept withdrawal, or reject withdrawal. The Commission was unsure whether the Agreement required it to take any action and eventually voted to note receipt of Hanover's Notice.<sup>2</sup> Throughout the first half of 2007, the Commission continued to operate with Hanover as a full participating member. Hanover continued to negotiate ownership and/or rent of 248 Broadhead Road with Lower Nazareth and Bath. During April 2007 negotiations between Hanover and Bath regarding 248 Broadhead Road broke down. In a July 13, 2007 letter, Hanover conditionally rescinded its withdrawal from the CRPD based upon the satisfaction of three conditions by Lower Nazareth Township. The Commission voted 2-1 at the July 23, 2007 meeting to reject Hanover's July 13 rescission. All three municipalities participated in the vote.

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<sup>2</sup> The minutes of the December 18, 2006 meeting reflect the following decision:

**Nagle:** I'd like to make a motion that we received the letter dated November 28, which is regarding Hanover Township from Northampton, or from of North Hampton [sic] County from the Colonial Regional Police Department.

**Fields:** Second

**All in Favor:** Aye

See R.R. at 147a.

On August 1, 2007, Lower Nazareth executed a Sale and Purchase Agreement and a Property and Maintenance Agreement with Hanover for 248 Broadhead Road. At the August 27, 2007 meeting, the Commission voted 2-1 to accept the July 13 rescission letter. All three municipalities again participated in the vote, but Bath, who opposed accepting the July 13 rescission letter, objected to Hanover's participating in the vote and asserted that Hanover was no longer a member of the Commission due to submission of the Notice. On November 20, 2007, Hanover unconditionally rescinded its Notice. At the November 26, 2007 meeting, the Commission voted 2-1 to accept the November 20 letter rescinding Hanover's withdrawal from the CRPD. Bath again objected to Hanover's participation in the vote.

Because Bath Borough continued to object to Hanover's participation in the voting, the dispute resolution procedures in Article XIV of the Agreement were pursued by the commission members and their governing bodies in order to interpret the Agreement and determine, *inter alia*, whether Hanover was permitted to rescind its withdrawal. Article XIV of the Agreement reads in relevant part:

All disputes arising out of interpretation of this Agreement shall be resolved by the CRPC, and if the dispute is not resolved within sixty (60) days, by a vote of the member Municipalities, each body casting one (1) vote, as determined by a majority in each governing body, within the next sixty (60) days.

The aforesaid internal method of resolution of disputes shall be mandatory and shall be deemed a condition precedent before any member Municipality may institute a suit or claim in any Pennsylvania Court of competent jurisdiction, the right to institute suit being expressly reserved hereby by each participating Municipality.

See R.R. at 89a.

The governing bodies of Hanover and Lower Nazareth determined, *inter alia*, that Hanover was permitted to rescind its notice of withdrawal. The governing body of Bath determined that Hanover was not permitted to rescind its Notice.

Subsequently, Bath filed a declaratory judgment action in common pleas requesting interpretation of the Agreement. Common pleas entered judgment in favor of Appellees, the Commission, Hanover and Lower Nazareth, finding that Hanover was permitted to rescind its Notice. This appeal followed.

Bath challenges common pleas' entry of declaratory judgment in favor of Appellees on five grounds. First, Bath asserts that common pleas erred in finding that Hanover's Notice was not a final binding action but rather a preliminary action that it was free to rescind. Bath asserts that the Notice was clear and unambiguous and effectively terminated the contractual relationship between the parties. Correspondence and conduct between contractual parties must be unequivocal and unambiguous in order to terminate a contract. *Accu-Weather, Inc. v. Prospect Communications*, 644 A.2d 1251, 1254 (Pa. Super. 1994). "Ambiguous conduct and language intended to signal contract termination will be deemed not to have terminated the contract." *Id.* In *Accu-Weather*, the Superior Court held that the appellee did not properly terminate the contract because (1) notice was ambiguous in that it failed to manifest a clear intent to terminate the agreement, and (2) appellee's subsequent performance under the agreement negated the notice of termination.<sup>3</sup> *Id.*

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<sup>3</sup> The Superior Court found that the following language was ineffective to terminate the agreement:

**(Footnote continued on next page...)**

In the instant case, Hanover’s Notice is similarly ambiguous. Hanover stated that, “[t]his action is necessitated by the uncertainty of resolving the ownership issue of 248 Broadhead Road...” *See* R.R. at 145a. It also stated that, “[i]t is our strong desire to remain a member of the C.R.P.D. by coming to an amicable solution regarding 248 Broadhead Road.” *See* R.R. at 145a. Hanover was not unconditionally withdrawing from the CRPD, but rather giving notice of its intent to withdraw effective January 1, 2008, if certain issues and conditions were not resolved. In addition, Hanover’s Commission representative, Eric Nagle, reiterated that the Notice was sent in order to protect Hanover’s rights, but that discussions were ongoing between the municipalities regarding 248 Broadhead Road. *See* R.R. at 146a.

The conduct of the municipalities following receipt of the Notice also reflects their failure to interpret the notice as a genuine withdrawal rather than a statement of possible future action. The Commission was unsure of what steps, if any, it was required to take with regard to the Notice. In addition, the Commission continued to operate in the manner it had always operated until negotiations between Hanover and Bath broke down. Finally, the Commission took no steps to facilitate Hanover’s withdrawal, including valuing Hanover’s proportionate share of continuing obligations and liabilities as required by Article XII of the

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**(continued...)**

This is to serve you notice to cancel our contract with you, effective 90 days from February 1, 1991 (our 1st conversation).

Due to the reorganization of the station and market condition, we are forced to take this step, but at a later date, we may continue your services.

644 A.2d at 1253. The Superior Court determined that the phrase “but at a later date, we may continue your services” rendered the notice of termination ambiguous. *Id.*

Agreement. Thus, we agree with common pleas that Hanover's Notice was ambiguous and did not effectively terminate its participation in the Agreement.

Having thus decided that Hanover did not effectively withdraw from the agreement in the first place, we need not reach Bath's additional arguments that Hanover was not permitted under the terms of the Agreement to rescind its withdrawal, that the 2-1 vote in November 2007 to accept the rescission was invalid, and that Hanover was equitably estopped from rescinding its withdrawal.

Accordingly, we affirm.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge

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Township, in their capacity as	:	
representatives of Lower	:	
Nazareth Township and Hanover	:	
Township and The Board of Supervisors	:	
of Hanover Township, in their capacity as	:	
representatives of Hanover Township	:	

**ORDER**

AND NOW, this 30th day of December, 2008, the order of Court of Common Pleas of Northampton County in the above captioned matter is hereby AFFIRMED.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge