COURT OF APPEALS
DECISION
DATED AND FILED

March 20, 2007

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2006AP687 **Cir. Ct. No. 2004CV1021**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

TOWN OF RINGLE,

PLAINTIFF-APPELLANT,

V.

MARATHON COUNTY,

DEFENDANT-RESPONDENT,

FIBER RECOVERY, INC.,

DEFENDANT.

APPEAL from a judgment of the circuit court for Marathon County: GREGORY B. HUBER, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Town of Ringle appeals a summary judgment in favor of Marathon County concerning alleged contractual damages pertaining to

the operation of a landfill located on property within the Town's limits. The Town argues the circuit court erred by denying its claim that the County owed tipping fees for all materials taken over its scale, including materials taken to a recycling plant that were not otherwise targeted for disposal in the landfill. The Town also contends the County owes expenses for three fires at the recycling plant. Finally, the Town asserts the court erred by concluding the contract at issue permitted downward adjustments to the tipping fee. We reject the Town's arguments and affirm.

¶2 The County began operating the landfill in approximately 1980, an area known as "Area A." The landfill was situated within a larger area of 575 acres, with Area A comprising approximately thirty acres of that. In order to extend the life of Area A, a private company built a recycling plant on the property in the early 1980s. The recycling plant processed burnable waste into an alternative fuel source, such as fuel pellets, that would otherwise have been deposited in the Area A landfill. The recycling plant was owned and operated by the private company that built it until 1993, when the company suffered financial difficulties. The County purchased the plant and assumed operations. When the County took over the recycling plant, it stopped diverting burnable material from the landfill and began to bring in clean waste paper from outside Marathon County to be processed at the recycling plant. Area A reached capacity in November 1993.

¶3 After the County took over the recycling plant, but before Area A reached capacity, the Town and the County entered into a contract for the creation and operation of another landfill to be known as "Area B," located within the same 575 acres as Area A. Area B is approximately thirty-five acres. In 1997, the

County sold the recycling plant to Fiber Recovery, Inc., an intervenor in the proceedings below.

¶4 The Town commenced suit to recover costs related to three fires in 1999 and 2000, and for "tipping fees" dating back to 1997 for the materials directed to the recycling plant.[1] The County moved for summary judgment, which the circuit court granted. The court concluded the Town's position relied on "overly creative logical and linguistic interpretations." The court held that the scope of the contract, "at its very beginning … makes clear that it is about the Area B landfill." The court noted the "Scope of The Contract" provision and the defined term, "Solid Waste Management Facility," expressly limited the scope of the parties' rights and obligations to those associated with "the construction, operation, maintenance, closure and long-term care of the Area B site." Because materials directed to the recycling plant were not related to or diverted from Area B, but rather were brought in from outside Marathon County to be processed at the recycling plant, they were not to be included in the calculation of tipping fees. The Town now appeals.

¶5 The standard of review for summary judgment is well-established and will not be repeated at length. We apply the same methodology as that applied by the circuit court and although summary judgment presents a question of law which we review de novo, we nonetheless value a circuit court's decision on such a question. ***M&I First Nat'l Bank v. Episcopal Homes***, 195 Wis. 2d 485, 497, 536 N.W.2d 175 (Ct. App. 1995).

[1] Article X, § 7, of the contract provides: "7. Town Share of Tipping Fees. The County agrees to pay Town One dollar and Fifty-five Cents ($1.55) per ton for accepted materials which go across the scale at the Solid Waste Management Facility."

¶6 Article I of the contract at issue, entitled "SCOPE OF THE CONTRACT" provides as follows:

> **This contract governs the activities of the County and the Town, only insofar as they relate to the construction, operation, maintenance and long-term care of the Area B Solid Waste Disposal Facility**. This contract does not affect nor do the parties contemplate that the Contract affects or deals with or restricts in any manner any other activities of the County or the Town. (Emphasis added).

¶7 Importantly, the parties also specifically defined the terms "Solid Waste Management Facility" and "Solid Waste Disposal Facility." Solid Waste Management Facility was defined in the "Definitions" section of the contract as:

> the real property within the boundaries of Exhibit A. It is understood and agreed by the parties that **where this term appears in the contract, any action authorized or mandated shall relate solely to the construction, operation, maintenance, closure and long term care of the solid waste disposal facility**…. (Emphasis added).

¶8 The contract also provided in the "Definitions" section: "Solid Waste Disposal Facility means the area contained within the boundaries shown on Exhibit 'A' and known as 'Area B.'"

¶9 We conclude the only reasonable interpretation of the contract as a whole supports the circuit court's conclusion that "these provisions make it clear that the contract is about Area B landfill and nothing else." Accordingly, the County is only required to pay tipping fees under the contract for accepted materials that are related to Area B. There is no dispute the recycling plant is not located within Area B. None of the materials directed to the recycling plant during the period at issue were related to, or diverted from, Area B. The materials were brought in from outside Marathon County to be processed at the recycling

plant and the materials went out to the market in the form of recycled fuel pellets. Based on the contract, the materials directed to the recycling plant are therefore not to be included in the calculation of the Town's share of tipping fees.

¶10 The Town insists that "[p]ayment of a contractually owed sum is simply not" an "action authorized or mandated" by the contract, and therefore the narrowing language in the definition of "Solid Waste Management Facility" is inapplicable. The Town's argument is unreasonable. The limitations provided in the definition of Solid Waste Management Facility explicitly apply to "*any* action authorized or mandated." As the circuit court stated: "While writing a check is certainly not strenuous enough to cause anyone to break a sweat, it is an action. Furthermore, it is an action mandated by the contract – specifically, Article X, § 7."

¶11 The Town insists that we must look to extrinsic evidence to the effect that certain parties have interpreted the contract differently in the past. We are not persuaded. "[C]ourt[s] must look for the intent of the parties in the plain language of the contract." ***Tri City Nat'l Bank v. Federal Ins. Co.***, 2004 WI App 12, ¶17, 268 Wis. 2d 785, 674 N.W.2d 617. If the terms of the contract are unambiguous, the court must "construe the contract according to its plain meaning even though one of the parties may have construed it differently." ***Kailin v. Armstrong***, 2002 WI App 70, ¶18, 252 Wis. 2d 676, 643 N.W.2d 132. As the circuit court in the present case observed: "Probably no rule is better understood than that the opinions of the parties to the contract as to what they took it to mean cannot be resorted to, either to explain or change [the terms of the contract]." *See* ***Kernz v. J. L. French Corp.***, 2003 WI App 140, ¶20, 266 Wis. 2d 124, 667 N.W.2d 751 (quoted source omitted).

¶12 The Town next argues the circuit court erred by denying it reimbursement for three fires at the recycling plant. Article X, § 4 of the contract states:

> 4. Financial Responsibility
>
> County agrees to assume financial responsibility for fires and hazardous waste discovered at the Solid Waste Management Facility for the term of the contract. The Town of Ringle shall be obligated to contribute the first Two Thousand Five Hundred Dollars ($2,500.00) toward expenses associated with putting out fires at the Solid Waste Management Facility. This obligation shall be limited to two fires per year.

¶13 Our conclusion above regarding the "Scope of The Contract" provision and the meaning of the term "Solid Waste Management Facility" applies equally here. The parties expressly defined the term "Solid Waste Management Facility" to be understood to mean that "where this term appears in the contract, any action authorized or mandated shall relate solely to the construction, operation, maintenance, closure and long term care of the solid waste disposal facility [Area B]…." It is undisputed the fires occurred at the recycling plant only, and it therefore follows that any financial responsibility mandated by Article X, § 4 pertaining to fires at the recycling plant falls outside the scope of the contract. To uphold the Town's argument and find the County liable for either the fire costs or tipping fees would require a construction of the contract that ignores the scope and plain language that expressly limit the parties' rights and responsibilities to Area B.

¶14 Finally, the County argued in its motion for summary judgment that if the court determined the Town was entitled to tipping fees for materials brought to the recycling center, the contract permitted downward adjustments to the tipping fees. The Town argues on appeal the contract only allows increases in the

tipping fees and does not permit downward adjustments. Because we conclude the County is not required to pay tipping fees under the contract for the materials directed to the recycling plant, we need not reach this issue. *See* ***Gross v. Hoffman***, 227 Wis. 296, 300, 277 N.W.2d 663 (1938) (only dispositive issues need be addressed).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2005-06).