

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 30, 2002

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 01-0927
STATE OF WISCONSIN**

Cir. Ct. No. 00-CV-91

**IN COURT OF APPEALS
DISTRICT III**

MULTI-STATE SPECIALIZED TRANSIT, INC.,

PLAINTIFF-APPELLANT,

v.

**MCCAIN FOOD SERVICES, INC. AND MCCAIN FOODS
USA, INC.,**

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Chippewa County:
RODERICK A. CAMERON, Judge. *Affirmed.*

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

¶1 PER CURIAM. Multi-State Specialized Transit, Inc., appeals a summary judgment dismissing its breach of contract action against McCain Foods. The trial court concluded that the contract allowed McCain to terminate the agreement without giving thirty days' notice and an opportunity to correct Multi-

State's breach of the environmental protection clause.¹ Multi-State argues that the contract unambiguously required McCain to provide thirty days' notice and an opportunity to cure or, if the contract is ambiguous, it should be construed against McCain. We conclude that the contract is not ambiguous and does not require thirty days' notice or an opportunity to cure Multi-State's breaches of the agreement.

¶2 The contract calls for Multi-State to transport and dispose of McCain's onion waste that is generated as a byproduct of its onion ring operation. Section 7.2 of the agreement provides:

Either party may terminate this Agreement for material breach of the Agreement by the other party after giving written notice of breach and allowing the other party thirty (30) days to correct the breach. Neither party shall terminate this Agreement without giving the other party thirty (30) days written notice of intent to terminate after failure of the other party to correct the breach within thirty (30) days. However, if MSST has been found to be in violation of any environmental regulatory law or State Of Wisconsin permit associated with the handling or disposal of the onion slurry, McCain may terminate this Agreement immediately by written notice.

¶3 Construction of an unambiguous contract is a question of law that we decide without deference to the trial court. *See Borchardt v. Wilk*, 156 Wis. 2d 420, 427, 456 N.W.2d 653 (Ct. App. 1990). Whether the contract is ambiguous is also a question of law. *Id.* When the contract's language is unambiguous, we apply its literal meaning. *Id.* The contract is construed to give

¹ The trial court also ruled that the contract did not require McCain to utilize Multi-State's services and Multi-State challenges that ruling as well. However, we conclude that the contract allowed McCain to terminate the agreement without thirty days notice, we need not review that issue.

its words their usual, common and ordinary meaning. *See State ex rel. Siciliano v. Johnson*, 21 Wis. 2d 482, 487, 125 N.W.2d 624 (1963). Our goal in contract interpretation is to determine and give effect to the parties' intentions. *See Wisconsin Label Corp. v. Northbrook Prop. & Cas. Ins.*, 2000 WI 26, ¶23, 233 Wis. 2d 314, 607 N.W.2d 276.

¶4 Multi-State does not dispute that it violated State environmental laws. Rather, Multi-State argues that it was never “found to be in violation” by any DNR or other governmental authority and the contract does not allow McCain to “find” the violation. We disagree. The contract does not require a finding by any governmental agency. In common parlance, the requirement that Multi-State be “found to be in violation” only requires that McCain has discovered the violation. Multi-State would have this court construe “found” as a technical word and would have us apply the definition that a lawyer or a grammarian might apply. In this contract between two business entities, there is no basis for giving this common word any specialized meaning.

¶5 Multi-State argues that allowing McCain to “find” a violation would give McCain the right to unilaterally terminate the agreement and Multi-State could never effectively challenge such a “finding.” The contract does not allow McCain to terminate the relationship based on pretense. An unsupported claim that Multi-State violated State environmental laws would be actionable. McCain's right to immediately terminate the agreement does not give it the right to end the agreement on a whim. Rather, the termination must be based on actual violations of State environmental regulations.

¶6 McCain has established that those violations occurred. Multi-State does not deny that it disposed of onion waste on lands and in manure pits without

the approval of the DNR, failed to conduct testing of the onion waste and failed to maintain records as required by the DNR permits, failed to file monthly and annual reports with the DNR and failed to provide the DNR and McCain with updated land management plans on a timely basis. Although the DNR did not take formal action against Multi-State, DNR officials had informed McCain that Multi-State was in violation of environmental laws.

¶7 Multi-State argues that the violations are not sufficiently significant to allow termination of the agreement. Ordinarily, a relatively minor breach of contract does not relieve the other party of the obligation to perform. *See* ARTHUR LINTON CORBIN, CORBIN ON CONTRACTS, § 700 at 310 (1960). That rule is not applicable when, as here, the contract explicitly provides for termination upon the occurrence of a condition. *See Woodland Realty, Inc. v. Winzenried*, 82 Wis. 2d 218, 223-23, 262 N.W.2d 106 (1978). By the terms of the agreement itself, compliance with environmental regulations has been elevated to such a level that any breach by Multi-State justifies immediate termination. The termination paragraph, after reciting the provisions for thirty days' notice and an opportunity to correct the breach, specifically exempts environmental regulatory violations by using the word "however," and by exempting violation of "any" environmental regulatory law or permit from the thirty-day provision. Upon learning of Multi-State's violations of the DNR permits, the contract allowed McCain to terminate the agreement without providing any opportunity to remedy the violations.

By the Court.—Judgment affirmed.

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

