

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

SEPTEMBER 6, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

NOTICE

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

No. 95-0351-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IRISH & LA COUNT, INC.,

Plaintiff-Appellant,

v.

THE LARSEN COMPANY,

Defendant-Respondent.

APPEAL from an order and a judgment of the circuit court for Brown County: RICHARD J. DIETZ, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Irish & LaCount, Inc., appeals an order and judgment that dismissed its breach of contract lawsuit against The Larsen Company, after a trial to the court.¹ The companies entered an "Ensilage

¹ This is an expedited appeal under RULE 809.17, STATS.

Contract," under which Irish & LaCount agreed to remove waste byproduct from Larsen's sweet corn processing plant. Under the contract's payment clause, Irish & LaCount would receive \$4 per ton of waste removed, with tonnage measured at 80% of the incoming green tonnage, and the total projected payment was set at \$64,947. Irish & LaCount argues that the projected payment clause set a base revenue level, unconditionally guaranteeing it a minimum of \$64,947 during the one year term of the contract. The trial court ruled that the \$64,947 clause was a nonenforceable projection, not an unconditional promise. We agree with the trial court's analysis and therefore affirm the order and judgment.

The trial court correctly held the contract unambiguous. Contracts are unambiguous if they permit only one construction. *Meyer v. City of Amery*, 185 Wis.2d 537, 543, 518 N.W.2d 296, 298 (Ct. App. 1994). The ensilage contract set the "projected payment" at \$64,947 for the one year period. "Projected" means "planned," "figured," or "estimated." *Merriam-Webster's Collegiate Dictionary* 932 (10th ed. 1994). It does not mean "guarantee." *Merriam-Webster's Collegiate Dictionary* 516 (10th ed. 1994). This clause also lay adjacent to another making the payments due in three installments, the last installment "to reflect the difference" in the projected amount. Viewed in this context, the "projected payment" clause did nothing more than provide a means for calculating the amounts of the first and second installment payments. It established a standard from which the parties expected actual performance to vary over the contract term, with Larsen to make an appropriate adjustment for any variance in the final payment. In sum, we see no indication in the "projected payment" clause that the parties intended to bind Larsen to a minimum annual payment or guarantee Irish & LaCount minimum annual revenues.

By the Court. – Order and judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.