[Cite as *REDOT Dev. of Ohio, L.L.C. v. Waste Mgt. of Ohio, Inc.*, 2013-Ohio-2364.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

REDOT Development of Ohio, LLC

Appellant

v.

Waste Management of Ohio, Inc.

Appellee

Court of Appeals No. L-12-1161

Trial Court No. CI0201005087

DECISION AND JUDGMENT

Decided: June 7, 2013

* * * * *

J. Mark Trimble and Adam V. Nowland, for appellant.

Basil J. Musnuff, Marquettes D. Robinson and Joseph P. Thacker, for appellee.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas, which granted summary judgment to appellee, Waste Management of Ohio, Inc. ("WMO"). For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, REDOT Development of Ohio ("REDOT"), sets forth the following sole assignment of error:

> I. The trial court erred in granting summary judgment to Waste Management, as issues of material fact existed and Waste Management was not entitled to judgment as a matter of law as to REDOT'S breach of contract claim.

{¶ 3} The following undisputed facts are relevant to this appeal. This case arises from a dispute pertaining to the interpretation of a transportation services agreement ("TSA") executed in 2008 between WMO and REDOT. The contract was finalized and executed following exhaustive negotiations, proposals, and counterproposals transpiring between the parties, both of which are Ohio-based commercial businesses. Appellant, REDOT, is an Ohio company in the business of furnishing waste transportation services. Appellee, WMO, is an Ohio corporation in the business of furnishing waste disposal services.

{¶ 4} Commencing in mid-2007, and continuing until January 2008, the parties engaged in extensive hands-on negotiations pertaining to a proposed business relationship between the parties. In the course of these negotiations, the parties exchanged numerous contract drafts, counterproposals, consultations with legal counsel, and ultimately concluding in the execution of the underlying written seven-year contract referred to as a TSA.

{¶ 5} The original impetus leading to this new business contract was in connection to WMO's exploration of the potential economic viability of a new use of an existing waste product material. WMO was prospecting the possibility that a byproduct material known as "residual," which remains after incoming waste material is converted into recyclable materials, could be profitably utilized as a solidification agent in the process of converting liquid waste into a waste form capable of being deposited into WMO's waste landfills.

{¶ 6} In connection to the trial run of the above business venture, WMO and REDOT entered into a seven-year TSA contract pertaining to the transportation of the residual material from a Cleveland-area WMO waste processing facility to a Toledo-area WMO landfill. Notably, in the course of the TSA negotiations, REDOT pursued the inclusion of language in the contract which would explicitly guarantee an enumerated minimum number of weekly loads of material for transportation. Significantly, WMO rejected the notion of a contractually guaranteed minimum number of loads to be transported by REDOT. The agreed upon contract contained no guarantee of a minimum number of loads to be transported pursuant to the contract.

{¶ 7} To avoid any appearance of misunderstanding in the course of discussing the proposed and rejected minimum number of loads language, WMO returned the draft including such a provision with the minimum number of loads provision crossed out. More importantly, consistent with WMO's explicit rejection of a minimum number of loads provision, the clear and unambiguous provision later agreed to by the parties and

set forth in section 5(A) of the executed contract stated in relevant part, "Company shall have no specific obligation to use Carrier unless the parties have signed a purchase agreement for services." As such, the contract made it clear that WMO was not subject to any specific obligation in terms of the frequency with which it used the transportation services of REDOT. On the contrary, the contract established that any transportation services were only to be provided as requested by WMO.

{¶ 8} While appellant asserts that subsequent to execution of the TSA, an employee of WMO somehow guaranteed a minimum number of weekly loads of material to be transported by REDOT in a way enforceable upon WMO, such arguments do not comport to the actual, plain and unambiguous terms of the written TSA contract and do not comport with the deposition testimony of the former WMO employee at issue.

{¶ 9} On or about February 28, 2008, REDOT commenced hauling loads of WMO residual material on an as requested basis in conformity with the TSA contract executed with WMO. It later became apparent to WMO that the new business venture was not proving to be economically viable. WMO subsequently approached REDOT seeking its consent to a per load rate reduction given the economic difficulties in connection to the attempted new use of the residual waste material in the liquid waste solidification process. REDOT agreed to the rate reduction.

{¶ 10} While REDOT alleges that simultaneous to the rate reduction, an employee of WMO furnished verbal representations to REDOT arguably implying that a minimum number of daily loads to be transported would occur at some indeterminate future point,

we note that the plain and unambiguous language of the contract covering the matter explicitly forecloses the possibility of any obligation of a minimum number of loads being imposed upon WMO. The contract language was not modified. It remained in effect for the seven-year term of the contract.

{¶ 11} WMO ultimately recognized that its new venture in connection to the experimental new use of a residual material for waste solidification and disposal was not economically viable. Accordingly, the practical implication was that WMO no longer needed the residual material transportation services of REDOT given WMO's cessation of the failed project. Utilization of REDOT transportation services under the TSA was discontinued. Again, the plain and unambiguous TSA provisions governing the matter explicitly stated that no minimum amount of transportation services were agreed to or guaranteed by the TSA.

{¶ 12} On July 13, 2010, appellant filed suit against appellee alleging eight separate causes of action. As relevant to the instant case, the complaint asserted that WMO breached the TSA. In support, REDOT furnished the testimony of one of its employees claiming that subsequent to the execution of the TSA that expressly stated that there was no obligation on the minimum number of loads to be transported, an employee of WMO furnished an allegedly enforceable contrary verbal assurance of a minimum number of loads to be transported. In conjunction with this, REDOT furnished an affidavit in support of summary judgment from the WMO employee which stated in relevant part, "I intended that WMO provide REDOT with the level of work hauling

three to four loads per day of these waste materials." The affidavit directly contradicted the earlier deposition testimony of the WMO employee.

{¶ 13} More significantly, all of the above runs directly counter to the express, plain and unambiguous terms of the seven-year TSA executed between REDOT and WMO. On the contrary, the relevant provision included in the executed contract following lengthy negotiations between the parties established in relevant part, "Company shall have no specific obligation to use Carrier unless the parties have signed a purchase agreement for services." As such, the TSA clearly established in provision 5(A) that no minimum number of loads to be transported by REDOT for WMO was being imposed upon WMO. In conjunction with the plain meaning of the above-quoted TSA contract provision, the former WMO employee who furnished a subsequent affidavit in favor of REDOT, had previously testified in his deposition, "There was never an intent to have a minimum number of loads." Regardless and most significantly, the negotiated contract language expressly stated that there was no specific obligation placed upon WMO.

{¶ 14} On August 15, 2011, WMO filed for summary judgment on all of appellant's claims. On May 16, 2012, the trial court granted summary judgment on all counts in favor of WMO. The trial court determined in relevant part, "The court finds that the transportation services agreement executed on January 11, 2008 between the parties is clear and unambiguous and does not provide provisions making plaintiff the exclusive hauler nor does the TSA provide a minimum number of loads." The court went

on to conclude, "Based upon the arguments of counsel, affidavit of Robert Smith, deposition testimony of Robert Smith, Charles Dotson, and Todd Brady, the TSA, Civ.R. 56, and all relevant case law, the court finds defendant's motion for summary judgment well-taken and granted as to each and every cause of action asserted by plaintiff against defendant." This appeal ensued.

{¶ 15} In the sole assignment of error, appellant asserts that the trial court erred in its summary judgment determination that appellee did not breach the underlying TSA contract. In support, appellant relies heavily upon the affidavit of former WMO employee Robert Smith whose affidavit claimed, "I intended that WMO provide REDOT with a minimum level of work hauling three to four loads per day of these waste materials under the TSA." In conjunction with this, appellant relies upon the deposition testimony of REDOT employee Charles Dotson who testified that a WMO employee told Dotson subsequent to the execution of the TSA specifically negating any minimum obligation upon WMO, "I believe I'll take care of you, I know this ---I know this is hard to swallow, this reduction, but something to the effect, and we'll be sure you get your three to four loads a day and it will increase to seven."

{¶ 16} Conversely, appellee contends that the relevant contract provisions agreed upon following exhaustive negotiations between the parties established the propriety of summary judgment in its favor. Specifically, TSA provision 5(A) establishes, "Company shall have no specific obligation to use Carrier unless the parties have signed a purchase agreement for services." In conjunction with this, TSA provision 27 clearly establishes,

"This agreement states the entire agreement between the parties and there are no other agreements or understandings whatsoever expressed or replied relating to the subject matter thereof."

{¶ 17} In addition, the deposition testimony of WMO employee Robert Smith stated in relevant part, "No. There was never an intent to have a minimum number of loads." Consistent with this, the record reflects that when REDOT submitted a proposed TSA agreement in the course of negotiations with WMO that included a minimum load obligation upon WMO, it was subsequently returned by WMO with that minimum load requirement provision redlined out. Not surprisingly, the final agreement executed by the parties not only contained no such provision but actually contained a contrary provision explicitly stating that no specific usage obligation was being imposed upon WMO by the agreement.

{¶ 18} We review summary judgment determinations on appeal pursuant to the de novo standard of review, applying the same standard as the trial court. *Lorain Natl. Bank v. Saratoga Apts.*, 61 Ohio App.3d 127, 129, 572 N.E.2d 198 (9th Dist. 1989). Applying Civ.R. 56(C), summary judgment is appropriate where (1) there is no genuine issue as to any material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion, and viewing the evidence in the light most favorable to the non-moving party, that conclusion is adverse to the non-moving party. *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 66, 375 N.E.2d 46 (1978).

{¶ 19} In order to assess the propriety of appellant's claim that the trial court erred in finding no breach of the TSA by WMO in connection to its use of REDOT transportation services governed by the TSA, we are guided by the plain meaning doctrine. The plain meaning doctrine establishes the courts have no authority to bypass or modify the plain meaning of unambiguous language. The practical implication is that judicial application must be constrained to the confines of the plain meaning of the precise language at issue. *State v. Sylvania Twp*., 6th Dist. No. L-06-1395, 2007-Ohio-3108, ¶ 16.

{¶ 20} We have independently reviewed and considered the entire record of evidence. We find that the record clearly establishes that the parties did not negotiate the underlying TSA contract quickly, lightly, or unilaterally. On the contrary, the record clearly shows that the parties and their counsel engaged in protracted, extensive, and precise negotiations. Those negotiations culminated in a meeting of the minds and a corresponding, executed seven-year contract. Provision 5(A) of the TSA explicitly and clearly established that no minimum usage amount was being imposed upon WMO. This provision is not unexpected given that WMO had previously rejected in writing the proposed inclusion of such a provision.

{¶ 21} In conjunction with the above, we find that both the parol evidence rule and the statute of frauds direct summary judgment in favor of WMO. R.C. 1335.05, the statute of frauds, prohibits the enforceability of any alleged contractual agreement of a duration exceeding one year unless the agreement is written and executed by the parties.

As such, given the seven-year duration of the underlying TSA, all arguments construing claimed subsequent oral statements of a WMO employee pertaining to minimum weekly load amounts as constituting a subsequent oral modification to a seven-year written contract are without merit. Consistent with this, the parol evidence rule establishes that valid written contracts may not be varied, contradicted or supplemented by claimed contrary prior or contemporaneous oral statements. 11 Williston on Contracts (4th Ed.1999) 569-570, Section 33:4. Such claimed statements are the linchpin of appellant's challenge to the adverse summary judgment ruling.

{¶ 22} Wherefore, we find that based upon the plain meaning doctrine's application to the TSA provisions and the facts and circumstances of this case, the statute of frauds, the parol evidence rule, and the entire record of evidence, reasonable minds can only conclude that appellee did not breach any enforceable obligation to appellant with respect to the amount of loads to be transported.

{¶ 23} On the contrary, the TSA clearly and unambiguously specified that no minimum obligation of usage amount was being imposed upon WMO. All arguments in support of the notion that such an obligation existed and was breached by WMO run counter to the plain meaning of the TSA, the parol evidence rule, the statute of frauds, and the record of evidence. Wherefore, we find it reasonable minds can only conclude that viewing the evidence in the light most favorably to REDOT, WMO is entitled to judgment as a matter of law. Appellant's assignment of error is found not well-taken.

The May 16, 2012 summary judgment of the trial court is hereby affirmed in its entirety.

Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, P.J. _____
JUDGE

Thomas J. Osowik, J. _____
JUDGE

Stephen A. Yarbrough, J. _____
CONCUR.
JUDGE