

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDEPENDENT SANITATION
COMPANY, A NEVADA
CORPORATION,
Appellant,
vs.
EMPIRE CONTRACTORS LLC, A
NEVADA LIMITED LIABILITY
COMPANY,
Respondent.

No. 44980

FILED

NOV 08 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Caselli*
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying injunctive and declaratory relief. Second Judicial District Court, Washoe County; Peter I. Breen, Judge. We conclude that the district court improperly denied injunctive and declaratory relief, and we therefore reverse the district court's order.

Appellant Independent Sanitation (Independent) brought suit for injunctive and declaratory relief against respondent Empire Sanitation (Empire), alleging that it had violated Independent's exclusive franchise agreement with the Incline Village General Improvement District (IVGID)¹ to collect and haul construction waste.² The district court found that collection, removal and disposal of construction waste did not raise a health and safety concern and therefore fell outside IVGID's police powers

¹The Incline Village General Improvement District is a municipality of the state. See NRS 444A.012.

²IVGID enacted an ordinance to regulate waste collection and disposal and, under that ordinance, it later entered into the exclusive franchise agreement with Independent.

to regulate that activity. The district court also found that, although Independent had an exclusive franchise agreement with IVGID to collect and process garbage, the agreement did not include construction waste. Further, the district court found that Independent impliedly waived its exclusive right. Therefore, the district court entered judgment for Empire.

On appeal, Independent advances three primary arguments: (1) that IVGID properly granted the exclusive franchise agreement, (2) that the agreement clearly includes the collection and disposal of construction waste, and (3) that Independent did not waive its exclusive contractual rights.³

Because the parties are familiar with the facts of this case, we will not recount them except as necessary for this decision. We conclude that regulation of construction waste is within IVGID's police powers and that, pursuant to its police powers, IVGID properly granted Independent an exclusive franchise agreement to collect and dispose of construction waste. We also conclude that Independent did not waive its exclusive contractual rights. Accordingly, the district court abused its discretion in denying the injunction, and we reverse the district court's order.

³Empire argues in this appeal that the agreement unduly impinged upon interstate commerce under the so-called "dormant" commerce clause. U.S. Const. art. I, § 8, cl. 3. Independent argues that Empire lacked standing to raise the dormant Commerce Clause as an issue below, and that, regardless, the agreement did not violate the dormant Commerce Clause. The district court's order, however, does not address the dormant Commerce Clause or Empire's standing to raise the issue; rather, the district court based its decision on its findings that IVGID exceeded the scope of its police power and on its interpretation of the agreement. Therefore, we decline to further address Independent's standing or Commerce Clause arguments.

Police powers, statutory authority and exclusivity

The district court found that because accumulation of construction waste was not injurious to the public health and therefore its regulation fell outside of IVGID's police powers, collection and disposal of construction waste could not be included in an exclusive waste hauling franchise agreement. We disagree.

First, in addition to the fact that the construction waste may contain materials hazardous to human health such as asbestos, construction waste poses other safety hazards by creating conditions that may cause fire, or may cause the collapse of the debris and materials, may create animal habitat and may cause other safety hazards.⁴ Further, excessive quantities of construction debris can create a public nuisance.⁵ As such, we conclude that construction waste management raises serious public health concerns and therefore falls within IVGID's police powers.⁶

Second, garbage collection and disposal is a core function of local government.⁷ The Nevada Legislature enacted a statutory scheme,

⁴Douglas Disposal, Inc. v. Wee Haul, LLC, ___ Nev. ___, ___, ___ P.3d ___, ___ (Adv. Op. No. 51, November 8, 2007).

⁵City of Chicago v. Krisjon Const. Co., 617 N.E.2d 21, 25, (Ill. Ct. App. 1993) (holding that excessive quantities of construction debris and inefficient and improper methods for its disposal results in scenic blight, cause serious hazards to public health and safety, create public nuisances).

⁶Reduction Company v. Sanitary Works, 199 U.S. 306, 318-19 (1905); see also State v. District Court, 101 Nev. 658, 663, 708 P.2d 1022, 1025 (1985) (explaining that, inherent in the State's police powers is the authority to provide for the health, safety, and welfare of its citizens.).

⁷USA Recycling, Inc. v. Town of Babylon, 66 F.3d 1272, 1275 (2d Cir. 1995).

codified at NRS Chapter 444, to regulate the collection and disposal of solid waste for the protection of public health in Nevada.⁸ Pursuant to NRS 444.510(1), the Legislature imposed upon municipalities the task of “develop[ing] a plan to provide for a solid waste management system,” including “construction waste.”⁹ And, NRS 244.187 and NRS 244.188 authorize grants of exclusive franchises to garbage service businesses to provide services for the “[c]ollection and disposal of garbage and other waste.”¹⁰ (Emphasis added.)

⁸See NRS 444.440.

⁹See NRS 444.490 (defining “solid waste” to include construction waste).

¹⁰NRS 244.187 provides, in relevant part:

A board of county commissioners may, to provide adequate, economical and efficient services to the inhabitants of the county and to promote the general welfare of those inhabitants, displace or limit competition in any of the following areas:

....

3. Collection and disposal of garbage and other waste.

NRS 244.188 provides, in relevant part:

1. Except as otherwise provided [(where these powers are provided to an unincorporated town or within a general improvement district)], a board of county commissioners may, outside the boundaries of incorporated cities and general improvement districts:

(a) Provide those services set forth in NRS 244.187 on an exclusive basis or, by ordinance, adopt a regulatory scheme for controlling the provision of those services or controlling

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In this case, pursuant to NRS 318.055, Washoe County¹¹ delegated the task of developing a plan for a solid waste management system within Incline Village to IVGID. In developing a solid waste management plan, a general improvement district may contract, without calling for bids, for the collection and disposal of garbage and refuse from within the district.¹² Accordingly, IVGID acted within its statutory authority in contracting with Independent for construction waste collection and disposal.

Third, this court will not invalidate a municipal ordinance that is substantially related to the protection of the public health, even if that ordinance interferes with private property rights.¹³ We conclude that IVGID validly enacted an ordinance to regulate waste management and validly entered into an exclusive franchise agreement with Independent to collect and haul all garbage, including construction waste.

... continued

development in those areas on an exclusive basis;
or

(b) Grant an exclusive franchise to any person to provide those services.

¹¹Per NRS 414.470, the term "municipality includes Nevada counties.

¹²NRS 318.142.

¹³Reduction Company v. Sanitary Works, 199 U.S. 306, 318-19 (1905); see Tri-State Rubbish, Inc. v. Waste Management, Inc., 998 F.2d 1073, 1082 (1st Cir. 1993) (concluding that a municipality could lawfully regulate waste for public health reasons, even if the regulations severely limited the value of an ongoing business); State v. Park, 42 Nev. 386, 178 P. 389 (1919)..

Scope of the Agreement

The district court also found that the exclusive franchise agreement does not “by intention or by practice” include construction waste. We disagree.

“[T]his court reviews the construction of a contract de novo.¹⁴ “[W]hen a contract is clear, . . . its terms must be given their plain meaning.”¹⁵ “[A] contract should be construed, if logically and legally permissible, so as to effectuate valid contractual relations, rather than in a manner which would render the agreement invalid, or render performance impossible.”¹⁶ “The parties are in the best position to know what was intended by the language employed.”¹⁷ In case of doubt, this court follows the parties’ own construction of the contract language so long as it is reasonable.¹⁸

Under the agreement at issue here, IVGID granted Independent an exclusive franchise for collecting, removing, and disposing all garbage, rubbish, waste matter and refuse. In this, the agreement unambiguously incorporated the meaning of “solid waste” as defined in

¹⁴NOLM, LLC v. County of Clark, 120 Nev. 736, 739, 100 P.3d 658, 661 (2004).

¹⁵Ringle v. Bruton, 120 Nev. 82, 93, 86 P.3d 1032, 1039 (2004).

¹⁶Mohr Park Manor, Inc. v. Mohr, 83 Nev. 107, 112, 424 P.2d 101, 104 (1967); Club v. Investment Co., 64 Nev. 312, 325, 182 P.2d 1011, 1017 (1947).

¹⁷Lorenz v. Beltio, Ltd., 114 Nev. 795, 805, 963 P.2d 488, 495 (1998) (quoting 17A Am. Jur. 2d Contracts § 357 (1991)).

¹⁸Id.

NRS 440.490, which includes construction waste. Because the franchise agreement is clear on its face, there is no need to further construe it.

Waiver

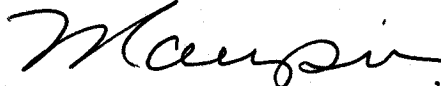
Finally, the district court, without making specific findings, determined that Independent by, "intention or practice," waived its exclusive right to collect and dispose of construction waste. "[I]n the absence of express findings of fact by the district court, [this] court will imply findings where evidence clearly supports the judgment."¹⁹ As discussed above, we conclude that the agreement clearly manifested the parties' intention to grant an exclusive right to collect and haul construction waste. Further, the record is devoid of any substantial evidence that Independent ever expressly or impliedly waived that right through its practices or policies. Therefore, we conclude that the district court's finding of waiver is not supported by substantial evidence.

CONCLUSION

IVGID properly exercised its police powers and its statutory authority when it granted Independent the exclusive franchise agreement to collect and dispose of garbage, including construction waste. Additionally, there is no evidence to support the district court's conclusion that Independent waived any exclusive right set forth in the agreement. We, therefore, conclude that the district court abused its discretion in denying the injunction against Empire prohibiting its collection of and hauling construction waste within the Incline Village General Improvement District.

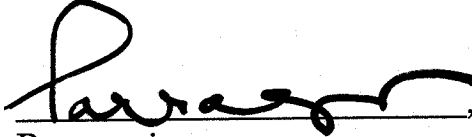
¹⁹Trident Constr. v. West Elec., 105 Nev. 423, 426, 776 P.2d 1239, 1241 (1993).

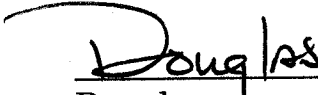
Accordingly, we REVERSE the district court's order denying the injunction and declaratory relief and REMAND this matter to the district court for proceedings consistent with this order.²⁰

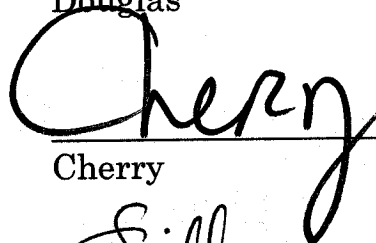

_____, C.J.

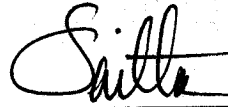
Maupin

_____, J.

Gibbons

_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Cherry


_____, J.
Saitta

cc: Second Judicial District Court Dept. 7, District Judge
Noel E. Manoukian, Settlement Judge
Parsons Behle & Latimer
Hager & Hearne
Washoe District Court Clerk

²⁰The Honorable James W. Hardesty, Justice, voluntarily recused himself from participation in the decision of this matter.