FILED
MAY 30 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

THE CITY OF SPIRIT LAKE, IOWA, a MUNICIPAL CORPORATION,

Plaintiff-Appellee,

vs.

EMPIRE CONSTRUCTION CO., INC.

Defendant-Appellant.

EMPIRE CONSTRUCTION CO., INC.,

Counterclaimant-Appellant,

vs.

THE CITY OF SPIRIT LAKE, IOWA, a MUNICIPAL CORPORATION,

Defendant to Counterclaim-Appellee.

Filed May 30, 1980

0-96
2-63941

Appeal from Dickinson District Court - James H. Andreasen, Judge.

Defendant appeals from declaratory judgment for plaintiff-city in action to construe contract between landfill operator, several municipalities, and county. - AFFIRMED.

Robert W. Sackett and Bradley B. Howe, of Sackett, Sackett, Hemphill & Howe, Spencer, and John J. Murray, of Mitchell, Murray & Blackburn, Fort Dodge, for defendant-appellant.

Harold R. Grigg and Ronald Shea, of Smith, Grigg & Shea, Primghar, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

Defendant-Empire Construction Company appeals from a declaratory judgment for plaintiff-Spirit Lake in an action to construe the contract between the predecessor to Empire as a landfill operator, and Spirit Lake along with several other municipalities in Dickinson County and Dickinson County itself. Empire contends the trial court erred in not using any of several equitable means to construe a guaranty provision in the contract whereby the municipalities were required to deliver an estimated amount of garbage to the landfill. We affirm.

In January 1972, Spirit Lake and other municipalities together with Dickinson County formed the Dickinson County Sanitary Landfill Commission to develop, operate and maintain sanitary landfill facilities for the municipalities and the county. The commission employed an engineering firm to assist them in developing a solid waste plan. The engineering firm sent out questionnaires to the municipalities to collect information necessary for the development of the plan. One part of the questionnaire called for an estimate of the projected volume of waste the municipality expected to produce during the upcoming year. Spirit Lake's estimate was significantly higher than the other municipalities. That figure was accepted by the engineering firm, however, without extensive scrutiny. Testimony at trial revealed that the reason for the higher estimate for Spirit Lake was that the figures provided by Spirit Lake were in amounts of uncompacted garbage as opposed to the compacted garbage figures used by the other municipalities. The reason for the discrepancy was apparently not discovered by the engineering firm prior to the preparation of its preliminary report.

Using the data obtained by the engineering firm, the Commission decided to make arrangements with Carl Meese to operate the landfill. A contract was drawn up between the municipalities and the county as users of the landfill, and Meese as the operator. The record shows the contract was carefully drafted and carefully reviewed by each municipality before it was executed. The contract set out specific rates to be charged and included a provision for the adjustment of those rates. That provision stated:

> 13. During March of each twelve month period, commencing with the month of March, 1976, the Dickinson County Sanitary Land Fill Commission shall invite Operators to a formal meeting for the purpose of

> reviewing the foregoing schedule of charges and to adjust the same as to yardage, volume, weight and rates; it is contemplated herein that an adjustment upwards on such schedule of rates will be approved by the Dickinson County Sanitary Land Fill Commission if the volume generated by the Municipalities is more than 10 percent ___ less than the volume estimated by the consulting engineers when planning this project; and also that the schedule of rates will be adjusted consistent with but not in excess of, the cost of living index determined by the United States Department of Commerce.

It was provided that the contract would be effective for ten years. Meese's interests in the contract were assigned to Empire.

Not long after the landfill operation commenced, it became apparent that the amount of waste produced by Spirit Lake was far short of the amount estimated. Consequently, after the first year of operation, the Commission increased the rates and proposed special assessments against the municipalities and the county to ensure continued operation of the landfill. Apparently, no proposal was made regarding a decrease in the figure of estimated volume to be produced by Spirit Lake. The following year, Spirit Lake received a statement from Empire showing a balance due for the year in the amount of $27,350.51. This figure apparently constitutes the rate multiplied by the amount of waste short of that estimated for Spirit Lake. On Empire's request, the Commission met and voted that Spirit Lake should pay one-half of the amount claimed by Empire in complete satisfaction of the claim. Spirit Lake then filed a petition for declaratory judgment and Empire counterclaimed for $27,350.51. As each year passed prior to trial, Empire amended its counterclaim to tack on the accrued yearly losses. The trial court concluded that the contract did not contain a volume guaranty, that such a provision could not be implied whether or not the contract was considered to be fully integrated, and that Spirit Lake was entitled to a judgment in its favor.

Since this case was brought in equity, our review is de novo. Iowa R. App. P. 4. We give weight to the trial court's findings of fact, especially regarding the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

Empire attempted to introduce, over Spirit Lake's objections, extrinsic evidence in the form of testimony of various witnesses that was intended to clarify the true and actual intent of the parties with regard to whether a volume guaranty was intended.

Extrinsic evidence is admissible to determine whether the written instrument is fully integrated. Fashion Fabrics of Iowa, Inc. v. Retail Investors Corp., 266 N.W.2d 22, 25 (Iowa 1978). Extrinsic evidence is also admissible for the purpose of interpreting the terms of a written agreement when it throws light on the situation of the parties, the antecedent negotiations, the attendent circumstances, and the objects the parties were striving to ascertain. Id.; Hamilton v. Wosepka, 261 Iowa 299, 306, 154 N.W.2d 164, 168 (1967).

Empire contends the extrinsic evidence indicates that paragraph thirteen of the contract can properly be interpreted as a volume guaranty provision. However, we concur with the trial court in the conclusion that paragraph thirteen is not subject to such an interpretation. Paragraph thirteen clearly and unambiguously states that annual volume production will be used to determine the necessity of rate adjustment. There is no language in the paragraph that lends itself to an interpretation that a volume guaranty was intended. Rather than using any terms that were subject to a "guaranty" interpretation, the paragraph used the word "estimated." "An estimate is equivalent of 'more or less' and does not pretend to be based on absolute calculations. Use of the word precludes accuracy. 'To make an estimate' ordinarily means to calculate roughly or to form an opinion as to an amount from imperfect data." Denniston & Partridge Co. v. Mingus, 179 N.W.2d 748, 752 (Iowa 1970).

Empire argues that certain of the record-keeping requirements of paragraph seven would be unnecessary if a quota system was not intended. However, Empire concedes that for purposes of that argument, it must be assumed that all parties pay cash at the gate. Such an assumption is incongruous with paragraph fourteen of the contract, which states that municipalities shall be billed monthly for all charges made for the preceding month. It would seem that the record-keeping requirements of paragraph seven would be necessary for such a monthly billing procedure. Thus, the conclusion that those record-keeping requirements were only necessary for a quota system is without merit.

Empire also contends that in light of the extrinsic evidence showing that a volume guarantee was intended, equity should reform the contract or find an implied covenant to incorporate that intention into the express agreement. Such a contention must be established by clear, satisfactory, and convincing proof. Akkerman v. Gersema, 260 Iowa 432, 438, 149 N.W.2d 856, 859 (1967). "[T]he right to reform an instrument is not

absolute, but is within the sound discretion of the equity court and depends upon whether the remedy is essential to the ends of justice." Id. at 440, 149 N.W.2d at 861. With regard to implied covenants, it has been stated:

> Courts are slow to find implied covenants. The obligation must arise from the language used or it must be indispensable to give effect to the intent of the parties; it must have been so clearly within their contemplation that they deemed it unnecessary to express it. It can be justified only on the ground of legal necessity and can arise only when it can be assumed it would have been made part of the agreement if attention had been called to it. Moreover, an implied covenant cannot be found when the contract is fully integrated.

Fashion Fabrics of Iowa Inc., 266 N.W.2d at 27-28.

The trial court concluded that neither reformation nor finding an implied covenant was appropriate. The trial court found that the written instrument was intended by the parties as a complete and final document of the terms and agreements, and thus, that the contract was fully integrated. Considering the time spent in drafting the written instrument and in reviewing each and every provision word by word, we agree with the trial court's conclusion.

The trial court went on to state that even if the contract was not considered fully integrated, it could not find an implied provision for a volume guaranty, since it did not find the extrinsic evidence with regard to such a guaranty to be clear and convincing. The trier of fact need not take the extrinsic evidence as a verity. Lyon v. Willie, 288 N.W.2d 884, 892 (Iowa 1980). Since all the extrinsic evidence was testimonial, credibility of the witnesses undoubtedly played a significant role in the trial court's findings of fact. We consequently follow our rule giving weight to those trial court findings of fact, Iowa R. App. P. 14(f)(7), and defer to the trial court's conclusions that the evidence establishing an implied covenant or a justification for reformation was not clear and convincing.

This case involves a close conflict between the recognition of the intent of parties to a contract and the sanctity and stability of contracts as drafted. Under the circumstances of this case, involving a contention that a mistaken estimate provided by an engineering firm should be held to bind the city to a 10-year obligation, the cost of which has been increasing every year due to increased rates, our hand is tipped in favor of affirming the trial court's judgment.

AFFIRMED.