

FILED 61
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

CITY OF LAKESIDE, IOWA,)
A Municipal Corporation,)

Plaintiff-Appellant,)

Filed January 30, 1981

vs.)

CITY OF STORM LAKE, IOWA,)
A Municipal Corporation,)

0-297
2-64350

Defendant-Appellee.)

Appeal from Buena Vista District Court - Murray S. Underwood, Judge.

Plaintiff Lakeside appeals declaratory judgment ordering that a water contract between plaintiff and defendant Storm Lake requires plaintiff to pay for water at the more costly flat rate charged to defendant's residential users rather than at the lesser graduated rate charged by defendant to its commercial and industrial users.

AFFIRMED.

Willis J. Hamilton and Steve Hamilton of Hamilton Law Firm, P.C., Storm Lake, for plaintiff-appellant.

Paul D. Havens of White, Prichard, Flores & Havens, Storm Lake, for defendant-appellee.

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

DONIELSON, J.

Plaintiff, the City of Lakeside, appeals from declaratory judgment ordering that a water contract with defendant, the City of Storm Lake, requires plaintiff to pay for water at the flat rate charged to defendant's residential users rather than at the lesser graduated rate charged by the defendant to its industrial and commercial users. We affirm.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4.

I.

In 1967, the City of Lakeside entered into a forty-year contract to purchase water from the City of Storm Lake. The following provision of that contract is at issue in this appeal:

It is agreed that Storm Lake will provide water to Lakeside and that Lakeside will pay Storm Lake for said water, 110% of the rate charged by Storm Lake to its domestic users. It is expressly agreed that Storm Lake shall have the right to amend its water rate to domestic users at any time during the term of this agreement, but in no event will Lakeside be charged more than 110% of the rate charged to domestic users of Storm Lake.

At the time the contract was entered into, Storm Lake charged the same graduated rate to both its residential and its commercial users. In 1978, however, Storm Lake passed an ordinance amending its water rates and establishing a classification system whereby its residential users were charged a flat rate of \$1.45 per thousand gallons and its commercial and industrial users were charged on a sliding scale rate that included a quantity discount. On the basis of this amendment, Storm Lake then began to charge Lakeside the same flat rate it charged to its residential users, a rate considerably higher than the rate at which Lakeside had been buying water prior to the 1978 amendment.

Lakeside then filed an equity petition, requesting that the court adjudicate the rights and obligations of the parties under the 1967 contract. Specifically, plaintiff urged the court to adopt the position that the contract term "domestic" was intended by the parties to mean "internal" to the City of Storm Lake rather than "residential" and that Lakeside, as an incorporated municipality, was entitled to the lesser sliding scale rates charged to Storm Lake's industrial and commercial users pursuant to the 1978 amendment. In its judgment filed on October 19, 1979, the trial court noted that the common dictionary meaning of "domestic" is "of or pertaining to the household or

family" and concluded that the term "domestic" as used in the parties' contract was clearly synonymous with the term "residential" as used in the 1978 amendment to the Storm Lake ordinance. The court then ordered Lakeside to pay for its water at the flat rate applicable to Storm Lake's residential users and Lakeside brought this appeal.

II.

Plaintiff Lakeside first challenges the trial court's conclusion that the contract provision is clear and unambiguous and that the term "domestic" as used here is synonymous with "residential." We, however, agree with the trial court.

When asked to interpret the terms of a contract, our object is to ascertain and give effect to the intentions of the contracting parties. Youngwirth v. State Farm Mutual Automobile Insurance Co., 258 Iowa 974, 978, 140 N.W.2d 881, 883 (1966); Iowa R. App. P. 14(f)(14). In so doing, if the contract is clear and unambiguous, we will not resort to rules of construction, Kinney v. Capitol-Strauss, Inc., 207 N.W.2d 574, 576 (Iowa 1973), but will instead determine intent by what the contract itself says. Iowa R. App. P. 14(f)(14). A contract is ambiguous when its language is capable of being reasonably understood in either of two or more possible senses. Youngwirth, 258 Iowa at 979, 140 N.W.2d at 884; Wilson v. State Farm Mutual Automobile Insurance Co., 256 Iowa 844, 847, 128 N.W.2d 218, 220 (1964). We do not think that to be the case here, however, and conclude that by the choice of the term "domestic users," the parties clearly and unambiguously expressed their intent that Lakeside should pay for its water at 110% of the rate charged by Storm Lake to its residential users. That this was the intent of the parties is illustrated by the fact that Storm Lake would presumably not enter into a contract that could conceivably result in Lakeside residents paying lower rates than Storm Lake residents for Storm Lake water, a situation that could arise at some point in the future if the rates paid by Lakeside were not tied to the rates paid by residents of Storm Lake. We of course cannot be certain that the parties perceived this potential problem at the time they entered into the contract, but had they done so, it is inconceivable that Storm Lake would expose its residents to the possibility of paying higher rates than Lakeside residents for Storm Lake water. Furthermore, it is our duty to attempt to avoid unjust and unreasonable results in construing contracts. Miller v. Geerlings, 256 Iowa 569, 579, 128 N.W.2d 207, 213 (1964). We therefore conclude that the parties intended Lakeside to pay 110% of the rate paid by residential users of Storm Lake.

III.

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Over plaintiff's objection, the trial court admitted extrinsic evidence regarding the manner in which a Storm Lake trailer park was charged for water both before and after the 1978 rate amendments. Before the rates were amended the trailer park, which serviced its nearly one hundred residential units through one meter, paid on the same sliding scale rate used for all of Storm Lake's customers, including Lakeside. After the rate amendments, however, the trailer park was charged the flat rate used for Storm Lake residents.

Plaintiff objects to admission of this evidence on the ground that it is not relevant to the determination of the appropriate rate for Lakeside, but we disagree. Relevance is determined by the extent to which the offered evidence makes the desired inference more probable than it would be without it. McCormick on Evidence § 185, at 437 (2d ed. E. Cleary 1972). We think that the challenged evidence is clearly relevant to the question before us. Both Lakeside and the trailer court serviced all their residents through a single meter. The fact that Storm Lake charges the flat rate to large groups of its own residents who are served by one meter makes more likely the inference that a group of non-Storm Lake residents who find themselves similarly situated should be charged the same rate for Storm Lake water as that charged to the Storm Lake residents. We conclude that the challenged evidence is relevant and admissible and we affirm the trial court judgment.

AFFIRMED.