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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-345 / 93-1482

RATHBUN AREA SOLID WASTE COMMISSION,

Plaintiff-Appellant,

vs.

GLENN MORROW and DORIS MORROW,

Defendants-Appellees.

Appeal from the Iowa District Court for Appanoose County, Phillip R. Collett, Judge.

Rathbun Area Solid Waste Commission appeals a judgment declaring the rights of the parties under a ground lease. **AFFIRMED.**

Michael J. Eason and Ivan T. Webber of Ahlers, Cooney, Dorweiler, Haynie, Smith & Allbee, P.C., Des Moines, and Mark Kruse, County Attorney, for appellant.

Richard C. Bauerle of Keith, Orsborn, Bauerle, Milani & Neary, Ottumwa, for appellees.

Heard by Donielson, C.J., and Cady and Huitink, JJ.

HUITINK, J.

Rathbun Area Solid Waste Commission appeals from a judgment declaring the rights of the parties under a ground lease. We affirm.

In 1975 Glen and Doris Morrow (Morrows) leased land in Appanoose County to Mott Quarries, Inc. (Mott) in contemplation that Mott would use the land as a solid waste disposal landfill. Shortly thereafter, Mott entered into contracts with Appanoose County and various cities which agreed to pay Mott a certain dollar amount per household within their borders for the disposal of the cities' solid waste on Mott's leased land. The lease between Morrows and Mott provided for a $500 monthly rent and "in addition [lessor] shall be paid ten percent of that part of gross income received by lessee annually from the governmental subdivisions for the operation of the landfill which exceeds a base of sixty thousand dollars ($60,000)."

In December 1983 Appanoose County and the cities in the vicinity of the landfill entered into an intergovernmental agreement and created the Rathbun Area Solid Waste Commission (commission) pursuant to Iowa Code chapter 28E (1993). The commission was a legal entity organized to provide solid waste management in and around Appanoose County. In 1989 the commission purchased Mott's interest in the ground lease between Morrows and Mott. The commission began charging a "gate fee" which was a per ton charge assigned directly to the dumper as opposed to

receiving payments made by the cities based on tax revenue. The idea was to prevent small users of the landfill from subsidizing large users. Consequently, in 1991 the commission collected its last payment from individual governmental units or cities. Since then the commission's landfill operation revenue has been in the form of gate fees, and it has not paid Morrows any "additional rent" as provided in the lease.

The parties disputed whether gate fees constituted "income received . . . from the governmental subdivisions for the operation of the landfill" to determine if additional rent was still due to Morrows under the lease. The commission brought a declaratory judgment action concerning the meaning of that part of the lease.

The district court found the lease provided for payment of additional rent from all gross income the commission received from operation of the landfill. Accordingly, the commission was to pay the required amount received in gate fees to Morrows.

The commission contends the gate fees constitute income from landfill users that are not "governmental subdivisions" and thus the income is not a part of the "additional rental" agreed to by the parties. The commission argues the language in the contract contemplates the possibility of no additional rental due if income was not being received from the governmental subsidies. Since this declaratory judgment action was brought in equity, our review is de novo. Iowa R. App. P. 4.

The guiding principle in contract construction is that the parties' intent controls; and except in cases of ambiguity, this is determined by what the contract itself says. Iowa R. App. P. 14(f)(14); Iowa Fuel and Minerals v. Bd. of Regents, 471 N.W.2d 859, 862 (Iowa 1991). The contract will be read in light of the surrounding circumstances and given such practical constructions as is placed thereon by the parties at the time of execution. Lovlie v. Plumb, 250 N.W.2d 56, 59 (Iowa 1977).

An ambiguity exists when, after application of pertinent rules of interpretation to the face of the instrument, a genuine uncertainty exists concerning which of two reasonable constructions is proper. Berryhill v. Hatt, 428 N.W.2d 647, 654 (Iowa 1988). If the contract is not ambiguous, it will be enforced as written, but when there are ambiguities, they are strictly construed against the drafter. Village Supply Co. v. Iowa Fund, Inc., 312 N.W.2d 551, 555 (Iowa 1981) (citation omitted).

Because a contract is to be interpreted as a whole, it is assumed in the first instance that no part of it is superfluous; an interpretation which gives a reasonable, lawful, and effective meaning to all terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect. Iowa Fuel, 471 N.W.2d at 863. Furthermore, a contract will not be interpreted giving discretion to one party in a manner which would put one party at the mercy of another, unless the contract clearly

requires such an interpretation. Id. (citing Midwest Management Corp. v. Stephens, 291 N.W.2d 896, 913 (Iowa 1980); Harvey Constr. Co. v. Parmele, 253 Iowa 731, 741-42, 113 N.W.2d 760, 766 (1962)). Particular words and phrases in a contract are not to be interpreted in isolation. Id. (citations omitted).

After applying these principles to the terms of the contract we find no ambiguity in the language used. The language of the lease clearly and unambiguously expresses the intention to pay Morrows percentage rents for the operation of the landfill. We are not persuaded that the formation of the commission allows it to avoid paying Morrows any percentage rents.

Under the commission's interpretation the focus is placed on the phrase "governmental subdivisions." This interpretation means the Morrows are owed percentage rents only from those governmental subdivisions using the landfill. However, isolating "governmental subdivisions" from the rest of the contract leaves the phrase "for the operation of the landfill" without effect.

The parties entered into the contract to provide compensation in exchange for the use of the real estate. The payment of the consideration was dependent upon the operation of the landfill, not the entity paying the Morrows. The cities expected to use the landfill, and they had no limits on the amount of waste they could deposit in the landfill. The Morrows expected payment for allowing

the cities to use the landfill. The parties' mutual expectations were that the consideration paid would increase as the volume of waste deposited increased.

The commission's interpretation places the Morrows at its mercy. This results in a windfall to the commission and makes its contractual obligation illusory and unenforceable. See Iowa Fuel, 471 N.W.2d at 863. It also disregards the expectations of the parties when they first entered into the contract. The commission cannot escape its legal obligation to compensate Morrows for the volume of waste deposited at the landfill at a minimum return while sharing the revenues of any increased business.

When the contract is read in light of the circumstances surrounding its formation, it is clear the parties intended to compensate Morrows for the operation of the landfill through percentage rents. The commission's interpretation of the contract language is contrary to the intent of the parties as well as the other principles of contact construction. See id. at 862-63.

We have considered all of the arguments advanced by the commission and find them to be without merit. The contract requires the commission to pay Morrows (on an annual basis) ten percent of all gate fees (which exceed the $60,000 base) received by the commission from the operation of the landfill. We therefore affirm the decision of the district court and remand for entry of judgment.

Costs of this appeal are assessed to the commission.

AFFIRMED.

Donielson, C.J., concurs; Cady, J., dissents.

CADY, J. (dissenting)

I respectfully dissent. When a contract is not ambiguous, it will be enforced as written. Spilman v. Board of Directors, 253 N.W.2d 593, 596 (Iowa 1977). Our task is not to alter a contract for the benefit of one party and to the detriment of another based on our sense of fairness. Osterling v. Sturgeon, 261 Iowa 836, 843, 156 N.W.2d 344, 348-49 (1968). Nor must we, under the disguise of interpretation, relieve one of the parties to a contract from the terms which were voluntarily assumed. Id. Nor must we, based on equity considerations, obviate later objections to a contract which might have been foreseen and could have been guarded against. Id.

The majority concludes the parties intended for the consideration under the contract to be tied to the volume of waste deposited on the land, and the contract would be rendered illusory and unenforceable if the intent was not followed. In coming to this conclusion, the majority acknowledged the language of the contract was unambiguous. I am unable to locate the language in the contract to support the intent found by the majority. To the contrary, the language of the contract reveals the parties contemplated that the rent payments would be derived from

two sources. One source was the lessee in the form of a fixed monthly payment. The second source was from governmental subdivisions which the lessee would permit to use the landfill during the term of the lease agreement. There was no language indicating the parties ever contemplated the events which gave rise to this litigation. The contract did not prohibit an assignment of the lessee's rights and obligations, and no provisions were included in the agreement to define the rights and obligations of the parties in the event the second source of funding of the rent was eliminated, for whatever reason. Consequently, it is not our role to substitute our judgment.

I also disagree with the conclusion by the majority that the commission's interpretation would render the contract illusory and unenforceable. I acknowledge we should avoid interpretations which render a contract unenforceable, but the commission's interpretation does not make the obligations under the contract in this case illusory. Failure of consideration impacts a contract only if the alleged failure is total. Johnson v. Dodgen, 451 N.W.2d 168, 172 (Iowa 1990). In this case, the lessee is still obligated to pay the fixed monthly rent of $500.

I have empathy for Morrow's claim, but court's are bound to apply the governing legal principles in the resolution of contract disputes. The world is filled with contracts which one of the parties would like to rewrite

because it is no longer as advantageous as thought at the time it was made. See Harrington v. Harrington, 365 N.W.2d 552 (N.D. 1985). If we allow a party to rewrite a contract because it has become unfair, we destroy the very purpose of a contract. I would reverse the decision of the trial court.