

Waste Diversion/Landfill: Federal District Court Addresses Successor-In-Interest Issue



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

04/02/2020

Co-Author: Hannah Hines

The United States District Court for the Southern District of Alabama (“Court”) in a February 21st Order addressed a dispute involving a waste disposal contract. See *WM Mobile Bay Env'tl. Ctr., Inc. v. City of Mobile*, No. CV 18-00429-KD-MU, 2020 WL 869215 (S.D. Ala. Feb. 21, 2020).

The issue addressed involved the rights of a successor-in-interest to a landfill operation to enforce a prior agreement between a City and another party regarding waste disposal.

The City of Mobile Solid Waste Disposal Authority (“Authority”) in 1993 signed a contract with TransAmerican Waste Industries (“TWI”). TWI agreed to operate its Chastang Landfill.

The Authority also agreed to deposit all of Mobile’s solid waste at Chastang Landfill. The City of Mobile (a co-defendant in this suit) in 1994 entered into an agreement with the Authority which designated the Chastang Sanitary Landfill as the sole deposit point of all non-hazardous and non-infectious municipal solid waste collected by the City.

Chastang Landfill, Inc. was incorporated as a subsidiary to TWI. TWI executed an Asset Contribution Agreement with Chastang Landfill, Inc., granting it all of TWI’s rights, titles, and interests in the landfill. Chastang Landfill, Inc. later changed its name to WM Mobile Bay Environmental Center, Inc. (“Plaintiff”). In 2013 it filed suit against the Authority and the City of Mobile (“Defendants”) claiming that the Defendants had breached the terms of the 1993 and 1994 agreements by diverting construction and demolition waste and other waste to a different facility.

The suit was settled in 2017.

The Defendants agreed to pay Plaintiff a sum of damages. However, certain payments were never made because the Mobile City Council did not approve the necessary funding. The Plaintiff then filed suit for breach of this settlement. It also renewed its claim for breach of contract for the alleged violation of the 1993 and 1994 agreements.

Plaintiff was not a party to the 1994 agreement. Nor was its predecessor TWI. Therefore, a demonstration was required that it was an intended, direct third-party beneficiary under the agreement.

The Court stated that “[u]nder Alabama law, a third person has no rights under a contract between others unless the contracting parties intend that the third person receive a direct benefit, enforceable in court, as opposed to an incidental benefit.” To prove this, the “third-party beneficiary must establish:

- (1) that the contracting parties intended, when they entered the contract, to bestow a direct, as opposed to an incidental, benefit upon a third party;
- (2) that the plaintiff was the intended third-party beneficiary of the contract; and
- (3) that the contract was breached.”

The intent to bestow a direct benefit can be inferred from the circumstances surrounding the agreement’s formation. However, a court will first look to the contract itself to decide if the requisite intent is present.

The Court initially addressed whether Plaintiff was a successor-in-interest to any of TWI’s alleged rights. Such rights would have been originally bestowed upon TWI as the then-operator of the landfill.

The Defendants argued that the Plaintiff was not a successor-in-interest. This was premised on the assertion that the Asset Contribution Agreement indicated only the sale of an asset.

Alabama law requires reference to contractual rights. The Court noted that in the Agreement TWI conveyed all of its rights, title, and interest in the landfill. Since TWI’s interest was based solely on the 1993 contract to operate the landfill, it properly conveyed this contract to Plaintiff. This was the case even if it was not explicitly listed. Therefore, Plaintiff was a successor-in-interest to any third-party benefits under the agreement if they did in fact exist.

The Court considered whether Plaintiff had valid standing as a third-party beneficiary to the 1994 agreement. Though the Court noted that the Authority clearly foresaw that the operator of the landfill would benefit from the agreement, it stated:

“foreseeability alone . . . does not confer third-party beneficiary status.”

The Court then addressed “[t]he stated purpose of the agreement, [which] was to benefit the citizens of Mobile by providing a long-range plan for meeting the City’s ‘needs for landfill to dispose of its solid waste at a reasonable price.’”

The intended beneficiaries of the agreement were deemed to be the citizens of Mobile. Any benefit bestowed to the operator of the landfill was deemed incidental. The Court noted that the agreement expressed no preference as to who operated the landfill. Further, there was no preference indicated as to how the landfill would be operated. This was held to demonstrate that the purpose of the agreement was not to benefit the operator. Instead, the citizens were held to be the focus of any benefits.

The 1994 agreement was also held to provide that it was effective for 20 years. Alabama law prohibited the Defendants “from entering into a contract for services” for more than three years. As a result, the Court stated it was:

“implausible to say that the City intended to be contractually bound to [the landfill operator] for at least twenty years when it was prohibited by law from doing so.”

The Plaintiff, WM Mobile Bay, was not a third-party beneficiary to the 1994 agreement. Therefore, it did not have a cause of action against the Defendants.

The Court noted that even if WM Mobile Bay was a third-party beneficiary, “it ha[d] waived any right to claim that status.” “[W]aiver is the intentional relinquishment of a known right . . . shown in an unequivocal manner.” To assert the affirmative defense of waiver, the asserting party must show:

- (1) that the other party intended to waive a known right and demonstrated this by some external act manifesting that assent, and
- (2) the party asserting the waiver was induced to act upon its belief that there was a waiver and incurred trouble or expense because of this.

The Court stated that between 1993 and 1997, waste was being diverted to another landfill in violation of the prior agreements. WM Mobile Bay's predecessors-in-interest, TWI, submitted proposals to have the waste diverted to another landfill it owned, and "[t]hus, rather than assert its asserted right to have the said waste delivered by the City to the Chastang Landfill, WM Mobile (TWI) proposed a new facility to receive said waste." Further, when the City subsequently entered into a contract with another entity to receive the waste at issue, TWI "did nothing . . . to assert its alleged rights against the City."

In fact, "no formal action was taken against the City until 2018 by the Plaintiff as the purported third party beneficiary of the 1994 [a]greement." Finally, the City incurred trouble and expense in trying to find a disposal site for the diverted waste. Therefore, the Court found that the Plaintiff, through these prior actions and inactions, had "waived any alleged third-party beneficiary rights under the 1994 Agreement."

The Court also addressed WM Mobile Bay's claim for breach of the settlement agreement. The Defendants argued that any settlement was null and void because Alabama law prohibits government officers, departments, or agencies from entering into any contracts to expend money in excess of amounts appropriated for that kind of expenditure. The settlement required passage of a budget amendment. Therefore, the statute was held violated and the agreement unenforceable.

Because the Plaintiff had no claim under the 1994 Agreement and the settlement was declared unenforceable, the Court granted summary judgement in favor of the Defendants.

A copy of the decision can be found [here](#).