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Landfill/Real Estate Repurchase Option: Kansas Appellate Court Addresses Whether Contract and/or Applicable Law Impose Closure Obligation

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The Court of Appeals of Kansas (“Appellate Court”) addressed in an October 21st Opinion a question arising out of a contract that provided the right to repurchase the real estate on which the landfill occupies. See *South Mulberry Properties, L.L.C., v. GT Management, L.L.C.*, 2022 WL 12127266.

The issue addressed was whether the current landfill owner/operator was obligated to undertake closure of the landfill upon transfer to the party that held the real estate repurchase option.

GT Management, L.L.C., (“GT”) owns land upon which it operates a landfill under a permit from the Kansas Department of Health and Environment (“KDHE”). South Mulberry Properties, L.L.C., (“SMP”) is stated to have held an exclusive option to repurchase the real estate that the landfill occupies. SMP decided to exercise this option to repurchase the real estate.

The question considered was whether the underlying contract and applicable law required GT to undertake closure pursuant to the applicable regulations prior to conveying the property to SMP.

A lower court ultimately found, pursuant to Summary Judgment Motions, that:

- The applicable contract requires GT to close the landfill before it is transferred to SMP.
- GT is not responsible for addressing off-site waste found on property north of the landfill.

The Appellate Court upheld the lower court in regard to its finding that GT was not responsible for addressing off-site waste. However, it reversed the lower court and found that neither the contract nor Kansas law required closure of the landfill before title to the real estate is transferred.

In addressing the closure issue, the Appellate Court cited various paragraphs to the relevant contract. It found, in reading the contract as a whole, that the parties intended that the landfill be operated in compliance with all applicable statutory and regulatory provisions. This was indicated to include at the time of closure or transfer of the property.

The contract was held to not require GT to close the landfill simply because SMP was exercising its exclusive repurchase option. It states in relevant part:

The plain language of paragraph 10 does not impose an absolute obligation on GT to close the Landfill. Rather than creating an independent contractual obligation on GT that it be responsible for closure of the

Landfill, the closure obligations are those required by Kansas law at the time closure occurs. Thus, the contract directs that “in no event” shall exercise of the option interfere with GT’s obligation to close the Landfill “in compliance and conformance with the then existing rules and regulations of the State of Kansas or such other governmental entities which shall have jurisdiction over such operation.” (Emphasis added.) The parties did not agree that GT would close the Landfill when the option was exercised; they agreed that closure obligations would be in conformance and compliance with the KDHE regulations in effect at the time the option was exercised. It is fair to say the parties did not know what closure obligations GT would ultimately have because those obligations were based on the regulation in effect at the time the option was exercised rather than on the regulatory requirements at the time the contract was signed.

GT’s obligation to close the landfill was deemed to arise from the KDHE rules and regulations. The Appellate Court noted that there is no KDHE rule or regulation requiring closure of the landfill simply because it is sold or transferred.

The lower court’s denial of declaratory judgment for SMP holding it was not responsible off-site waste was correct. However, the appropriate basis for denial was that the issue was not ripe for adjudication. The Appellate Court noted that SMP:

Seeks to shield itself from liability in any future KDHE action to avoid an obligation that the KDHE has not yet imposed—and might never impose.

As a result, the issue is deemed not ripe.

A copy of the Opinion can be downloaded [here](#).