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## **CONTRACTS - ALABAMA**

### **WM Mobile Bay Environmental Center, Inc. v. City of Mobile Solid Waste Authority**

**United States District Court, S.D. Alabama, Southern Division - December 22, 2014 - Slip Copy - 2014 WL 7336095**

The City of Mobile Solid Waste Authority (SWA) and WM Mobile Bay Environmental Center, Inc. (WM Mobile) (as successor in interest) are parties to a 1993 Solid Waste Management Contract for landfill operations and other solid waste management operations (the Contract).

In 2003, SWA entered into a Lease Agreement with Waste Away Group, Inc. (Waste Away) – WM Mobile’s parent company – whereby Waste Away leased the Landfill from SWA for a term ending October 2038. The Lease was part of a bond issue by SWA in which tax-exempt bonds were issued and the proceeds were used by Waste Away to obtain new disposal cells and liner systems, improve the leachate and methane gas collection systems, and acquire equipment for the landfill.

WM Mobile brought suit against SWA for breach of the terms of the 1993 Contract. WM Mobile sought a declaratory judgment to establish the current rates for waste disposal at the Landfill and hauling waste from the transfer station to the Landfill. WM Mobile also sought a declaratory judgment as to SWA’s contract obligation to work with WM Mobile to expand the service area for the Landfill. SWA filed a counterclaim for breach of contract against WM Mobile alleging that royalties had been underpaid for 2012 and 2013.

In response, SWA argued that the 2003 Lease Agreement between Waste Away and SWA was dispositive of all the claims relating to the financial relationship between the parties because the Lease restructured the financial obligations and other terms of the 1993 Contract.

WM Mobile argued that the Lease had no bearing on this litigation, as it was not a party to the Lease. WM Mobile also argued that the Contract provided that it “may be modified, amended, discharged or waived only by an agreement in writing signed by each party” but there was no such agreement and no clear expression in the Lease that it was intended to modify or amend the Contract.

The District Court held that:

- The 2003 Lease Agreement did not supplant the 1993 Contract, denying all of SWA’s motions for summary judgment brought under this argument;
- There existed a genuine issue of material fact as to whether SWA failed to negotiate price adjustments and reimbursements in good faith, and whether WM Mobile provided sufficient documentation, denying WM Mobile’s motion for summary judgment on this issue;
- SWA officially approved the expansion of the landfill on two occasions, but that the expansion efforts were thwarted by the
- City’s and County’s inaction, granting SWA’s motion for summary judgment on this issue;
- WM Mobile was owed reimbursement and indemnification in the amount of \$23,064.50;

- WM Mobile owed royalties on the solid waste deposited by Waste Management and its affiliates, and therefore, WM Mobile was not entitled to summary judgment as to this count;
- SWA had breached the Contract by delivering certain City of Mobile waste to another landfill, with the issue of damages to be determined at trial.

Shout out to my peeps at Maynard, Cooper & Gale!

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