

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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CHARTER TOWNSHIP OF ORION,

Plaintiff-Appellant,

v

OAKLAND COUNTY BOARD OF  
COMMISSIONERS and SOLID WASTE  
PLANNING COMMITTEE,

Defendants-Appellees,

and

WASTE MANAGEMENT OF MICHIGAN, INC.,

Intervening Defendant.

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UNPUBLISHED

April 14, 1998

No. 198056

Oakland Circuit Court

LC No. 90-392783-CE

Before: Michael J. Kelly, P.J., and Hood and Gribbs, JJ.

PER CURIAM.

Plaintiff appeals as of leave granted the directed verdict entered in favor of defendant Oakland County during a bench trial. We affirm.

This litigation arises from an agreement between the parties relating to the operation of the Eagle Valley landfill located in Orion Township in Oakland County. Oakland County Board of Commissioners and the Solid Waste Planning Committee (hereinafter referred to as "Oakland County") sought repayment of approximately \$1.5 million paid to plaintiff under the agreement. Plaintiff opposed the repayment and sought to require Oakland County to pay it the remaining \$5.5 million it alleges it is owed under the agreement. The trial court entered a directed verdict in favor of Oakland County, and ordered plaintiff to repay the \$1.5 million.

Plaintiff argues that the court erred in granting a directed verdict in favor of Oakland County based upon an implied condition in the agreement which required Oakland County to obtain a sufficient number of IGA's (inter-governmental agreements) with other municipalities for waste disposal in order to provide a sufficient amount of revenue to retire the bonds. Plaintiff argues that the condition required for it to receive the \$7 million under the agreement was the approval of a bond issue by the voters of Oakland County, and not the issuance of the bonds as the agreement stated. Plaintiff contends that there would be no mutuality of obligation or that it would not have received any consideration if Oakland County were permitted to seek repayment by failing to issue the bonds. We disagree.

This Court reviews the trial court's decision to grant a directed verdict de novo. *Meagher v Wayne State Univ*, 222 Mich App 700, 708; 565 NW2d 401 (1997). Where contractual language is clear, its construction is a question of law for the court to decide. *Dillon v DeNooyer Chevrolet*, 217 Mich App 163, 166; 550 NW2d 846 (1996). Contractual language is construed according to its plain and ordinary meaning, and technical or constrained constructions are to be avoided. *Id.*

We find that the court did not err in finding that a condition existed which required Oakland County to obtain a sufficient number of IGA's prior to issuing its approved bonds. The host agreement clearly stated that plaintiff would be required to repay funds it received from Oakland County if the landfill were not used for waste disposal by a county system and/or if the bonds were not issued by the county. The testimony of former Orion Township supervisor Joanne VanTassel, in which she indicated that only voter approval was necessary to receive the payments, is contradicted by the clear terms of the written agreement between the parties. In addition, the draft of the proposed IGA, which was incorporated by reference into the agreement, stated that adequate supplies of solid waste and revenues were necessary to operate an economically feasible viable county waste system. Plaintiff was therefore aware of the necessity of Oakland County to create an operating county waste disposal system, through obtaining a sufficient number of IGA's, in order to meet its obligations under the agreement. A county waste system was never formed and did not use the Eagle Valley Landfill for any waste disposal. Oakland County did not issue bonds because it did not obtain a sufficient number of IGA's. Plaintiff received consideration from Oakland County in the agreement because Oakland County promised to pay it \$7 million in the event the bonds were issued and the landfill was used by a county system. Although the consideration was conditional, it was bargained for when the parties signed the agreement. Accordingly, the trial court did not err in granting a directed verdict in favor of Oakland County based on the terms of the agreement.

Plaintiff argues that Oakland County should have been compelled to comply with making payments under the agreement pursuant to the doctrine of promissory estoppel. However, plaintiff did not raise this theory in opposing the motion for a directed verdict, and we decline to review it. As a general rule, appellate review is limited to issues decided by the trial court. *Bowers v Bowers*, 216 Mich App 491, 495; 549 NW2d 592 (1996). In any event, plaintiff has not demonstrated evidence of a clear promise by Oakland County that it would make payments to it under the agreement based on any conditions other than those specified in the agreement.

Plaintiff also contends that the trial court erred in granting a directed verdict based upon the doctrine of frustration of purpose. We agree. Before the courts will allow a party to avail himself or

herself of the doctrine of frustration of purpose, the following must be present: (1) the contract must be at least partially executory; (2) the frustrated party's purpose in making the contract must have been known to both parties when the contract was made; and (3) this purpose must have been basically frustrated by an event not reasonably foreseeable at the time the contract was made, the occurrence of which has not been due to the fault of the frustrated party and the risk of which was not assumed by him. *Molnar v Molnar*, 110 Mich App 622; 626; 313 NW2d 171 (1981). We find that the event allegedly causing the frustration of the agreement's purpose, the failure to obtain a sufficient number of IGA's, was an event clearly foreseeable by the parties at the time the agreement was made. Hence, the trial court erred in applying the doctrine of frustration of purpose. However, the directed verdict was otherwise proper based on the terms of the agreement.

Affirmed.

/s/ Michael J. Kelly

/s/ Harold Hood

/s/ Roman S. Gibbs