

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
SAN ANGELO DIVISION

REPUBLIC WASTE SERVICES OF TEXAS, LTD.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action
)	No. 6:14-cv-67-C
TEXAS DISPOSAL SYSTEMS, INC.,)	
)	
Defendant.)	

**REPUBLIC’S MOTION FOR ENTRY OF SUMMARY JUDGMENT FOLLOWING
REMAND, REQUEST FOR STATUS CONFERENCE, AND BRIEF IN SUPPORT**

The U.S. Court of Appeals for the Fifth Circuit issued its mandate in this case on January 6, 2017. *See* Docket Entry No. 44. The Fifth Circuit reversed in part, vacated in part, and remanded for further proceedings consistent with its opinion. Plaintiff Republic Waste Services of Texas, Ltd. respectfully requests that this Court implement the mandate by entering a judgment on the issue that the Fifth Circuit resolved, and by setting a status conference to discuss and determine an efficient course toward trial.

Background

The underlying facts are essentially undisputed, as both parties concede. *See* Docket Entry No. 37, at 2. Republic and the City of San Angelo have entered into an exclusive contract for the management of all solid waste, including construction waste. Defendant Texas Disposal Systems, Inc. nevertheless collects and hauls construction waste from within San Angelo, arguing that Republic’s exclusive

contract is invalid with respect to construction waste due to section 364.034(h) of the Texas Health and Safety Code. In 2014, Republic sued TDS for tortious interference with an existing contract, seeking declaratory relief as to the validity of its exclusive contract with the City, an injunction against TDS's continued servicing of construction projects, and money damages. *See generally* Docket Entry No. 1.

TDS filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), *see* Docket Entry No. 8, while Republic filed a motion for partial summary judgment pursuant to Rule 56(a) and brief in support, *see* Docket Entry No. 11, both of which raised the legal question over the validity of Republic's exclusive rights as to construction waste. Holding that section 364.034(h) abrogated the City's preexisting authority to enter into an exclusive contract for the disposal of construction waste, the Court granted TDS's motion, denied Republic's motion, and dismissed the case with prejudice. *See* Docket Entry No. 37 & 38. Republic appealed. *See* Docket Entry No. 40.

The Fifth Circuit ultimately gave a different answer to the legal question, "hold[ing] that the language in Section 364.034(h) fails to indicate with unmistakable clarity that the legislature intended to restrict a home-rule city's authority to enter into an exclusive contract for solid waste disposal services to a construction project." *Republic Waste Servs. of Tex., Ltd. v. Tex. Disposal Sys., Inc.*, No. 15-11035, slip op. at 9 (5th Cir. Dec. 15, 2016). Accordingly, the Fifth Circuit reversed the dismissal, vacated the denial of summary judgment, and remanded for

further proceedings consistent with its opinion. *See id.* The mandate issued after TDS declined to file a petition for rehearing. *See* FED. R. APP. P. 41(b).

Argument and Authorities

Now that the Fifth Circuit has issued its mandate, the validity of Republic's exclusive contract is settled as a matter of law. Of course, this Court is bound to "implement both the letter and the spirit of the appellate court's mandate." *Perez v. Stephens*, 784 F.3d 276, 280 (5th Cir. 2015). It should do so by granting declaratory to Republic on the motion for partial summary judgment, denial of which was vacated on appeal. The Court has described what this would entail:

Specifically, [Republic] seeks a declaration that it has the exclusive right to provide all solid waste disposal within the City of San Angelo, including construction waste. [Republic] also seeks an injunction forcing [TDS] to cease soliciting customers within the City of San Angelo and enjoining [TDS] from collecting and hauling construction and demolition waste that originates within the City of San Angelo.

Docket Entry No. 37, at 1–2.

There is no reason to delay such a grant of prospective declaratory relief, beyond the two years Republic has already waited since filing its complaint. "[T]he sole issue to be decided . . . is a matter of statutory construction," as this Court correctly noted in a prior order. Docket Entry No. 37, at 2. The fact issues relevant to declaratory relief were undisputed at the time of Republic's prior summary judgment, and they remain so. The Fifth Circuit has conclusively decided the sole disputed legal issue in Republic's favor, so summary judgment granting declaratory relief should follow as a matter of course. TDS cannot be allowed to continue impinging on Republic's rights under the exclusive contract with the City.

That leaves the matter of retrospective relief, in the form of damages attributable to TDS's tortious interference with Republic's exclusive contract, and permanent injunctive relief. By January 20, 2017, TDS is expected to file an answer that will raise the affirmative defense of justification. *See* FED. R. CIV. P. 12(a)(4)(A) (noting that "the responsive pleading must be served within 14 days after notice of the court's action" denying the motion to dismiss). Once that happens, the Court should hold a status conference to take stock of what remains to be done on remand, and to give guidance to the parties about the expected course of these proceedings.

Conclusion

The Court should enter a judgment granting declaratory relief in Republic's favor. The Court should also hold a status conference to determine how the remainder of this case will proceed in light of the Fifth Circuit's mandate.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

Counsel for Republic Waste Services of Texas, Ltd. conferred with counsel for Texas Disposal Systems, Inc. regarding whether the Motion is opposed. Counsel for Texas Disposal Systems, Inc. indicated that the Motion opposed.

By: /s/ Edwin Buffmire
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CERTIFICATE OF SERVICE

This is to certify that on this 18th day of January, 2017, this document was served electronically via the Court's ECF system upon the persons on the service list below:

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