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

REPUBLIC WASTE SERVICES OF TEXAS, LTD.,	)	
Plaintiff,	)	
v.	)	
TEXAS DISPOSAL SYSTEMS, INC.,	)	
Defendant.	)	Civil Action No. 6:14-CV-067-C

ORDER

Came on to be heard on September 14, 2015, Defendant Texas Disposal Systems, Inc.'s Rule 12(b)(6) Motion to Dismiss, along with Plaintiff Republic Waste Services of Texas, Ltd.'s Motion for Partial Summary Judgment. Defendant's Motion to Dismiss was filed November 20, 2014, and Plaintiff's Motion for Partial Summary Judgment was filed December 12, 2014. The Court fully considered not only the Motions, but also the respective Responses, Replies, and Supplements.

I. BACKGROUND

This case is a declaratory judgment action relating to the rights of Republic Waste under a contract entered into with the City of San Angelo for solid waste disposal. Specifically, Republic Waste 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 Waste also seeks an injunction forcing Texas Disposal to cease soliciting customers within the City of San Angelo and enjoining Texas Disposal from collecting and hauling construction and demolition waste that originates

within the City of San Angelo. Finally, Republic Waste seeks damages based upon a claim of tortious interference with contract.

Texas Disposal contends that the contract (which it recognizes as having been entered into and in effect) is not valid for construction and demolition waste. Texas Disposal also has a contract with the City of San Angelo that allows it to provide any service that does not conflict with the City's contract with Republic Waste and the exclusive rights granted by that contract.

The parties conceded at the hearing that the facts are not in dispute and the central issue of both pending motions is a matter of law. More specifically, the sole issue to be decided by the Court is a matter of statutory construction. Counsel for both parties presented thorough and cogent arguments to assist the Court in this matter of first impression.

II. STANDARDS

Rule 12(b)(6)

In order for a complainant to state a claim for relief, the complainant must plead a short, plain statement of the claim showing entitlement to such relief. *See* Fed. R. Civ. P. 8. To survive a motion to dismiss for failure to state a claim, a complaint must contain sufficient factual matter that, if accepted as true, "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp.* v. *Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* It follows that "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'" *Id.* at 1950 (quoting Fed. R. Civ. P.

8(a)(2)). While this standard does not require the complainant to make detailed factual allegations, it does demand more than a complainant's bare assertions or legal conclusions. *Id.* at 1949. Hence, formulaic recitations of the elements of a cause of action supported by mere conclusory statements do not satisfy Rule 8. *Id.*

Summary Judgment

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A dispute about a material fact is "genuine" if "it is real and substantial, as opposed to merely formal or a sham," and such that a reasonable jury could return a verdict for the nonmoving party. *Bazan ex rel. Bazan v. Hidalgo County*, 246 F.3d 481, 489 (5th Cir. 2001). A fact is "material" only if it might affect the outcome of the suit under governing law. *Id.* "Factual disputes that are irrelevant or unnecessary will not be counted." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In coming to a decision, the court must draw *justifiable* inferences in favor of the nonmoving party. *Id.* at 255 (emphasis added). Any inference drawn in the nonmoving party's favor must also be reasonable. *Dean v. City of Shreveport*, 438 F.3d 448, 454 (5th Cir. 2006). An actual controversy of fact exists where both parties have submitted evidence of contradictory facts. *Olabisiomotosho v. City of Houston*, 185 F.3d 521, 525 (5th Cir. 1999).

III. DISCUSSION

Texas Disposal seeks dismissal of Republic Waste's claims, arguing that section 364.034(h) of the Texas Health and Safety Code does not allow exclusive contracts between

municipalities and waste service providers that require the use of such services by persons within the territory when such services are for temporary construction waste disposal. Specifically, section 364.034(h) states that "[t]his section does not apply to a private entity that contracts to provide temporary solid waste disposal services to a construction project." Tex. Health & Safety Code § 364.034(h). Thus, Texas Disposal contends that under the plain language of the Texas Health and Safety Code, exclusive contracts for the collection of construction site waste are unauthorized and therefore unenforceable.

Republic Waste counter-argues that chapter 364 of the Texas Health and Safety Code applies to counties and does nothing to limit the authority found under chapter 363, which provides that municipalities can enter into exclusive waste disposal contracts. Republic Waste is correct that the title of chapter 364 is the "County Solid Waste Control Act." *See* Tex. Health & Safety Code § 364.001 (short title). Chapter 363 is titled the "Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act." *See id.* at § 363.001 (short title). However, it does not appear that the intent of the Texas legislature was to limit the application of chapter 364 to merely counties while excluding its application to municipalities. Although provisions in chapter 363 explicitly provide that municipalities may enter into contracts with terms considered appropriate for the operation of all or any part of a solid waste management system, *id.* at section 363.117, such is simply a broad grant of authority by the legislature allowing municipalities to do so. Yet, chapter 364, specifically section 364.034, also refers to "municipalities" and includes municipalities in its defining section where the term "public agency" is defined. *Id.* at § 364.003(3). Neither party disputes that the term "public agency" is intended to include municipalities. Thus, the Court finds that the plain wording of the

statutory provisions shows an intent by the legislature that chapter 364 apply to municipalities and not just counties.

Texas Disposal argues that section 364.034(h) specifically refers to "solid waste disposal services to a construction project" and therefore controls in the specific instances of construction waste over the broad grant of authority found in chapter 363. The Court agrees. A general statutory construction principal is that a specific provision will control over a more generalized provision. Tex. Gov't Code § 311.026(b) (if there is an irreconcilable conflict between general and specific statutory provisions, the specific prevails). Although municipalities are granted general authority to enter into contracts with terms considered appropriate for the operation of all or any part of a solid waste management system, the legislature may limit that authority in specific instances. Here, the legislature apparently chose to limit the authority when it later passed section 364.034(h).[1] Furthermore, as pointed out by Texas Disposal, section 363.007 explicitly lists chapter 364 as not being affected by the provisions of chapter 363. Tex. Health & Safety Code § 363.007(2) ("This chapter does not affect: . . . (2) Chapter 364 . . . .").

Likewise, the Court finds that section 364.034(e), enacted at the same time as paragraph (h), does not control over paragraph (h). Section 364.034(e) states in relevant part that "[n]othing in this section shall limit the authority of a public agency, including a county or municipality, to enforce its grant of a franchise or contract for solid waste collection and transportation services within its territory." The legislature's intent as to how paragraph (e) is to

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[1]Section 363.117 was enacted in 1989 and section 364.034(h) was enacted in 2007. Another general statutory construction principal is that a latter enactment will control over a prior enactment if there is a conflict. Tex. Gov't Code § 311.025(a) ("if statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment prevails").

interact with paragraph (h) is unclear. However, in construing statutory provisions, a court is required to give meaning to each provision and the legislature's intent, if possible. Tex. Gov't Code § 311.021(2); *see also Spradlin v. Jim Walter Homes, Inc.*, 34 S.W.3d 578, 580 (Tex. 2000) (in construing a statute, a court does "not treat any statutory language as surplusage, if possible"). To this end, the Court finds that paragraph (e) is likely referring to general solid waste disposal related to residential and commercial waste services while paragraph (h) specifically refers to construction waste. Such a reading would not render paragraph (h) meaningless and would still give meaning to paragraph (e). The interpretation offered by Texas Disposal is also a valid and likely interpretation as well. Texas Disposal contends that the purpose of paragraph (e) is to allow persons to continue to receive waste services from another entity—even after the adoption of an exclusive franchise—under certain circumstances, such as when those persons have pre-existing contracts with another entity. Texas Disposal argues that Republic Waste's interpretation of paragraph (e) is unsupportable because it misconstrues one sentence out of an entire paragraph. At any rate, the Court notes that paragraph (h) is excluded from any control by paragraph (e). Tex. Health & Safety Code § 364.034(e) ("[e]xcept as provided by Subsections (f), (g), and (h)").[2]

Finally, Republic Waste argues that the City of San Angelo has inherent police powers to enter into exclusive contracts for solid waste disposal beyond any grant of such authority found in the Texas Health and Safety Code under either chapter 363 or 364. As such, Republic Waste

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[2]Moreover, as argued by Texas Disposal, subsection (h) clearly states that "[t]his section does not apply to a private entity that contracts to provide . . . construction waste." Thus, the express terms of paragraph (h) state that section 364.034 (including paragraph (e)) has no effect on paragraph (h).

contends, any limits found in section 364.034 on the authority of the City of San Angelo to grant exclusive franchise rights to Republic Waste are in conflict with the City's inherent authority. As stated by Republic Waste, the legislature must show a clear intent to take away such authority. The Court finds that the legislature showed its clear intent to take away the City's inherent authority to grant exclusive franchise or contact rights in the specific instance of "contracts to provide temporary solid waste disposal services to a construction project." The plain wording of section 364.034(h) shows such an intent.

IV. CONCLUSION

For the reasons stated herein, as well as those argued by Defendant, the Court finds that the Motion to Dismiss should be **GRANTED** and the Motion for Partial Summary Judgment should be **DENIED AS MOOT**.

SO ORDERED

Dated this 22nd day of September, 2015.

SAM R. CUMMINGS
SENIOR UNITED STATES DISTRICT JUDGE