

IN THE CHANCERY COURT FOR BRADLEY COUNTY, TENNESSEE

BRADLEY COUNTY, TENNESSEE,)
)
 Plaintiff/Counter-Defendant,)
)
 vs.)
)
 THE CITY OF CLEVELAND,)
 TENNESSEE,)
)
 Defendant/Counter-Plaintiff.)

NO. 09-177

2011 JUL -5 AM 11:05
 CLERK & MASTER
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ORDER

This cause came to be heard on the 21st day of April, 2011 upon the parties' joint Motions for Summary Judgment. The parties stipulated there are no material questions of fact and all inferences to be drawn from the stipulated facts are to be resolved as questions of law and do not allow different inferences to be drawn; therefore, this case is appropriate for summary judgment.

This case involves the interpretation of a 1967 contract between the parties along with its subsequent "Amendments". These contracts concern the division of local option sales tax. Pursuant to Title 67 of the Tennessee Code, cities and counties were given authority by the Legislature to impose sales tax upon local populations. One-half of the proceeds were to be expended and distributed in the same manner as the County property tax for school purposes were expended and distributed. The other one-half of the proceeds were to either be distributed pursuant to the situs of the sale or in a method agreed to between the governmental bodies. Absent any specific agreement, the sales tax would be distributed pursuant to the statute.

STATE OF TENNESSEE, COUNTY OF BRADLEY
 I have this date served upon the attorneys or self
 represented litigants in this matter a copy of this
 Order by placing same in the U.S. Mail with
 sufficient postage for delivery.

Docket # 09-177 Entered this 5th
 day of July 2011, Carl D. Shrewsbury
Ann Wilser : Carl D. Shrewsbury; Clerk & Master
 Deputy Clerk

The parties in this case agreed to a formula for the division of “the tax” evidenced by a contract dated May 10, 1967. In 1972 the parties executed an Amendment to the contract. The 1972 Amendment to this contract refers to “said additional sales tax . . .” in the preamble clause and “. . . any moneys received from any additional sales tax . . .” in the operating clause. It is this subtle difference over which this lawsuit is brought. It is this language upon which the County relies to say all taxes in perpetuity are subject to the formula in the contract. The contract recognized and allowed in TCA §67-6-712 provided that the second half of the tax was to be distributed by reversing the percentages applicable to the first half of the statute. This formula was to be utilized until such time as the average daily attendance in each of the two school systems reached fifty (50%) percent and at that time the distribution of the second half of the tax would be the same as the percentage for the distribution of the first half of the tax. The contract contained no other ending date.

Courts are required to construe contracts of doubtful meaning so as to give them effect rather than destroy them. New Memphis Gaslight Co. Cases, 105 Tenn. 268, 60 S.W. 206 (1900).

When two clauses of a contract are in conflict, the first governs rather than the last. Coble Systems, Inc. v. Gifford Co., 627 S.W. 2d 359 (Tenn. Ct. App. 1981).

Here the chief purpose of the contract is the division of the sales tax. This was discussed in the 1967 and 1972 contracts.

Both the City and County Minutes referenced these agreements. Additionally, the parties today agree that in 1980 the City and County wanted to again raise the sales tax,

but the referendum did not pass. This was again evidenced by what was to be a second amendment to the contract drafted and signed by both parties. The Referendum failed.

The Referendum subsequently passed in 1982.

The 1980 contract again provided “any additional taxes shall be divided...” It is this phrase that Bradley County contends is not ambiguous and therefore controls the division of all sales tax in the past and in the future if and when passed by the City of Cleveland, including that tax passed on March 3, 2009. This passed without contractual agreement as to its division with the County. In fact, the City of Cleveland expressly terminated all past contracts. The County subsequently passed its tax hike on March 25, 2009. According to statute, T.C.A. §67-6-703, if the City passes a tax and the County does not, the City receives the revenue during that fiscal year until such time the County subsequently passes a sales tax. Where there has been no agreement, the governments must divide the tax pursuant to TCA §67-6-712. It is this gap period over which these parties disagree concerning the division of the revenue from the tax.

It is the position of the City of Cleveland that the City Commission did not have the authority to enter into these past agreements for several reasons. The City alleges each contract is an ultra vires act and therefore was an illegal action on behalf of the City of Cleveland. Any agreement between the two bodies was, therefore, of no force and effect, and the statutory method of division should be followed from and after 1982. The City of Cleveland further raises the defense that the passage of the Referendum by Bradley County was unconstitutional because the City of Cleveland was not allowed to vote in the County’s Referendum.

Additionally, the City of Cleveland argues that the contract itself has no termination clause and therefore is terminable within a reasonable amount of time with notice. The City of Cleveland voted to terminate the contract as of March 3, 2009. The City of Cleveland is requesting this court to allow it to keep all of its sales tax from and after July 1, 2009 through June 30, 2010 and not divide it pursuant to any past agreements between the City and the County. The final argument of the City of Cleveland is that the clause quoted above is ambiguous and because it is ambiguous, the court should look at the entire actions between the parties as well as the Minutes from their various meetings to interpret the clause as applying only to each tax as it was passed and not binding upon future governmental bodies and future tax referendums such that the parties are free to adopt new contracts differently with each new tax.

This is not the first time these parties have been in court over the division of tax revenue. Many of these issues were raised in a previous lawsuit between the parties, City of Cleveland v. Bradley County, 1999 WL 281086 (Tenn. Ct. App. Apr. 16, 1999).

Bradley County responds to the defenses raised by the City of Cleveland by pointing out that the issues concerning the termination clause and alleged ultra vires acts have previously been determined by the Court of Appeals in the City of Cleveland v. Bradley County case *supra* and are therefore res judicata or precluded from further consideration by this court.

Further, Bradley County argues that the clause in question is not ambiguous and therefore no other documents are relevant or necessary for its interpretation, and the court should use the plain meaning of the words. In support of this position, Bradley County cites 17A Am.Jur.2d §392, stating that the preamble clause of the Resolution cannot by

law create an ambiguity with the operating clause of the Resolution. Bradley County urges this court to look only at the operative clause of the agreement which was quoted above.

After considering the above arguments and reviewing the pleadings and law which includes the previous case between these parties in this matter, the court hereby finds as follows:

1. The defenses of ultra vires acts, unconstitutionality of the agreement, and lack of a termination clause are all res judicata to this case, and these defenses are denied.
2. The court finds the contract is ambiguous on this question.

The argument of the City of Cleveland is persuasive in looking at the entire document and actions by Resolution when attempting contract interpretation. When reading the Resolutions and contracts, it is the opinion of this court that each contract and amendment is subject to more than one reasonable interpretation. Because of this, the court must look further. Discerning the meaning of the disputed clause above, the court must also look at the grammar that was used in constructing the sentence. The court begins by assuming that the parties drafting the documents meant to draft them as signed. The City alleges the 1972 Amendment referred only to the tax raised in that particular Referendum. The County urges this court to find that the words “any additional taxes” mean all future taxes ever passed by the governing bodies. However, the word future was not used in describing taxes in this contract. The 1980 agreement contained basically the same wordage. Additionally, the actions of the parties verify that with each new tax a new agreement was drawn. Otherwise, the 1980 (1982) Amendment would have been unnecessary. Under the law, the conduct of the parties is the strongest

09-177

evidence of their original intent. Pinson & Assoc. Ins. Agency, Inc. v. Kreal, 800 S.W. 2d 486 (Tenn. Ct. App. 1990).


When reading the document as a whole, it speaks specifically to the tax being raised at that time, and there is no indication of any intention to bind all future sales tax increases with one agreement. The parties conducted themselves in that manner. They intended each action (1972 and 1980 contracts) to be meaningful.

There is no mention in the Minutes of either party of their intention to bind future boards for more than the original term of each agreement.

The court holds the City did not have to share any property taxes with the County until such time as the County passed its own Referendum. At that point in time, pursuant to statute, the City was allowed to collect its own sales tax through that current fiscal year which ended June 30, 2010. After that appointed time and absent any agreement between the parties, the statute sets the basis for which the sales tax is to be divided.

The costs of this cause are taxed equally.

This 1 day of July, 2011.



CHANCELLOR JERRI S. BRYANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been forwarded to the following by placing a copy of same in the United States Mail, postage pre-paid:

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This 5 day of July, 2011.

Carl D. Shrewsbury
Clerk & Master *AW*