

FILED
COMMON PLEAS COURT
IN THE COURT OF COMMON PLEAS OF WAYNE COUNTY, OHIO
WAYNE COUNTY, OHIO

2008 OCT 15 AM 9 03

STATE OF OHIO, ex rel. JIM PETRO, ATTORNEY GENERAL
TIM NEAL, CLERK OF COURTS
CASE NO. 06-CV-0287

Plaintiff

JUDGE MARK K. WIEST

v.

MAGISTRATE'S PROPOSED DECISION

NORTON ENVIRONMENTAL COMPANY, et al.,

Defendants

This matter is before the court on defendants' (Mount Eaton Reclamation, Inc. and Twilight Mining, Inc) motions for partial summary judgment/judgment on the pleadings. For the reasons stated below, summary judgment is granted in favor of defendants, Mount Eaton Reclamation, Inc. (Mt. Eaton) and Twilight Mining, Inc. (Twilight).

Defendant, Mt. Eaton is seeking dismissal from the lawsuit as it was not the owner or operator of the sanitary landfill facility, but merely one of the owners of the land on which the landfill is located.

Defendant, Twilight is seeking indemnification from co-defendants, Mt. Eaton and Norton Environmental Company (Norton) pursuant to the lease agreement.

First, the motion for judgment on the pleadings/summary judgment filed by defendant, Mt. Eaton is granted. Ohio Admin. Code 3745-27-19(A) establishes the applicability for the operational criteria for a sanitary landfill facility and states, "The owner or operator of a sanitary

landfill facility shall comply with the requirements and operational criteria specified in this rule . . .” (Emphasis added.) Neither Mt. Eaton nor Twilight own or operate this sanitary landfill facility. The defendants are merely owners of the land upon which the landfill facility is operated by Norton. Norton is the owner and operator of the sanitary landfill facility. The landfill facility is separate from the land upon which it is operated. [See the definition of a sanitary landfill facility in Ohio Admin. Code 3745-27-01(S)(4)].

Plaintiff seeks to hold the defendant landowners (Mt. Eaton and Twilight) liable for the actions of the defendant operator of the sanitary landfill facility under Ohio Admin. Code 3745-27-19. Plaintiff relies upon the definition of owner in Ohio Admin. Code 3745-27-01(O)(7) to support its argument that the property owners are liable. Plaintiff has interpreted the Ohio Admin. Code too broadly. Defendants Mt. Eaton and Twilight are certainly owners, but only of the land, not the sanitary landfill facility. The rules under Ohio Admin. Code 3745-27-19 apply to the owner of the sanitary landfill facility or the operator of the sanitary landfill facility. The rules do not apply to the land owner unless that owner either owns or operates the sanitary landfill facility on the land. In this case, it is undisputed that neither Mt. Eaton nor Twilight own or operate the sanitary landfill facility. Norton is the owner and operator of the sanitary landfill facility.

Since 3745-27-19 of the Ohio Admin. Code does not apply to mere land owners, defendants Mt. Eaton and Twilight should be dismissed from this matter. In light of the foregoing decision, Twilight’s motion for summary judgment as to indemnification is moot.

JOURNALIZED

OCT 15 2008

TIM NEAL
CLERK, WAYNE COUNTY, OHIO


Corey E. Spittle, Magistrate

10/15/08
Date

Pursuant to Civil Rule 53, a party may within 14 days of the filing of this Proposed Decision, serve and file a written objection. If an objection is timely filed, any other party may serve and file an objection within ten (10) days from the date of filing of the first objection. Any objection to a factual finding by a magistrate must be accompanied by a transcript of the evidence or a supporting affidavit. The transcript or supporting affidavit must be filed within 30 days after the objections are filed.

*****WAIVER OF RIGHT TO ASSIGN ADOPTION BY COURT AS ERROR ON APPEAL.*****

A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FINDING OF FACT OR CONCLUSION OF LAW UNLESS THE PARTY HAS OBJECTED TO THAT FINDING OR CONCLUSION UNDER CIVIL RULE 53.

CERTIFICATE OF SERVICE

The undersigned Deputy Clerk hereby certifies that copies of the within proposed decision were mailed by U.S. Mail to the parties this day of , 2008.

Deputy Clerk