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SHEFELMAN PLLC

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

RABANCO LTD., a Washington corporation,

Plaintiff,

v.

KING COUNTY, a political subdivision of the  
State of Washington,

Defendant.

The Honorable Douglass North

No. 04-2-06720-1 SEA

*D.A.N.*

~~PROPOSED~~ ORDER DENYING  
RABANCO'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT,  
GRANTING PARTIAL SUMMARY  
JUDGMENT TO KING COUNTY ON  
RABANCO'S SECOND CLAIM, AND  
ENTERING FINAL JUDGMENT  
PURSUANT TO CR 54(b)

THESE MATTERS came on for hearing before the Court on Friday, May 21, 2004 on Plaintiff Rabanco's Motion for Partial Summary Judgment, Plaintiff's Motion for Leave to File an Overlength Brief, as well as cross-motions by the parties to strike certain materials submitted on summary judgment.

The Court has received and considered the following:

1. Plaintiff Rabanco's Motion for Partial Summary Judgment. Sub # 34
2. Complaint and attached exhibits Sub # 1
3. Declaration of Pete Keller and attached exhibit Sub # 4C
4. King County's Opposition to Plaintiff Rabanco's Motion for Partial Summary Judgment. Sub # 87
5. Declaration of Eugene Echhardt and attached exhibits. Sub # 86
6. Declaration of Rod Dembowski and attached exhibits. Sub # 92
7. Declaration of Theresa Jennings and attached exhibits. Sub # 91
8. Plaintiff Rabanco's Motion to Strike Washburn Letter and Eckhardt Declaration or Alternatively, for a CR 56(F) Continuance of the Summary Judgment Hearing. Sub # 100

ORDER DENYING RABANCO'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT, GRANTING  
PARTIAL SUMMARY JUDGMENT FOR KING COUNTY,  
AND ENTERING FINAL JUDGMENT PURSUANT TO  
CR 54(b) - 1

COPY

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- 1 9. Declaration of Kelly Corr in Support of Rabanco's Request for a Sub # 98  
CR(f) Continuance.
- 2 10. Plaintiff's Motion to Shorten Time Re: Plaintiff's Motion for Leave Sub # 105  
to File An Overlength Brief
- 3 11. Plaintiff's Motion for Leave to File Overlength Brief Sub # 106
- 4 12. Declaration of Kelly P. Corr in Support of Plaintiff's Motion For Sub # 111  
Leave to File Overlength Brief
- 5 13. Plaintiff Rabanco's Reply Supporting its Motion for Partial Sub # 114  
Summary Judgment
- 6 14. Declaration of Kevin J. Craig in Support of Plaintiff's Motion for Sub # 112  
Partial Summary Judgment and attached exhibits.
- 7 15. Declaration of James K. Sells and attached exhibits Sub # 113
- 8 16. Declaration of Nick Harbert in Support of Plaintiff's Motion for Sub # 107  
Partial Summary Judgment and attached exhibits
- 9 17. Defendant King County's Opposition to Rabanco's Motion to Sub # 124  
Strike and Motion to Continue.
- 10 18. Declaration of Bill Reed and attached exhibits. Sub # 123
- 11 19. Second Declaration of Eugene Eckhardt. Sub # 121
- 12 20. Defendant King County's Motion to Shorten Time Re: Defendant's Sub # 119  
Motion to Strike
- 13 21. King County's Motion to Strike Declaration of James K. Sells and Sub # 120  
Exhibits Thereto.
- 14 22. Rabanco's Reply in Support of Motion to Strike of for a CR 56(f) Sub # 130  
Continuance.
- 15 23. Plaintiff Rabanco LTD's Opposition to King County's Motion to Sub # 129  
Strike Declaration of James K. Sells and Exhibits Thereto.
- 16 24. Plaintiff's Supplemental Submission in Support of its Motion for Sub # 126  
Partial Summary Judgment.
- 17 25. Second Declaration of Kevin J. Craig. Sub # 128
- 18 26. Third Declaration of Kevin J. Craig and attached exhibits. Sub # 137
- 19 27. King County's Objection to Plaintiff's Supplemental Submission in Sub # 131  
Support of its Motion for Partial Summary Judgment.
- 20 28. Plaintiff Rabanco's Response To King County's Cross-Motion For Sub # 139  
Partial Summary Judgment

21

22 The Court heard oral argument from counsel on May 21, 2004. Plaintiff Rabanco's

23 Response to King County's Cross Motion for Partial Summary Judgment (Sub # 139) was

24 subsequently filed on June 1, 2004. The Court, having considered the above, and the records

25 and files in this matter, and being fully informed, and IT IS HEREBY ORDERED that:

26

1           1.       Plaintiff's Motion for Leave to File an Overlength Brief is **GRANTED**. The  
2 Court accepts plaintiff's twelve (12) page reply memorandum in support of its Motion for  
3 Partial Summary Judgment.

4           2.       The following documents are **STRICKEN** as untimely:

5		
6	Declaration of Eugene Echhardt and attached exhibits.	Sub # 86
7	Exhibit A to Declaration of Theresa Jennings.	Sub # 91
8	Second Declaration of Eugene Eckhardt.	Sub # 121
	Declaration of James K. Sells.	Sub # 113
	Second Declaration of Kevin J. Craig.	Sub # 128

9           3.       The Court entered its memorandum decision ("Letter Ruling") on June 7, 2004.  
10 The Court's Letter Ruling is attached as Attachment A and incorporated by this reference;

11           4.       Rabanco's Motion For Partial Summary Judgment is **DENIED**; and

12           5.       Partial summary judgment is **GRANTED** to King County, and Plaintiff  
13 Rabanco's Second Claim for Relief (Complaint Part VI (Sections 76-87)) is dismissed with  
14 prejudice.

15           The Court, having considered the above, and the records and files in this matter, and  
16 being fully informed, further finds that:

17           1.       Plaintiff Rabanco's Second Claim for Relief challenges King County's "flow  
18 control" ordinance, King County Code § 10.08.020, on grounds that it violated RCW 36.58.040  
19 ("the flow control claim"). While based on different legal theories, Rabanco's other claims all  
20 challenge King County's decisions to increase the Regional Direct rate that it charges Rabanco  
21 for the disposal of municipal solid waste and to require the King County Solid Waste Division  
22 to use those funds to pay rent on the Cedar Hills landfill ("the Regional Direct claims").

23           2.       The flow control claim and the Regional Direct claims can be separately  
24 enforced and provide more than one form of recovery that are not mutually exclusive. The  
25 claims are separable because they rely on entirely distinct factual bases and involve discrete  
26 questions of law. The only facts pertinent to the flow control claim are the contents of

1 Rabanco's solid waste collection certificate from the Washington Utilities and Transportation  
2 Commission and whether King County has solid waste interlocal agreements with the other  
3 counties in Rabanco's permit. Those facts have no bearing on the legality of King County's  
4 decisions to increase the Regional Direct rate and to require its Solid Waste Division to pay rent  
5 on the Cedar Hills landfill. Similarly, the legal question of whether King County's flow control  
6 ordinance violates RCW 36.58.040 has no bearing on whether the Regional Direct rate increase  
7 and the rent obligation are legal. The flow control claim and the Regional Direct claims also  
8 provide different forms of recovery that are not mutually exclusive, as a ruling that the flow  
9 control ordinance is invalid would not preclude a ruling that the Regional Direct rate increase  
10 and the rent transaction are also invalid.

11 3. Accordingly, Rabanco has presented more than one claim for relief under Civil  
12 Rule 54(b).

13 4. Other than the involvement of the same parties, there is no relationship between  
14 the adjudicated flow control claim and the unadjudicated Regional Direct claims. As described  
15 above, the flow control and the Regional Direct claims are neither closely related nor stem from  
16 essentially the same factual allegations. Rather, none of the factual allegations relevant to the  
17 flow control claim overlap with the factual allegations relevant to the Regional Direct claims  
18 regarding the increase in a solid waste disposal rate and the rent transaction on the Cedar Hills  
19 landfill.

20 5. No questions that the appellate court would review on the Regional Direct claim  
21 are still before this Court for determination in the unadjudicated portion of the case. The flow  
22 control claim's legal issues, underlying facts, and evidence necessary to prove those facts do not  
23 overlap with the Regional Direct claims' legal issues, facts, or evidence.

24 6. It is unlikely that the future developments in this Court on the Regional Direct  
25 claims will moot the need for appellate review of the flow control claim. As noted above, the  
26 flow control and Regional Direct issues present separate claims for relief that are not mutually

1 exclusive. It appears that Rabanco has an incentive to pursue the flow control on appeal  
2 regardless of the outcome in the trial court on the Regional Direct claims. Even if Rabanco  
3 prevails on the Regional Direct claims and that rate remains at \$59.50 per ton, Rabanco has  
4 submitted evidence that its landfill in Klickitat County, which charges \$19.75 per ton, would  
5 present a less expensive alternative if King County's flow control ordinance is invalidated. *See*  
6 Harbert Decl. ¶ 10; Keller Decl. ¶¶ 11-12.

7 7. The potential advantages of an immediate appeal in terms of simplifying and  
8 facilitating the trial on the Regional Direct claims would offset the delay, if any, in that trial.  
9 Because the legal and factual issues concerning the flow control and Regional Direct claims do  
10 not overlap, an immediate appeal of the flow control claim is unlikely to delay the trial of the  
11 Regional Direct claims. Furthermore, an appellate decision invalidating the flow control  
12 ordinance would moot the need for any trial on the Regional Direct claims, as Rabanco could  
13 alleviate the impact of the Regional Direct increase by re-routing the solid waste to its less  
14 expensive landfill in Klickitat County. Because this Court granted partial summary judgment at  
15 an early stage of the litigation, it is likely that the Court of Appeals will issue its opinion before  
16 the trial on the remaining Regional Direct claims. The remaining claims are currently set for  
17 trial on August 22, 2005, and although this Court and the parties have discussed setting the trial  
18 for an earlier date, the earliest possible trial date is mid-November 2004. Thus, an immediate  
19 appeal would serve judicial economy.

20 8. An immediate appeal also would provide several practical benefits. As discussed  
21 above, the flow control claim is wholly unrelated to the remaining Regional Direct claims. An  
22 appellate decision on the flow control claim may moot the need for a trial on the more  
23 complicated and fact-based Regional Direct claims, and it is likely that the Court of Appeals  
24 would issue its opinion in advance of the trial on the remaining claims. Furthermore, because  
25 the flow control involves a question of first impression regarding the interpretation of a state  
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24 would issue its opinion in advance of the trial on the remaining claims. Furthermore, because  
25 the flow control involves a question of first impression regarding the interpretation of a state  
26

1 statute, the resolution of that issue may have statewide impact. The Court notes that one  
2 industry association attempted to intervene in this case.

3 9. Accordingly, there is no just reason for delay in entering a partial final judgment  
4 for King County on Plaintiff Rabanco's Second Claim for Relief under Civil Rule 54(b).

5 Based on the above findings, IT IS HEREBY ORDERED that:

6 1. Pursuant to Civil Rule 54(b), a partial final judgment for King County on  
7 Plaintiff Rabanco's Second Claim for Relief shall be entered.

8 2. In the alternative, this Court certifies that pursuant to Rule of Appellate  
9 Procedure 2.3(b)(4) this Order involves a controlling question of law as to which there is  
10 substantial ground for a difference of opinion and that, for the reasons discussed above,  
11 immediate review of the order may materially advance the ultimate termination of the litigation.

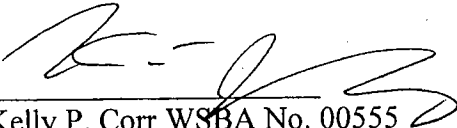
12 3. The proceedings before this Court are hereby stayed pending the appeal of the  
13 Civil Rule 54(b) judgment on Plaintiff Rabanco's Second Claim for Relief.

14  
15  
16 Entered this 15<sup>th</sup> day of July, 2004.

17  
18 Douglas A. North  
19 HONORABLE DOUGLASS A. NORTH

20 Presented by:

21 CORR CRONIN LLP

22  
23   
24 Kelly P. Corr WSBA No. 00555  
25 Kevin J. Craig, WSBA No. 29932  
26 Attorney for Plaintiffs

ORDER DENYING RABANCO'S MOTION FOR  
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CR 54(b) - 6

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