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An agreement is void for lack of certainty when the parties’ obligations are not clearly ascertainable.

In 2004, R & D Holding and 360 Ranch Corporation entered into a “Waiver of Right to Protest” (Waiver) the creation of Special Improvement Districts (SIDs). The purpose of the SIDs included making road and/or intersection improvements to Cottonwood Road, which is between Huffine Lane and West Babcock Street in Bozeman, Montana. The Waiver provided that if no SIDs were implemented, the parties agreed to “participate in an alternate financing method for completion of these projects on a fair share, proportionate basis as determined by square footage of the property, linear front footage of the property, taxable valuation of the property, or a combination thereof.” The Waiver further provided that it would be a covenant running with the land, would bind all successors and assigns, and would not expire.

Subsequently, First Security Bank (FSB) took possession of 360 Ranch Corporation’s interest in the property and Covenant Investments, Inc., (Covenant) took possession of R & D Holding’s interest in the property. The City of Bozeman did not implement any SIDs. Covenant undertook and paid for improvements to the intersection of Huffine Lane and Cottonwood Road. In early 2007, Covenant requested that FSB pay its fair share of the street improvements it had undertaken. FSB refused and Covenant filed suit.

FSB filed a motion to dismiss the complaint, arguing no valid, enforceable contract existed between the parties. District Court Judge Mike Salvagni granted FSB’s motion. On appeal, the Montana Supreme Court agreed that no valid, enforceable contract existed between the parties and affirmed the lower court’s dismissal of the complaint. It further concluded Covenant had waived its right to belatedly enforce the Waiver because it acted unilaterally in making the improvements to the intersection.
The Waiver was void because it did not include all the essential terms. It was silent as to the nature, cost, and timing of the street improvements and who was responsible for determining the necessary improvements. There were no clear and definite parameters for determining the parties’ obligations. Furthermore, the Waiver did not contemplate unilateral action with respect to the improvements. Rather, it reflected the intention that the parties would jointly participate in the planning, financing, and completion of the improvements. Covenant, by acting unilaterally, deprived FSB of any such participation.

Montana practitioners should be aware of this case because it reiterates the established rule that contracts are only enforceable when the parties’ obligations are clearly ascertainable.

District Court Judge of Gallatin County, Mike Salvagni

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