



that contractual right by actively soliciting and providing construction waste services to customers located within the City.

In response to a demand to cease and desist, Defendant provided a letter to Republic that acknowledged: (1) Defendant's awareness of Republic's contract; (2) the rights granted Republic under it; and (3) Defendant's intent to continue to usurp those rights. Defendant's admissions in that letter establish all requisite elements of Republic's tortious interference with contract claim. And Republic's declaratory judgment action merely seeks the answer to the legal question of Republic's rights under the same contract, which Texas Disposal Systems continues to disregard. TDS challenged the enforceability of Republic's contract in a motion to dismiss raising a single legal question as to the City's authority to enter into the contract. That issue has been fully briefed. Because Defendant's motion to dismiss should be denied, its factual admissions call for summary judgment in favor of Republic.

## 2. PARTIAL SUMMARY JUDGMENT

Summary judgment is appropriate when the record shows that there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–25 (1986). “An issue is ‘material’ if it involves a fact that might affect the outcome of the suit under the governing law.” *McDorman ex rel. Connelly v. Texas-Cola Leasing Co. LP, LLP*, 288 F. Supp. 2d 796, 801 (N.D. Tex. 2003).

**2.1. Republic is entitled to summary judgment as to its declaratory judgment claim.**

Republic's seeks a declaration of its rights under a contract. 28 U.S.C. § 2201 empowers this Court to declare Republic's rights under a contract. And Chapter 37 of the Texas Civil Practice & Remedies Code provides that, "a person interested under a . . . written contract . . . may have determined any question of construction or validity arising under the [contract] and obtain a declaration of rights, status, or other legal relations thereunder." Tex. Civ. Prac. & Rem. Code § 37.004(a).

The San Angelo City Council contracted with Republic through a Special Exclusive Contract for Solid Waste Collection and Disposal Services (the "2014 Contract") for Republic to collect, transport, haul, and dispose of residential and commercial garbage generated or accumulated within the City of San Angelo. *See* App'x 2, 72, Exhibits A & B (2014 Contract and affidavit in support thereof). Defendant bid for this contract, but lost. The 2014 Contract became effective August 1, 2014. Republic seeks a declaration that the 2014 Contract is enforceable and that under it, Republic has the exclusive right to collect and haul construction waste within the City of San Angelo.

The Contract specifically provides Republic "the exclusive right to collect residential and Non-Residential Acceptable Waste and temporary Construction & Demolition Waste." App'x at 6, Ex. A ¶ 6(A). Construction and demolition waste is defined as "waste resulting from construction or demolition projects; includes all materials that are directly or indirectly the by-products of construction work." App'x at

42, Ex. A. Definitions. Thus, Republic has the exclusive right and obligation to collect and haul construction waste within the City of San Angelo.

Defendant only disputes the enforceability of Republic's contract. *See* App'x at 76–77, Exhibit C & D (Letter and Affidavit in support thereof), and Defendant Texas Disposal Systems, Inc.'s Motion to Dismiss Pursuant to Rule 12(b)(6), Federal Rule of Civil Procedure, ECF No. 8, Nov. 20, 2014. That is a legal question fully addressed (and refuted) in the Parties' briefing on Defendant's Motion to Dismiss. *See* App'x at 101, Ex. F, Republic's Response to Motion to Dismiss. Republic's same legal arguments establishing the authority for, and enforceability of, its contract apply, and are hereby reasserted, equally at summary judgment. Because Defendant does not dispute Republic's interpretation of the contract's terms, *see* App'x at 76–77, Republic is entitled to judgment as a matter of law on its declaratory judgment claim.

**2.2. Republic is entitled to summary judgment on its tortious interference with contract claim.**

Despite Defendant's awareness of the 2014 Contract and its terms, Defendant collects and solicits construction and demolition waste at customer locations within the City of San Angelo and hauls construction and demolition waste within the City of San Angelo. Texas Disposal Systems has no right to do so—the City has granted the right to provide these services to Republic exclusively. The undisputed facts entitle Republic to judgment as a matter of law that Texas Disposal Systems is liable to Republic for its tortious interference with Republic's contract.

On September 8, 2014, counsel for Republic sent to Texas Disposal Systems a letter demanding that TDS cease and desist providing and soliciting the collection, hauling, and disposal of construction and demolition waste pursuant to Republic's rights under the 2014 Contract.

On September 18, 2014, TDS delivered to Republic's counsel a response letter admitting that:

- (1) Texas Disposal Systems provides temporary solid waste disposal to construction projects with the City of San Angelo and "will continue to provide" those services;
- (2) The 2014 Exclusive Hauling Contract "purports to grant Republic the exclusive right to collect construction and demolition waste"; and
- (3) Texas Disposal Systems has a conflicting opinion on the enforceability of the 2014 Exclusive Hauling Contract and it believes "this dispute is ripe for the courts to settle." App'x at 76–77, 79.

Thus, there can be no factual dispute that: (1) Republic possesses a contract with the City of San Angelo; (2) the contract provides Republic the exclusive right to collect and haul construction waste; (3) TDS is aware of the rights granted under the contract; and (4) TDS continues to intentionally and willfully interfere with those rights, causing Republic damages. *See* App'x at 83–99, Ex. E, Landfill Hauling Invoices, Exhibit D to Plaintiff's Complaint; *see also Juliette Fowler Homes, Inc. v. Welch Assocs.*, 793 S.W.2d 660, 664 (Tex. 1990) (setting forth the elements of a tortious interference with contract claim).

3. **PRAYER**

WHEREFORE Plaintiff Republic Waste Services of Texas, Ltd. requests that it be granted partial summary judgment holding Defendant liable for tortious interference with Republic's right under its contract with the City of San Angelo, declaratory judgment that the contract between Republic and the City of San Angelo is enforceable as to the rights granted Republic regarding construction and demolition waste, and providing for further proceedings to determine the appropriate remedies under Republic's tortious interference claim.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

This is to certify that on this 11th day of December, 2014, this document was served electronically via the Court's ECF system upon the persons on the service list below:

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