

IN THE DISTRICT COURT OF SAUNDERS COUNTY, NEBRASKA

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| STATE OF NEBRASKA, ex rel Michael J. Linder, Director, NDEQ, & CITY OF ASHLAND, NEBRASKA, A Municipal Corporation, |) | CASE NO. CI05-175 |
| Plaintiff, |) | |
| Vs. |) | JOURNAL ENTRY |
| ASHLAND SALVAGE, INC., A Nebraska Corporation, & ARLO REMMEN |) | |
| Defendants. |) | |

This case came on for hearing on July 14, 2006 on the Parties' Cross Motions for Summary Judgment. Present were the State by Natalee Hart, the City of Ashland by Mark Fahleson, and Ashland Salvage and Arlo Remmen, by/with counsel Terry Barber. Evidence was adduced. The court established a briefing schedule and the matter has been under advisement since the last brief was received.

The record before the court consists of Exhibits 21 through 51 and the many subparts thereto, all of which the court has reviewed. In addition, the court has reviewed the file and the briefs of the parties. After consideration of all matters properly before it, the court now finds, concludes and rules as follows:

1. Plaintiffs, State of Nebraska and City of Ashland, make the following claims¹ against Defendant Arlo Remmen who is the operator/owner of Ashland Salvage Inc. and Ashland Salvage, Inc.:
 - The State claims that the Defendants have violated the Integrated Solid Waste Management Act by dumping solid waste on property owned and operated by Defendants in Saunders County and contend that this has been a continuing violation since December 22, 2003.
 - The State claims that the Defendants have violated the Integrated Solid Waste Management Act by disposing of tires on the property owned and operated by Defendants and contend that this has been a continuing violation since December 22, 2003.
 - The State claims that the Defendants have violated the Integrated Solid Waste Management Act by maintaining a solid waste disposal facility without the required license, on the property owned and operated by Defendants and contend that this has been a continuing violation since December 22, 2003.
 - The State claims that the Defendants have violated the Environmental Protection Act by maintaining a nuisance on the property owned and operated by Defendants and contend that this has been a continuing violation since August 27, 2004.

¹ A counterclaim filed by the Defendants has previously been dismissed.

- The State requests that the court issue an injunction ordering Defendants to cease the violations and to immediately remedy the violations.
 - The City claims that the Defendants have violated city ordinances by maintaining a nuisance in violation of the ordinances.
2. The State seeks both the issuance of an injunction and the imposition of civil penalties upon Defendants for the continuing violation of the applicable laws. The City seeks injunctive relief and an order that it may enter the property for the purpose of abating the nuisance. The State seeks Partial Summary Judgment on its claims, the City seeks Summary Judgment as to its claim.
 3. The Defendants allege that the complaint filed herein does not state a cause of action and seeks summary judgment.
 4. The following paragraphs set forth the standards for summary judgment:
 - Summary judgment is proper when the pleadings and evidence admitted at the hearing disclose that there is no genuine issue as to any material fact or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law. Range v. Abbott Sports Complex, 269 Neb. 281, 691 N.W.2d 525 (2005).
 - On a motion for summary judgment, the question is not how a factual issue is to be decided, but whether any real issue of material fact exists. Id.
 - Because the party moving for summary judgment has the burden of showing that no genuine issue as to any material fact exists, that party must therefore produce enough evidence to demonstrate his or her entitlement to judgment if the evidence remains uncontroverted.... Once the party moving for summary judgment produces enough evidence to demonstrate his or her entitlement to judgment if the evidence remains uncontroverted, the burden of producing contrary evidence shifts to the party opposing the motion. Schafersman v. Agland Coop, 268 Neb. 138, 681 N.W.2d 47 (2004).
 5. Upon review of the evidence and the applicable law, the court concludes that there is no material issue of fact as to the following issues:
 - The Defendants have, in their operation of the Ashland Salvage property located in Saunders County, violated the Integrated Solid Waste Management Act by dumping solid waste on the property. This has been a continuing violation since December 22, 2003.
 - The Defendants have, in their operation of the Ashland Salvage property located in Saunders County, violated the Integrated Solid Waste Management Act by disposing of tires on the property. This has been a continuing violation since December 22, 2003.
 - The Defendants have, in their operation of the Ashland Salvage property located in Saunders County, violated the Integrated Solid Waste Management Act by maintaining a solid waste disposal facility without the required license, on the property. This has been a continuing violation since December 22, 2003.
 - The Defendants have, in their operation of the Ashland Salvage property located in Saunders County, violated the Environmental Protection Act by maintaining a nuisance on the property. This has been a continuing violation since August 27, 2004.

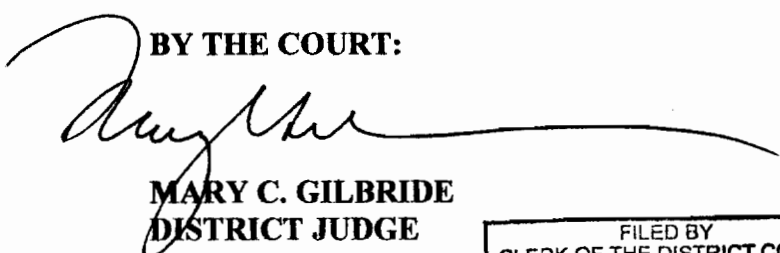
- The Defendants have, in their operation of the Ashland Salvage property located in Saunders County, violated city ordinances by maintaining a nuisance in violation of those ordinances.
6. The evidence does not demonstrate that the Plaintiffs have failed to set forth a claim and the Defendants' Motion for Summary Judgment is overruled.
 7. The court grants the State's Motion for Partial Summary Judgment to the extent of the findings detailed in Paragraph 5, supra. The State is entitled to immediate injunctive relief based upon these findings. The State shall prepare an appropriate order and present it to the court for signature within 10 days of the date of this order.
 8. The court grants the City's Motion for Summary Judgment to the extent of the findings detailed in Paragraph 5, supra. The City is entitled to immediate injunctive relief and the right to enter and abate, based upon these findings. The City shall prepare an appropriate order, and present it to the court for signature within 10 days of the date of this order.
 9. The determination of the penalty and the issue of individual/corporate liability for the penalty remain for decision in this case. The court therefore sets hearing on the penalty phase of the proceedings for **February 5, 2007 at 1:30PM. The afternoon is reserved.**
 10. In order to avoid an unnecessary interlocutory appeal, the court reminds counsel of the following rule. In Merrill V. Griswold's, Inc., 270 Neb. 458, 703 N.W.2d 893 (2005), the Nebraska Supreme Court stated:

Generally, when multiple issues are presented to a trial court for simultaneous disposition in the same proceeding and the court decides some of the issues, while reserving some issue or issues for later determination, the court's determination of less than all the issues is an interlocutory order and is not a final order for the purpose of an appeal.
 11. The State's Motion for Partial Summary Judgment is sustained. The City's Motion for Summary Judgment is sustained. Defendants' Motion for Summary Judgment is overruled. Further hearing is set for **February 5, 2007 at 1:30PM.**

So ordered.

Dated and signed this 4th day of December, 2006.

BY THE COURT:


**MARY C. GILBRIDE
DISTRICT JUDGE**

**PC: Mr. Barber
Mr. Fahleson
Ms. Hart**

