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Monica Ashford-Smith
Tennessee Public Utility Commission
502 Deaderick Street, 4th Floor
Nashville, Tennessee 37243

In Re: Petition of Superior Wastewater Systems et seq

Docket No. 23-00051

Dear Monica,

This docket is on hold pending the outcome of a lawsuit brought by Superior Wastewater against Tennessee Wastewater Systems in Williamson County Chancery Court. Attached is the court's decision, issued today, dismissing that suit.

Sincerely,

BRADLEY ARANT BOULT CUMMINGS, LLP

A handwritten signature in blue ink, appearing to read "Henry Walker", written over a light blue horizontal line.

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cc: Erik Lybeck

IN THE CHANCERY COURT FOR THE 21ST JUDICIAL DISTRICT
AT WILLIAMSON COUNTY, TENNESSEE

SUPERIOR WASTEWATER)
SYSTEMS, LLC f/k/a KINGS CHAPEL,)
CAPACITY, LLC and JOHN POWELL)
Plaintiffs,)

v.)

Case No. 23CV-53047

TENNESSEE WASTEWATER,)
SYSTEMS, INC.)
Defendant.)

MEMORANDUM AND ORDER

This dispute concerning the interpretation of a settlement agreement between two wastewater disposal utility companies is before the Court on Defendant Tennessee Wastewater Systems, Inc.'s ("TWSI") May 13, 2024 motion to dismiss the Amended Complaint filed by Plaintiffs Superior Wastewater Systems, LLC and John Powell (collectively, "Superior") on April 17, 2024. For the reasons stated below, TWSI's motion to dismiss is GRANTED.

PROCEDURAL HISTORY

Superior filed its original complaint on November 14, 2023. In its original complaint, Superior accused TWSI of breach of contract and petitioned this Court for a declaratory judgment. On December 12, 2023, TWSI filed its answer and asserted a counterclaim seeking reformation of the parties' contract. Superior responded to the counterclaim on January 10, 2024.

On March 23, 2024, TWSI moved to amend its answer and counterclaim to request the recovery of attorney's fees and assert that Superior's recent attempt to expand its service area falls outside the ambit of the parties' contract. Superior accordingly filed its own motion to amend its

complaint on April 12, 2024. Four days after Superior filed its motion to amend, this Court entered an agreed order permitting both parties to take leave to amend their pleadings.

A day after the entry of the agreed order, Superior filed its Amended Complaint. On May 13, 2024, TWSI filed a motion to dismiss the Amended Complaint for failure to state a claim. Superior filed its response to TWSI's motion to dismiss on June 24, 2024.

On June 27, this Court heard the parties' oral arguments and subsequently took the matter under advisement.

STATEMENT OF FACTS

Superior is a "provider of wastewater utility services and is regulated by the Tennessee Public Utilities Commission" ("TPUC").¹ To launch service into a new municipality or subdivision, a public utility provider must obtain a certificate of convenience and necessity ("CCN").² Tenn. Code Ann. § 65-4-201(a) (West 2024). In 2004, Superior—at the time known as King's Chapel Capacity ("KCC")—filed a petition (the "2004 Petition") for a wastewater disposal CCN with the Tennessee Regulatory Authority ("TRA"), the predecessor agency to the TPUC.³ The geographic scope of Superior's requested CCN included 269 single-family homes in Williamson County (collectively, the "Ashby Communities") to which TWSI already possessed a wastewater disposal CCN.⁴ Consequently, TWSI objected to 2004 Petition and, throughout 2004 and 2005, the parties litigated this matter before the TRA and several Tennessee courts.⁵

After nearly a year of litigation, the parties entered into a "highly negotiated" agreement in

¹ Amd. Compl. ¶ 5.

² *Id.* ¶ 28.

³ *Id.* ¶ 8. For the sake of consistency, the Court will refer to King's Chapel Capacity as 'Superior' throughout this memo and order. However, when quoting the parties' pleadings or any exhibits attached thereto, the Court will not replace the parties' use of 'King's Chapel Capacity' or 'KCC.'

⁴ *Id.* ¶¶ 8, 9.

⁵ *Id.* ¶ 10.

July 2005 (the “Settlement Agreement”) to “resolve their disputes.”⁶ The Settlement Agreement first listed its aims, among which were the “granting of a Certificate of Need and Necessity” to Superior, the “transfer of the State Operating Permit” for the wastewater disposal plant servicing the Ashby Communities, and the “removal of the Objection to the CCN” sought by Superior “at a time and in forms acceptable to” Superior.⁷ This list of objectives did not explicitly articulate any desire to shield Superior from TWSI’s legal objection to any or all of its future attempts to expand the size of its service area.⁸

As the name ‘Settlement Agreement’ suggests, the parties mutually promised to abstain from initiating “all actions, claims, demands, [etc.,] . . . which have arisen, or may have arisen, or shall arise by reason” of the parties’ prior litigation.⁹ However, another important paragraph of the Settlement Agreement (“Paragraph Six”) explained:

6. Upon execution of this Settlement Agreement, TWS shall file a cancellation and/or transfer as appropriate, in a form and substance satisfactory to [Superior/KCC] prior to submittal, of that portion of its certificated area which is described in the pending KCC petition for authority and shall withdraw any objection or opposition to the CCN Application before the Tennessee Regulatory Authority filed by KCC for the establishment of the wastewater treatment facility in the area set forth in the Application, or as such application may be amended provided such amendment does involve a revision or change of the geographic area and number of customers to be served.¹⁰

Superior claims that Paragraph Six was intended to “preclude the possibility” of future disputes similar to the one that prompted the parties to sign the Settlement Agreement.¹¹ However, the Settlement Agreement also included a merger clause which stated “there are no other

⁶ *Id.* ¶ 11.

⁷ *See* Amd. Compl. Ex. A 2-3.

⁸ *See id.*

⁹ *Id.* 3-4.

¹⁰ *Id.* 3.

¹¹ Amd. Compl. ¶¶ 15-17.

understandings or agreements, verbal or otherwise, in relation thereto between the Parties except as” explicitly written in the Settlement Agreement.¹²

After the parties signed the Settlement Agreement, TWSI withdrew its objection to the 2004 Petition and allowed Superior to provide wastewater disposal services to the Ashby Communities.¹³ In January 2006, the TRA granted the 2004 Petition¹⁴ and Superior has not suggested that TWSI timely petitioned the TRA to reconsider its final order or timely petitioned a chancery court judicially review the order.¹⁵ On July 6, 2023, Superior petitioned the TPUC to, according to Superior, “amend its CCN application by expanding Superior’s existing service territory to include an additional 355 parcels in proximity to the Triune area of Williamson County” (the “2023 Petition”).¹⁶ At the time of the 2023 Petition, Superior did not service the “355 parcels in proximity to the Triune area.”¹⁷ “To prepare for Superior’s eventual service” to this area, Superior’s principal, John Powell, “acquired several real estate contracts, with the intention to close on each real estate contract after receiving the amended CCN.”¹⁸ On August 23, 2023, TWSI filed a petition to intervene in the 2023 Petition (the “2023 Objection”) because the area described in the 2023 Petition fell into TWSI’s service area.¹⁹

Superior informed TWSI that the 2023 Objection breached the parties’ Settlement Agreement, but TWSI did not withdraw the objection.²⁰ Due to the 2023 Objection, “Superior’s CCN application was delayed, Powell has been unable to close on the acquired real estate contracts, and Powell has been forced to renegotiate the real estate contracts at significant expense,

¹² *Id.* ¶ 18.

¹³ *See id.* ¶ 21.

¹⁴ *Id.*

¹⁵ *See generally id.*

¹⁶ *Id.* ¶ 22.

¹⁷ *See id.*; Pls.’ Resp. Def.’s Mot. Dismiss 9.

¹⁸ Amd. Compl. ¶ 23.

¹⁹ *Id.* ¶ 24.

²⁰ *Id.* ¶¶ 25-26.

with additional delay costs accruing each month Superior cannot obtain its amended CCN.”²¹ Superior now brings a breach of contract claim against TWSI and asks this Court to declare that TWSI has breached the Settlement Agreement and hold a trial to determine the damages sustained by Superior in the wake of the 2023 Objection.²²

LEGAL STANDARD

TWSI seeks the dismissal of all claims made in Superior’s Amended Complaint pursuant to Rule 12.02(6) of the Tennessee Rules of Civil Procedure.²³ Rule 12.02(6) allows a party to move to dismiss a complaint if the facts contained therein fail “to state a claim upon which relief can be granted.” Tenn. R. Civ. P. 12.02(6). “Courts reviewing a complaint tested by a motion to dismiss must construe the complaint liberally in favor of the plaintiff by taking all factual allegations in the complaint as true, and by giving the plaintiff the benefit of all reasonable inferences that can be drawn.” *Conley v. Life Care Ctrs. of Am.*, 236 S.W.3d 713, 724 (Tenn. Ct. App. 2007). However, “allegations of pure legal conclusions will not sustain a complaint.” *Whitel v. Revco Discount Drug Centers, Inc.*, 33 S.W.3d 713, 718 (Tenn. 2000); *see also Lee v. State Volunteer Mut. Ins. Co.*, No. E2002-03127-COA-R3-CV, 2005 WL 123492, at *10 (Tenn. Ct. App. Jan. 15, 2005) (“A complaint . . . must do more than simply parrot the legal elements of the cause of action.”). Consequently, “[d]ismissal pursuant to Tenn. R. Civ. P. 12.02(6) is only warranted when the alleged facts will not entitle the plaintiff to relief or when the complaint is totally lacking in clarity and specificity.” *Conley*, 236 S.W.3d at 724 (citing *Dobbs v. Guenther*, 846 S.W.2d 270, 273 (Tenn. Ct. App. 1992)).

²¹ *Id.* ¶ 28.

²² Pls.’ Prayer for Relief ¶¶ 2, 7.

²³ Def.’s Mot. Dismiss 1.

Generally speaking, when “matters outside the pleading are presented to and not excluded by the court” on a 12.02(6) motion, said motion is converted into a motion for summary judgment. Tenn. R. Civ. P. 12.02; *Smith v. Hauck*, 469 S.W.3d 564, 567 (Tenn. Ct. App. 2015) (citation omitted). However, courts ruling on a 12.02(6) motion may, without converting the motion to one for summary judgment, consider ““matters incorporated by reference or integral to the claim, items subject to judicial notice, matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint whose authenticity is unquestioned.”” *State ex rel. Harman v. Trinity Indus., Inc.*, No. M2022-00167-COA-R3-CV, 2023 WL 3959887 at *17 (Tenn. Ct. App. June 13, 2023) (quoting *Vanwinkle v. Thompson*, No. M2020-01291-COA-R3-CV, 2022 WL 1788274, at *3 (Tenn. Ct. App. June 2, 2022)).

DISCUSSION

Superior alleges TWSI has breached the Settlement Agreement.²⁴ This alleged breach has prompted Superior to ask the Court to declare the following: one, TWSI has breached the Settlement Agreement by objecting to Superior’s 2023 Petition before the TPUC; two, TWSI must withdraw the 2023 Objection; and three, Superior is “entitled to all additional special, incidental, and consequential damages resulting from [TWSI’s] breach, including [its] reasonable attorneys’ fees.”²⁵ For the reasons below, the Court determines that the facts as Superior has alleged them do not entitle Superior to relief.

Breach of Contract

“In order to make a prima facie case for a breach of contract claim, a plaintiff must allege: ‘(1) the existence of an enforceable contract, (2) nonperformance amounting to a breach of the

²⁴ Amd. Compl. ¶¶ 31-36.

²⁵ *Id.* ¶¶ 37-41.

contract, and (3) damages caused by the breach of the contract.” *Tolliver v. Tellico Vill. Prop. Owners Ass’n, Inc.*, 579 S.W.3d 8, 25 (Tenn. Ct. App. 2019) (quoting *C&W Asset Acquisition, LLC v. Oggs*, 230 S.W.3d 671, 676-77 (Tenn. Ct. App. 2007)).

Superior has not properly alleged the present existence of an enforceable contract because the Settlement Agreement has been fully performed and thus has ceased to be executory.²⁶ See *Application (9.a.)*, *Oxford English Dictionary* (online ed. 2024); *Petition*, *Black’s Law Dictionary* (6th ed. 1990); *Application*, *Black’s Law Dictionary* (6th ed. 1990); Restatement (Second) of Contracts § 235(1) (Am. L. Inst. 1981). Superior has not properly averred any nonperforming act amounting to a breach by TWSI because the Settlement Agreement did not obligate TWSI to withhold its objection to the 2023 Petition.²⁷ See *Cummings Inc. v. Dorgan*, 320 S.W.3d 316, 333 (Tenn. Ct. App. 2009); *Higgins v. Oil, Chem. & Atomic Workers Int’l Union, Loc. No. 3-677*, 811 S.W.2d 875, 881 (Tenn. 1991); Tenn. Comp. R. & Regs. 1220-04-13-17(2) (West 2024). Because Superior has neither suitably alleged a binding contract between Superior and TWSI nor a breach thereof, Superior’s factual allegations show no damages caused by a breach of contract. Consequently, the Court dismisses Superior’s breach of contract claim. *Tolliver*, 579 S.W.3d at 25 (quoting *C&W Asset Acquisition*, 230 S.W.3d at 676-77).

Scope of Paragraph Six and the Settlement Agreement

The parties’ disagreement over TWSI’s obligations as articulated in the Settlement Agreement rests, for the most part, on the parties’ interpretation of Paragraph Six.²⁸ Again, Paragraph Six reads in full:

6. Upon execution of this Settlement Agreement, TWS shall file a cancellation and/or transfer as appropriate, in a form and substance satisfactory to [Superior/KCC] prior to submittal, of that portion of its certificated area which is

²⁶ See Amd. Compl. Ex. A 2-3.

²⁷ See *id.*

²⁸ Compare Amd. Compl. ¶¶ 14, 27 with Def.’s Mot. Dismiss 2, 7-8.

described in the pending KCC petition for authority and shall withdraw any objection or opposition to the CCN Application before the Tennessee Regulatory Authority filed by KCC for the establishment of the wastewater treatment facility in the area set forth in the Application, or as such application may be amended provided such amendment does involve a revision or change of the geographic area and number of customers to be served.²⁹

Later in the Settlement Agreement, both Superior and TWSI promised to abstain from initiating “all actions, claims, demands, [etc.] . . . which have arisen, or may have arisen, or shall arise by reason” of the litigation the parties undertook in 2004 and 2005.³⁰ Tennessee courts have routinely decided agreements in which the parties agree to release claims against one another—such as the Settlement Agreement—are binding contracts. *See, e.g., Siddle v. Crants*, No. 3:09-0175, 2010 WL 424906 (M.D. Tenn. Jan. 25, 2010) (agreement mutually barring claims arising from business relationship was an enforceable contract); *Perkins v. Metro. Gov’t of Nashville and Davidson Cnty.*, 380 S.W.3d 73 (Tenn. 2012) (settlement agreement between former employee and municipal government was enforceable but did not contemplate, and thus did not bar, Title VII and ADEA claims). The facts as alleged by Superior show that the two parties entered a binding contract by assenting to the Settlement Agreement.³¹ Therefore, “issues of enforceability of [the Settlement Agreement] are governed by contract law.” *See Envir. Abatement, Inc. v. Astrum R.E. Corp.*, 27 S.W.3d 530, 539 (Tenn. Ct. App. 2000) (citing *Sweeten v. Trade Envelopes, Inc.*, 938 S.W.2d 383, 385 (Tenn. 1996)).

When resolving questions of contractual interpretation, Tennessee trial courts must “interpret contracts so as to ascertain and give effect to the intent of the contracting parties consistent with legal principles.” *Individual Healthcare Specialists, Inc. v. BlueCross BlueShield of Tenn., Inc.*, 56 S.W.3d 671, 688 (Tenn. 2019). “The intent of the parties is presumed to be that

²⁹ Amd. Compl. Ex. A 3.

³⁰ *Id.* 3-4.

³¹ *See generally* Amd. Compl. Ex. A.

specifically expressed in the body of the contract.” *Planters Gin Co. v. Fed. Compress & Warehouse Co.*, 78 S.W.3d 885, 890 (Tenn. 2002). Thus, in “resolving disputes concerning contract interpretation,” courts must “ascertain the intention of the parties based upon the usual, natural, and ordinary meaning of the contractual language.” *Id.* at 889-890 (quoting *Guiliano v. Cleo, Inc.*, 995 S.W.2d 88, 95 (Tenn. 1999)).³²

Additionally, courts must also pay mind to the relationship between different provisions of the contract, which must be “construed in harmony with each other so as to give effect to each provision.” *Cummings Inc. v. Dorgan*, 320 S.W.3d 316, 333 (Tenn. Ct. App. 2009) (citing *Teter v. Republic Parking Sys., Inc.*, 181 S.W.3d 330, 342 (Tenn. 2005)); *see also* Restatement (Second) of Contracts § 202(2) (Am. L. Inst. 1981) (“A writing is interpreted as a whole, and all writings that are part of the same transaction are interpreted together.”).³³ After performing this analysis, if a court determines “the language in a contract is clear and unambiguous, then its literal meaning controls the outcome of a contract dispute, and the court may not look beyond the four corners of the contract to ascertain the parties’ intention.” *Cummings Inc.*, 320 S.W.3d at 333.

Paragraph Six first provides that “[u]pon execution of this Settlement Agreement, TWS[I] shall file a cancellation and/or transfer as appropriate, in a form and substance satisfactory to [KCC/Superior] prior to submittal, of that portion of its certificated area which is described in the pending KCC petition for authority.”³⁴ Since, as far as Superior’s complaint can identify, the 2004

³² This Court employs the plain meaning of written contracts as its interpretive lodestar because doing so “simplifies the litigation of contract disputes and, more important[ly], protects contracting parties against being blindsided by evidence intended to contradict the deal that they thought they had graven in stone by using clear language.” *Beantalk Grp., Inc. v. AM Gen. Corp.*, 283 F.3d 856, 859 (7th Cir. 2002) (opinion of Posner, J.); *see also* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 69 (2012) (“The ordinary-meaning rule is the most fundamental semantic rule of interpretation. It governs constitutions, statutes, rules, and private instruments. Interpreters should not be required to divine arcane nuances or to discover hidden meanings.”)

³³ The Settlement Agreement also provides: “THE PROVISIONS OF THIS AGREEMENT must be read as a whole, are not severable and/or separately enforceable by either party hereto.” Amd. Compl. Ex. A 4.

³⁴ Amd. Compl. Ex. A 3.

Petition was Superior's only TRA petition at the time that the parties entered the Settlement Agreement, the phrase "KCC petition for authority" could only refer to the 2004 Petition.³⁵ Because the 2004 Petition contained a request for a CCN in the Ashby Communities, the Ashby Communities were "that portion of [TWSI's] certificated area which is described in the pending KCC petition for authority."³⁶ Therefore, the first portion of Paragraph Six required TWSI to rescind its right to service the Ashby Communities under its CCN or otherwise transfer said right to Superior.³⁷

Paragraph Six then further declares that TWSI

shall withdraw any objection or opposition to the CCN Application before the Tennessee Regulatory Authority filed by KCC for the establishment of the wastewater treatment facility in the area set forth in the Application, or as such application may be amended provided such amendment does involve a revision or change of the geographic area and number of customers to be served.³⁸

Because the 2004 Petition contains Superior's sole request for a CCN, the phrase "CCN Application" could only refer to the 2004 Petition.³⁹ Therefore, the phrases "KCC petition" and "CCN Application" synonymously refer to the 2004 Petition.⁴⁰ Moreover, even when removed from the context of the parties' proceedings before the TRA, the "usual, natural, and ordinary meaning[s]" of 'application' and 'petition' indicate that a CCN application is no different from a CCN petition. *See Planters Gin Co.*, 78 S.W.3d at 890; *Application (9.a.)*, *Oxford English Dictionary* (online ed. 2024); *Application (2a)*, *Merriam-Webster Dictionary* (online ed. 2024); *see also Petition (n.1)*, *Random House Thesaurus* (college ed. 1984) (petition and application are synonyms). The Oxford English Dictionary defines 'application' as "the action of making a

³⁵ See Amd. Compl. ¶ 8.

³⁶ See Amd. Compl. ¶ 8, Ex. A 3.

³⁷ See *id.*

³⁸ Amd. Compl. Ex. A 3.

³⁹ See Amd. Compl. ¶ 8, Ex. A 3.

⁴⁰ See *id.*

request, *petition*, or appeal to a person or body of people” or “a request, *petition*, or appeal so made.” *Application* (9.a.), *Oxford English Dictionary* (online ed. 2024) (*emphasis supplied*). Similarly, the Merriam-Webster Dictionary defines ‘application’ interchangeably with ‘petition.’ *Application* (2a), *Merriam-Webster Dictionary* (online ed. 2024).

Furthermore, in the context of an administrative law proceeding such as the one that prompted the parties’ Settlement Agreement, the definitions of ‘application’ and ‘petition’ bear an even stronger degree of synonymity. *See Apply*, *Black’s Law Dictionary* (6th ed. 1990); *Petition*, *Black’s Law Dictionary* (6th ed. 1990); *see also Petition*, *Barron’s Law Dictionary*, (6th ed. 2010) (quoting *State ex rel. Warren v. Roberts*, 110 S.E.2d 909, 911 (W.Va. 1959)) (A petition “connotes an application in writing . . . stating facts and circumstances . . . and containing a prayer for relief.”) When one applies, he or she makes “a formal request or *petition*.” *Apply*, *Black’s Law Dictionary* (6th ed. 1990) (*emphasis supplied*). Correspondingly, when one makes a petition, he or she offers “a written address, embodying an *application* or prayer . . . to the power, body, or person to whom it is presented.” *Petition*, *Black’s Law Dictionary* (6th ed. 1990) (*emphasis supplied*). The 2004 Petition exactly captures the sort of request contemplated by the ordinary legal definitions of ‘application’ and ‘petition,’ as the 2004 Petition embodied Superior’s written request for permission from the TRA to provide wastewater disposal services to the Ashby Communities.⁴¹ *See Apply*, *Black’s Law Dictionary* (6th ed. 1990); *Petition*, *Black’s Law Dictionary* (6th ed. 1990). It is therefore beyond question that ‘KCC petition’ and ‘CCN Application’ both reference the 2004 Petition.⁴² *See Apply*, *Black’s Law Dictionary* (6th ed. 1990); *Petition*, *Black’s Law Dictionary* (6th ed. 1990). Consequently, TWSI was required to “withdraw any objection or opposition to”

⁴¹ Amd. Compl. ¶ 8.

⁴² *See id.*

the 2004 Petition or any amendment to the 2004 Petition, “provided such amendment [did] involve a revision or change of the geographic area and number of customers to be served.”⁴³

Superior argues this portion of Paragraph Six “applies to any future attempts to amend the geographic area of the CCN then being applied for.”⁴⁴ However, this interpretation mistakenly conflates an application to amend a CCN with an amendment of an application for a CCN—a fact easily unearthed by a simple reading of Paragraph Six. Again, the plain language of Paragraph Six only prohibits TWSI from objecting to amendments intended to change the geographic scope of the request in 2004 Petition before it was decided by the TRA.⁴⁵ This is *not* the same thing as an amendment to the geographic scope of the CCN Superior obtained after the TRA’s approval of the 2004 Petition. In fact, an amendment to the geographic scope of Superior’s already existent CCN would, legally speaking, require a new application altogether rather than an amendment to the 2004 Petition. *See* Tenn. Comp. R. & Regs. 1220-04-13-17(2) (West 2024) (Public wastewater utilities must furnish the same information to the TPUC irrespective of whether they seek a “new or expanded CCN”).

Indeed, Superior itself admits that, as a public utility service provider, it “must apply for and obtain a [CCN] before establishing service into a new municipality or territory.”⁴⁶ When Superior submitted its 2023 Petition as a “Petition . . . to Amend Existing Service Territory in Williamson County,” rather than an amendment to the 2004 Petition, to the TPUC, Superior sought to establish service in a territory it had not yet serviced—that is, a new territory.⁴⁷ This petition,

⁴³ *See* Amd. Compl. Ex. A 3.

⁴⁴ Pls.’ Resp. Mot. Dismiss 7.

⁴⁵ *See* Amd. Compl. Ex. A 3.

⁴⁶ *See* Amd. Compl. ¶ 7.

⁴⁷ *See* Def.’s Mot. Dismiss Ex. D 1; Pls.’ Resp. Def.’s Mot. Dismiss 9. Because Exhibit D to the Defendant’s Motion to Dismiss is incorporated by reference in the Motion to Dismiss, TWSI’s 12.02(6) motion is not converted into a motion for summary judgment. *See State ex rel. Harman v. Trinity Indus., Inc.*, No. M2022-00167-COA-R3-CV, 2023 WL 3959887 at *17 (Tenn. Ct. App. June 13, 2023) (quoting *Vanwinkle v. Thompson*, No. M2020-01291-COA-R3-CV, 2022 WL 1788274, at *3 (Tenn. Ct. App. June 2, 2022)).

then, was a *new* application to amend a pre-existing CCN, not an amendment to an *old* application for a CCN—a fact acknowledged by Superior when it referred to the 2023 Petition as “Superior’s CCN application.”⁴⁸ However, Paragraph Six does not prevent TWSI from objecting to any such new application.⁴⁹ Superior claims the Settlement Agreement included the phrase ‘such amendment does involve a revision or change of the geographic area and number of customers to be served’ to prevent similar disputes from occurring in the future, but the Settlement Agreement’s merger clause prevents such an intent from being imputed to Paragraph Six.⁵⁰ Consequently, Paragraph Six prohibits only objections to amendments of the 2004 Petition and *not* objections to new petitions to amend the CCN which Superior obtained through the 2004 Petition.⁵¹ *See* Tenn. Comp. R. & Regs. 1220-04-13-17(2).

Reading Paragraph Six in context with the rest of the Settlement Agreement bolsters this conclusion.⁵² *See Cummings Inc.*, 320 S.W.3d at 333. Paragraphs I through VII of the Settlement Agreement list the objectives of the contract, which include the “granting of a Certificate of Need and Necessity” to Superior, the “transfer of the State Operating Permit” for the wastewater disposal plant servicing the Ashby Communities, and, most crucially, the “removal of the Objection to the CCN” sought by Superior “at a time and in forms acceptable to” Superior.⁵³ Notably, not among the aims included in this list of objectives is the parties’ desire to prevent future litigation arising from any and all of Superior’s attempts to expand the size of its service area.⁵⁴ Because this Court

⁴⁸ *See* Amd. Compl. ¶ 28.

⁴⁹ *See* Amd. Compl. Ex. A 3.

⁵⁰ *See* Amd. Compl. ¶¶ 16-18 (“There are no other understandings or agreements, verbal or otherwise, in relation thereto between the Parties except as herein expressly set forth.”). As explained below, the Settlement Agreement does not list the prevention of litigation arising from future service expansion as one of its aims. Therefore, such parol evidence cannot influence the Court’s interpretation of the Settlement Agreement.

⁵¹ *See* Amd. Compl. ¶ 28, Ex. A 3.

⁵² *See* Amd. Compl. Ex. A 2-3.

⁵³ *See id.*

⁵⁴ *See id.*

must construe different provisions of the Settlement Agreement “in harmony with each other so as to give effect to each provision,” Paragraph Six’s requirement that TWSI “withdraw any objection or opposition to” any amendment to the 2004 Petition involving “a revision or change of the geographic area and number of customers to be served” must be understood to accord with the aims listed in Paragraphs I-VII.⁵⁵ See *Cummings Inc.*, 320 S.W.3d at 333.

The Settlement Agreement’s explicit emphasis on TWSI’s expeditious rescission of its objection to the 2004 Petition and furnishing Superior the means to run a wastewater treatment plant in the Ashby Communities indicate the parties only intended to resolve their conflict over which of the two would provide wastewater utilities to the Ashby Communities.⁵⁶ Meanwhile, the Settlement Agreement’s thundering silence concerning future disputes over other service areas reveals the parties did not intend to ban TWSI for all time from objecting to Superior’s attempts to encroach into TWSI’s service territory.⁵⁷ The Settlement Agreement’s silence on this crucial point is significant because “the law does not favor perpetual contracts” and will only recognize unending contractual obligations if they are explicitly manifest in the language of a contract.⁵⁸ See *Higgins v. Oil, Chem. & Atomic Workers Int’l Union, Loc. No. 3-677*, 811 S.W.2d 875, 881 (Tenn. 1991) (citing *In re Miller*, 447 A.2d 549, 553-54 (N.J. 1982)). Since no intention to impose perpetual obligations on TWSI is explicitly manifest in Paragraph Six or anywhere else in the Settlement Agreement, Paragraph Six does not prohibit TWSI from objecting to all future

⁵⁵ See *id.* 3.

⁵⁶ See Amd. Compl. Ex. A

⁵⁷ See generally Amd. Compl.

⁵⁸ “[B]usiness contracts should be interpreted with a healthy dose of common sense to avoid reaching nonsensical results” because contracts “are not parlor games but the means of getting the world’s work done.” *Reid Hosp. and Health Care Servs., Inc. v. Conifer Revenue Cycle Sols., LLC*, 8 F.4th 642, 653 (7th Cir. 2021). The Court finds it difficult to believe that TWSI would categorically forfeit its legal right to object to *any* of Superior’s attempts to encroach on TWSI’s service territories, for such a forfeiture is essentially an invitation to Superior to poach all of TWSI’s business—an exceptionally nonsensical result.

amendments to the CCN awarded to Superior by the TRA, but in fact only prohibited TWSI's objections to the language of the 2004 Petition.⁵⁹

Existence of a Binding Contract

As previously established, the parties did enter a binding contract when they assented to the Settlement Agreement. That contract has been fully performed and ceased to be executory long before Superior initiated the case at bar.⁶⁰ Paragraph Six required TWSI to withdraw its objection to the 2004 Petition and refrain from objecting to any amendments thereto.⁶¹ After entering the Settlement Agreement, TWSI withdrew its objection to the 2004 Petition and allowed Superior to provide disposal services to the Ashby Communities.⁶² In January 2006, the TRA "granted Superior's petition,"⁶³ and Superior has not suggested that TWSI timely petitioned the TRA to reconsider its final order or petitioned a chancery court to judicially review the order.⁶⁴ *See* Tenn. Comp. R. & Regs. 1220-01-02-.20(1) (West 2024) (amended in 2018 to reflect renaming of TRA to TPUC) (litigants in a contested case before the TRA/TPUC have fifteen days to file a petition to reconsider a final order); Tenn. Code Ann. § 4-5-322(b)(1)(A)(iv) (West 2024) (litigants in a contested case before administrative agency have sixty days to seek judicial review of agency orders). Therefore, after March 4, 2006, TWSI voluntarily forfeited all its opportunities to object to the 2004 Petition and thus fully performed its duties under the Settlement Agreement. *See* Tenn. Comp. R. & Regs. 1220-01-02-.20(1); Tenn. Code Ann. § 4-5-322(b)(1)(A)(iv).

Thus, TWSI fully performed the duties imposed upon it by the Settlement Agreement.⁶⁵

⁵⁹ *See generally* Amd. Compl. Ex. A.

⁶⁰ *See generally id.*

⁶¹ *See id.* 3.

⁶² *See* Amd. Compl. ¶ 21.

⁶³ *Id.*

⁶⁴ *See generally id.*

⁶⁵ *See generally* Amd. Compl. Ex. A.

Because the “[f]ull performance of a duty under a contract discharges the duty,” there is no provision of the Settlement Agreement enforceable against TWSI. *See* Restatement (Second) of Contracts § 235(1) (Am. L. Inst. 1981); *see also Allman v. Allman*, No. M1997-00251-COA-R3-CV, 2000 WL 1728339 at *4 (Tenn. Ct. App. Nov. 22, 2000) (Husband who was obligated by marital dissolution agreement to pay balance of loan discharged this obligation by paying the balance of the loan). The Settlement Agreement ceased to be executory long ago and can no longer be enforced against TWSI.⁶⁶ As a result, Superior has not properly alleged the present “existence of an enforceable contract.” *See Tolliver v. Tellico Vill. Prop. Owners Ass’n, Inc.*, 579 S.W.3d 8, 25 (Tenn. Ct. App. 2019) (quoting *C&W Asset Acquisition, LLC v. Oggs*, 230 S.W.3d 671, 676-77 (Tenn. Ct. App. 2007)).

Nonperforming Act Amounting to Breach and Damages Caused by Breach

Superior alleges that TWSI breached the Settlement Agreement by filing its 2023 Objection.⁶⁷ However, as established previously, Paragraph Six only prohibits objections to amendments of the 2004 Petition itself, but *not* objections to amendments of the CCN which Superior obtained through the 2004 Petition.⁶⁸ Since the 2023 Objection is an objection to an amendment of the CCN which Superior obtained through the 2004 Petition, TWSI did not violate Paragraph Six by filing the 2023 Objection.⁶⁹ Therefore, Superior has not alleged a nonperforming act “amounting to a breach of the contract” and, by logical extension, also failed to establish that

⁶⁶ Superior’s claim “that the promises and obligations in the Settlement Agreement between TWSI and Superior are not akin to an executory contract” is accidentally correct. This is so because Superior misunderstands executory contracts to be those in which “a party promises to relieve another party in return for a specific act.” *See* Pls.’ Resp. Opp’n Def.’s Mot. Dismiss 4. In actuality, an executory contract is a contract which “has not been fully completed or performed.” *Executory contract*, *Black’s Law Dictionary* (6th ed. 1990).

⁶⁷ Amd. Compl. ¶¶ 24-25.

⁶⁸ *See* Amd. Compl. Ex. A 3.

⁶⁹ *See* Amd. Compl. ¶ 24.

it has sustained “damages caused by the breach of the contract.” *See Tolliver*, 579 S.W.3d at 25 (quoting *C&W Asset Acquisition*, 230 S.W.3d at 676-77).

Declaratory Judgment

In Tennessee, one with an interest in a “written contract . . . or whose rights, status, or other legal relations are affected by a . . . contract” may petition a trial court to decide any “question of construction or validity arising under the . . . contract . . . and obtain a declaration of rights, status or other legal relations thereunder.” Tenn. Code. Ann. § 29-14-103 (West 2024). However, “in order to maintain an action for a declaratory judgment, a justiciable controversy must exist” between the parties. *State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 193 (Tenn. 2000) (citing *Jared v. Fitzgerald*, 195 S.W.2d 1, 4 (Tenn. 1946)). “A case is not justiciable if it does not involve a genuine, existing controversy requiring the adjudication of presently existing rights.” *UT Med. Grp., Inc. v. Vogt*, 235 S.W.3d 110, 119 (Tenn. 2007) (citing *Brown & Williamson Tobacco Corp.*, 18 S.W.3d at 193). Therefore, if “the facts averred in the [complaint] and admitted or denied in the answer” are such that “the declaration would not terminate any controversy, nor determine present rights of either party,” but instead be “no more than a stepping-stone to further litigation,” then a trial court’s denial of declaratory relief is appropriate. *Nicholson v. Cummings*, 217 S.W.2d 942, 943 (Tenn. 1949); *see also* Tenn. Code Ann. § 29-14-109 (West 2024) (“The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceedings.”). Additionally, a trial court’s discretion in refusing to enter a declaration is very wide and will not be disturbed on appeal unless the trial court has acted arbitrarily. *State ex rel. Barnhart v. Cty. of Bristol*, 970 S.W.2d 948, 954 (Tenn. 1998).

The case at bar contains no justiciable controversy because “it does not involve a genuine, existing controversy requiring the adjudication of presently existing rights.” *See UT Med. Grp.*, 235 S.W.3d at 119 (citing *Brown & Williamson Tobacco Corp.*, 18 S.W.3d at 193). The dispute between Superior and TWSI concerns the rights Superior possessed when the Settlement Agreement was executory—that is, rights which were appropriate to enforce in 2005 but not in 2024. *See* Tenn. Comp. R. & Regs. 1220-01-02-.20(1); Tenn. Code Ann. § 4-5-322(b)(1)(A)(iv). The facts, as Superior has alleged them, are such that “the declaration would not terminate any controversy, nor determine present rights of either party,” but instead be “no more than a stepping-stone to” a temporally and financially profligate trial to determine the scope of financial losses sustained by Superior that, as a matter of law, did not result from a breach of the Settlement Agreement.⁷⁰ *See Nicholson*, 217 S.W.2d at 943; *see Tolliver v. Tellico Vill. Prop. Owners Ass’n, Inc.*, 579 S.W.3d 8, 25 (Tenn. Ct. App. 2019). Therefore, Superior’s complaint does not warrant a declaratory judgment. If there is any stepping-stone this Court will enthusiastically place before the parties, it is one which will lead them to the TPUC, the appropriate forum for their present dispute. The Court believes granting TWSI’s Motion to Dismiss achieves this goal.

CONCLUSION

Accordingly,

IT IS THEREFORE ORDERED THAT: TWSI’s motion to dismiss Superior’s amended complaint pursuant to Rule 12.02(6) of the Tennessee Rules of Procedure is GRANTED. Superior’s Amended Complaint is hereby dismissed pursuant to Rule 12.02(6) of the Tennessee Rules of Civil Procedure.

⁷⁰ *See* Pls.’ Prayer for Relief ¶ 5.

IT IS FURTHER ORDERED THAT: Pursuant to Tenn. Code Ann. § 20-12-119(c), the Court grants TWSI leave to file and serve an application for attorney's fees not later than the close of business on August 9, 2024.

IT IS FURTHER ORDERED THAT: Superior shall file and serve its written opposition, if any, to the reasonableness of TWSI's application for attorney's fees not later than the close of business on August 16, 2024. If Superior files and serves such opposition and requests a hearing to dispute the reasonableness of TWSI's attorney's fees, Superior shall file a notice of hearing setting this matter on the Court's next available non-domestic motion docket, in compliance with Local Rule 5.03(a).

IT IS FURTHER ORDERED THAT: This is a final judgment from which either party may appeal, pursuant to Rule 3 of the Tennessee Rules of Appellate Procedure.

IT IS SO ORDERED THIS 30 **DAY OF JULY, 2024.**


JOSEPH A. WOODRUFF, Chancellor


CLERK'S CERTIFICATE OF SERVICE

I hereby certify a true and exact copy of the foregoing *Memorandum and Order* was mailed, postage prepaid, and/or emailed, and/or faxed, to:

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This 30th day of July, 2024.


Clerk & Master / Deputy Clerk