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## Landfill Closure/Property Redevelopment: Oregon Appellate Court Addresses Whether Mulch Storage Agreement Constitutes an Irrevocable License

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The Court of Appeals of Oregon (“Court”) issued a December 18th opinion addressing whether the temporary storage of waste mulch generated pursuant to a landfill closure constituted an irrevocable license. See *Joseph Mill Property, LLC, v. S&V Properties, LLC*, 301 Or. App. 319.

The Landfill was on property that had been purchased and would be redeveloped for subsequent sale.

OfficeMax is stated to have purchased property that was contaminated with a wood-products landfill. The permitted landfill was subject an Order requiring its eventual closure. The company entered into an agreement with S&V Properties (“S&V”) to process and remove landfill material as part of the closure.

The closure (denominated “removal plan”) involved processing approximately 56,000 to 65,000 cubic yards of material. The processing was expected to yield approximately 5,000 cubic yards of mulch. S&V agreed to:

- Process the landfill material
- Take ownership of the resulting mulch
- Temporarily store the mulch on the property (while gradually selling and removing it)

S&V subsequently determined that the amount of material to be processed was significantly greater than originally estimated. An additional 40,000 cubic yards of mulch was expected to be generated. As a result, it informed OfficeMax it could not undertake ownership of this increased volume of mulch unless it could be stored on the property for a three-year period. Three years was deemed the minimum acceptable time to remove the mulch.

OfficeMax orally agreed to S&V’s proposed storage schedule.

S&V completed processing and stockpiling the mulch. Further, the Oregon Department of Environmental Quality approved a three-year storage plan for the mulch. The state agency also determined that the landfill had been successfully closed and issued a no-further-action letter.

OfficeMax sold the property prior to the expiration of the three-year storage period. The new owner of the property sued S&V for trespass because of the presence of the remaining mulch. S&V filed a third-party complaint against OfficeMax for breach of license.

The third-party complaint alleged that the mulch storage agreement constituted an irrevocable license. S&V further alleged that OfficeMax had breached the license by selling the property to an owner that did not honor the license.

OfficeMax argued in a Motion to Dismiss that a license is only irrevocable if the licensor is estopped from revoking the license. OfficeMax argued that S&V failed to allege facts sufficient to establish an estoppel. The lower court agreed and dismissed the breach of license claim.

The Court discusses Oregon's statute of frauds and the elements of a license. It notes that the parties agreed that there were sufficient facts to prove the license had been granted. However, the disagreement was whether OfficeMax could revoke that license.

The Court then addresses S&V's contention that it pleaded sufficient facts to make the license irrevocable under three exceptions to the general rule of revocability. These include:

1. its license was irrevocable under an estoppel theory;
2. its license became irrevocable because it was coupled with an interest in chattel property located on OfficeMax's property; and
3. its license was irrevocable to the extent that S&V had executed the license.

The court concludes that none of the three exceptions are applicable to S&V. As a result, it upholds the lower court and determines that the license is revocable.

A copy of the Opinion can be downloaded [here](#).