**THE STATE OF NEW HAMPSHIRE**

**SUPREME COURT**

**In Case No. 2008-0690, Provan & Lorber, Inc. v. Stephen M. LaFrance & a., the court on January 11, 2010, issued the following order:**

The respondents, Stephen M. LaFrance and Horizons Engineering, P.L.L.C. (Horizons), appeal superior court orders finding them in contempt of an order that approved their 2004 settlement agreement with the petitioner, Provan & Lorber, Inc., and awarding the petitioner certain relief. We reverse.

The petitioner is an engineering company with offices in Contoocook and Littleton. LaFrance, formerly a vice-president of the petitioner, left the petitioner's employ to start his own engineering company, Horizons. At the time of his departure, he and others, including Horizons employee Karen Philbrick, wrongfully took a large amount of proprietary information from the petitioner, including digitally stored maps and plans. As a result, the petitioner brought an equity petition against the respondents. The parties entered into a settlement agreement, which the trial court approved in 2004. Pursuant to the settlement agreement, the respondents represented and warranted "that all digital files taken by Philbrick or other persons and given to Horizons have been deleted from all computers and digital storage devices to which that . . . digital material was copied to (directly or indirectly . . . ) and that no attempts will be made to access or recover those deleted files." (Emphasis added.) Horizons and its employees agreed "not to access or make use of any of the digital materials (or later hard copy versions of those documents) that were taken from [the petitioner] by Horizons employees (or persons to become Horizons employees) and to immediately report to [the attorneys for the parties] if any such materials, now believed to be deleted, are discovered."

Additionally, each Horizons employee was required to sign a certification under oath attesting that the employee has been advised that "Horizons and all of its employees are prohibited from making any use of the [data unlawfully taken by one or more Horizons employees from the petitioner] . . . and that data is required to be fully deleted from the computers (or other digital storage device) of Horizons and its employees (and of any other person to whom the data was obtained through Horizons or its employees)" and that neither Horizons nor its employees may "use any of that data or information or attempt to retrieve any such data (data here includes data as well as programs)."

In 2008, the petitioner moved to reopen the case and requested that the trial court find the respondents in contempt for having obtained a topographical

map the petitioner had created for the Town of Lincoln. The trial court found that by obtaining the map, the respondents were in contempt of the court order approving the parties' settlement. We review the trial court's contempt finding under our unsustainable exercise of discretion standard. See In the Matter of Stall & Stall, 153 N.H. 163, 168 (2005). We conclude that the trial court unsustainably exercised its discretion when it found that the respondents violated the parties' settlement agreement and, therefore, were in contempt.

A settlement agreement is contractual in nature and its interpretation, therefore, is governed by contract rules. See Public Serv. Co. of N.H. v. Town of Seabrook, 133 N.H. 365, 370 (1990); Belrose v. Baker, 121 N.H. 48, 51 (1981). We review the trial court's interpretation of the parties' settlement agreement de novo. See Czumak v. N.H. Div. of Developmental Servs., 155 N.H. 368, 373 (2007). When interpreting a written agreement, we give the language used by the parties its reasonable meaning, considering the circumstances and the context in which the agreement was negotiated, and reading the document as a whole. Id.; see Belrose, 121 N.H. at 51. Absent ambiguity, the parties' intent will be determined from the plain meaning of the language used in the agreement. Czumak, 155 N.H. at 373.

The trial court determined that the settlement agreement precluded the respondents from using not only the digital files taken by the respondents themselves but also those taken by "other persons." The trial court reasoned that the term "other persons" included individuals such as the Town of Lincoln's planning director, who had given the map to the respondents. We believe that, in context, the term "other persons" refers only to those who acted in concert with LaFrance and Philbrick.

The petitioner contends that even if the trial court misinterpreted the term "other persons," we may still affirm its contempt finding. The petitioner argues that the map at issue was one of the digital files originally downloaded by the respondents and that, by obtaining the map from the Town of Lincoln, the respondents violated their agreement not to "recover . . . deleted files." The record submitted on appeal reveals that whether the map was one of the files originally downloaded from the petitioner's computers by the respondents is a disputed issue of fact. Assuming, arguendo, that this fact is true, given that the settlement agreement focused upon digital files, we believe that the word "recover" refers to the mechanized recovery of digital files.

While at oral argument, the petitioner asserted that the respondents were in contempt because they breached the implied duty of good faith and fair dealing, the petitioner has failed to demonstrate that it preserved this argument for our review. See Bean v. Red Oak Prop. Mgmt., 151 N.H. 248, 250 (2004). Accordingly, we decline to address it.

For all of the above reasons, therefore, we reverse the trial court's finding that the respondents were in contempt of the prior court order approving the parties' 2004 settlement agreement. In light of our decision, we need not address the parties' remaining arguments, including those related to the petitioner's cross-appeal.

Reversed.

DALIANIS, DUGGAN and HICKS, JJ., concurred.

**Eileen Fox,**
**Clerk**