STATE OF MICHIGAN

COURT OF APPEALS

SHR LIMITED PARTNERSHIP,

Plaintiff-Appellee,

v

NORTHERN LAKES PETROLEUM, INC. and O.I.L. ENERGY CORPORATION,

Defendants-Appellants.

UNPUBLISHED
September 24, 2002

No. 225484
Charlevoix Circuit Court
LC No. 99-188818-CK

Before: Jansen, P.J., and Smolenski and Wilder, JJ.

JANSEN, P.J. (*dissenting*).

I respectfully dissent and would affirm the trial court's ruling.

The trial court did not err in focusing on "$5.00 per acre" in paragraph 17 of the lease, nor did the trial court err in ruling that this language is clear and unambiguous. A contract is ambiguous if its provisions may reasonably be understood in different ways. *Universal Underwriters Ins Co v Kneeland*, 464 Mich 491, 496; 628 NW2d 491 (2001). Where no ambiguity exists, the contract must be enforced as written. *Farm Bureau Ins Co v Nikkel*, 460 Mich 558, 566; 596 NW2d 915 (1999). The majority, by referring to paragraph 14, is creating an ambiguity in paragraph 17 where no ambiguity exists. Moreover, paragraph 14 does not operate such that the extension payment is to be effectively calculated on a net mineral acre basis, as the majority concludes.

The language "$5.00 per acre" cannot be reasonably understood in different ways. The language of paragraph 17 ("$5.00 per acre") is clear and unambiguous and, therefore, must be applied as written. Paragraph 14 simply states that if the lessor (plaintiff) has an ownership interest less than stated, then the royalties and other payments would be reduced according to the actual ownership interest. I fail to see how this leads to the conclusion that paragraph 14 operates such that the extension payment would be effectively calculated on a net mineral acre basis. Paragraph 14 simply means that plaintiff would be paid according to the actual acreage that it owned. Here, in applying the clear and unambiguous language of paragraph 17 ("$5.00 per acre) to the ownership interest (7,242 acres), plaintiff is entitled to $36,210 as a matter of law. The trial court did not err in so ruling. If defendants wanted to pay five dollars for each net mineral acre for the extension payment, they should have stated as such in the lease agreement.

I would not address the other counts in plaintiff's complaint because the trial court did not rule on the merits of counts II and III.

I would affirm.

/s/ Kathleen Jansen