STATE OF MICHIGAN

COURT OF APPEALS

PATRICK BLANZY and PATRICIA BLANZY, Plaintiffs/Counter-Defendants-Appellees,	UNPUBLISHED August 19, 2008
v	No. 278895 Otsego Circuit Court
DELTA OIL COMPANY, INC., Defendant/Counter-Plaintiff-Appellant.	LC No. 05-011045-CH

Before: Markey, P.J., and Whitbeck and Gleicher, JJ.

PER CURIAM.

In this contract dispute arising out of an oil and gas lease, defendant Delta Oil Company, Inc. (Delta Oil), appeals as of right the trial court's grant of summary disposition in favor of plaintiffs Patrick and Patricia Blanzy. The sole issue on appeal is whether the trial court properly determined that, under the terms of the lease, Delta Oil had an obligation to pay up to $1600 a year of the Blanzys' propane bill, even after the lease terminated. Because we conclude that the trial court properly determined that the plain language of the lease required Delta Oil to continue making the payments, we affirm.

I. Basic Facts And Procedural History

Delta Oil is in the business of exploring for and producing gas and oil in Michigan. Delta Oil developed a natural gas field, called the Dover-Schrader Unit, that covers hundreds of acres in Otsego County's Dover Township. The Dover-Schrader Unit produces natural gas from the Antrim geological formation. The Blanzys own 280 acres of land within the Dover-Schrader Unit.

After Delta Oil developed the Dover-Schrader Unit, it determined that it might also be able to produce oil from a deeper geological formation called the Niagaran on some of the same land occupied by the Dover-Schrader Unit. For that reason, Delta Oil obtained gas and oil leases from property owners, which included 40 acres of the Blanzys' property. The Blanzys executed the lease with Delta Oil in February 1992.

Under the terms of the lease, Delta Oil would have one year to begin operations. Thereafter, the lease would continue as long as Delta Oil did not cease operations for more than

90 days or, if the well was producing oil, so long as the well produced. In consideration for the lease, Delta Oil agreed to pay the Blanzys $4000 at the signing, to pay a 20 percent royalty on oil produced from the well, and to pay for up to $1600 of the Blanzys' propane use at a specified address. The lease also provided: "This propane agreement to remain in effect so long as Delta . . . produces gas from the Dover-Schrader Gas Unit."

Delta Oil drilled a well on the Blanzys' property in 1992, but the well did not produce oil. In 1997, Delta Oil approached the Blanzys and asked them to affirm the continuing validity of the lease in an affidavit, which they did. Delta Oil then tried to produce oil from the well in that year, and again in 2000 and 2001, but it was unsuccessful each time. In 2004, Delta Oil plugged the well on the Blanzys' property. It is undisputed that until the plugging of the well, Delta Oil had honored the lease's propane provision. However, after Delta Oil plugged the well, it ceased to make payments under the propane provision.

In 2004, the Blanzys contacted Delta Oil about its failure to honor the propane provision. Delta Oil responded that it was no longer obligated to make payments under the lease because the propane provision only applied during the term of the lease and the lease had expired. In addition, in November 2004, Delta Oil surrendered its lease and recorded a release with Otsego County.

In January 2005, the Blanzys sued Delta Oil. The Blanzys asked the trial court to declare the lease's propane provision valid and enforceable and to award damages. (In its answer, Delta Oil filed a counterclaim against the Blanzys for filing a frivolous suit. But that claim is not at issue on appeal.) After the parties both moved for summary disposition, the trial court determined that the propane provision was not ambiguous and required Delta Oil to continue making the propane payments as long as the Dover-Schrader Unit continued to produce gas. Because it was undisputed that the Dover-Schrader Unit continued to produce gas, the trial court denied Delta Oil's motion and granted the Blanzys' motion in an opinion and order entered in October 2005.

On June 5, 2007, the trial court entered a final order disposing of all claims. And Delta Oil now appeals.

II. The Survival Of The Propane Provision

A. Standard Of Review

On appeal, Delta Oil argues that the trial court erred when it determined that the lease's propane provision survived the termination of the lease. We review de novo both a trial court's decision concerning a motion for summary disposition and the proper interpretation of a contract.[1]

[1] *Hamade v Sunoco, Inc*, 271 Mich App 145, 153, 165; 721 NW2d 233 (2006).

B. Intent

In order to determine whether the lease's propane provision survived the termination of Delta Oil's leasehold interest in the Blanzys' 40 acres, we must determine the parties' intent. And, of course, the parties' intent can best be discerned by first examining the language actually used in the governing agreement.[2]

The parties executed the lease at issue in February 1992. Although the majority of the lease terms were contained in a standardized oil and gas lease, the parties made several important changes to the lease. Among the many additions and changes to the lease was a term for the provision of propane:

> [Delta Oil] to pay for [the Blanzys'] propane at the above address.[3] Payment may be up to, but not to exceed the cost of $1,600.00 (One Thousand Six Hundred Dollars) per year. This propane agreement to remain in effect so long as Delta, its successors and assigns produces gas from the Dover-Schrader Gas Unit.

We conclude that this provision is unambiguous and plainly answers the question before this Court: Delta Oil's obligation to pay for the Blanzys' propane remains "in effect so long as Delta . . . produces gas from the Dover-Schrader Gas Unit." Although Delta Oil argues that, when read in the context of the entire agreement, this obligation must be understood to have terminated when the lease terminated, Delta Oil does not identify the language within the preprinted lease that necessitates this result. Because there is no language in the lease that can reasonably be construed to modify the lease's propane provision, this case is distinguishable from *SHR Ltd Partnership v Northern Lakes Petroleum, Inc*.[4] Instead, Delta Oil contends that this Court should conclude that the parties intended the lease's propane provision to expire when the lease terminated because to interpret it otherwise would be to defeat the underlying purpose of oil and gas leases, which is to promote production.[5] But we are not at liberty to ignore the plain language of the actual lease based on some abstract concept of what might generally promote the development of oil and gas resources.[6] Further, although it might be reasonable to infer that the parties' intended an obligation without a specified duration to terminate with the

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[2] *Rory v Continental Ins Co*, 473 Mich 457, 469 n 21; 703 NW2d 23 (2005).

[3] The provision actually states: "Lessor to pay for Lessee's propane at the above address." But the parties agree that this was a clerical error.

[4] *SHR Ltd Partnership v Northern Lakes Petroleum, Inc*, 469 Mich 920; 670 NW2d 226 (2003).

[5] See *JJ Fagan & Co v Burns*, 247 Mich 674, 677-678; 226 NW 653 (1929) (noting the specialized nature of oil and gas leases).

[6] See *Bloomfield Estates Improvement Ass'n, Inc v Birmingham*, 479 Mich 206, 213; 737 NW2d 670 (2007), quoting *Rich Products Corp v Kemutec, Inc*, 66 F Supp 2d 937, 968 (ED Wis, 1999) ("Because the parties have freely set forth their rights and obligations toward each other in their contract, when resolving a contractual dispute, 'society is not motivated to do what is fair or just in some abstract sense, but rather seeks to divine and enforce the justifiable expectations of the parties as determined from the language of their contract.'").

lease, this inference cannot negate explicit language to the contrary. The parties to an agreement are free to organize their affairs as they see fit; and—absent considerations not relevant here—courts will enforce those agreements as written.[7] By explicitly tying the lease's propane provision to the production of a unit other than the one that was the subject of the lease, the parties clearly expressed their intent to provide consideration that could potentially outlast the life of the lease.

For this same reason, we also reject Delta Oil's contention that the duration specified in the lease's propane provision must be read as an additional limitation on Delta Oil's obligation to pay for the propane—that is, that the obligation lasts until either the lease terminates *or* Delta Oil ceases to produce gas from the Dover-Schrader Unit, whichever comes first. The language actually used by the parties contains no such limitation, and we decline to read one into the agreement.[8] Likewise, we find misplaced Delta Oil's reliance on foreign authorities for the proposition that all obligations under an oil and gas lease terminate as a matter of law when the lease terminates. None of the cited authorities addressed an explicit agreement by the parties concerning payments that were contingent on something other than development of the gas or oil on the leased property.[9]

Finally, we must reject Delta Oil's contention that enforcing the lease's propane provision as written somehow undermines the mutuality of obligation underlying the whole lease. Mutuality of obligation is an element of contract formation,[10] which specifies that both parties to the agreement must be bound or neither is bound.[11] In the present case, the parties were clearly mutually obligated by the lease agreement: the Blanzys were obligated to convey a leasehold interest in their land to Delta Oil and Delta Oil was bound to make the specified payments. The fact that the Blanzys no longer have any obligations under the lease does not

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[7] See *id.* at 212 (stating that courts respect the freedom of individuals freely to arrange their affairs via contract by enforcing unambiguous contracts as written).

[8] See *Rory*, *supra* at 468 (noting that unambiguous contracts are not open to judicial construction).

[9] See, e.g., *Stockton v Weeks*, 51 Cal App 2d 447; 125 P2d 110 (1942). In *Stockton*, the court recognized that future payments may be enforceable where the payments are part of the consideration for the lease, but distinguished the case before it on the grounds that the bonuses were tied to the acreage retained by the lessee and that it was the intent of the parties to give the lessee time to ascertain the profitability of the lease. *Id.* See also *Joyce v Wyant*, 105 F Supp 979 (WD Mich, 1952) (noting that the lease recited consideration that required the lessee to drill four wells, but concluding that the requirement was limited by another clause that extended the lease only so long as the lessee met the deadlines for drilling the wells).

[10] *Thomas v Leja*, 187 Mich App 418, 422; 468 NW2d 58 (1991).

[11] *Reed v Citizens Ins Co of America*, 198 Mich App 443, 449; 499 NW2d 22 (1993), overruled on other grounds *Griffith v State Farm Mut Automobile Ins Co*, 472 Mich 521; 697 NW2d 895 (2005).

alter the fact that they were obligated to perform at the lease's inception. Accordingly, we conclude that the lease's propane provision is valid and must be enforced as written.[12]

III. Conclusion

The trial court properly enforced the lease's propane provision according to its plain and unambiguous terms.

Affirmed.

/s/ Jane E. Markey
/s/ William C. Whitbeck
/s/ Elizabeth Gleicher

[12] *Hamade*, *supra* at 166.