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ARKANSAS COURT OF APPEALS

DIVISION II
No. CA11-139

	Opinion Delivered October 12, 2011
GUY GARNER AND RUBY GARNER APPELLANTS	APPEAL FROM THE CLEBURNE COUNTY CIRCUIT COURT [NO. CV-2010-114-4]
V.	HONORABLE TIM WEAVER, JUDGE
XTO ENERGY, INC. APPELLEE	AFFIRMED

JOHN MAUZY PITTMAN, Judge

On March 23, 2005, appellants Guy and Ruby Garner, owners of certain real property in Cleburne County, Arkansas, executed a mineral lease for a primary term of five years to Steven L. Yeager, LLC. The lessee subsequently assigned the mineral lease to appellee, XTO Energy, Inc. Appellee began drilling operations on the property on March 10, 2010, but no well producing or capable of producing gas had been completed until two months after the primary term of the lease expired. Appellants filed an action on May 11, 2010, seeking a judgment declaring that the lease expired by its own terms at the conclusion of the primary term on March 23, 2010. The parties filed motions for summary judgment, and, in an order entered January 21, 2011, the trial court ruled in favor of appellee, concluding that the drilling operations that commenced on March 10, 2010, had the effect of extending the lease beyond its primary term. This appeal followed.

Appellants argue that the terms of the lease are ambiguous as to which actions on the part of the lessee will extend the lease beyond its primary term and that the ambiguity should be resolved in their favor because the lease was not drafted by them but instead by appellee's predecessor in interest. This argument is without merit because the terms of the lease are not ambiguous.

Summary judgment is to be granted by a trial court only when it is clear that there are no genuine issues of material fact to be litigated and the party is entitled to judgment as a matter of law. *Delt v. Bowers*, 97 Ark. App. 323, 249 S.W.3d 162 (2007). The parties agree that there are no disputed facts and that the sole issue is the interpretation of the lease contract. In the absence of disputed extrinsic evidence, the construction and legal effect of a written lease contract are to be determined by the court as a matter of law. *Southway v. Metropolitan Realty & Development*, 90 Ark. App. 51, 206 S.W.3d 250 (2005). When contracting parties express their intention in a written instrument in clear and unambiguous language, it is the court's duty to construe the writing in accordance with the plain meaning of the language employed. *Id.* In regard to the construction of an agreement's terms, the initial determination of the existence of an ambiguity rests with the court. *Cranfill v. Union Planters Bank*, 86 Ark. App. 1, 158 S.W.3d 703 (2004). When a contract is unambiguous, its construction is a question of law for the court. *Id.* A contract is unambiguous and its construction and legal effect are questions of law when its terms are not susceptible to more than one equally reasonable construction. *Id.*

Here, the habendum clause provides that "[t]his lease will remain in force for a primary term of 5 years and as long thereafter as oil, gas, or other hydrocarbons are produced or deemed to be produced, from the premises or from lands pooled therewith." Paragraph 10 of the lease states:

> If prior to the discovery of oil or gas on the leased premises Lessee should drill a dry hole or holes thereon, or if after discovery of oil or gas the production thereof shall cease for any cause, this Lease shall not terminate if Lessee commences additional operations as provided herein within ninety (90) days thereafter, or, if it be within the primary term, then not until the expiration thereof. If at, or after, the expiration of the primary term oil or gas is not being produced on the leased premises, but Lessee is then engaged in operations thereon as provided herein, this Lease shall remain in force so long as operations are prosecuted (whether on the same or successive wells) with no cessation of more than ninety (90) days, and, if production results therefrom, then as long as production is maintained pursuant to the terms hereof.

Appellants argue that the lease was only extended following the primary term under this paragraph if a dry well had been drilled prior to the expiration of the primary term or if a producing well ceased production, and that the trial court therefore erred in ruling that the lease was extended by the commencement of drilling operations by appellee XTO on March 10, 2010. We do not agree. The intention of the parties is to be gathered not from disjointed or particular words and phrases found in a contract, but instead from the whole context of the agreement. *Southway v. Metropolitan Realty & Development*, *supra*.

"Operations," pursuant to Paragraph 6, include preparation of a drill site and drilling, and it is undisputed that appellee commenced drilling prior to the expiration of the primary term and has not ceased operations for a period in excess of ninety days since that time. We think that it is unreasonable to view Paragraph 10 as a monolithic set of conditions, all of which must be satisfied, in order for the primary lease term to be extended. Instead, it clearly

sets out several circumstances that will extend the primary term, including the drilling of dry holes, recommencement of production within ninety days following temporary cessation of production, and engagement in operations prior to expiration of the primary term on premises where oil and gas is not being produced. This comports with standard industry practice:

> Most modern oil and gas leases provide for an extension of the lease after the definite term as long as the mineral is produced, or as long as the premises are diligently operated. Where the habendum clause of this type is used, the lessee need not actually produce or discover oil within the definite term, but if operations are commenced within the definite term and carried on with diligence until oil or gas is discovered and produced, the lease continues for the producing life of the property.
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> One form of lease is limited to a change in the habendum by the addition of such expressions as "said premises developed and operated," "operations are continued thereon," or "as long after the commencement of operations as said premises are being operated for the production of oil or gas." These clauses have been construed as meaning that if a lessee commences a well within the primary term of a lease and carries on the drilling operations diligently and in good faith, although he does not actually complete the well and secure production until after the end of the primary term, the lease remains in force until he completes the well, and if he secures production therefrom, as long as production in paying quantities continues. These leases are sometimes known as commencement leases.
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> Once drilling has commenced, the lessee has the right to complete the well in the period beyond the primary term, unless he abandons development or fails to diligently operate the lease.

2 *Summers On Oil and Gas* § 14:3 (Nancy St. Paul, ed., 3d ed. 2010).

> The habendum clause denominates the period for which a gas and oil lease is to run. Unless it is properly modified by other provisions, all rights of the lessee cease at the expiration of the fixed time stated in the lease. At the expiration of the fixed time, if there is no production to extend it, the lease ends, not by forfeiture, but by its own terms. Under an habendum clause providing "[i]t is agreed that this lease shall remain in full force for a term of five years from this date, and as long thereafter as oil or gas, or either of them is produced from said land by the lessee, or the premises are being developed or operated," the primary term may be extended as long as either of the two conditions is met.

17 Richard A. Lord, *Williston on Contracts* § 50:58 (4th ed. 2000).

Affirmed.

HART and ROBBINS, JJ., agree.