

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2000-CA-000203-MR

KENAMERICAN RESOURCES, INC.

APPELLANT

v. APPEAL FROM MUHLENBERG CIRCUIT COURT  
HONORABLE DAVID H. JERNIGAN, JUDGE  
ACTION NO. 97-CI-00364

JOEL D. LANSDEN, SUCCESSOR  
TRUSTEE OF THE JOHN G.B. HALL  
TRUST; and JOEL D. LANSDEN,  
SUCCESSOR TRUSTEE OF THE HELON  
MORTON HALL TRUST

APPELLEES

AND

NO. 2000-CA-000327-MR

AMCA COAL LEASING, INC.; and  
ANDALEX RESOURCES, INC.

APPELLANTS

v. APPEAL FROM MUHLENBERG CIRCUIT COURT  
HONORABLE DAVID H. JERNIGAN, JUDGE  
ACTION NO. 97-CI-00364

JOEL D. LANSDEN, SUCCESSOR TRUSTEE  
OF THE JOHN G.B. HALL TRUST;  
JOEL D. LANSDEN, SUCCESSOR TRUSTEE  
OF THE HELON MORTON HALL TRUST; and  
KENAMERICAN RESOURCES, INC.

APPELLEES

AND

NO. 2000-CA-000391-MR

KENAMERICAN RESOURCES, INC.

CROSS-APPELLANT

v. APPEAL FROM MUHLENBERG CIRCUIT COURT  
HONORABLE DAVID H. JERNIGAN, JUDGE  
ACTION NO. 97-CI-00364

JOEL D. LANSDEN, SUCCESSOR TRUSTEE  
OF THE JOHN G.B. HALL TRUST;  
JOEL D. LANSDEN, SUCCESSOR TRUSTEE  
OF THE HELON MORTON HALL TRUST;  
AMCA COAL LEASING, INC; ANDALEX RESOURCES,  
INC.; and JOEL D. LANSDEN, INDIVIDUALLY

CROSS-APPELLEES

OPINION  
AFFIRMING

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BEFORE: DYCHE, JOHNSON, AND McANULTY, JUDGES.

McANULTY, JUDGE: Joel Lansden (hereinafter appellee), successor trustee under the John G.B. Hall Trust and the Helon Morton Hall Trust, is record title owner of certain real estate and coal interests in Muhlenberg County. Appellee filed a petition for declaration of rights asking the circuit court to declare that a coal lease between appellee, as current lessor of the coal interests, and the successor lessee, KenAmerican Resources, Inc. (hereinafter appellant), was no longer in effect.<sup>1</sup> The trial

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<sup>1</sup> In addition, Andalex Resources, Inc. and its subsidiary, AMCA Coal Leasing, Inc., which entered into leases with the trustee regarding the properties at issue, together filed a separate appeal (2000-CA-327) to protect their interests in this matter. They filed a brief in this appeal supporting the decision of the trial court to grant the motion for summary judgment. Additionally, KenAmerican Resources, Inc. filed a cross-appeal (2000-CA-391) to the appeal filed by AMCA and

(continued...)

court granted summary judgment for appellee. Appellant appeals and argues that the trial court erred in not granting summary judgment in its favor. We affirm.

The portion of the coal lease at issue is the term clause. It states:

This lease shall be for a term of thirty years from this date or until all coal is mined and removed according to the terms hereof.

The lease was entered into on September 30, 1958. Appellee claimed in the trial court that the lease had expired by its own terms after 30 years. Appellee also contended that since appellee did not evict the lessee from the property after thirty years, an annual holdover tenancy was created pursuant to KRS 383.160, which continued on a year-to-year basis. Appellee states that this arrangement was terminated by written notice in 1997.

Appellant, however, maintains that the term clause of the lease must be read as a term of thirty years *and thereafter* until all the coal is mined and removed from the property. Appellant states that this is a well-recognized term in Kentucky mineral leases, and argues that industry custom and corresponding case law in Kentucky establish the usage and meaning of such terms in coal leases. Appellant contends the lease term must be given this interpretation in order to carry out the intent of the parties when they entered into the lease. Since the coal has not

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<sup>1</sup>(...continued)  
Andalex. The appeals were ordered by this Court to be heard together.

been mined, appellant asserts that the lease is still in full force and effect.

A contract must be construed as a whole, and the intention of the parties must be collected from the entire instrument. Warfield Natural Gas Co. v. Cassady, 260 Ky. 548, 86 S.W.2d 276, 277 (1935). Individual clauses and particular words must be considered in connection with the rest of the agreement, and all parts of the writing, and every word in it, given effect, if possible. Id. at 277-278. In the construction of contracts or other writings, "the intention to be enforced by the courts as gathered from the language used is the one which the words in their usual and ordinary meaning express, and not the one which the parties may have intended to but did not express." Citizens Tel. Co. v. City of Newport, 188 Ky. 629, 638, 224 S.W. 187, 191 (1920).

The trial court read the word "or" in the lease provision as disjunctive, which is its ordinary meaning.

In common and natural usage the word "or" is disjunctive and expresses an alternative as between either of two or more separate subjects or conditions and implies an election or choice as between them.

Board of Nat'l Missions of Presbyterian Church v. Harrel's Trustee, Ky., 286 S.W.2d 905, 907 (1956). The court stated that in order to give effect to the word "or" in this lease, the lease must terminate when either of the two described events occurred. The court further noted that if the "or" was read as "and", there would have been no need for the thirty year term if it had not been intended to limit the duration of the lease. Moreover, the

trial court found no ambiguity in the lease provision which would require the court to look outside the document for its interpretation. See Texas Eastern Transmission Corp. v. Carman, Ky., 314 S.W.2d 684 (1958). The court held that since thirty years had passed, the lease had expired despite the fact that the coal was not removed.

We agree with the court's analysis of the lease term in question. The cases appellant relies on employ an entirely different lease term. They state that the lease shall operate for a number of years "and for so long thereafter" as coal shall continue to be mined or revenues shall be paid. We disagree with appellant that because that is a common or usual term in a habendum clause in a coal lease, their lease ought to be interpreted the same. Furthermore, appellant's construction would have required the court to supply those terms. It is not within the courts' function to make contracts for people but to construe them according to the language used by the contracting parties. Weir v. Jarecki, 254 Ky. 738, 72 S.W.2d 450 (1933). In the cases relied on by appellant, the words "and for so long thereafter" were expressly used in the leases therein. We believe that that language needed to have been included in the lease if that meaning had been intended by the parties. As it is, that term may not be supplied by the court.

Therefore, we find that the trial court correctly construed the lease. As 30 years have passed, the lease no longer is in effect according to its terms. The trial court's grant of summary judgment was proper.

ALL CONCUR.

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BRIEF FOR APPELLEE, JOEL D.  
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