

RENDERED: JULY 12, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-001524-MR

KENTUCKY FUEL CORPORATION

APPELLANT

v.

APPEAL FROM PIKE CIRCUIT COURT
HONORABLE EDDY COLEMAN, JUDGE
ACTION NO. 17-CI-01379

RON SAROS, PAT SAROS; AND
RPS INVESTMENTS, LLC

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: DIXON, KRAMER, AND TAYLOR, JUDGES.

DIXON, JUDGE: Kentucky Fuel Corporation (“Kentucky Fuel”) appeals from a judgment of the Pike Circuit Court in favor of Appellees, finding two lease agreements contained contradictory and ambiguous language, and further, finding

that Kentucky Fuel owed Appellees a total of \$16,500.00. Upon careful review, we affirm.

BACKGROUND

Kentucky Fuel and Ron Saros, Pat Saros, and RPS Investments, LLC, entered into two surface lease agreements for the purpose of strip-mining on the Saroses' property. Ron and Pat Saros entered into the first lease with Kentucky Fuel on August 11, 2010. RPS Investments, LLC ("RPS"), a company owned by Ron and Pat Saros, entered into a nearly identical lease with Kentucky Fuel on February 19, 2011.

Both leases required Kentucky Fuel to make advance rental payments at the beginning of each lease year. The first lease required Kentucky Fuel to pay a \$2,000.00 annual rental fee to Ron and Pat Saros, and the second lease required payment of a \$3,500.00 annual rental fee to RPS by Kentucky Fuel. Both leases contain the following provisions regarding when annual rental fee payments should cease:

Subsequent annual rental fees shall be due and payable on the first day of each lease year thereafter, if on such date actual mining operations have not been commenced *or completed*.

...

Lessee shall cease all annual rental fee payments upon the commencement of mining activities on the property. Owner hereby acknowledges said rental fee payments shall only be due and payable until actual mining activities begin.

(Emphasis added).

The trial court's judgment noted that the Saroses and RPS received annual rental payments upon entering into the two leases. Kentucky Fuel subsequently began mining operations but concluded coal production after only two or three months. The trial court found that although coal production ended, "mining operations" continued, and "[n]o bond release has occurred, the property is used by the coal company for transportation in its mining operations, and the [Saroses] are still unable to use their property." The record indicates that after coal production ceased, the Saroses and RPS requested annual rental fees, and Kentucky Fuel made the requested payments until 2015.

There was no dispute that Kentucky Fuel began mining operations, produced coal for two to three months, and continued mining operations on the property. The sole dispute was whether Kentucky Fuel was required to continue making annual rental payments to the Saroses and RPS. Kentucky Fuel filed a motion for summary judgment, arguing that rental fees were only due until actual mining activities commenced, based on the clear language of the leases, and that it is entitled to reimbursement for annual rental fees paid after mining activities began. Conversely, the Saroses and RPS argued that the language of the rental fee provision was ambiguous and contradictory and that they are entitled to past due annual rental fee payments. Specifically, the first part of the contested language

requires payment of the annual rental fee if “mining operations have not been commenced *or completed*” whereas the second portion provides for cessation of “all annual rental fee payments upon the commencement of mining activities.”

The trial court found the two provisions were ambiguous and susceptible to two different interpretations, so it looked to the conduct of the parties to determine the intent of the parties. Kentucky Fuel continued to make annual rental fee payments to the Saroses before ceasing payment in 2015.

Applying the contemporaneous construction doctrine, the trial court found that the conduct of the parties indicated their interpretation of the rental fee provision supported the Saroses’ and RPS’s argument that Kentucky Fuel was required to continue making annual rental payments. Following the trial court’s judgment in favor of the Saroses and RPS, Kentucky Fuel filed a motion to alter, amend, or vacate the judgment. The trial court denied the motion, and this appeal followed.

STANDARD OF REVIEW

“Interpretation of a contract is ordinarily a question of law for a court’s determination. So with questions of contractual interpretation, an appellate court reviews the lower court’s findings *de novo*, with no deference to the ruling of the lower court.” *Martin/Elias Properties, LLC v. Acuity*, 544 S.W.3d 639, 641-42 (Ky. 2018) (citations omitted).

ANALYSIS

On appeal, Kentucky Fuel argues that the trial court erroneously found the rental fee provision in the two leases contained ambiguous and contradictory language. “A contract is not ambiguous if a reasonable person would find its terms susceptible to only one meaning. However, if the provisions in controversy are reasonably susceptible to different or inconsistent, yet reasonable, interpretations, the contract is deemed to be ambiguous.” *Cadleyway Properties, Inc. v. Bayview Loan Servicing, LLC*, 338 S.W.3d 280, 286 (Ky. App. 2010) (citations omitted).

The rental provision of the leases contains a patent ambiguity. The first clause of the language at issue requires payment of the annual rental fee until mining operations commence *or* are completed. The second clause provides that Kentucky Fuel will cease annual rental fee payments when mining operations commence. The contract supports two different interpretations, making it unclear whether Kentucky Fuel is required to cease making annual rental fee payments upon commencement of mining activities or after all mining activities have concluded.

Because the lease agreements contain an ambiguity, the trial court correctly examined extrinsic evidence. Although Kentucky Fuel disputes the trial court’s interpretation of the leases, it does not dispute the trial court’s factual

finding that Kentucky Fuel continued to make annual rental fee payments after commencing mining activities. Thus, the parties' conduct supports the trial court's holding that it was the intent of the parties that Kentucky Fuel would continue to make annual rental fee payments until mining activities were completed.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the Pike Circuit Court.

ALL CONCUR.

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