

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MICHIGAN CONSOLIDATED GAS COMPANY,  
  
Plaintiff/Counterdefendant-Appellee,

UNPUBLISHED  
July 10, 1998

v

SAVOY OIL & GAS, INC. SHAREHOLDER  
TRUST and THOMAS C. PANGBORN, TRUSTEE,

No. 199620  
Grand Traverse Circuit Court  
LC No. 95-013656 CK

Defendants/Counterplaintiffs-Appellants.

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Before: Griffin, P.J., and Holbrook, Jr., and Neff, JJ.

PER CURIAM.

Defendants appeal as of right from an order granting plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10). We reverse and remand.

**I. BACKGROUND AND STANDARD OF REVIEW**

This dispute stems from the parties' disagreement regarding the scope of a natural gas supply contract. Plaintiff brought an action for declaratory relief and defendants filed a counterclaim for breach of contract. The trial court found that the clear and unambiguous language of the contract limited plaintiff's obligation to accept gas only produced from: (1) the Anderson-Lutz number 1-27 well (hereinafter "1-27"), the one well originally listed on Exhibit A of the contract, "and the [1990] re-drill of its original bore" (hereinafter "1-27A"); and (2) the Bowling number 2-35 well (hereinafter "2-35"), specifically added to Exhibit A by written agreement in December 1981. Therefore, the trial court concluded that plaintiff had no obligation to purchase gas drawn from the Antrim Shale Formation (hereinafter "Antrim gas"), because the Antrim gas did not come from either of these specified wells.

We review motions for summary disposition de novo in order to determine "whether the moving party was entitled to judgment as a matter of law." *Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 85; 520 NW2d 633 (1994).

A motion pursuant to MCR 2.116(C)(10) tests the factual basis underlying a plaintiff's claim. MCR 2.116(C)(10) permits summary disposition when, except for the amount

of damages, there is no genuine issue concerning any material fact and the moving party is entitled to damages as a matter of law. A court reviewing such a motion must consider the pleadings, affidavits, depositions, admissions, and any other documentary evidence in favor of the opposing party and grant the benefit of any reasonable doubt to the opposing party. [*Id.*]

## II. ANALYSIS OF CONTRACTUAL LANGUAGE

The parties' dispute centers on the scope of the contract, as determined by the gas commitment clause located in article III of the contract, which reads:

1) Subject to all of the provisions hereof, Seller commits to the performance of this Agreement all gas reserves in the formations and strata above the base of the Niagaran Formation which are attributable to any interest in such gas now or hereafter owned by Seller, and produced from the wells shown in Exhibit A.

During the time period at issue, Exhibit A read in pertinent part:

### AREA OF COMMITMENT

Seller's acreage and/or leaseholds owned or hereafter acquired which are attributable to the reservoir or reservoirs penetrated by the wells listed below:

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Anderson-Lutz #1-27

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Bowling #2-35

Plaintiff contends that the language of the above clause commits plaintiff to purchase just that gas produced by the wells specifically listed in Exhibit A. Conversely, defendants claim that the commitment clause's scope was intended to be much broader. Defendants argue that the clause covered gas drawn from a specific geological location (i.e., "formations and strata above the base of the Niagaran Formation"), as long as that gas was extracted from a reservoir or reservoirs penetrated by the wells listed in Exhibit A. Under defendant's interpretation, Antrim gas would be included under the contract because it was drawn from a reservoir that lay above the Niagaran Formation, and was penetrated by 1-27.

"The cardinal rule in the interpretation of contracts is to ascertain the intention of the parties." *D'Avanzo v Wise & Marsac, PC*, 223 Mich App 314, 319; 565 NW2d 915 (1997). "When deciding a motion for summary disposition in a claim for breach of contract, a court may interpret the contract only where the terms are clear. If the terms are ambiguous, a factual development is necessary to determine the intent of the parties, and summary disposition is inappropriate." *Michaels v Amway*

*Corp*, 206 Mich App 644, 649; 522 NW2d 703 (1994). A contract is ambiguous if it is (1) susceptible of two or more reasonable interpretations or (2) is inconsistent on its face. *Petovello v Murray*, 139 Mich App 639, 642; 362 NW2d 857 (1984). When attempting to ascertain the meaning of a contract, a court should strive to give all of its terms reasonable, effective and lawful meaning. *Detroit v A W Kutsche & Co*, 309 Mich 700, 709; 16 NW2d 128 (1944); see Restatement Contracts, 2d, § 203(a) (observing that “an interpretation which gives a reasonable, lawful, and effective meaning to all the terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect”).

After reviewing the contract and examining all documentary evidence, we conclude that the scope of the commitment clause is ambiguous. On the one hand, it is reasonable to say that the Antrim gas is not covered by the contract because it is not drawn from either 1-27 or 2-35.<sup>1</sup> On the other hand, we also believe it reasonable to conclude that even though it is not drawn from the wells listed on Exhibit A, it is nevertheless within the intended scope of the contract, given the prefatory language employed in Exhibit A.

Support for either reading of Exhibit A can be found in the documentary evidence that is part of the record below. See *Michigan Millers Mutual Ins Co v Bronson Plating Co*, 197 Mich App 482, 495; 496 NW2d 373 (1992) (“Extrinsic evidence is admissible to show the *existence* of an ambiguity.”). For example, John Odinga, Manager of Gas Acquisition for plaintiff at the time the contract was executed,<sup>2</sup> stated in an affidavit that he intended for the scope of “the contract and amendments to cover the right and obligation to purchase gas ‘above the base of the Niagaran formation,’” including the Antrim Reservoir, the existence of which he was aware of at the time the contract was negotiated. This supports the broader interpretation of Exhibit A. Conversely, plaintiff’s current director of gas supply and a former contract administrator testified that, under his interpretation of the contract, defendants would have the right to drill a new well into the same reservoir from which gas was being extracted, and the gas extracted from the new well would remain covered by the contract. This supports the more narrow interpretation of Exhibit A.

We also disagree with the trial court’s reasoning that the December 1981 amendment to the original contract that added 2-35 to Exhibit A would have been unnecessary under defendants’ interpretation of the contract. Clearly, under plaintiff’s interpretation in which only the natural gas produced from wells listed on Exhibit A was covered by the contract, this amendment would have been necessary. However, amendment of the contract would also be necessary under defendants’ interpretation, given that the reservoir penetrated by 2-35 had not previously been pierced by 1-27.

Therefore, summary disposition in favor of plaintiff under MCR 2.116(C)(10) was inappropriate because the language of the commitment clause and Exhibit A is susceptible to two different and reasonable interpretations. *Petovello*, *supra* at 642. For the same reason, summary disposition in favor of defendants is similarly inappropriate.

### III. DISCOVERY

Defendants also argue that the trial court erred when it denied defendants' discovery request to acquire information from Shell Western E & P, Inc (hereinafter "Shell") and Netherland, Sewell & Associates (hereinafter "Netherland"), regarding the possible purchase of Antrim gas by plaintiff under contractual language similar to that at issue in the case at bar. "This Court reviews a trial court's decision to grant or deny discovery for an abuse of discretion." *Harrison v Olde Financial Corp*, 225 Mich App 601, 614; 572 NW2d 679 (1997).

"Michigan law is strongly committed to open and far-reaching discovery, and generally provides for discovery of any relevant, nonprivileged matter." *Ostoin v Waterford Twp Police Dep't*, 189 Mich App 334, 337; 471 NW2d 666 (1991). Accord MCR 2.302(B)(1). "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401. Defendants fail to persuade this Court that the evidence sought was relevant to the issue of interpreting the language employed in the natural gas supply contract it had with plaintiff. See *Miller, supra* at 495 (observing that the material sought was relevant to show a party's prior interpretation of disputed contractual language). Accordingly, we see no abuse of discretion.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard Allen Griffin

/s/ Donald E. Holbrook, Jr.

/s/ Janet T. Neff

<sup>1</sup> The parties dispute whether 1-27 and 1-27A are the same or different wells. Because resolution of this dispute does not effect our analysis of the propriety of summary disposition, we will not address it.

<sup>2</sup> Odinga averred that he "was the only representative of [plaintiff] . . . directly involved in the negotiation of the Contract."