COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

TIER 1 RESOURCES PARTNERS, GWENDOLYN B. GELTEMEYER, JOHN W. BUSH AND JOHN F. GRIFFIN, AS CO-TRUSTEES OF THE BUSH-GRIFFIN LIVING TRUST CREATED UTA DATED 5/1/1999, JOHN F. GRIFFIN, JOHN W. BUSH, DONNA PEPPER, BARRY HAILEY, VANESSA ARLEDGE DEATON, IN HER CAPACITY AS INDEPENDENT EXECUTOR OF THE ESTATE OF FRAZEE ARLEDGE, LYNN HUGHES, MELANIE LEE, ROBERT HAILEY, JULIE CANON, SYLVIA BUSH, AND DAVID JESS ST. CLAIR, AS INDEPENDENT EXECUTOR OF THE ESTATE OF SHARON B. ST. CLAIR, AND DAVID JESS ST. CLAIR, JUSTIN DALLAS ST. CLAIR AND JON CHRISTOPHER ST. CLAIR AS SUCCESSORS IN INTEREST TO SHARON B. ST. CLAIR, AND QUAIL PASTURE LP, SUCCESSOR TO GWENDOLYN B. GELTEMEYER, Appellants, v. DELAWARE BASIN RESOURCES LLC, Appellee.	§ § § § § § § § § § § §	No. 08-20-00060-CV Appeal from the 143rd District Court of Reeves County, Texas (TC#17-09-22152-CVR)

O P I N I O N

This oil-and-gas dispute questions whether a group of identical leases automatically terminated—as to one section of land—at the end of the leases' primary term. Appellants include twelve Appellant-Lessors of mineral interests covering two sections of land in Reeves County, Texas, and Tier 1 Resources Partners, LLC (Tier 1), an unrelated third-party Lessee who entered a group of subsequent leases upon termination of the section at issue (collectively, Appellants). Appellee Delaware Basin Resources LLC (DBR) is the original Lessee of the group of leases at issue. In the court below, all parties moved for summary judgment, and the trial court granted DBR's motion. Appellants challenge the trial court's interpretation of the relevant lease provisions and ask this Court to reverse the adverse judgment entered against them. We reverse and render judgment in favor of Appellants.

I. BACKGROUND

All of the Appellants, except for Tier 1, collectively own the undivided mineral interest in the two sections of Reeves County land at issue in this case. The parties refer to these Appellants—who are relatives or entities created by those relatives—as the Bush Lessors. Between February 11, 2014, and February 17, 2014, the Bush Lessors entered into twelve virtually identical oil-and-gas leases with DBR. The only difference between each lease is the name and address of the respective lessor in the opening paragraph and the specific lease date. Each lease agreement is eight pages long and is comprised of two parts: a ten-paragraph "Producers 88"[1] lease form and

[1] The "Producers 88" lease is a commonly used, fixed-term lease that includes "unless" drilling clauses, but the label serves more as a designation with many variations as opposed to a rigid form. *See* A.W. Walker, Jr., *Defects and Ambiguities in Oil and Gas Leases*, 28 Tex. L. Rev. 895, 896-97 (1950). This type of lease automatically terminates "unless" the operator complies with the requirements set forth in the lease. *See* 6 William B. Burford, *West's Texas Forms: Minerals, Oil & Gas* § 3:1 (4th ed. 2008). The most basic component of a Producers 88 in Texas is a "primary"

an eleven-paragraph addendum, which is labeled "Exhibit A" to each lease. The eleven paragraphs in each addendum are numbered 11 through 21.

Relevant Lease Provisions

Relevant to this appeal, Paragraph 1 contains a description of the land covered by the lease. The relevant portion of Paragraph 1 reads:

> The land covered hereby, herein called "said land", is located in the County of Reeves, State of Texas, and is described as follows:
>
> Section 6, Block C-5, PSL Survey and Section 2 Block C-3 PSL Survey
>
> For the purpose of determining the amount of any bonus or other payment hereunder, said land shall be deemed to contain 1280 acres, whether actually containing more or less, and the above recital of acreage in any tract shall be deemed to be the true acreage thereof.

Although the two sections of land are situated in different blocks, we will refer to them as simply as Section 6 and Section 2 for ease of reference. Both sections are the standard size of approximately one square mile, or 640 acres. The two sections are not contiguous to each other; they are separated by one full section.

Paragraph 2 contains the habendum clause, establishing a three-year primary term expiring in February of 2017. Upon lease expiration, DBR's interest automatically terminated "as to all the lands and depths then covered thereby except lands and depths then designated by Lessee . . . to be within a 'production unit' . . . assigned to each well then producing in paying quantities on the leased premises or lands properly pooled therewith." DBR could suspend automatic termination, though, by conducting a continuous drilling program as defined by the lease terms. Under the

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term, fixed in years, followed by an indefinite "secondary" term. *Id.* Generally, the leased land must begin to be developed by the end of the primary term and the lease is then kept alive into the secondary term by actual production or an agreed-upon substitute. *Id.*

program, so long as DBR began drilling a new well within 180 days from the completion of its previous well, it could maintain the lease for further development of new production units.

Exhibit A of each lease begins with the following provision: "Any other provisions of this Lease to the contrary notwithstanding, it is specifically agreed and understood as follows: IN THE EVENT OF A CONFLICT BETWEEN SECTION NOS. 1–10 OF THIS LEASE AND THE FOLLOWING SECTION NOS. 11–21, THE PROVISIONS OF SECTION NOS. 11–21 SHALL CONTROL."

Paragraph 11 of each lease states:

> Notwithstanding any other provisions in this Lease or any wording contained herein . . . each of the separately designated tracts described shall be treated for all purposes as a separate and distinct Lease. All of the provisions contained in this Lease form shall be applicable to each such tract and be construed as if a separate Lease agreement had been made and executed covering each such tract.

Paragraph 13(d) contains a retained-acreage clause and reads:

> As to acreage which is included within a production unit, this lease may be held in force after the termination of the primary term only by production from, or operations conducted . . . on, such unit; and production from, or operations conducted on, one unit will not maintain this lease in force as to any other acreage included within any other unit, but such production or operations will maintain this lease only as to the acreage within the unit or units upon which such production or operations are being maintained or conducted.

Paragraph 13(e) requires DBR, upon termination of the lease, to deliver to the Bush Lessors and file in Reeves County a release of their interest in the land no longer leased:

> Upon termination of this lease as to any portion of the leased premises, Lessee shall deliver to Lessor a plat showing the designated production units around each well, if any, and within 60 days of said termination must record such plat and a release complying with the requirements of this Section in the public records of the appropriate county and state and thereafter provide Lessor with a recorded copy of such.

Paragraph 19(c) contains a Pugh clause and reads:

> In the event a portion or portions of the land herein leased is pooled or unitized with other land so as to form a pooled unit or units, operations on, completion of a well upon, or production from such pooled unit will not maintain this lease as to any land covered hereby and not included in such pooled unit or units in any manner provided herein.

Factual Background & Procedural History

DBR, with the Bush Lessors' consent, split Section 6 into quarters and unitized each quarter with adjacent land to the north or south.[2] Before the end of the primary term, DBR completed two wells on Section 6: "Iguana Unit 6A #1H" and "Iguana Unit 6B #2H." During the secondary term, DBR perpetuated its lease—at least as to Section 6—by drilling four more wells on Section 6.[3] At no time did DBR drill or conduct any operations specifically on Section 2.

In the summer of 2017, after the primary term in the DBR leases ended and Section 2 had not been developed, the Bush Lessors re-leased Section 2 to Tier 1. DBR sued the Bush Lessors and Tier 1 on September 29, 2017, claiming the Tier 1 leases constituted a cloud upon DBR's title and interest in Section 2, and sought to have the cloud removed by invalidating Tier 1's leases. Tier 1 and the Bush Lessors counterclaimed, arguing DBR's leases covering Section 2 had automatically terminated and DBR had breached the lease agreements by failing to issue a formal release of their interest in the section. The Bush Lessors and Tier 1 also sent letters asserting their rights and demanding that DBR issue releases of Section 2 and file those releases in the real

[2] The southeast quarter of Section 6 was unitized with the eastern half of the section to the south, forming Iguana Unit 6A. The northeast quarter of Section 6 was unitized with the eastern half of the section to the north, forming Iguana Unit 6B. The southwest quarter of Section 6 was unitized with the western half of the section to the south, forming Iguana Unit 6C. The northwest quarter of Section 6 was unitized with the western half of the unit to the north, forming Iguana Unit 6D.

[3] These wells were called: Iguana Unit 6C #3H, Iguana Unit 6D #4H, Iguana Unit 6D5 #5H, Iguana Unit 6A6 #6H.

property records of Reeves County, Texas.

All parties agreed the issue of whether the DBR leases had terminated as to Section 2 was the sole dispositive issue in the case and each filed a motion for summary judgment on the issue. All parties further agreed the sole issue in the case presented a question of law and the rulings on the summary judgment motions would resolve the dispute in its entirety. DBR attached an example of one of the subsequent leases between the Bush Lessors and Tier 1 to its motion for summary judgment below. It should be noted that although the subsequent Tier 1 leases only described one section—Section 2—the leases included a Paragraph 11 identical to those in the DBR leases. In addition to the Tier 1 leases, DBR also attached as evidence several other contemporaneous leases signed by the Bush Lessors and other lessees, covering different land, to its motion for summary judgment below. In those contemporaneous leases, the Bush Lessors and the respective lessees attached an "Exhibit B," where the land conveyed was described and split into multiple "Tracts."

Following a hearing, the trial court granted DBR's motion for summary judgment and simultaneously denied the cross-motion of Appellants, the Bush Lessors and Tier 1.

This appeal followed.

II. DISCUSSION

Appellants challenge the trial court's grant of summary judgment in favor of DBR on the issue of whether the DBR leases covering Section 2 had automatically terminated, such that the mineral owners were free to execute subsequent oil-and-gas leases with another lessee on that section.

A. Standard of Review

We review a trial court's grant of summary judgment *de novo*. *Provident Life and Acc. Ins.*

Co. v. Knott, 128 S.W.3d 211, 215 (Tex. 2003). Oil-and-gas-lease-construction questions are also reviewed *de novo*. *Anadarko Petroleum Corp. v. Thompson*, 94 S.W.3d 550, 554 (Tex. 2002) (citing *El Paso Natural Gas Co. v. Minco Oil & Gas, Inc.*, 8 S.W.3d 309, 312 (Tex. 1999)). Further, "[w]hen both parties move for summary judgment on the same issue and the trial court grants one motion and denies the other, we determine if the trial court erred in doing so, and either affirm or render the judgment that the trial court should have rendered." *Apache Deepwater, LLC v. Double Eagle Development, LLC*, 557 S.W.3d 650, 654 (Tex. App.—El Paso 2017, pet. denied) (citing *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005)).

B. Applicable Law

Because an oil-and-gas lease is a contract, it is governed by the "general principles that govern . . . construction of contracts . . . ." *Endeavor Energy Res., L.P. v. Discovery Operating, Inc.*, 554 S.W.3d 586, 595 (Tex. 2018). Texas has a strong public policy favoring freedom of contract, and courts must respect and enforce the terms of a contract the parties have agreed to unless there are compelling reasons not to do so. *Phila. Indem. Ins. Co. v. White*, 490 S.W.3d 468, 471 (Tex. 2016). In construing an unambiguous lease, our primary duty is to ascertain the parties' intent as expressed within the lease's four corners. *Luckel v. White*, 819 S.W.2d 459, 461 (Tex. 1991). We give the lease's language its plain, grammatical meaning unless doing so would clearly defeat the parties' intentions. *Thompson*, 94 S.W.3d at 554. A court should "determine, objectively, what an ordinary person using those words under the circumstances in which they are used would understand them to mean." *URI, Inc. v. Kleberg County*, 543 S.W.3d 755, 764 (Tex. 2018).

Whether a contract is ambiguous is a threshold question we must consider before

proceeding with a review of other issues. *Clayton Williams Energy, Inc. v. BMT O & G TX, L.P.*, 473 S.W.3d 341, 348 (Tex. App.—El Paso 2015, pet. denied) (citing *J.M. Davidson, Inc. v. Webster*, 128 S.W.3d 223, 230 (Tex. 2003)). A contract is unambiguous if it can be given a clear and definite legal meaning and can be construed as a matter of law. *Anderson Energy Corp. v. Dominion Okla. Tex. Expl. & Prod., Inc.*, 469 S.W.3d 280, 287 (Tex. App.—San Antonio 2015, no pet.) (citing *Gilbert Tex. Contr., L.P. v. Underwriters at Lloyd's London*, 327 S.W.3d 118, 133 (Tex. 2010)). "An ambiguity does not arise simply because the parties advance conflicting interpretations of the contract." *Columbia Gas Transmission Corp. v. New Ulm Gas, Ltd.*, 940 S.W.2d 587, 589 (Tex. 1996). A contract is only ambiguous if it is subject to more than one reasonable interpretation after applying the relevant rules of construction, which creates a fact issue on the parties' intent. *In re D. Wilson Const. Co.*, 196 S.W.3d 774, 781 (Tex. 2006). If we determine the contract is not ambiguous, our primary duty as a reviewing court is to give effect to the written expression of the parties' intent. *Forbau v. Aetna Life Ins. Co.*, 876 S.W.2d 132, 133 (Tex. 1994). "Only where a contract is first determined to be ambiguous may the courts consider the parties' interpretation . . . and admit extraneous evidence to determine the true meaning of the instrument." *Nat'l Union Fire Ins. Co. of Pittsburgh, Penn. v. CBI Indus., Inc.*, 907 S.W.2d 517, 520 (Tex. 1995) (per curiam). "Courts may not rewrite the parties' contract, nor should courts add to [the contract's] language." *In re Davenport*, 522 S.W.3d 452, 457 (Tex. 2017). Stated differently, it is not within a court's "purview to rewrite the leases and alter the parties' contract." *Apache Deepwater, LLC*, 557 S.W.3d at 656.

There are two types of contract ambiguity: patent and latent. *Nat'l Union Fire Ins. Co. of Pittsburgh, Penn.*, 907 S.W.2d at 520. "A patent ambiguity is evident on the face of the contract"

while a "latent ambiguity arises when a contract which is unambiguous on its face is applied to the subject matter with which it deals and an ambiguity appears by reason of some collateral matter[,]" such as the circumstances present when the contract was entered. *Id*. at 520-21. As the Supreme Court of Texas noted in *URI*, allowing surrounding circumstances to reveal a latent ambiguity "seems conceptually at odds with the proscription against employing extrinsic evidence to create an ambiguity." 543 S.W.3d at 765. The Court provided a helpful example to clarify:

> A classic example of a latent ambiguity is when a contract requires goods to be delivered to "the green house on Pecan Street," but there were, in fact, two green houses on Pecan Street. When surrounding circumstances reveal an ambiguity about the intent embodied in the contract's language, as in the "green house" example, extrinsic evidence of the parties' true intent will then—and only then—be admissible to settle the matter. But, when the contextual evidence discloses no ambiguity, extrinsic evidence that the parties actually intended for the goods to be delivered to the blue house on Pecan Street would not be admissible to alter unambiguous contract language requiring delivery to the green house. Nor would the contract's meaning be informed by extrinsic evidence that the parties intended additional requirements or constraints that were not expressed in the agreement—such as delivery by 5:00 p.m. or only on Sundays.

Id. at 765-66 (internal citations omitted). The parol evidence rule prohibits extrinsic evidence of subjective intent that would alter the contract's plain terms. *Id*. at 767. Using the example of *URI*, "extrinsic evidence may be consulted to give meaning to the phrase 'the green house on Pecan Street,' but 'cannot be used to show the parties' motives or intentions apart from' the language employed in the contract." *Id*. In *URI,* the Court held that the courts below had impermissibly relied on extrinsic evidence to construe unambiguous language in the contract at issue. *Id*. at 769.

There is a presumption "that the parties to a lease intend every clause to have some effect." *Thompson*, 94 S.W.3d at 554. Therefore, courts "should examine and consider the entire writing in an effort to harmonize and give effect to all the provisions of the contract so that none will be

rendered meaningless." *Coker v. Coker*, 650 S.W.2d 391, 393 (Tex. 1983); *see also Thompson*, 94 S.W.3d at 554 ("We examine the entire lease and attempt to harmonize all its parts, even if different parts appear contradictory or inconsistent."). Harmonizing and giving effect to all the provisions of an oil-and-gas lease to ascertain the parties' intent should be done by looking first to the four corners of the lease itself. *Chesapeake Exploration, LLC v. Energen Resources Corp.*, 445 S.W.3d 878, 881-82 (Tex. App.—El Paso 2014, no pet.) (citing *Luckel v. White*, 819 S.W.2d 459, 461 (Tex. 1991)).

Generally speaking, lessors do not want an operator to be allowed to maintain large portions of leased lands when only a small area is being developed; the lessor's preference is usually to have the operator fully develop the leased lands, thus maximizing royalty payments to the lessor. *See Endeavor Energy Res., L.P.*, 554 S.W.3d at 597. An operator's goal, on the other hand, is to have the freedom to delay operations for any reason convenient to it, without losing the right to begin or continue operations in the future. *Id*. These competing goals are negotiated through various clauses common in oil-and-gas leases.

A mineral lease's habendum clause divides a lease's duration into two parts: a primary term and a secondary term. *Endeavor Energy Res., L.P.*, 554 S.W.3d at 597 (citing *Anadarko Petroleum Corp. v. Thompson*, 94 S.W.3d 550, 554 (Tex. 2002)). Usually, the primary term lasts for a fixed period of time; the secondary term then continues for only so long as oil-and-gas operations continue. *Endeavor Energy Res., L.P.*, 554 S.W.3d at 597. A lease automatically terminates if drilling or operations are not conducted at all during the primary term, or if they cease for a specified amount of time during the secondary term. *Id*.

A forfeiture cuts short the natural limit of a leasehold interest, and generally arises from

the failure to comply with a condition subsequent. *See Endeavor Energy Res., L.P.*, 554 S.W.3d at 606 n.14. Forfeitures are disfavored in Texas, and contracts are construed to avoid them. *Aquaplex, Inc. v. Rancho La Valencia, Inc.*, 297 S.W.3d 768, 774 (Tex. 2009). A special limitation, on the other hand, automatically terminates a lease upon the happening of a stipulated event. *Endeavor Energy Res., L.P.*, 554 S.W.3d at 606. The event may be, among other things, a cessation of production or a failure to commence drilling. *Id.* While we will construe contracts to avoid forfeitures, a special limitation does not result in a forfeiture—it results in a termination of all or part of the lease under its own terms. *Id*. Special limitations are common and necessary in oil-and-gas leases, but in order for such a special limitation to be valid, the language must be "so clear, precise, and unequivocal" it cannot reasonably have any other meaning. *Thompson*, 94 S.W.3d at 554.

Whereas a continuous-development clause generally extends the entire lease so long as the lessee remains engaged in the required development efforts, a retained-acreage clause "typically divides the leased acreage such that production or development will preserve the lease only as to a specified portion of the leased acreage." *Endeavor Energy Res., L.P.*, 554 S.W.3d at 598. "Although 'originally drafted to prevent the lessee from losing those portions of a lease that had productive wells located thereon if the rest of the lease terminated,' retained-acreage clauses have expanded to 'include clauses that require the release of all acreage that, at the end of the primary term, is not within a drilling, spacing, or proration unit.'" *Id*. (citing Bruce M. Kramer, *Oil and Gas Leases and Pooling: A Look Back and a Peek Ahead*, 45 TEX. TECH L. REV. 877, 881 n.28 (2013)). Similarly, a Pugh clause is "calculated to prevent the holding of non-pooled acreage in [a lease] while certain portions of the lease acreage [are] being held under pooled arrangements."

Shown v. Getty Oil Co., 645 S.W.2d 555, 560 (Tex. App.—San Antonio 1982, writ ref'd).

C. Analysis

We determine, as a matter of law, that Paragraph 2 is a clear, precise, and unequivocal special limitation that automatically terminates the lease if no operations are conducted on the covered land during the primary term. DBR concedes that Paragraph 2 is a standard clause providing for automatic termination if the property is not developed by the end of the primary term. The dispute in this instance centers on whether each lease created two separate leases: one covering Section 6 and one covering Section 2. If the document is to be interpreted as one lease covering both sections, operations on either section would perpetuate the lease as to both sections. If the document is to be interpreted as two separate leases, then one would automatically terminate if no operations were conducted on the specific parcel covered, even if operations were conducted on the other parcel.

Whether two leases were created in this one document depends upon the interpretation, operation, and connectedness of Paragraph 11 and Paragraph 1. The Bush Lessors interpret Paragraph 11 to treat Section 6 and Section 2 as two separately leased tracts of land. In their view, the language "each of the separately designated tracts described" demonstrates that multiple, separately designated tracts were described in the lease. Because Paragraph 1 describes two non-contiguous, standard sections of land, the Bush Lessors contend the two sections are separately designated. DBR argues Section 6 and Section 2 were not separately designated tracts; and the language in Paragraph 11 merely "gave the parties the option of severing the lease into multiple separate and independent leases . . . ." In their view, nowhere in the lease did the parties explicitly exercise the option. We conclude, as a matter of law, that there is only one reasonable interpretation

of the language at issue here: Paragraph 11 unambiguously created separate leases over Section 6 and Section 2, and Paragraph 2 set forth a clear, precise, and unequivocal special limitation in each lease. Accordingly, DBR's lease of Section 2 terminated at the end of the primary term when no operations had been conducted on that tract.

We begin and end the analysis with the most important consideration in interpreting any contract: "the plain meaning of the [agreement's] operative language . . . ." *RSUI Indem. Co. v. The Lynd Co.*, 466 S.W.3d 113, 121 (Tex. 2015). The parties dispute the meaning of Paragraph 11 and the way in which Paragraph 11 interacts with the rest of the contract, particularly Paragraph 1. Paragraph 11 reads as follows:

> Notwithstanding any other provisions in this Lease or any wording contained herein . . . each of the separately designated tracts described shall be treated for all purposes as a separate and distinct Lease. All of the provisions contained in this Lease form shall be applicable to each such tract and be construed as if a separate Lease agreement had been made and executed covering each such tract.

This dispute centers around the first sentence of Paragraph 11. For the purposes of interpretation, we will break the sentence down into three parts: the "notwithstanding" clause, the object of the sentence ("each of the separately designated tracts described"), and the action the object receives ("shall be treated for all purposes as a separate and distinct Lease").

(1) The "Notwithstanding" Clause

The term "notwithstanding" means "despite" or "in spite of." BLACK'S LAW DICTIONARY 1231 (10th ed. 2014). As such, the first portion of the paragraph, which reads: "[n]otwithstanding any other provisions in this Lease or any wording contained herein . . ." must be interpreted to mean what follows controls over all other provisions in the lease. That much the parties do not dispute.

(2) The "Object" Clause

The parties' dispute is over the interpretation of what follows the notwithstanding clause, which states: "each of the separately designated tracts described shall be treated for all purposes as a separate and distinct Lease." The disputed language is written in the passive voice, emphasizing the object being acted upon, in this case "each of the separately designated tracts described . . . ." Inherent in the plain language of the object-clause are two elements: first, that there are separately designated tracts; and second, those separately designated tracts are described somewhere within the lease. Those two elements are not possible implications, as DBR argues, but essential conclusions from the plain language; "tracts" is plural and the contract labels them as having been described.

Principles of contract interpretation require us to attempt to harmonize the phrase—and its inherent elements—with the rest of the contract. *See Coker*, 650 S.W.2d at 393. Therefore, the question becomes: is there anywhere in the lease that can reasonably be interpreted as describing multiple tracts? If other language in the lease clearly describes multiple separate tracts, Paragraph 11 has a purpose and must be interpreted according to its plain language. If no language could reasonably be interpreted to describe multiple separate tracts, only then could we deem Paragraph 11 surplusage. *See, e.g., Heritage Res., Inc. v. NationsBank*, 939 S.W.2d 118, 121 (Tex. 1996).

First, we must determine what the parties intended by the word "tracts" in Paragraph 11. The word "tract" is not a defined term within the lease, and so we must presume that the parties intended the word's plain, generally accepted meaning. *See Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 662 (Tex. 2005). A "tract" is defined as "[a]ll contiguous property with a common owner." THE WOLTERS KLUWER BOUVIER LAW DICTIONARY DESK EDITION (2012). Similarly,

Black's Law Dictionary defines "tract" as: "A specified parcel of land." BLACK'S LAW DICTIONARY 1720 (10th ed. 2014). Black's then defines "parcel" as: "A tract of land; esp., a continuous tract or plot of land in one possession, no part of which is separated from the rest by intervening land in another's possession." BLACK'S LAW DICTIONARY 1286 (10th ed. 2014). We give the term "tract" in Paragraph 11 its ordinary meaning; each individual parcel described that does not share a common border with another parcel under common ownership is a separate tract.

All parties agree the only place in each lease where specific land is described is in the granting clause of Paragraph 1. In Paragraph 1, the land covered by the lease is described as follows: "Section 6, Block C-5, PSL Survey and Section 2 Block C-3 PSL Survey[.]" It is undisputed Section 6 and Section 2 are both standard 640-acre sections that do not share a border; they are separated by another standard section and a distance of approximately one mile. The conjunction "and" in between the descriptions of Section 6 and Section 2 is a common, reasonable, and convincing literary separator between two wholly different tracts or parcels being described. Thus, the only reasonable interpretation of the plain language of Paragraph 11 and Paragraph 1 is that Section 6 and Section 2 are two separately designated tracts.

DBR argues that Paragraph 1 only describes one tract, and that the parties would have needed to attach a separate exhibit designating multiple tracts in order for the land to be split. Under this theory, DBR argues Paragraph 11 merely gave "the parties the option of dividing the leased premises into multiple, separate and independent 'tracts,' each its own separate and independent lease[,]" but that the parties did not exercise the option. But DBR's interpretation runs contrary to the ordinary definition of the word "tract." And DBR points to no authority requiring such additional attachment, nor has one been found by this Court.

DBR does provide evidence, in the form of several oil-and-gas leases between the Bush Lessors and other lessees, where such exhibits were attached. DBR argues this evidence shows that the Bush Lessors knew how to separately designate tracts, but chose not to in their lease with DBR. First, this Court finds DBR's argument based on these other leases unconvincing.[4] But we need not discuss in detail the merits of DBR's argument. These unrelated leases covered different land and were the result of unknown negotiations between the Bush Lessors and different lessees. As a result, they cannot provide insight as to the intent of these parties or whether there are latent ambiguities in the lease at issue here. In light of our determination that the lease language is unambiguous on its face, this Court will not consider extrinsic evidence that would create an ambiguity where none exists. *See Forbau*, 876 S.W.2d at 133.

DBR also points to other language in the lease, arguing the parties intended only one 1,280-acre tract:

> For the purpose of determining the amount of any bonus or other payment hereunder, said land shall be deemed to contain 1280 acres, whether actually containing more or less, and the above recital of acreage in any tract shall be deemed to be the true acreage thereof. Lessor accepts the bonus as lump sum consideration for this Lease and all rights and options hereunder.

This evidence does not support DBR's argument for two reasons. First, the beginning of the sentence places an explicit limitation on the purpose the land may be deemed to contain 1,280 acres, and the purpose is for calculating any agreed-upon bonus or other payment under the lease.

[4] In the unrelated leases where an "Exhibit B" was attached, the land was not described in Paragraph 1. Instead, Paragraph 1 in those leases simply referred to Exhibit B for a description of the property. The Bush Lessors explain that this was because the land description in those leases was necessarily more complicated than the description in the lease document at issue here; in those lease documents, numerous "lots" within a section were being leased. Additionally, the inclusion of an Exhibit B in those leases arguably benefitted the lessee—allowing them to merge what might otherwise have been considered multiple tracts into one "tract," requiring the drilling of fewer wells to potentially extend the primary term.

Second, even if there was a conflict between Paragraph 11 and this part of Paragraph 1, the language in Paragraph 11 would control as a result of the "notwithstanding" clauses at the beginning of Exhibit A and Paragraph 11.

Aside from the lack of admissible evidence to support it, DBR's overall interpretation of Paragraph 11 violates two principles of contract interpretation. First, it would require us to add language not found in Paragraph 11. For example, Paragraph 11 could have read as follows: "*The parties reserve the right to attach an exhibit describing separately designated tracts*. *If the parties attach such an exhibit,* each of the separately designated tracts described shall be treated for all purposes as a separate and distinct Lease." No such option-related language exists in Paragraph 11. Second, as the Bush Lessors point out, DBR's proposed interpretation would render Paragraph 11 meaningless. There would be no purpose in reserving—but not exercising—an option to do something which could only be done in the same agreement where the option is found. This Court will not choose a meaning for Paragraph 11 requiring additional words over the reasonable, plain-language meaning of the agreement as written. *See In re Davenport*, 522 S.W.3d at 457. And we will not render Paragraph 11 meaningless in light of a reasonable interpretation that gives the provision meaning when harmonized with the rest of the agreement. We determine that the clear and unambiguous language of Paragraph 11 can be harmonized with the description of two separate, non-contiguous tracts of land in Paragraph 1.

(3) The "Action" Clause

The interpretation of the remainder of Paragraph 11, like the "notwithstanding" clause, is not in dispute. Referring to the separately designated tracts, this clause states they "shall be treated for all purposes as a separate and distinct Lease." The next sentence essentially restates the same

idea in different words: "All of the provisions contained in this Lease form shall be applicable to each such tract and be construed as if a separate Lease agreement had been made and executed covering each such tract." We determine this part of Paragraph 11 to be unambiguous and clear that the separate tracts are to be treated as being held by separate leases and that each provision of the lease document—including the special limitation in Paragraph 2—is to be applied to each tract individually.

We have determined that two tracts were described in Paragraph 1. We have determined that Paragraph 11 split the document into two separate leases—one covering Section 6 and one covering Section 2. We have determined that Paragraph 2 contains a clear, precise, and unequivocal special limitation that automatically terminates either lease if no operations are conducted upon the covered land within the primary term. We now return to the undisputed evidence that no operations were conducted on Section 2 during the primary term. As a result of the foregoing, DBR's lease of Section 2 automatically terminated in February of 2017. After that date, the Bush Lessors were free to grant a subsequent lease of Section 2 to another lessee and they were justified in demanding that DBR provide and record a release of Section 2, pursuant to their obligation to do so under Paragraph 13(e) of the lease.

III. CONCLUSION

Having sustained Appellants' sole issue, we reverse the judgment of the trial court granting summary judgment for DBR and denying Appellants' cross-motion for summary judgment. We render summary judgment on Appellants' cross-motion under the unambiguous terms of the lease and remand the cause to the trial court for further proceedings.

GINA M. PALAFOX, Justice

September 20, 2021

Before Rodriguez, C.J., Palafox, J., and Ferguson, Judge
Ferguson, Judge, sitting by assignment