IN THE COURT OF COMMON PLEAS OF INDIANA COUNTY, PA
CIVIL ACTION – EQUITY

Plaintiffs	)	
	)	
vs.	)	No.
	)	
Defendant	)	

MEMORANDUM OF LAW

This matter comes before this Court on Plaintiffs' Petition for Preliminary and Special Injunctive Relief/Motion for Declaratory Judgment. In support thereof, Plaintiffs submit the following Memorandum of Law applicable to this case, which supersedes the Memorandum offered to the Court following the May 6, 2010, hearing in this case.

I. THE LEASE IS CLEAR AND UNAMBIGUOUS AND, THEREFORE, THE PLAIN MEANING OF THE LEASE PROVISIONS SHOULD BE ENFORCED.

In this case, the terms of the relevant Lease are clear and unambiguous. In Pennsylvania, oil and gas leases are interpreted by applying contract principles. Hutchison v. Sunbeam Coal Corp., 513 Pa. 192, 519 A.2d 385, 389-90 (Pa.1986) (citation omitted); J.K. Willison v. Consol. Coal Co., 536 Pa. 49, 637 A.2d 979, 982 (Pa.1994) (citation omitted); Aye v. Philadelphia Co., 193 Pa. 451, 44 A. 555, 556 (Pa.1899). Pennsylvania law regarding the interpretation of contracts is well established.

Determining the intention of the parties is a paramount consideration in the interpretation of any contract. Robert F. Felte, Inc. v. White, 451 Pa. 137, 143, 302 A.2d 347, 351 (1973); Unit Vending Corp. v. Lacas, 410 Pa. 614, 617, 190 A.2d 298, 300 (1963). The intent of the parties is to be ascertained from the document itself when the terms are clear and unambiguous. Steuart v. McChesney, 498 Pa. 45, 48-49, 444 A.2d 659, 661 (1982); In re Estate of Breyer, 475 Pa. 108,

115, 379 A.2d 1305, 1309 (1977).

A contract is ambiguous if it is reasonably susceptible of different constructions and capable of being understood in more than one sense. Metzger v. Clifford Realty Corp., 327 Pa.Super. 377, 386, 476 A.2d 1, 5 (1984); Commonwealth State Highway & Bridge Auth. v. E.J. Albrecht Co., 59 Pa.Commw. 246, 251, 430 A.2d 328, 330 (1981). *See also* Black's Law Dictionary 73 (Rev. 5th ed.1979). The Court, as a matter of law, determines the existence of an ambiguity and interprets the contract whereas the resolution of conflicting parol evidence relevant to what the parties intended by the ambiguous provision is for the trier of fact. Easton v. Washington County Ins. Co., 391 Pa. 28, 137 A.2d 332 (1957); Fischer & Porter Co. v. Porter, 364 Pa. 495, 72 A.2d 98 (1950). See generally 4 Williston on Contracts § 616 (3d ed.1961); Hutchison, 519 A.2d at 389-90; *see also* Murphy v. Duquesne Univ. of the Holy Ghost, 565 Pa. 571, 777 A.2d 418, 429-30 (Pa.2001) (*citing* Hutchison, *supra*; other citations omitted). As further explained by the Pennsylvania Supreme Court in Willison, applying well-established Pennsylvania contract law to the oil and gas lease in that case, the accepted and plain meaning of the language used, rather than the silent intentions of the contracting parties, determines the construction to be given the agreement. Amoco Oil Co. v. Snyder, 505 Pa. 214, 478 A.2d 795, 798 (Pa.1984). "It is well established that the intent of the parties to a written contract is to be regarded as being embodied in the writing itself, and when the words are clear and unambiguous, the intent is to be discovered only from the express language of the agreement." Steuart v. McChesney, 498 Pa. 45, 444 A.2d 659, 661 (Pa.1982).

Where the parties have expressly agreed on what shall be done, there is no room for the implication of anything not so stipulated for, and this rule is equally applicable to oil and gas leases as it is to any other contract. Jacobs v. CNG Transmission Corp., 565 Pa. 228, 772 A.2d

445 (2001). Further, a lease must be interpreted as written rather than revised by a Court to accommodate perceived equities. Kepple v. Fairman Drilling Co., 532 Pa. 304, 615 A.2d 1298, 1304 (1992). A Court cannot construe a lease in terms of a presumed purpose and other external factors where it yields a result that is contrary to the terms of the lease. Willison, 637 A.2d at 981. It is well-established that a Court in equity must follow the law. Kepple, 615 A.2d at 1304. A Court in equity does not have legal or equitable power to ***make*** a contract for the parties. Id.

Finally, when in doubt, our Pennsylvania Courts have enforced handwritten language in a standard pre-printed form (such as in this case) over the printed language. "Where written and printed portions of a contract are repugnant, printed matter must yield to written clauses, as written clauses presumably constitute deliberate expression of the real intent of the parties." Woytek v. Benjamin Coal Company, 300 Pa.Super 397, 402-03, 446 A.2d 914 (1982).

Defendant argues that Plaintiffs' objection to well sites #6 and #7 is unreasonable. However, because the language of the Lease is clear and unambiguous, the Lease must be enforced as written without concern for outside factors or perceived equities. In this case, the parties clearly agreed that all well sites would require the approval of the landowners, giving Plaintiffs broad discretion.

This lease clearly and specifically gave Plaintiffs the right to determine when "enough is enough." By the language of the lease, Plaintiffs had the power to reject the locations of drill sites after the first site. However, they did not do this. They approved five (5) well sites in that Defendant agreed to locate those sites on the perimeter of the farm and out of the central portion, or the "heart" of the agricultural fields. Defendant's witnesses each agreed that the preservation of the agricultural fields was *always* Plaintiffs' main concern. This was the reason that the handwritten provision was added to the standard lease in the first place.

Defendant alleges that Plaintiffs had a duty to confer with them on locations and had a duty to "work with them" to find an agreeable site. Plaintiffs disagree. There is no language in this lease to indicate that Plaintiffs had any such duty. Many gas leases do, in fact, include language such as this when it is the intent of the parties to force compromise. That is not the case here. Plaintiffs were given the power to stop development when it began to take too much of a toll on the land.

This may not have been a deal that Defendant would have signed, had they been a party to the original lease. It may appear to be a "bad deal" for them. However, it is what it is and it says what it says and the language is clear and unambiguous.

Defendant also argues that, if Plaintiff does not approve these additional well sites, they are unable to drain the reserve and fully develop the land. Unfortunately, there is nothing in the Lease or in case law to suggest that Defendant has any right or duty to drain the reserve. On the contrary, any duty to develop the gas interests was limited by the handwritten language giving Plaintiffs the ability to pull the plug once the land was being compromised. Obviously, Lessor wants to drain the reserve. This is in Defendant's business interests. It is not in Plaintiffs' interests in that this would destroy the agricultural integrity of the land that they have so continuously sought to protect.

If you follow Defendant's logic, then no lease would be enforceable where it limits the Defendant's ability to fully develop or drain the reserve. That is simply not the law. Pennsylvania Courts have consistently enforced limitations on full development of oil and gas interests. *See* Stoddard v. Emery, 128 Pa. 436, 18 A. 339 (1889)(where lease provides for specific number of wells to be drilled, evidence of custom to fully develop is not admissible and has no bearing); Adobe Oil & Gas Corp. v. Harchick, 29 Pa. D.& C.3d 418, 1984 WL 610

(Pa.Com.Pl. Clearfield 1984)(where lease provided that three wells would be drilled, court limited development to only three wells on 150 acre parcel although six or seven wells would be needed to fully develop gas interests); McKnight v. Manufacturers' Natural Gas Co., 146 Pa. 185, 23 A. 164 (1892)(noting that, where lessor reserved the right to approve all well sites, lessee had no right to put a well down except at points that lessor fixed upon).

Defendant suggests that the enforcement of any specific limitation on Defendant's right/duty to fully develop the reserve will lead to an absurd result. However, PA Courts have consistently upheld provisions that limit full development, especially where there is specific language inserted into a standard lease form to benefit the landowner, as we have here. Defendant now attempts to re-draft the Lease and add or impute provisions that simply are not there such as a duty to accommodate the gas company. Defendant cites several cases where Courts have ordered surface owners to accommodate the gas company in its drilling plan. However, comparing those cases to the instant case is like comparing apples to oranges. The cases cited by Defendant do not involve leases with clear, handwritten language reserving the right to approve well sites to the landowner. That makes all of the difference from the general rule of "accommodation."

This Lease is clear and unambiguous and clearly provides Plaintiffs with the right to decide where wells should be drilled upon their property. It contains no further provision adding any duty upon Plaintiffs to confer with or accommodate Defendant. It was written to allow Plaintiffs to protect their family farm and that is what is being done now.

II. IN THE ALTERNATIVE, IF THE COURT DETERMINES THAT THE LEASE PROVISIONS ARE AMBIGUOUS, THEN THE PAROL EVIDENCE CLEARLY DEMONSTRATES THAT THE INTENT OF THE PARTIES WAS TO GIVE THE LANDOWNERS THE RIGHT TO APPROVE OR REJECT WELL SITES.

It is well-settled that a written agreement will be construed against the party preparing it. Burns Manufacturing Co. v. Boehm, 467 Pa. 307, 313 n.3, 356 A.2d 763, 766 n.3 (1976); Baltic Development Co. v. Jiffy Enterprises, 435 Pa. 411, 416, 257 A.2d 541, 543 (1969). "The express intent and agreement of the parties may overcome any 'implied covenant.'" Jacobs, 772 A.2d at 453, *quoting* Aye v. Philadelphia, 193 Pa. 451, 44 A. 555 (1899). Parties to a gas lease can properly covenant to limit and customize any implied duty to explore and develop. McKnight v. Manufacturers' Natural Gas Co., 146 Pa. 185, 23 A. 164, 165 (1892). A lease can restrict the implied duty by reserving, to the lessor, the ability to dictate and limit the place(s) of operation. Id. (valid lease provision stated that original lessor had exclusive right to choose the location of all wells on his property). That is exactly what we have in this case. A lease can also limit the drilling program to a specific number of wells. 29 Pa. D. & C.3d 418 (Pa.Com.Pl. 1984)(upholding gas lease that specifically limited drilling program to three wells as dictated by the plain language of the lease).

III. IN THE ALTERNATIVE, SHOULD THE COURT FIND THAT PLAINTIFFS HAVE A DUTY TO BE REASONABLE IN ACCOMODATING LESSOR, THEN PLAINTIFFS HAVE SUFFICIENTLY PROVEN THAT THEY HAVE DONE SO.

To date, Plaintiffs have approved five (5) well locations without objection. Plaintiffs have maintained their concerns for the agricultural integrity of the farm from the inception of this Lease. Lessors' witnesses each agreed that Mrs. Shearer had clearly and consistently expressed her continued concern for the farm land. The wells that have been approved were approved on the outer perimeters of the land so as to preserve the most fertile and valuable farming fields.

Now, Lessor desires to come into the heart of the fields to drain their reserve. Plaintiffs were reasonable in denying approval for well sites #6 and #7. The preservation of the farm land has always been the family's concern, as is evident in the handwritten provision in this Lease.

IV. PLAINTIFFS HAVE DEMONSTRATED THAT, IF DEFENDANT IS PERMITTED TO CONTINUE IN ITS PLANS TO DRILL WELLS #6 AND #7 AND CONSTRUCT ADDITIONAL ROADS, IMMEDIATE AND IRREPARABLE DAMAGE WILL RESULT.

It is clear that the construction of additional wells and roadways on the property, especially in the agricultural fields, will be permanent and will reduce the value of the land forever. Defendants have four (4) wells on their property and have approved a fifth well site. Defendant has immediate plans for at least two (2) more wells to be drilled in the center of the property and in the most prime agricultural sections. Lessor maintains that Plaintiffs can be restored by way of monetary damages. However, Lessor would like the Court to ignore the fact that these wells are permanent fixtures and will have to be serviced and maintained via roadways for an indefinite period of years. These wells and roadways will cause immediate and irreparable damage to the value of the property.

IV. CONCLUSION

For the reasons stated above, Plaintiffs request this Honorable Court to grant a preliminary and special injunction and enjoin Defendant from proceeding with plans to drill Wells #6 and #7 without Plaintiffs' approval.