



ATTORNEYS AT LAW

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## Back to Basics: The Importance of Language and Rules of Construction

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In April of 2019, the Superior Court of Pennsylvania highlighted the necessity of utilizing clear and concise language in oil and gas leases in *Mitch v. XTO Energy, Inc.*, 2019 Pa. Super. Unpub. LEXIS 1580. In *Mitch*, the Plaintiff entered into a 2012 oil and gas lease in favor of XTO, the Addendum to which provided that “[i]f any well(s) is (are) drilled on the lease premises and is (are) producing in paying quantities, the surface owner shall be entitled to receive a payment in lieu of free gas ... provided the surface owner has his primary residence on the lease premises.”

The lease was subsequently pooled into a unit. None of the vertical components of the well pad were located on the Plaintiff’s land. However, the Plaintiff filed a complaint asserting that he was owed payments pursuant to the Addendum because a horizontal portion of the well was drilled beneath his property. In response, XTO asserted that a well must be drilled on the surface of the Plaintiff’s land, rather than beneath it, before the he would be entitled to payment in lieu of free gas.

The trial court granted XTO’s motion for summary judgment finding that “the only reasonable interpretation of [the Addendum] is that Mitch would receive payment ... in lieu of free gas, where his primary residence was on the drilling land, and a vertical drilling mechanism, or well pad, was constructed on the surface of his property. It makes no reasonable or rational sense that XTO would contract for an additional benefit in favor of Mitch where there is no additional detriment to Mitch.”

The Superior Court concluded that the trial court properly construed the language of the Addendum and stated that simply because the parties do not agree on its meaning does not render it ambiguous and that it should not “distort the meaning of the language or resort to a strained contrivance in order to find an ambiguity” (internal citation omitted). Accordingly, the Court construed the word “on” in the ordinary sense and “conclude[d] that the only reasonable interpretation of ‘on the lease premises’ is to mean on the surface of the lease premises.”

The *Mitch* case is a reminder of the importance of utilizing concise language in drafting oil and gas leases and the canons of construction that Courts will utilize in interpreting such contracts. The following is a general overview on the rules of construction that should be kept in mind while drafting and reviewing oil and gas leases (and other contracts):

- Leases are controlled by the principles of contract law.
  - Due to the complexity of the industry, oil and gas leases are construed with reference to both the intention of the parties and industry practices.
  
- As to not restrict ownership, courts generally favor validity of the document at issue.
- The ultimate goal of construing a deed is to determine the intent of the parties.
- The language contained within the four corners of an instrument is the controlling factor.
  - Contracts must be construed as a whole, rather than as individual clauses.

- Every word shall have some effect, if possible, and as much effect as it may have consistently with other parts of the instrument.
- If a deed is unambiguous, it will be enforced according to its plain text.
  - Words are to be given their plain, ordinary and popular meaning, unless they have acquired a peculiar sense in respect to the particular subject matter.
- If ambiguity exists, courts will resort to other rules of construction in order to ascertain the intent of the parties at the time and place of the conveyance:
  - *Contra Proferentum* – Construe Against the Drafter – generally adopts interpretation favorable to lessor as it is usually the lessee that selects the terms.
  - *Ejusdem Generis* – “Of the Same Kind” – where general words follow the enumeration of particular minerals, the general words will be construed as applicable only to minerals of the same general character as those enumerated.
  - Actions of the Parties – it is permissible to prove the situation of the parties when the contract was entered into and their subsequent conduct to determine intent.
- The absence of a material term constitutes an ambiguity and parol evidence will be admitted to determine the parties’ intent.
- Courts will construe ambiguities in the most reasonable manner possible and will reject interpretations which bring about unreasonable results.

For a copy of the *Mitch* decision, or for assistance with drafting or reviewing contracts, including oil and gas leases and mineral deeds, do not hesitate to contact the Oil and Gas Group of Dickie, McCamey & Chilcote, P. C.



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