IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4039

Summary Calendar

EDWIN J. KRIELOW, ET AL.,

Plaintiffs-Appellants,

versus

UNION TEXAS PETROLEUM CORP., ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
(91 CV 1970)

(July 13, 1993)

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:*

Edwin J. Krielow and other members of his family brought this action--a diversity action regarding certain mineral rights affecting 275.78 acres in Louisiana--in September 1991, seeking to release his property from lease obligations. The district court granted defendants' motion for summary judgment, and the Krielows appeal from that judgment. Finding that the parties are

---

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, we have determined that this opinion should not be published.

bound by the express terms of their 1969 letter agreement, we affirm.

I. BACKGROUND

A. Facts

In 1951, Allied Chemical Corporation was granted a mineral lease on a tract of land including 273.65 acres of property owned by Edwin Krielow. In 1957, Allied obtained a second mineral lease including the remaining 2.13 acres of Krielow Property. Allied then transferred its rights and obligations under the terms of these leases to Union Texas Petroleum Corporation (UTPC)--a fully owned subsidiary of Allied.

The 1951 lease provided Krielow with a royalty interest of one-eighth of the value of production, and the 1957 lease provided him with a royalty interest of one-sixth of the value of production. Although Krielow retained ownership and executive rights over his property, he assigned portions of his royalty interests under the leases to others. By 1969, Edwin Krielow's remaining royalty interest in the leased property was 1/128th of production.

In 1969, Allied decided to create a single reservoir-wide unit for a reservoir known as the Camerina Sand, portions of which ran beneath the Krielow property. To create this single unit, pursuant to LA. REV. STAT. 30:5(c), Allied needed to obtain the approval of three-fourths of the land owners and royalty owners who were to be included. Accordingly, Allied negotiated a supplemental lease agreement with Krielow. This agreement,

drafted by Allied and accepted by Krielow on September 26, 1969, provides that:

> [i]n consideration of your execution of said Unit Agreement and if the reservoirwide unit is established, Allied Chemical Corporation agrees that should the total royalties payable under the above described mineral leases on gas and liquid production from the reservoirwide unit for any "calendar year" ever be less than Fifty Dollars ($50.00) for each acre covered by said mineral leases and included in the unit, then Allied Chemical Corporation, within 90 days after the end of the calendar year during which the royalties payable were less than said minimum amount, release and relinquish all rights and interests under the above described oil, gas and mineral leases insofar as they cover all depths and horizons other than the Main Camerina "A" Sand and any other sand producing oil and/or gas at the end of said calendar year.[1]

In accordance with this agreement, a single, reservoir-wide unit for the Camerina Sand, including the entire 275.78 acres of the Krielow property, was created on December 1, 1969.[2]

In 1981, Krielow complained about the manner in which UTPC was operating and administering the 1951 and 1957 leases. These complaints primarily concerned exploration for and production of deep zones running beneath portions of the Camerina Sand under the Krielow property. UTPC and Edwin Krielow reached a compromise agreement in December 1981, pursuant to which UTPC agreed to (1) pay $41,367.00 per year for a five-year period

---

[1] Emphasis has been added.

[2] According to the record, an agreement containing terms identical to those quoted above was offered to each landowner within the Lake Arthur Field, and no agreements having different terms were entered into with any other individual landowner. Moreover, the actual terms of these agreements were the result of negotiations with the Fay family, who stipulated that a "minimum royalty requirement" be added to the agreement to insure that the land would either remain productive or be released.

beginning December 1981 and (2) increase the royalty for production from beneath the Camerina sand. UTPC could avoid payment pursuant to this agreement by either releasing or exploring all depths below the Camerina Sand; specifically, in the absence of exploration within five years, UTPC agreed to release all depths below the Camerina Sand from the leases. In return, Krielow agreed that the 1951 and 1957 leases were in full force and effect and that, "notwithstanding any provisions of said leases to the contrary, no portion of said leases shall expire during the period for which payments are made hereunder or during which surface operations for deepening or drilling are conducted hereunder by UTPC or its assigns." The parties also specified that the 1981 compromise agreement would "supersede all prior agreements regarding the heretofore mentioned leases." In accordance with this compromise agreement, UTPC paid $41,365 per year for five years and then, in 1986, released its rights as to the "deep depths" beneath the Camerina Sand.

The Krielow well produced from the Camerina Sand until 1979. In October 1989, the well was recompleted to a depth above the Camerina Sand to increase production, and it has produced in significant quantities ever since.

B. Proceedings

The Krielows brought this action in September 1991, asserting that (1) UTPC and Meridian Oil (defendants) failed to comply with the minimum royalty provision of the 1969 letter agreement and (2) defendants drained hydrocarbons contained under

the Krielow property from a well located on an adjoining piece of property. As for this first claim, the district court emphasized that the parties have stipulated that the total royalties paid under the 1951 and 1957 leases far exceeded $50 per acre for 1984 through 1986. Relying upon the express "total royalties payable" language of the 1969 agreement, the court concluded that there is "nothing in the agreement to suggest that the parties intended that the trigger for the release be at the point when production had declined so that less than $50 per acre in royalties was paid to Edwin J. Krielow or the holders of his 1/128th royalty interest." In reaching this conclusion, the court stressed that the entire purpose of the 1969 agreement was to create a reservoir-wide unit, and that the obvious intent of the release provision was to release all non-producing depths from the leases once the unit's overall production declined to a certain minimum level.[3]

The district court also rejected the Krielows' allegation that the defendants had drained hydrocarbons from under the Krielow property. Specifically, the court concluded that defendants had met their burden pursuant to Rule 56(c) of the Federal Rules of Civil Procedure by establishing the absence of a genuine issue of material fact, and that the Krielows then failed

[3] Because the district court determined that the Krielow property had not been released pursuant to the release provision of the 1969 agreement, the court did not reach defendants' alternative argument that the 1981 compromise agreement superseded the 1969 agreement, thereby defusing the 1969 agreements' release provision.

to come forward with evidence to establish that a genuine issue of material fact exists as to whether such drainage occurred. Accordingly, the district court granted summary judgment in favor of defendants and rejected the Krielows' motion for summary judgment. The Krielows appeal from that grant of summary judgment.

II. DISCUSSION

The only issue raised by the Krielows on appeal is whether the district court properly granted summary judgment in favor of defendants with respect to the 1969 agreement.[4] Accordingly, this case presents us with a straight-forward question of contract interpretation pursuant to Louisiana law.

Under Louisiana law, the principal rule of contract interpretation is that legal agreements have the effect of law upon the parties,[5] and courts are bound to give legal effect to all such contracts according to the true intent of the parties. LA. CIV. CODE ARTS. 2045 (1987) ("Interpretation of a contract is the determination of the common intent of the parties.");

---

[4] The Krielows have not properly pursued their drainage assertion on appeal and, therefore, we conclude that this issue has been waived. See Matter of Texas Mortgage Services Corp., 761 F.2d 1068, 1073-74 (5th Cir. 1985) ("[I]ssues not raised or argued in the brief of the appellant may be considered waived and thus will not be noticed or entertained by the court of appeals.") (emphasis in original and quotation omitted); see generally, FED. R. APP. P. 28(a) ("Briefs of the Appellant"); C. WRIGHT, A. MILLER, E. COOPER & E. GRESSMAN, FEDERAL PRACTICE AND PROCEDURE § 3974, at 421 n.1 (1977 & Supp. 1992).

[5] LA. CIV. CODE art. 1983 (1987) ("Contracts have the effect of law for the parties and may be dissolved only through the consent of the parties or on grounds provided by law.").

Pendleton v. Shell Oil Co., 408 So.2d 1341, 1342 (La. 1982); Rebstock v. Birthright Oil & Gas Co., 406 So.2d 636, 640 (La. App. 1st Cir.), writ denied, 407 So.2d 742 (La. 1981). Specifically, "[w]hen the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent." LA. CIV. CODE art. 2046 (1987); see Smith v. Moncrief, 421 So.2d 1127, 1131 (La. App. 3d Cir.), writ denied, 426 So.2d 177 (La. 1982). In such cases, the meaning and intent of the parties must be sought within the four corners of the instrument rather than from parole evidence. See LA. CIV. CODE art. 1848 (1987) ("Testimonial or other evidence may not be admitted to negate or vary the contents of an authentic act or an act under private signature."); Tauzin v. Claitor, 417 So.2d 1304, 1309 (La. App. 1st Cir.) (permitting the admission of parole evidence because of ambiguity, but stating that, "[w]here the contract is clear and unambiguous, it cannot be varied, explained or contradicted by parole evidence"), writ denied, 422 So.2d 423 (La. 1982). Finally, "the words of the contract must be given their generally prevailing meaning." LA. CIV. CODE art. 2047 (1987). In other words, contractual provisions "must be interpreted in a commonsense fashion, according to the words of the contract their common and usual significance." Lambert v. Maryland Cas. Co., 418 So.2d 553, 559 (La. 1982), citing LA. CIV. CODE art. 1946; Franks Petroleum, Inc. v. Mayo, 438 So.2d 696, 699 (La. App. 2d Cir.), writ denied, 443 So.2d 595 (La. 1983).

As recognized by the district court, "[t]he fact that one party can, in hindsight, create a dispute about the meaning of a contractual provision does not render the provision ambiguous." Rutgers v. Martin Woodlands Gas Co., 974 F.2d 659, 662 (5th Cir. 1992) (applying Louisiana law); see also Esplanade Oil & Gas, Inc. v. Templeton Energy Income Corp., 889 F.2d 621, 623-24 (5th Cir. 1989) (applying Louisiana law). We conclude, as did the district court, that there is nothing ambiguous about "the total royalties payable under the . . . mineral leases . . . ." "[T]otal royalties" simply does not mean "only the royalties paid to Edwin J. Krielow," which is the interpretation the Krielows assert. Moreover, the record supports defendants' assertion that the principals fully understood that "total royalties" due and payable under the leases included those payable to third parties who, although the recipients of royalties generated pursuant to the 1951 and 1957 leases, had no rights to confect or amend the leases.[6] In short, the total royalties paid under the Krielow leases throughout the 1980's were, at minimum, twelve times the $50-per-acre floor established by the 1969 letter agreement:

Year	Total Royalties Paid Under the Krielow Leases	Royalties Per/Acre
1980	$1,022,244.89	$3,706.75
1981	885,863.62	3,212.22
1982	769,133.71	2,788.94

[6] Consider that, during his deposition, Edwin Krielow acknowledged that it was his understanding that all royalties paid pursuant to the 1969 agreement, including the interests which he had assigned, would be calculated and paid by UTPC pursuant to the 1951 and 1957 mineral leases; Krielow's royalty interest was in no way singled out.

1983	849,046.17	3,078.71
1984	368,093.59	1,334.74
1985	233,348.89	846.15
1986	226,611.21	821.72
1987	247,033.62	895.77
1988	478,295.70	1,734.34
1989	350,819.21	1,272.10
1990	267,269.44	969.15
1991	169,324.29	613.99

Finally, we acknowledge that relying upon the plain language of the 1969 agreement does not give rise to any "absurd consequences." LA. CIV. CODE art. 2046 (1987). The record firmly establishes that the purpose of the 1969 agreement was to establish a single, reservoir-wide unit for the Camerina Sand including but certainly not limited to the entire 275.78 acres of the Krielow property.[7] The consequence of relying upon the plain language of the 1969 agreement is to interpret the release provision to mean that the parties anticipated that the Camerina Sand unit's production would one day diminish to the point where the 1969 agreement would no longer be in the parties' best interest; the parties agreed that this point would be reached when the unit's output no longer generated royalties of at least $50 per acre for each calendar year.[8]

---

[7] We note that, in his deposition, Krielow admitted that he has no clear recollection of the 1969 agreement and no memory of negotiating or signing it.

[8] See supra note 2 and accompanying text (establishing that all Camerina Sand land owners were offered agreements containing terms identical to the 1969 agreement, and that no agreements having differed terms were entered into with any other individual landowner).

In conclusion, pursuant to LA. CIV. CODE ARTS. 1848, 1946, 2046, 2047 (1987), we refuse to consider the parol evidence offered by Krielow. Instead, relying upon the plain language of the 1969 agreement, we affirm the district court's grant of summary judgment in favor of defendants.[9]

III

For the foregoing reasons, we AFFIRM the district court's grant of summary judgment in favor of defendants.

[9] Because we find that the mineral rights to the Krielow property at issue were not released and that the parties are bound by the 1969 agreement, we do not reach the defendants' assertion that the 1981 compromise agreement, through the payment of over $206,000 to plaintiffs, legally precluded any obligation upon them to issue a release during 1984, 1985, and 1986.