

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

THOMAS F. CHARLES, DENNIS L. CHARLES and	:	NO. 09 - 00,067
DARLA K. ZIMMERMAN,	:	
Plaintiffs	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
GEORGE SGAGIAS and JAMES HALKIAS,	:	Motions for Summary Judgment
Defendants	:	

OPINION AND ORDER

Before the Court are cross-motions for summary judgment which seek a declaration of the meaning of an addendum executed by the parties in connection with an agreement to purchase real estate. Once the meaning of the addendum is resolved, the issue of a breach of the sales agreement will be submitted to a jury.

In April 2008, in light of the “gas lease boom”, Defendants (hereinafter “Buyers”) engaged a real estate agent to locate an appropriate property for investment. Buyers were specifically looking for a large property which would allow them to lease the gas rights as an investment. The agent made them aware of a certain property listed by another agent with his own agency, which was said in the listing to contain 320 acres and for which the sellers, Plaintiffs herein, were asking \$650,000, but which was being sold without the mineral, oil or gas rights. Buyers made an offer to purchase the property for \$1.2 million as long as the sale included the mineral, oil and gas rights. Sellers accepted this offer and on April 16, 2008, a standard agreement of sale was executed by the parties, with the additional language that “Sale price includes all mineral & gas rights to property and all surveying & engineering documents.” Buyers tendered a \$250,000 down

payment which was placed in an escrow account with the real estate agency. Closing was scheduled for May 17, 2008.

Buyers' counsel then proceeded to perform a title search which revealed that the chain of title contained a reservation of mineral rights made in the late 1800's. Believing that such a reservation also included the gas rights, Buyers' counsel contacted Sellers' counsel to relay his findings and convey his belief that the deal could not be done and to request return of the deposit. Sellers' counsel¹ and Buyers' counsel then had a further discussion regarding the possibility that a reservation of mineral rights did not include the gas rights, and while both attorneys came to believe that the gas rights were still in the sellers, neither was willing to guarantee such to his clients, and both recognized that no title company would guarantee such. They discussed several possible solutions to what sellers' counsel referred to as the "title glitch". A possible action to quiet title was dismissed as taking too long and having the possibility of being unenforceable, and the idea was arrived at that if buyers could find a gas company willing to lease the property from them in spite of the reservation of mineral rights, the reservation would no longer be an issue. The addendum at issue was then prepared by buyers' counsel and executed by all parties on June 12 and 13, 2008.² The relevant portion of that addendum reads as follows:

1. Closing date is changed to October 15, 2008 or sooner to allow buyers the right to pre-lease the Oil & Gas rights to be effective

¹ At this point, a second attorney became involved upon the request of sellers' original counsel, as he had more expertise in the real estate field, and it was this second attorney who participated in the negotiations following discovery of the reservation of mineral rights.

² It should be noted that Sellers' counsel did not see the addendum before his clients signed it. After he saw it, he attempted to advise them not to sign it but learned that they had already done so. He then prepared a second addendum which provided earlier deadlines but that addendum was never signed. Buyers testified they did not wish to abide by the shorter deadlines of the second addendum.

on closing, said Oil & Gas rights to be leased to Buyer's (sic) satisfaction with out (sic) any warranty of title.

Buyers then endeavored to lease the gas rights and at some point, Sellers offered to lower the purchase price to \$1,050,000. Buyers accepted this offer and closing was set for September 19, 2008. At closing, Buyers requested that Sellers hold seller's paper for \$500,000 but Sellers refused and the closing was not completed. As a dispute then arose regarding the deposit monies, such remain in escrow and both Buyers and Sellers claim entitlement thereto.

Buyers argue that the addendum states a condition precedent – obtaining a gas lease to their satisfaction – and since that condition was not fulfilled, they are entitled to a return of the deposit. Sellers argue that the addendum merely extended the closing date and since Buyers failed to close, Sellers are entitled to keep the deposit per the contract. This Court has already ruled the language of the addendum to be ambiguous in response to cross-motions for judgment on the pleadings. It has now become the Court's task to interpret the addendum considering the parole evidence offered by both sides.³

The Court begins the analysis by recognizing that “[t]he rule in Pennsylvania is that a condition precedent to an obligation, must be expressed by clear language or it will be construed as a promise or covenant. Language not clearly written as a condition precedent is presumed not to be, unless the contrary clearly appears to be the intention of the parties.” Mellon Bank v. Aetna Business Credit, Inc., 619 F.2d 1001, 1016 (3rd Cir. 1980). Certainly, the language at issue

³ In a breach of contract claim, if the provisions of the contract are ambiguous or obscure, its interpretation becomes a question of fact for the jury, and parole evidence is admissible to aid in this interpretation. BBCI, Inc. v. Canada Dry Delaware Valley Bottling Co., 393 F. Supp 299 (E.D. Pa. 1975), *citing* Consolidated Tile & Slate Co. v. Fox, 189 A.2d 228 (Pa. 1963).

is “not clearly written as a condition precedent”. The Court finds, however, that Defendants have overcome the presumption that the addendum is not a condition precedent and have shown that indeed, such was its purpose.

Most telling, in the Court’s opinion, is the circumstance that, prior to the drafting of the addendum, counsel for both sides were not willing to guarantee that Buyers would be purchasing the gas rights and thus, Buyers had the right to withdraw from the contract without penalty, as Sellers could not convey what Buyers wished to purchase. Pre-leasing the gas rights was intended to circumvent the issue and it is thus a matter of common sense that such was to be a condition precedent, since if a pre-lease could not be obtained, the original problem would remain and Sellers still could not convey what they had promised to convey.

Indeed, the language of a second addendum, prepared by Sellers’ counsel (as noted *supra*), more clearly expresses that it was the parties’ intention that a pre-lease was a condition of the contract. That second addendum states as follows:

1. Buyers agree to diligently proceed to contact and explore leasing the property without a representation or warranty of title provision. The buyers will advise the sellers and/or their agents on or before July 15th 2008, as to the status of the matter. If one or more companies are interested in proceeding and if buyers are able to proceed to negotiate a lease on representative terms without such warranty they will have until August 15 2008 to negotiate a satisfactory lease. If the lease is not finalized on or before August 15th either party may declare this agreement null & void by giving written notice to the other and/or their agents.

Clearly, the option to declare the agreement null and void should Buyers be unable to negotiate a satisfactory lease prior to a certain date, expresses an intention that the negotiation of a satisfactory lease act as a condition precedent.

While Sellers may now contend Buyers breached the contract by failing to act in good faith when attempting to pre-lease, or in making new demands that were not contemplated by the sales agreement,⁴ their argument that the addendum was not a condition precedent must fall to the more logical conclusion that it was.

ORDER

AND NOW, this 29th day of September 2010, for the foregoing reasons, Plaintiffs' motion for summary judgment is hereby DENIED and Defendants' motion for summary judgment is hereby GRANTED. The Court finds that the addendum at issue acted as a condition precedent to Buyers' obligations under the contract.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Michael Dinges, Esq.
James Kollas, Esq., Kollas and Kennedy
1104 Fernwood Ave., Ste. 104, Camp Hill, PA 17011
Gary Weber, Esq.
Hon. Dudley N. Anderson

⁴ As noted above, these issues will be tried before a jury.