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United States District Court, N.D. Alabama.

Virginia RAYBURN; George Rayburn; Edith Friedman; Peggy Stark; Karl Stark; Helen Blackshear; Mitchell Blackshear; Louie Bailey; Doug Bailey; Margaret McClung; Margaret Cunningham; Louis Herzberg; Jean Herzberg; and Adale Nunnally,
v.
USX Corporation.

No. CIV.A. 85–G–2661–W. | July 29, 1987.

Attorneys and Law Firms

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Opinion

GUIN, J.

MEMORANDUM OPINION

***1** This cause came before the court on a declaratory judgment action by which the court was asked to interpret the language of a warranty deed dated January 21, 1960, to determine the ownership of the occluded coalbed methane gas situated in the deeded property. Plaintiffs were parties to or are heirs of parties to the deed (plaintiffs' exhibit 1) by which USX Corporation (formerly United States Steel Corporation) was deeded all the mineral rights, except oil and gas, in approximately 2,874.31 acres of land in Tuscaloosa County.

Pertinent parts of the deed read:

> [T]he undersigned Grantors do hereby grant, bargain, sell, and convey unto the said United States Steel Corporation *the minerals and mining rights, except oil and gas and the right to explore for and remove the same,* in the following described land located in Townships 18 and 19 South, Range 8 West of the Huntsville Principal Meridian, Tuscaloosa County, Alabama; * * *
>
> Grantors herein covenant and agree that any right to explore for or produce oil and gas, or to drill wells for the exploration for or production of oil and gas in the above-described lands *shall be subject to the requirement that all coal seams located in said lands penetrated in such exploration or drilling operations shall be encased or grouted off,* except those which may be specifically exempted by the United States Steel Corporation in writing. The grout plug or casing shall extend from fifty (50) feet above the top of such seam to fifty (50) feet below the bottom of said seam, all casing being securely grouted in place. If all casing is removed upon abandonment the holes shall be plugged with grout for a distance extending from fifty (50) feet above the top of each coal seam to fifty (50) feet below the bottom os such seam. The United States Steel Corporation, its successors or assigns, shall be notified prior to encasing or grouting off coal seams, such notice to include the location of the hole or holes to be encased or grouted.

Both parties claim ownership of the methane gas in and to the property described in the deed conveyed to U.S. Steel, basing their claims on the expressed intentions of the parties in the deed. Plaintiffs, who have subsequently executed oil and gas leases, claim methane gas falls within the definition of gas excepted from the deed to USX. Defendant, on the other hand, claims that methane gas is inherent to the coalbed, and as such passed to it with the mineral rights.

Pertinent to the question before the court is the status of the oil and gas industry in 1960. The court has referred to plaintiffs' exhibit 6, Douglas R. Semmes, *Oil and Gas in Alabama* (1929), [1] for historical background. Particular attention has been directed to the history of the industry in Tuscaloosa County and the Log [2] of Friedman and Loveman Estate No. 3 Well to determine the common knowledge and commercial usage present in Tuscaloosa County at the time of the deed. History shows that in 1905 a well was drilled there for the purpose of testing for coal and iron. [3] In the same year the City of Tuscaloosa drilled a well near the courthouse to a depth of 1,511 feet. No reliable records were kept, but the formations were reported as usual succession of sandstone,

shale and conglomerates of the Coal Measure. There was a good flow of water, but no oil or gas shows were reported. [4]

***2** In 1916, two wells were drilled by Frederick Morck at Lock 15, on the Warrior River. Nothing further is reported in the area until 1920 when a bulletin on the oil and gas possibilities of the state was published. During the same year a geological examination of the northern part of the county was made by SinclairConsolidated Oil Corporation, and a location was made on the Friedman and Loveman Estate in Section 2, Township 18 South, Range 9 West. A well was drilled into the Bangor limestone, at a depth of 2,950 feet. [5] The Friedman and Loveman Log shows the Corona Coal Seam at a depth of 437 feet and indicates that there is "a little showing of gas" [6] in the seam. [7] The log further showed that in the Mary Lee Coal Seam, located at a depth of 885 feet, there was "gas enough to run." [8]

Other than that reference, with no explanatory material, the court has been unable to find any reference to occluded coalbed methane gas, by any name, in the Semmes book. No reference is made to the extraction of methane gas for commercial purposes, nor is it mentioned as a possibility for future development.

The record is bare of other indicia of the common knowledge and use of methane gas for commercial purposes in Alabama, or particularly in Tuscaloosa County, prior to the time of the January 1, 1960, warranty deed at issue. Knowledge gleaned since is irrelevant to interpretation of the subject document.

Although both parties have urged this court to decide as a matter of law that methane gas either is or is not included in the term "gas" or is or is not severed with the mineral coal, it is not necessary for the court to decide that issue. This decision is based on the language of the deed in question and is not a declaration that in all instruments the interpretation will be the same.

The language of the contracting document is clear and unambiguous. The reservation of oil and gas exploration "shall be subject to the requirement that all coal seams located in said lands penetrated in such exploration or drilling operations shall be encased or grouted off...." [9] *Kilfoyle v. Wright,* 300 F.2d 626, 627 (5th Cir.1962), discussed the purpose of the rules of construction as being to ascertain what the parties intended. *Kilfoyle* referred to the general rule expressed in 26 C.J.S. Deeds § 100g.;

> "In construing the deed to determine the identity of the property, reference may be had to the state of facts existing when the deed was made, to ascertain the intention of the parties, and the court will place itself as nearly as possible in the position of the parties and interpret the language in the light of the surrounding circumstances."

That general rule prevails in Alabama.

> "And it is the well-settled rule that, where the language of a deed is ambiguous, the intention of the parties may be ascertained by a consideration of the surrounding circumstances existing at the time of its execution, and for this purpose the court will place itself as nearly as possible in the position of the parties when the instrument was executed. 18 Corpus Juris, p. 260. To ascertain the intent in respect the property conveyed, reference may be had to the state of facts as they existed when the instrument was made, and to which the parties may be presumed to have had reference. 18 Corpus Juris, 280. Of course the entire instrument is to be considered, and, if it can be reasonably done, and not inconsistent with the general intent of the whole instrument, effect and meaning should be given to every clause, word, and expression, so that the deed may operate according to the intention of the parties. 18 Corpus Juris, 258...." (citations omitted).

***3** *Kilfoyle,* at 627, 628.

The language in the case before the court is not ambiguous. The deed clearly states "encase or grout off." Whether an ambiguity exists is a question for the court to decide. *Freeman v. Continental Gin Company,* 381 F.2d 459, 465 (5th Cir.1967), and the court has found no ambiguity. Plaintiffs may not now state that they intended the language to mean something other than its expressed intention. "[I]n determining the meaning of a writing, the court is required to look to all operative usages and all relevant circumstances 'other than oral statements by the parties of what they intended it to mean.' Restatement, Contracts § 230 (1932)." *Id.* Even were it not so, the court is not governed by the subjective intent of one of the parties in determining the meaning of this writing. The clearly expressed intention is that the methane in the coal bed *not* be available to any well drilled by the grantors who reserved the "oil and gas" or to their assigns. Otherwise, the words "encased or grouted off"

would be meaningless. If the intention was that this methane not be available to those owning the reserved "oil and gas," it is obvious that the parties could not have intended that such methane be included in the reservation.

In 1965, an Arkansas federal district court, interpreting the word "mineral," stated that its meaning "is governed not by what the grantor meant or might have meant, but by the general legal or commercial usage of the work at the time and place of its usage." *Middleton v. Western Coal and Mining Company,* 241 F.Supp. 407, 419 (W.D.Ark.1965), *aff'd* 362 F.2d 48 (8th Cir.1966) (quoting *Stegall v. Bugh,* 228 Ark. 632, 633, 310 S.W.2d 251, 253 (1958)). Regardless of what the grantor in this case conceivable might subjectively have meant, in 1960, in Tuscaloosa County, Alabama, occluded coalbed methane gas was not considered a gas to be included within the oil and gas exception to deeds. It was not at that time considered commercially recoverable and the language of the reservation clearly shows an intention that it not be available to the reserving grantors, and therefore an intention that they not be the owners of it.

Having considered the record and the applicable law, the court holds that there was no ambiguity in this deed. The methane gas passed under the deed and is the property of USX. A separate order in conformity with this memorandum opinion will be entered.

DONE this 28th day of July 1987.

FINAL JUDGMENT ORDER

This cause came on to be heard by the court on a declaratory judgment action by which the court was asked to interpret the language of a warranty deed dated January 21, 1960, to determine the ownership of the occluded coalbed methane gas situated in the deeded property. Having heard the evidence and having considered the pleadings, arguments and submissions of counsel, and the applicable law, the court now enters the following judgment in conformity with the memorandum opinion filed contemporaneously herewith:

***4** It is by the court ORDERED, ADJUDGED, DECREED and DECLARED that the occluded coalbed methane gas situated in the subject deeded property was severed with the mineral estate and is the property of the defendant, USX Corporation.

DONE and ORDERED the 28th day of July 1987.

Footnotes

1 This book was printed as Special Report 15, of the Geological Survey of Alabama. It was reprinted in 1940.

2 A log is an indication of the character of the material found in the drilled well.

3 *Id.,* at 167.

4 *Id.*

5 *Id.,* at 168.

6 This is an industry term meaning not enough gas present to run a well.

7 Semmes, at 168.

8 *Id.* The quoted phrase is one used in the industry to indicate there is enough gas in a coal seam to run casing and complete a well.

9 Plaintiffs' exhibit 1. Webster's Third New International Dictionary unabridged, G & C Merriam Company, Springfield, Massachusetts, 1971, defines "encase" and "grout" in the following ways: encase—"to cover or surround with or as if with something solid, impermeable, or confining" ' grout—"a mixture of portland cement and water applied under pressure during oil-well drilling to prevent contamination of the oil by sealing off undesirable fluids and also to provide a protective wall around the metal casing"; a material used to fill in space, forced under pressure, as into prepacked graded stone to form concrete, into fissures in foundation rock.