A. C. Golden v. SM Energy Company


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Facts Of The Case: Letter Agreement

• A. C. Golden owned oil and gas leases in McKenzie County

• July 15, 1970: Golden entered into Letter Agreement with Universal Resources Corp.
  – Golden sold “entire interest in these lands”
  – Subject to “my retention of four percent (4%) overriding royalty”
  – Letter Agreement created “joint area of interest”
Facts Of The Case: Joint Area of Interest (JAI)

• If Golden bought any leases in JAI, he would offer it at cost to Universal, subject to reservation of 4% ORRI
• If Universal bought any leases in JAI, it would assign 4% ORRI to Golden without cost
• Provided that: “[a]ny assignment of this agreement made by [Universal] shall recite that same is made pursuant and subject to the terms and conditions of this Agreement.”
Facts Of The Case: 1993 Assignment

• 1980s: Universal bought leases in JAI and assigned to Golden 4% ORRI
  – Including the Thompson lease
• April 29, 1993: Universal sold and assigned its interest in the leases and lands covered by Letter Agreement to Tipperary Petroleum Co.
  – Including “all operating agreements, joint venture agreements, partnership agreements, and other contracts, to the extent that they relate to any of the Assets.” (emphasis added)
Facts Of The Case:

- Later in 1993, Tipperary acquired all of Texaco’s interest in the Federal lease
- March 1, 2000: Tipperary sold and assigned its interest in the leases and lands subject to Letter Agreement to Nance Petroleum Corp.
  - Nance “assumes all of Assignor’s duties, liabilities and obligations relating to the Assets to which Assignor was a party or by which it was bound on and after the date hereof.”
  - Nance later merged into SM Energy
Facts Of The Case: SM as Operator

• SM operates Thompson-Federal well
  – Drill site spacing unit for Thompson-Federal well includes Thompson lease and Federal lease
  – SM has paid Golden royalties attributable to Thompson lease, but not Federal lease

• SM also operates Wilson well
  – Located within JAI
  – SM has paid 4% ORRI since Jan. 2009, but refused to pay them for earlier period because of executed division orders
Statement Of The Case

• Golden (and other plaintiffs) brought declaratory judgment action
• District Court granted summary judgment in favor of Golden and denied SM’s cross-motion
  – As a matter of law, SM, through its predecessors, expressly assumed Universal’s rights and obligations under Letter Agreement
  – SM owes Golden retroactive royalty payments on production from Wilson well
• District Court’s judgment expanding scope of ruling beyond pleadings to include all leases and wells in JAI
• Denied SM’s post-judgment motion to amend and for relief from judgment
Analysis: JAI or AMI Clause

• Court recognized that JAI is more commonly called an “area of mutual interest” (AMI) clause
  – Parties attempt to describe geographical area within which to share certain additional leases or other interests acquired by them in the future

• Golden and SM agree that AMI isn’t covenant running with the land
Analysis: AMI — what is it?

• Parties agree it’s a personal covenant that is enforceable only between the parties to the agreement
  – unless SM and its predecessors had agreed to be bound by JAI

• District court focused on 1993 Assignment
  – “all operating agreements, joint venture agreements, partnership agreements, and other contracts, to the extent that they relate to any of the Assets.” (emphasis added)
Two Schools of Thought

• Golden: SM assumed AMI because Tipperary acknowledged that its acquisition was subject to the terms of “other contracts,” which includes the letter agreement, and that the letter agreement “relate[s] to” the assets conveyed in the assignment.

• SM: No assumption of AMI because 1993 Assignment “reflects the parties’ intent to carefully limit the assignment of any agreement ‘to the extent’ that it related to one of the leases being assigned.”
  – AMI did not “relate to” the properties assigned because it only related to properties that Universal might acquire in the future.
Obligations of Assignee

• An assignee is responsible only for the obligations of the assignor which the assignee contracts to undertake.
  – Obligations aren’t delegated to assignee if assignee makes it known to the assignor that it does not intend to assume them
  – Even if the assigned contract specified that it was binding on the assigns of the parties to the contract, the mere fact that the contract was assigned does not necessarily bind the assignee
Intent of Assignee

• Intent can be determined from:
  – Conduct of the parties
  – Subject matter of the contract
  – Language of the assignment
  – Surrounding circumstances

• An assumption of obligations may be implied from an acceptance of benefits or the performance of duties under the contract
AMI: Ambiguous?

• A contract is ambiguous when rational arguments can be made for different interpretations. If ambiguous, extrinsic evidence may be considered to clarify the parties’ intentions.

• The interpretation of assignments is a question of fact for the trier of fact
  – Unless an assignment is memorialized in clear and unambiguous language
    • In that case, the court should look to extrinsic evidence to ascertain intent
• District Court: Letter Agreement is a contract that “relates” to the leases
  – Rights and obligations transferred to Tipperary
  – Did not address the “to the extent” language relied upon by SM

• Supreme Court: Contested provisions of the 1993 Assignment are ambiguous
  – District Court erred in interpreting the provisions as a matter of law
  – Resolution of the parties’ intent is a question of fact, which is inappropriate for summary judgment
Analysis: Constructive Notice

• Does it matter that all documents were recorded?

• District Court: SJ for Golden was proper because Tipperary had constructive knowledge of the Letter Agreement

• Supreme Court: Constructive notice does not determine whether Tipperary agreed to be bound by its terms
Analysis: N.D.C.C. § 9-03-25

• NDCC § 9-03-25: “voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it so far as the facts are known or ought to be known to the person accepting.”

• District Court: Tipperary bound by Letter Agreement because it signed 1993 Assignment
• Supreme Court: District Court’s decision would convert AMI clause from a personal covenant into a covenant that runs with the land

• This would obliterate the requirement that an assignee consent to be responsible for the obligations of the assignor
• SM: District Court erred in awarding Golden retroactive royalty payments on production from Wilson well
• SM doesn’t contest that it must pay Golden royalties on the Wilson well or that Golden was underpaid
• SM argued that “a working interest owner is not required to compensate royalty owners for underpayments if, as here, they executed a division order stating the percentage upon which they were paid.”
Acoma

- SM argues that its position is supported by *Acoma Oil Corp. v. Wilson*, 471 N.W.2d 476 (N.D. 1991)
- Supreme Court: *Acoma* is distinguishable
  - SM is both the well operator and the overpaid working interest owner
  - Golden was underpaid and SM was overpaid
- District Court correctly ruled that SM owed Golden royalty payments
Analysis: Expanded Judgment

• Golden prepared the judgment
  – Expanded the scope of the court’s decision to include wells within the entire area of mutual interest
    • These were not pled in the complaint
    • This was contrary to the District Court’s instructions
    • District court nevertheless approved the expanded judgment

• Supreme Court: District court cannot grant relief based on issues that are neither pleaded nor voluntarily litigated.
  – District Court erred in expanding the judgment to include unpled and unlitigated properties within the AMI
Thank you for the opportunity.

For further questions, please contact me:

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