IN THE CHANCERY COURT, STATE OF WYOMING

2024 WYCH 5

CHIPCORE, LLC,

Plaintiff and Counterclaim-Defendant,

v.

LEADERSHIP CIRCLE ENERGY LLC,

Defendant, Counterclaim Plaintiff, Third-Party Plaintiff,

v.

THREE CROWN PETROLEUM, LLC,

Third-Party Defendant.

Case No. CH-2023-0000016

Order Denying Plaintiff and Third-Party Defendant's Motion for Partial Summary Judgment

[¶ 1] Before the court is Plaintiff Chipcore, LLC (Chipcore) and Third-Party Defendant Three Crown Petroleum, LLC (Three Crown)'s motion for partial summary judgment. The motion has been fully briefed and argued. For the reasons below, the motion is denied.

BACKGROUND

[¶ 2] This is an oil and gas contracts case. The parties contracted for the cooperative exploration, development, and operation of two oil and gas properties in Goshen County, Wyoming. The first property, Kessler #1, is governed by a joint operating agreement, or JOA, modified by letter agreements. *Mot. Part. Sum. J.*, Mar. 11, 2024 (FSX No. 72487435), at Exs. 1, 1A, 1B, 1C. The second property, Kessler #2, is governed by a separate JOA and modified by separate letter agreements. *Id.* at Exs. 2, 2A, 2B.

[¶ 3] Nearly identical, the agreements make Chipcore operator of the two wells and allocate costs among working interest owners, including Defendant Leadership Circle Energy LLC (LCE) and what appear to be various nonparties to this action.

[¶ 4] Cost allocation turns on the phase of well development and operation. The agreements contemplate three phases: initial costs to drill and set pipe, remaining costs to equip wells for production, and costs after the first production.

[¶ 5] LCE's cost obligations are summarized below by phase.

- Phase One covers the initial costs to drill and set pipe. LCE bears all initial costs to drill and set the pipe. The other working interest owners cover no Phase One costs.

- Phase Two involves all remaining costs to drill, complete, and equip wells for production. The opposite of Phase One costs, which are entirely borne by LCE, Phase Two costs are entirely borne by other working interest owners.

- Phase Three encompasses costs after the first production (and any subsequent production). Unlike Phase One, where LCE is responsible for all costs, and Phase Two, where LCE is responsible for no costs, LCE is responsible for 55% of Phase Three costs while other working interest owners cover the remaining 45%.

[¶ 6] Exhibit A to each joint operating agreement sets out in table format the allocation of costs and liabilities among the interest owners along the three-phrase framework. *Mot. Part. Sum. J.*, Ex. 1, K1 JOA, p. 27; Ex. 2, K2 JOA, pp. 27-28. Additionally, the letter agreements state that LCE will pay around $3.2 million for Kessler #1 and $2.6 million for Kessler #2 "to pay the estimated costs to drill and set pipe for completion" and clarify the costs to drill and set pipe "will be the only costs owed by [LCE] under the JOA to drill, complete and equip the [wells] for production." *Id.* at Ex. 1B, K1 Ltr Agrmt 4.5.2022, p. 1; Ex. 2A, K2 Ltr Agrmt 5.6.2022, pp. 1-2.

[¶ 7] The agreements do not define "equip for production" or "production." They define "Completion" or "Complete" as "a single operation intended to complete a well **as a well capable of producing** Oil or Gas in one or more Zones, including, but not limited to, the setting of production casing, perforating, well stimulation and production testing conducted in such operation." *Id.* at Ex. 1, K1 JOA, p. 4, Art. I.C; Ex. 2, K2 JOA, p. 4, Art. I.C. (emphasis added). But this definition begs the question of what is meant by "capable of producing"? The meanings of "capable of producing," "equipped for production," and "production" drive this dispute.

[¶ 8] The parties do not dispute the wells have progressed beyond Phase One. They quarrel over whether the wells are in Phase Two or Phase Three. If in Phase Two, as LCE advocates, then interest owners other than LCE are responsible for all costs. But, if in Phase Three, as movants assert, then LCE is responsible for 55% of the costs with the other interest owners covers the remaining 45%.

[¶ 9] The phase determination carries significant financial implications. Under its Phase Three theory, Chipcore alleges LCE's net unpaid financial obligations total around $1.3 million. *Compl*., ¶ 60. This includes costs to plug, abandon, and reclaim the wells, which have been unsuccessful. *Id.* at ¶ 56. Under its Phase Two theory, LCE alleges it covered its Phase One obligations and Three Crown is required to cover any additional costs "to drill, complete, equip for production, plug, abandon and/or reclaim" the wells. *Ans., CC, Third-Party Compl*., ¶¶ 12-26.

[¶ 10] Seeking to settle the heart of this dispute, Chipcore and Three Crown moved for partial summary judgment. They ask the court to find:

> 1. Defendant Leadership Circle Energy ("LCE") is obligated to pay 55% of the costs incurred to operate (and to plug, abandon and reclaim, when necessary) each of the Kessler Wells after the date that each well was complete and equipped for production; and
> 2. The Kessler Wells were each complete and equipped for production as of the first day that each well produced oil or gas.

Mot. Part. Sum. J., p. 2.

[¶ 11] The parties stake out two diametrically opposed positions on LCE's obligations. The first position, articulated by movants, seems to be that once the wells have severed any quantity of oil or gas from the mineral estate by any means, then LCE is responsible for 55% of the costs, including costs to plug, abandon, and reclaim the unsuccessful wells. The second position, seemingly held by LCE, but unsupported by the contract documents, is that LCE has no responsibility to plug the wells. At this summary judgment juncture, the court is not yet convinced that the agreements support either extreme.

LEGAL STANDARD

[¶ 12] The court follows Wyoming's established framework for resolving summary judgment disputes involving contracts with technical terms like mineral interest contracts.

[¶ 13] Summary judgment is proper if there is no genuine dispute of material fact, and the moving party is entitled to judgment as a matter of law. W.R.C.P.Ch.C. 56(a). A fact is material if it would establish or refute an essential element of the cause of action or defense asserted by the parties. *Woodward v. Valvoda*, 2021 WY 5, ¶ 12, 478 P.3d 1189, 1196 (Wyo. 2021).

[¶ 14] The parties' respective summary judgment burdens are well established. *Wilcox v. Sec. State Bank,* 2023 WY 2, ¶ 26, 523 P.3d 277, 284 (Wyo. 2023), *reh'g denied* (Feb. 14, 2023). The moving party must establish a prima facie case and show there is no genuine issue of material fact and it is entitled to judgment as a matter of law. *Id.* If the moving party meets this burden, the nonmoving party must respond with materials beyond the pleadings showing a genuine issue of material fact. *Id.* Indeed, the nonmovant "must present specific facts; relying on conclusory statements or mere opinion will not satisfy that burden, nor will relying solely upon allegations and pleadings*." Johnson v. Dale C.*, 2015 WY 42, ¶ 14, 345 P.3d 883, 887 (Wyo. 2015).

[¶ 15] Also well-established is the court's viewpoint. *Kudar v. Morgan*, 2022 WY 159, ¶ 11, 521 P.3d 988, 992 (Wyo. 2022). The court views the evidence and reasonable inferences in the light most favorable to the nonmoving party. *Id.* And in contract cases specifically, the court will not enter summary judgment if there is "any doubt as to the meaning of a written instrument." *Meuse-Rhine-Ijssel Cattle Breeders of Canada Ltd. v. Y-Tex Corp*., 590 P.2d 1306, 1311 (Wyo. 1979). If "resort to extrinsic evidence may be necessary," then summary judgment is unavailable. *Jackson Hole Racquet Club Resort v. Teton Pines Ltd. P'ship*, 839 P.2d 951, 958 (Wyo. 1992) (quoting *Worland Sch. Dist. v. Bowman*, 445 P.2d 364, 366 (Wyo. 1968)). Summary judgment is available only when there is no ambiguity in the written instrument and resort to extrinsic evidence is unnecessary. *Westates Const. Co. v. City of Cheyenne*, 775 P.2d 502, 504 (Wyo. 1989).

[¶ 16] Courts resort to extrinsic evidence when terms "are used in some special or technical sense not apparent from the contractual document itself[.]" *N. Silo Res., LLC v. Deselms*, 2022 WY 116, ¶ 19, 518 P.3d 1074, 1082 (Wyo. 2022) (citing *Caballo Coal Co. v. Fid. Expl. & Prod. Co*., 2004 WY 6, ¶ 11, 84 P.3d 311, 315 (Wyo. 2004)). This happens commonly in contract disputes involving mineral interests. *See Boley v. Greenough*, 2001 WY 47, ¶ 11, 22 P.3d 854, 858 (Wyo. 2001) ("In interpreting unambiguous contracts involving mineral interests, we have consistently looked to surrounding circumstances, facts showing the relations of the parties, the subject matter of the contract, and the apparent purpose of making the contract."). Indeed, the Wyoming Supreme Court has highlighted mineral interests contracts as examples of contracts requiring review of extrinsic evidence. *Hopkins v. Bank of the W*., 2013 WY 129, ¶ 20, 311 P.3d 151, 157 (Wyo. 2013) (discussing *Hickman v. Groves*, 2003 WY 76, ¶ 11, 71 P.3d 256, 259–60 (Wyo.

2003) ("[S]ome contracts—like contracts involving mineral interests—may require the use of extrinsic evidence properly determine the intent of the parties.")).

ANALYSIS

[¶ 17] Following the Wyoming Supreme Court's guidance that contract disputes are inappropriate for summary judgment if there is any question as to the meaning of terms and acknowledgment that interpreting mineral interest contracts may require reviewing extrinsic evidence, this court concludes summary judgment is inappropriate here.

[¶ 18] The meaning of the contractual phrase "complete and equipped for production" is central to this summary judgment dispute and forms the crux of this case. LCE contends this phrase requires wells to be equipped with permanent equipment and to be producing in paying quantities, while Chipcore and Three Crown argue the phrase means the wells must be capable of producing, regardless of whether the equipment is permanent, or production is in paying quantities.

Both sides cite industry use of key terms in their arguments.

[¶ 19] In making their respective arguments, both sides point to industry use of terms. Chipcore and Three Crown mostly make a plain language argument, but they also cite Wyoming Oil and Gas Conservation Commission regulations, which define "completion" for an oil well as occurring when "the first new oil is produced through wellhead equipment into lease tanks from the producing interval after the production string has been run" and for a dry hole as occurring "when all provisions of plugging are complied with" under the rules. *Mot. Part. Sum. J.*, p. 10 (citing WOGCC Rules, Ch. 1, § 2).

[¶ 20] In response, LCE argues that in the oil and gas industry, the phrase "complete and equipped for production" means production in paying quantities. LCE points to Ms. Denomy's expert report for the industry meaning. *Rsp to Mot. Part. Sum. J.*, Mar. 18, 2024, (FSX No. 72548772), pp. 9-11.[1]

[1] Chipcore and Three Crown moved to exclude Ms. Denomy's expert report. *Mot. to Excl. Exp. Op. of Denomy*, Mar. 11, 2024 (FSX No. 72487108). Concurrent with this order, the court enters an order denying the motion to exclude Ms. Denomy. *Chipcore, LLC v. Leadership Circle Energy LLC*, 2024 WYCH 6, Ord. Denying Mot. to Excl. Exp. Op. (Wyo. Ch. C. 2024). In that order, the court determines that while Ms. Denomy's expert opinions

[¶ 21] LCE also cites cases upholding the industry understanding of production as production in paying quantities. *Id.* at 10 (citing *Coronado Oil Co. v. U.S. Dept. of Interior*¸ 415 F.Supp.2d 1339, 1351 (D. Wyo. 2006)). Movants argue this meaning of production applies in the lease context, not the JOA context. *Rply in Sup. of Mot. Part. Sum. J.*, Mar. 22, 2024 (FSX No. 72590650), p. 5.

[¶ 22] The court is not yet convinced the term "production" differs so dramatically in JOAs and leases. The JOA itself suggests that definitions in leases are relevant to how words are used in the JOA. On Page 2, of both JOAs, the parties left in a "SCRIVENER'S INSTRUCTION" that cautioned against conflicting terms found in a lease: "Be careful to check the applicable leases and state statue and/or regulation for possible conflicting definitions." *Mot. Part. Sum. J.*, at Ex. 1, K1 JOA, p. 2; Ex. 2, K2 JOA, p. 2. This leaves the court wondering, if leases are so foreign to JOAs, why would the drafter need to worry about conflicting definitions?

[¶ 23] The court also notes that at least one treatise supports LCE's interpretation of the term "production," explaining the oil and gas industry (at least in leases, but seemingly beyond them) understands "production" to mean "in paying quantities." *Interpretation of terms—Production and drilling*, 17 Williston on Contracts § 50:59 (4th ed.)[2] And there are other authorities to this effect. *E.g.,* 2 Summers Oil and Gas § 14:10 (3d ed.); *Meaning of "paying quantities" in oil and gas lease* 43 A.L.R.3d 8, § 2[a] (Originally published in 1972) ("in some jurisdictions, most surely Texas and Oklahoma, but probably including, inter alia, California, Louisiana, and Montana as well, the words 'produced,' 'found,' or 'discovered' are said to mean or be equivalent to produced, found, or discovered 'in paying quantities.' "). Yet, it has been held that a well is completed, meaning capable of producing in paying quantities, even if oil and gas has not been or cannot be produced. *Exxon Corp. v. Emerald Oil & Gas Co., L.C.*, 348 S.W.3d 194, 212 (Tex. 2011) ("A 'completed well' refers to 'a well *capable* of producing oil or gas.'… The 'completion of a well' can also refer to 'those processes necessary before production occurs [such as] perforating the casing and washing out the drilling mud.' "); *Levin v. Maw Oil & Gas, LLC*, 290 Kan. 928, 948, 234 P.3d 805, 819 (Kan. 2010); § 45:7. *Right of oil and gas driller*

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have their shortcomings, those shortcomings go to the weight of her testimony, not its admissibility. The court, as fact finder, will give Ms. Denomy's opinions the appropriate weight at trial.

[2] ("The courts, in applying traditional contract principles to the interpretation and construction of mineral leases, have defined certain stock expressions generally found in those leases. Principal among these is the word "production" as used in the oil and gas industry. It is generally held that "the word 'production' as used is equivalent to the phrase 'production in paying quantities.' The term 'paying quantities' embraces not only the amount of production, but also the ability to market the product at a profit.").

to receive compensation, 4 Summers Oil and Gas § 45:7 (3d ed.) ("Compensation for drilling an oil or gas well may be made contingent upon the discovery of oil or gas in paying quantities, but a contract will not be so construed in absence of a clear expression or implication of such intent by the contract."); *Id.,* § 45.4 ("Contracts sometimes provide for payment to the driller upon 'completion' of the well. Under such a contract, where the driller contracted to drill a well through a certain sand, unless oil or gas were found in paying quantities at a lesser depth, the drilling of the well through the specified sand and cleaning it out was held to amount to completion of the well.").

The parties stress industry-wide repercussions from the other's interpretation.

[¶ 24] Both sides also warn of industry-wide consequences from the other's interpretation. Chipcore and Three Crown caution that LCE's interpretation relieves a working interest owner of its obligations to plug, abandon, and reclaim a well that does not meet production thresholds. LCE warns that Chipcore and Three Crown's interpretation allows parties to skirt negotiated allocation arrangements and unfairly shift costs by installing temporary equipment, extracting trace amounts of oil mixed with water, and claiming completion and production.

Summary judgment is improper because resolution requires review of extrinsic evidence, including industry uses of key terms.

[¶ 25] These arguments about industry-specific meaning and consequences highlight the technical or special use of these terms within the mineral industry. Technical terms are unsurprising in joint operating agreements allocating profits and expenses of exploration and production of mineral interests. The joint operating agreements at issue here are based on the widely used A.A.P.L. Form 610, which has been a standard in the oil and gas industry since its development in 1956. *See Armstrong Petroleum Corp. v. Tri-Valley Oil & Gas Co.*, 116 Cal. App. 4th 1375, 1380–81, 11 Cal. Rptr. 3d 412, 416–17 (Cal. Ct. App. 2004). The Wyoming Supreme Court's observation of operating agreements is pertinent here: the agreements were "negotiated and drafted by professionals in a technical industry, using distinctive terminology for which customary meanings are often assumed." *Union Pac. Res. Co. v. Texaco, Inc.*, 882 P.2d 212, 214 (Wyo. 1994).

[¶ 26] Questions remain as to the customary meaning of the phrase "complete and equipped for production." Chipcore and Three Crown point to the regulatory definition of "complete" or "completion," which is defined by the agreements, but they do not provide any extrinsic evidence of the meaning of "production," "capable of production," and "equipped for production," which are undefined by the agreements and critical to resolution of this case. Movants provide no compelling extrinsic evidence fully supporting their interpretation of the agreements. Instead of supplying a retained-expert's signed

affidavit, they supply unsigned affidavits of non-retained experts, and WOGCC reports that have little bearing on the meaning of the terms. *Mot. Part. Sum. J.*, at Ex. 3, Aff. of J. Corbett; Ex. 4, Aff. of L. Chipperfield; Exs. 7-10, WOGCC Reports.

[¶ 27] Movants did not meet their burden of showing there is no genuine issue of material fact and that they are entitled to judgment as a matter of law. The court cannot say, as is required for summary judgment, that there is no doubt as to the meaning of the agreements. *See Meuse-Rhine-Ijssel Cattle Breeders of Canada Ltd.*, 590 P.2d at 1311. To remove all questions as to the meaning of the operative terms, the court must resort to extrinsic evidence, which makes summary judgment disposition improper.

CONCLUSION

[¶ 28] Heeding the Wyoming Supreme Court's observation that contracts involving mineral interests benefit from the review of extrinsic evidence, and finding the extrinsic materials provided by movants do not remove all question as to the meaning of key terms, the court determines this case is unsuitable for summary judgment disposition. Chipcore and Three Crown's motion for partial summary judgment is **DENIED**.

IT IS SO ORDERED.

DATED: May 15, 2024

/s/ Richard L. Lavery
CHANCERY COURT JUDGE