

IN THE COURT OF APPEALS OF IOWA

No. 3-799 / 12-2087
Filed November 6, 2013

**CENTER FRESH EGG FARM, L.L.P., B.E.K. POULTRY,
L.L.C., and DOOYEMA & SONS, INC.,**
Plaintiffs-Appellants/Counterclaim Defendants.

vs.

NATURAL FERTILIZER COMPANY,
Defendant-Appellee/Counterclaim Plaintiff.

**NATURAL FERTILIZER COMPANY and HULL
COOPERTAIVE ASSOCIATION,**
Plaintiffs-Appellees,

vs.

SIoux COUNTY EGG FARM, LLP, f/k/a WE 3 EGGS, LLC.
Defendant-Appellant.

Appeal from the Iowa District Court for Sioux County, Jeffrey A. Neary,
Judge.

The egg producers appeal the district court's ruling granting summary judgment to the fertilizer companies in this action involving the interpretation of their organic fertilizer contracts. **REVERSED AND REMANDED.**

Jason T. Madden of Bradshaw, Fowler, Proctor & Fairgrave, P.C., Des Moines, and William S. Smith of Smith & Kramer, P.C., Des Moines, for appellants.

Jeff W. Wright of Heidman Law Firm, L.L.P., Sioux City, for appellees.

Heard by Potterfield, P.J., and Doyle and Bower, JJ.

POTTERFIELD, P.J.

This appeal involves the interpretation of contract language governing the termination of the organic fertilizer agreements between egg producers and fertilizer companies. Because we find the contract language ambiguous, we reverse the entry of summary judgment for the fertilizer companies and remand for further proceedings.

I. Background Facts and Proceedings.

On July 27, 2006, Natural Fertilizer Company (NFC), a manure management company entered into an organic fertilizer agreement to purchase and remove chicken manure from Center Fresh Egg Farm (Center Fresh).

On May 20, 2007, a second and separate organic fertilizer agreement was entered into between NFC and Hull Cooperative Association (Hull Coop) and We 3 Eggs, L.L.C. (now Sioux County Egg Farm (Sioux County)), which contained the same “term” language:

**ARTICLE FIVE
TERM**

The term of this agreement shall be for a period of five years. This agreement shall automatically renew for an additional five year period annually, unless notice to terminate is given in accordance with the terms of this paragraph within six months prior to the expiration date. Such notice shall be in writing to the other party at the last known address. Notice given to any of the producers shall be sufficient to give notice to all of the producers, if notice is sent to 2769 410th Street, Sioux Center, IA 51250.

Either party may terminate the agreement if performance hereunder is rendered impossible or economically impractical for the Marketer due to regulatory changes that significant impact current land application procedures, or changes in the regulatory laws set forth by the Iowa Department of Natural Resources, Department of Agriculture, or other such government bodies or agencies which may result from new interpretation of such statues, administrative rules or regulations or implementations of new

statutes and ordinances, which may adversely affect the application procedures related to the activity anticipated under this agreement.

On October 29, 2010, Center Fresh sent a written notice to NFC that it “d[id] not intend to renew the [organic fertilizer] agreement when it comes up for renewal in 2011. . . . If you are willing to renew for one year at a time, we would welcome that amendment to the our existing agreement.”

On July 27, 2011, Sioux County sent a written notice to NFC and Hull Coop that the organic fertilizer agreement under which Sioux County had been operating “will not be renewed and will end on May 20, 2012 as provided in Article V.” A subsequent letter dated January 15, 2012, provided, “To avoid any confusion or misunderstanding, this letter is again intended to serve as the Notice from Sioux County” that the agreement “will not be renewed and will end on May 20, 2012 as provided in Article V of such agreement.”

NFC and Hull Coop (fertilizer companies) contended the notices were ineffective attempts to terminate, resulting in Center Fresh and Sioux County filing separate petitions for declaratory judgments that the organic fertilizer agreement in question was effective for a five-year term, the egg producer had provided notice of termination, and it had no remaining contractual obligations to the fertilizer companies pursuant to the contract. The fertilizer companies counterclaimed in each of the actions for breach of contract and the actions were consolidated. The parties filed cross-motions for summary judgment on the meaning of the term language. The district court entered summary judgment for the fertilizer companies, concluding the contract language unambiguously created a rolling five-year contract.

Center Fresh and Sioux County appealed. The supreme court granted the interlocutory appeal and transferred the case to this court.

II. Scope and Standard of Review.

We review summary judgment for correction of errors at law. *Boelman v. Grinnell Mut. Reins. Co.*, 826 N.W.2d 494, 500 (Iowa 2013). Summary judgment is appropriate when there are no genuine issues of material facts and the moving party is entitled to judgment as a matter of law. *Id.*; see Iowa R. Civ. P. 1.981(3). We view the evidence in the light most favorable to the nonmoving party. *Boelman*, 826 N.W.2d at 501.

III. Discussion.

At issue is the following contract language, “The term of this agreement shall be for a period of five years. This agreement shall automatically renew for an additional five year period annually, unless notice to terminate is given in accordance with the terms of this paragraph within six months prior to the expiration date.”

“The cardinal rule of contract interpretation is a determination of intent of the parties at the time they entered into the contract.” *C & J Vantage Leasing Co. v. Wolfe*, 795 N.W.2d 65, 77 (Iowa 2011). The language of the contract is the most important evidence of the intentions of the parties. *See id.*

The egg producers contend the language unambiguously allowed them to give notice of termination within or prior to six months of the expiration date, which was five years after the parties entered into the contract.

The fertilizer companies contend the contract is a rolling five-year contract, that is, the contract is always five years in length until notice of termination is

given within six months of the anniversary date of the contract, and after termination notice is given, there is a multiple-year “winding down” period.

We are guided by the following general principles of contract interpretation:

Interpretation involves a two-step process. First, from the words chosen, a court must determine what meanings are reasonably possible. In so doing, the court determines whether a disputed term is ambiguous. A term is not ambiguous merely because the parties disagree about its meaning. A term is ambiguous if, after all pertinent rules of interpretation have been considered, a genuine uncertainty exists concerning which of two reasonable interpretations is proper.

Once the court identifies an ambiguity, it then must choose among possible meanings. If extrinsic evidence is necessary to resolve the meaning of ambiguous language, a question of interpretation arises which is reserved for the trier of fact. However, any determination of meaning or ambiguity should only be made in the light of the relevant evidence of the situation and relations of the parties, the subject matter of the transaction, preliminary negotiations and statements made therein, usages of trade, and the course of dealing between the parties. But after the transaction has been shown in all its length and breadth, the words of an integrated agreement remain the most important evidence of intention.

In short, although other evidence may aid the process of interpretation, the words of the contract remain the key to determining whether the terms of [contract] are ambiguous.

Rick v. Sprague, 706 N.W.2d 717, 723 (Iowa 2005) (citations, quotation marks, and alterations omitted).

The district court reasoned,

Article Five states in the first sentence that the term of the agreement is five years. This is clear. The next sentence states that the agreement automatically renews for an additional five year period annually, unless notice to terminate is given within six months prior to the expiration date. This too is clear. This contract is a rolling five year agreement that is always five years in length, unless and until proper notice of termination is given under the agreement. To illustrate, if party A entered into this agreement with party B and after one year had passed party A decided it wanted to terminate the agreement, it could do so by giving proper notice

under the agreement but the agreement would not conclude, to the extent the parties could walk away from the relationship created by the agreement, until five years had passed. Under this scenario the agreement would have lasted 6 years. Similarly, if party A waited until after two years had passed before properly terminating the agreement, then the parties would continue for five years before their relationship came to an end and the agreement would have lasted seven years at that time.

The remaining portion of Article Five to be considered is the termination portion of the Article. Article Five states that a notice of termination, given in accordance with the terms of Article Five within six months prior to the expiration date, will cause the agreement to be terminated. This clearly indicates that the expiration date is on the anniversary date of the agreement's execution each year as the agreement renews annually for a period of five years. For example, one of the agreements at issue here was executed on July 27, 2006. That agreement automatically renews annually (i.e. each year) for a period of five years unless it is terminated properly under the agreement. So the first expiration date is July 27, 2007 and the subsequent expiration dates are on July 27 for each year thereafter until termination occurs and the agreement reaches its conclusion. The same is true for the other agreement but it has a different execution and thus expiration date (anniversary of the execution date). A proper termination under the agreement must be given within six months prior to July 27 of each year but clearly upon notice of termination the contract will continue for five more years before it concludes and the parties to the agreement no longer have any obligation under the agreement. The language of the agreements is clear and not ambiguous. There is no need to consider or review extrinsic evidence as the intent of the parties is clear from the language of the agreements.

The court entered summary judgment for the fertilizer companies, writing:

The Court declares each agreement's language to be unambiguous under Article Five and the meanings of the terms of Article Five are as set forth herein. Namely the Court declares as follows:

a. Article Five under each of the agreements at issue herein creates a rolling five year agreement, [which] renews annually for a period of five years, unless and until a notice of termination is given in accordance with the agreement;

b. Provided proper notice under the agreement is given within six months prior to the expiration date, the agreement will continue for five more years at which time it will terminate completely and the parties' obligations under the agreement shall cease.

c. The expiration date as indicated under Article Five is the annual anniversary of the date of the agreement's execution.

d. Each of the agreements was properly terminated in accordance with Article Five.

e. The agreement between Center Fresh and NFC executed July 27, 2006, terminates and concludes on July 27, 2015, at which time the parties to the agreement no longer have any ongoing obligation to each other under that agreement.

f. The agreement between Sioux County and NFC and Hull Cooperative executed on May 20, 2007, terminates and concludes on May 20, 2016, at which time the parties to the agreement no longer have any ongoing obligation to each other under that agreement.

The district court's interpretation does not adequately take into account all the contract language.

The first sentence states, "The term of this agreement shall be for a period of five years." The contract between Center Fresh and NFC was entered into on July 27, 2006. A contract using identical term language was entered on May 20, 2007, between Sioux County, NFC, and Hull Coop. If we consider just the first sentence of the Article Five, a reasonable interpretation of the contracts is that the Center Fresh contract term would end in five years on July 26, 2011; and the Sioux County contract term would end on May 19, 2012.

The second sentence provides an automatic five-year renewal unless notice to terminate is given: "This agreement shall automatically renew for an additional five year period annually, unless notice to terminate is given in accordance with the terms of this paragraph within six months prior to the expiration date." The egg producers argue that this second sentence allowed them to give notice of termination prior to the end of the contract term noted above, which they claim they did (Center Fresh on October 29, 2010, and Sioux County on July 27, 2011), and thus there was no "automatic renew[al]." The

notices to terminate provided by Center Fresh and Sioux County corroborate their understandings the term of their respective contract would end on their five year anniversary if they gave notice. The silence of NFC in response to the notices adds weight to the claims of Center Fresh and Sioux County that all parties intended and understood the contract to provide for a five-year term, which could be terminated by timely notice before the expiration of the term.

The fertilizer companies, on the other hand, read this second sentence in a manner that the five-year automatic renewal occurred annually on the anniversary date of entering the contract. The effect of the fertilizer companies' interpretation is that when Center Fresh gave notice in 2010, the "expiration date" of the rolling five-year contract was then July 26, 2015; when Sioux County gave notice in 2011, the "expiration date" of the rolling contract was May 19, 2016. Because the egg producers ceased performing under the contracts prior to this termination date, the fertilizer companies claim they are entitled to damages.

The modifier—"additional"—in the second sentence is not adequately addressed by the district court. "This agreement shall automatically renew for an *additional* five year period annually" The phrase "an additional five year period," connotes that there has already been a five year period. Moreover, we find the modifier—"annually"—is ambiguous as used in the sentence: "This agreement shall automatically renew . . . annually, unless notice to terminate is given in accordance with the terms of this paragraph within six months prior to the expiration date." One interpretation is that the contract becomes a rolling five-year contract after the initial five-year term. The egg producers argue that this interpretation makes termination impossible. They specifically denied the

contention in the fertilizer companies' affidavits that the parties understood the contracts created "rolling" five-year agreements. The egg producers do not provide any suggestion as to what the term annually means in the sentence, however.

We note too, that, the contract does not define the "expiration date." The fertilizer companies contend the phrase unambiguously means the "contract's anniversary." However, the egg producers argue "the 'expiration date' is five years after commencement."

As stated above, a contract or term is ambiguous if after rules of interpretation have been considered, a genuine uncertainty exists over which of two or more reasonable interpretations is possible. See *Rick*, 706 N.W.2d at 723. We cannot agree with the district court that the contract is unambiguous. We conclude that extrinsic evidence is necessary to resolve the meaning of the contract language, and consequently, summary judgment was improperly granted.

We reverse the judgment entry and remand for further proceedings.

REVERSED AND REMANDED.