

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

DAVID E. CAMERON, et al.,)	
)	
PLAINTIFFS,)	CASE NO. 2:12-CV-168
)	
vs.)	APRIL 15, 2014
)	
HESS CORPORATION, et al.,)	8:30 A.M.
)	
DEFENDANTS.)	
)	

EXCERPT OF PROCEEDINGS

BEFORE THE HONORABLE ALGENON L. MARBLEY
UNITED STATES DISTRICT JUDGE
COLUMBUS, OHIO

APPEARANCES:

FOR THE PLAINTIFF DAVID E. CAMERON:

CHRISTOPHER J. GAGIN, ESQ.
970 Windham Court
Youngstown, Ohio 44512

FOR THE DEFENDANT HESS OHIO RESOURCES, LLC:

Vorys, Sater, Seymour & Pease
By: WILLIAM D. KLOSS, ESQ.
52 East Gay Street
Columbus, Ohio 43216

Susman Godfrey, LLP
By: WESTON L. O'BLACK, ESQ.
1000 Louisiana
Houston, Texas 77002

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transcript produced by computer.

SHAWNA J. EVANS, RMR
FEDERAL OFFICIAL COURT REPORTER
85 MARCONI BOULEVARD
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TUESDAY MORNING SESSION

APRIL 15, 2014

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THE COURT: Good morning.

Ms. Clark, would you please call the case.

THE DEPUTY CLERK: 12-CV-168, David E. Cameron, et al., versus Hess Corporation, et al.

THE COURT: Would counsel please identify themselves for the record beginning with counsel for the plaintiff.

MR. GAGIN: Attorney Christopher G. Gagin, G-A-G-I-N, on behalf of plaintiff, Your Honor, David Earl Cameron.

MR. KLOSS: Bill Kloss on behalf of Hess Ohio Resources, the defendant.

O'BLACK: Weston O'Black on behalf of Hess Ohio Resources.

THE COURT: Mr. Gagin, would you identify for the record the gentleman sitting with you at counsel table.

MR. GAGIN: Yes, Your Honor, to my right is the plaintiff David Earl Cameron.

THE COURT: Mr. Kloss, likewise.

MR. KLOSS: To my left, your right, is Ivy Phillips who is our corporate representative for Hess.

THE COURT: All right. Mr. Gagin, are you ready to proceed?

MR. GAGIN: Yes, Your Honor.

1 THE COURT: Please proceed.

2 MR. GAGIN: Thank you, Your Honor, Mr. Cameron,
3 Mr. Kloss, Mr. Houston, Mr. O'Black, Ms. Phillips, and the Hess
4 Ohio Resources, LLC, team.

5 Today, David Cameron, a divorced father of two grown
6 boys, a former coal miner for more than 30 years and now a
7 full-time hay and cattle producer, asks this Honorable Court
8 for declaration of rights under his 2008 oil and gas lease
9 which he agreed to at his kitchen table much like the one I
10 have pictured before the Court. The Court will, or course,
11 hear much today and perhaps tomorrow about the lease's terms
12 and payments, tenders, tenders cashed, tenders refused. But,
13 from the plaintiff's perspective, it's that kitchen table that
14 is truly the focus of the trial here today.

15 Indeed, as this Court knows from the motions for summary
16 judgment, most of the facts in this case are well known. In
17 fact, I think the biggest surprises we will have today have
18 already occurred, that is, the snow we woke up to and the fact
19 that we were able to get Mr. Cameron into a suit, which I
20 credit to the Court.

21 Had we the ability, we would substitute the witness
22 stand for this kitchen table, for that is truly the setting in
23 this case. The evidence today will take the Court into that
24 kitchen and living room and out in the fields of Mr. Cameron's
25 farm. It will take us to tractors and tractor payments and the

1 concerns of a man who truly uses his land to earn his living.

2 As this trial develops, the evidence will seek to weave
3 together three distinct threads into a single whole cloth of
4 truth. Here at trial, the testimony and exhibits will explore
5 what was negotiated and understood at that very kitchen table.
6 It will then compare it to what was written and then to what
7 was done. And the parties will present their varying visions
8 and meanings for those three threads. Of those three threads,
9 of course, what was written and what was done subsequent to the
10 signing of the lease are already well known, as I have
11 indicated.

12 The evidence will show from the testimony you will
13 hear -- you will hear today from David Cameron the plaintiff,
14 his son Davey. And I understand we will have two witnesses
15 from the defense, John Marshall, who was also at that kitchen
16 table, and Ms. Phillips.

17 But we know that Mason Dixon, who was an original
18 defendant in this case and has now departed, was securing
19 leases for in and around Jefferson, Belmont, and Harrison
20 Counties in around 2008 and earlier and after. It was doing so
21 and signing these leases in Mason Dixon's name but with the
22 intent to immediately transfer those to Marquette Exploration,
23 LLC. It is known that Marquette Exploration was ultimately
24 acquired by Hess Corporation who assigned those leases to Hess
25 Ohio Resources, LLC, who is now the remaining defendant in this

1 case.

2 We know, of course, that there has been no oil or gas
3 production on Mr. Cameron's property. There have been no
4 royalty payments to Mr. Cameron's production. Yet, at that
5 kitchen table, evidence will show that he was told that the
6 operations were about to shift to development, to drilling, to
7 pipeline leasing. They were going to drill within 24 months.
8 That is what Mr. Cameron will testify to here today that was
9 told to him at the kitchen table, and, as the Court knows, that
10 is what his lease actually says.

11 The Cameron lease, of course, was executed on June 27,
12 2008 between Mr. Cameron and Mason Dixon. As the Court knows,
13 the lease, which Mason Dixon drafted, applies to Mr. Cameron's
14 six parcels which together form a family-owned farm consisting
15 of 166.36 acres in Mount Pleasant Township, Jefferson County,
16 Ohio. And it consists of four parts: the three-page preprinted
17 main body; Exhibit A which sets forth the acreage leased; an
18 addendum with certain substantive provisions relative to the
19 land use; and, of course, the now infamous order of payment and
20 bonus and rental agreement which sets forth financial terms, as
21 well as the Cameron lease's delay rental provisions.

22 Financially, Your Honor, the parties do not dispute and
23 it is well known the time line relative to payments which I
24 have put up. On June -- actually, July 25, 2008, Mr. Cameron
25 was paid an initial bonus of \$16,636 which constitutes a

1 hundred dollars an acre. That was essentially his signing
2 bonus. It is known that Marquette Exploration thereafter
3 tendered delay rental checks in like amounts on or about
4 May 29th, 2009, May 13th, 2010, and May 16, 2011, just as it is
5 known that Mr. Cameron negotiated each of those tenders, and
6 that is represented in the time line.

7 It is known that Hess, having acquired Marquette
8 Exploration in 2011, Hess thereafter tendered a fourth year
9 delay rental check in the amount of \$16,636 on or about May
10 15th, 2012, which Mr. Cameron negotiated but wrote under
11 protest thereon, as the Court will see.

12 Finally, it is known that Hess tendered a second bonus
13 check consisting of \$500 an acre on or about May 13th, 2013, in
14 the amount of \$83,180 which Mr. Cameron received but did not
15 cash.

16 This time line also indicates it is known that on
17 September 12th, 2011, I did send a termination notice to Hess.
18 And the question that will be answered partially today at trial
19 is why, after a termination notice was sent, was a fourth year
20 delay rental check cashed. As you will hear from Mr. Cameron
21 himself, life gets in the way of certain legal practices. He
22 bought a tractor in 2008, having been told about the royalty
23 money that would be coming within the 24 months. He had
24 tractor payments, Your Honor. When he bought that tractor, he
25 traded in his old tractor. The \$16,636, after you take out

1 portion for taxes, you will hear today went to pay for that
2 tractor. You will hear that Mr. Cameron makes his sole living
3 at the present time from his hay and cattle operations. If he
4 loses that tractor, he loses his livelihood.

5 But this all sets up the fact that what is known about
6 those second thread and third thread, what was written and what
7 was done is very well known to this Court and to the parties,
8 which brings us back to the kitchen table, Your Honor. The
9 kitchen table is really where the human element at the heart of
10 this deceptively simple contract case really manifests itself.

11 From the testimony and exhibits, Mr. Cameron intends to
12 prove by a preponderance of the evidence that his primary
13 understanding and, therefore, his primary intent in entering
14 into the Cameron lease was that oil and gas would be produced
15 from his lands within 24 months of June 27, 2008. That's what
16 the marketing material indicated to him, that is what John
17 Marshall indicated to him, that is what the order of payment
18 indicated to him. In context, the evidence will show that the
19 Mason Dixon landman drove home that point, that a drilling boom
20 was coming and Mr. Cameron was going to be a part of that.

21 From what was begun with an unsolicited offer to enter
22 into an oil and gas lease to what was negotiated, understood,
23 what was written in the Cameron lease's order of payment, to
24 what was done out of economic necessity, these are the threads
25 of this case, Your Honor, spun as they originally were at

1 Mr. Cameron's kitchen table. From these threads, that whole
2 cloth of Mr. Cameron's intent is both seen and understood. And
3 in context, the evidence will show that a 24-month drilling
4 commitment was represented to Mr. Cameron and written into his
5 lease and that, on balance, his actions were fully clothed in
6 his understanding and that intent.

7 Therefore, at the close of these proceedings, we will
8 ask this Court to declare that the Cameron lease terminated
9 under its own terms on June 26, 2010, which would be 24 months
10 after the original signing date, given the fact that there has
11 been no commencement of drilling operations. In the
12 alternative, if the Court must reform the lease -- and the
13 lease itself, as the evidence will show, suggests that the
14 understanding that was set forth at this table, as well as the
15 parties' actions, lends itself to a two-year primary term which
16 honors the letter of the order of payments, with a two-year
17 additional term which is constituted under the same terms and
18 provisions as that first primary term.

19 All of that despite what the habendum clause, which is
20 the second paragraph in the Cameron main body, says, Your
21 Honor, which does say a five-year primary term. But, as the
22 Court knows and will see again today, the order of payment was
23 deemed to control. That was the parties' negotiation. That
24 was Mr. Cameron's understanding.

25 I thank the Court.

1 THE COURT: Thank you, Mr. Gagin.

2 Mr. O'Black.

3 O'BLACK: Thank you, Your Honor. Good morning.

4 THE COURT: Good morning.

5 O'BLACK: Your Honor, we're here today to determine
6 what the parties intended in June 2008. As Hess Ohio claims,
7 the parties intended to create a five-and-five-year lease,
8 meaning the lease had a five-year primary term that could be
9 extended to ten years. As Mr. Gagin just says, their
10 contention in this case is that the lease had a two-year
11 primary term which could be extended for an additional term of
12 two more years.

13 Your Honor, the evidence will show from at the time of
14 lease signing, the parties intended to create a
15 five-and-five-year lease. And the evidence of the parties'
16 performance will confirm that intent. It wasn't until years
17 after signing the lease, and actually the fourth year of the
18 lease, when the shale boom had dramatically raised the price
19 that Mr. Cameron could get for his lease that he began to claim
20 a new interpretation of the lease.

21 In early 2008, a landman named John Marshall, who was
22 working for a company called Mason Dixon, pulled up to
23 Mr. Cameron's house in Jefferson County. He offers to lease
24 Mr. Cameron's mineral estate to his client, which is Marquette
25 Exploration which is now called Hess Ohio. Mr. Cameron's

1 interested but he isn't going to put up with a pressure sale.
2 A young man from Mason Dixon had come to Mr. Cameron months
3 before. Mr. Cameron thought he was pressuring him. He told
4 him to get out, get off my property. But John Marshall was
5 different. They got along. And as Mr. Cameron said in his
6 deposition, John Marshall talked like a sensible person.

7 John Marshall explains that he's offering to Mr. Cameron
8 what's called a five-and-five-year lease meaning that the lease
9 would have an initial primary term of five years which could be
10 extended to ten. The lease would start with an initial
11 payment, or bonus, that Mr. Cameron would receive after
12 signing, and that would be five or ten dollars an acre.

13 During that first five-year term, the lessee oil company
14 could either drill, or it could exercise its option to pay
15 annual delay payments which would defer the obligation to drill
16 through years two, three, four and five. At the time,
17 Mr. Marshall was offering Mr. Cameron five dollars an acre for
18 delay rental payments.

19 At the end of the five-year term, Marquette Exploration
20 had the option to exercise an extension payment. The payment
21 of that extension would extend the primary term five more
22 years, and the extended primary term would essentially be a
23 replay of the first five-year primary term. The lease also
24 provided what was called a one-eighth royalty. Mr. Marshall
25 explained that if a well was drilled on Mr. Cameron's property

1 or a unit around Mr. Cameron's property, and if that well
2 hit -- was producing, then Mr. Cameron could earn a royalty.
3 But he wouldn't earn a one-eighth royalty unless a pipeline was
4 built that ran through his part of the county. If a well was
5 drilled and if it was producing but there was no pipeline,
6 instead, he would get shut-in royalties of five dollars an
7 acre.

8 Mr. Marshall leaves a copy of the lease with
9 Mr. Cameron. Mr. Cameron reads the lease and then he takes it
10 to his attorney, Larry Piergallini. Now, Mr. Piergallini is an
11 experienced oil and gas attorney in Jefferson County. And
12 Mr. Piergallini tells Mr. Cameron that he's -- after he reads
13 the lease, that he's going to draft an addendum to give
14 Mr. Cameron additional protections. And he also tells
15 Mr. Cameron, Wait, I wouldn't sign the lease yet, hold out. If
16 you hold out, you'll get additional money.

17 A few weeks later, Mr. Marshall visits Mr. Cameron
18 again. Mr. Cameron tells him that his attorney is drafting an
19 addendum and that his attorney has told him to hold out for
20 more money. Several weeks go by. It's late May 2008 at this
21 point, and Mr. Cameron is still holding out and has not signed
22 the lease.

23 Marquette authorizes John Marshall to raise the price --
24 raise the offer to Mr. Cameron, and John Marshall takes that
25 offer to Mr. Cameron and delivers it to him personally. The

1 new offer provides that Mr. Cameron will receive \$100 an acre
2 as the initial bonus and delay rental payments, which means
3 that Mr. Cameron would get, after signing and then as delay
4 rental payment if the company had not drilled, \$16,000 for the
5 first five years. Marquette also raises its offer for the
6 extension bonus. So, if at the end of the initial primary term
7 a well hadn't been drilled and Marquette wanted to extend the
8 primary term to ten years, it would pay Mr. Cameron \$500 an
9 acre, which is \$83,000.

10 This, the evidence will show, Your Honor, is the offer
11 letter that John Marshall left with Mr. Cameron. And it
12 provides the payment schedule right here.

13 In year one, Mr. Cameron gets a hundred dollars per net
14 mineral acre as the initial signing bonus, which is \$16,000.
15 Then, Marquette, the lessee, has the option to pay the same
16 amount in delay rentals if it has not drilled, which would
17 defer drilling through years two, three, four and five. At the
18 end of the fifth year, if Marquette wanted to exercise its
19 option to extend the primary term to ten, it would pay the \$500
20 per mineral acre, \$83,000 extension bonus. Thereafter,
21 Marquette could resume paying delay rentals which would carry
22 the lease through years seven, eight, nine, through ten years.
23 This is what Mr. Cameron said at his deposition is what he was
24 sold on. The evidence will show that this is the best deal he
25 could get in June of 2008.

1 Weeks later, Mr. Cameron provides his changes to the
2 addendum that his attorney drafted to John Marshall, and
3 Mr. Cameron signs the lease. After signing the lease,
4 Mr. Cameron stays in touch with John Marshall, calling him from
5 time to time over the years to check in on where wells are
6 being drilled and what the leasing activity is in Jefferson
7 County and surrounding counties.

8 Once Mr. Cameron signed the lease, John Marshall took
9 the lease back to his office, and the evidence will show that
10 in the routine course, he created what's called a lease
11 purchase report and noted in that report his contemporaneous
12 intent that the lease would have a term of five years plus a
13 five-year option. And then, at that point, Marquette's leasing
14 technician input the lease terms into a lease data sheet. That
15 lease data sheet schedules the payments that would be made to
16 Mr. Cameron, and it provides that the original -- the effective
17 primary term is five years, which it has a quote, option for
18 extension of the primary term for an additional five years.

19 Your Honor, those were the expectations of the parties
20 when they signed the lease in 2008.

21 We're going to bring John Marshall here and he's going
22 to testify about what was said at that kitchen table, and he's
23 going to confirm there were no representations made about when
24 a well would be drilled or even if a well would be drilled on
25 Mr. Cameron's property.

1 But the evidence doesn't stop there. We'll also show
2 how the parties performed under the lease. In his pleadings
3 and filings in this case, Mr. Cameron now says that this lease
4 has a two-and-two-year lease, it's a two-and-two-year lease.
5 That means that the lease has an initial primary term of two
6 years which would allow one delay rental payment at the end of
7 the first year, which would defer drilling through the end of
8 the second year. That's the only delay rental payment,
9 according to Mr. Cameron's position now, that could be paid in
10 the primary term. At the end of that two years, according to
11 Mr. Cameron, the lease would terminate unless a well was
12 drilled, which it had not been, or he receives the \$83,000
13 extension payment. Thereafter, according to Mr. Cameron's
14 claim, the extension would only extend the lease two more years
15 and he would receive one more delay rental payment which could
16 extend the lease through year four.

17 Hess Ohio and Marquette have always claimed this is a
18 five-and-five-year lease. The initial bonus of \$16,000 can be
19 followed, if a well is not drilled, by delay rental payments
20 which will defer drilling through years two, three, four and
21 five. Thereafter, if Marquette wants additional time in order
22 to drill, it can pay the extension payment of \$83,000 before
23 the end of year five, which will extend the primary term ten
24 years. And the extended primary term is a replay of the
25 original primary term just like the payment schedule was

1 mentioned in John Marshall's proposal that he explained to
2 Mr. Cameron.

3 But how did the parties actually act? Well, Mr. Cameron
4 received his first initial payment in year one. Then, at the
5 end of year one, Mr. Cameron receives a delay rental payment of
6 \$16,000. He cashes that check. The cover letter to that check
7 explains that it's the delay rental for the second year of the
8 lease which defers drilling till June 2010. Now, at this
9 point, we're at the end of year two when, according to
10 Mr. Cameron's claims in this case, he was supposed to receive
11 an extension check of \$83,000 because he says the primary term
12 has ended.

13 But his actions speak louder than his claims in this
14 case. He received and cashed another delay rental payment of
15 \$16,000. On that cover letter for the delay rental payment, it
16 said that it was the delay rental payment for just one year,
17 year three, which would defer drilling until June 2011. And
18 Mr. Cameron said at his deposition that at the time he cashed
19 this check, he thought the lease was still in effect.

20 One more year goes by. Mr. Cameron receives and cashes
21 another delay rental check. Again, the check's cover letter
22 says it's a delay rental for the fourth year of the lease
23 deferring drilling till June 2012. Again, Mr. Cameron confirms
24 at his deposition that he thought the lease was still in effect
25 when he cashed this check.

1 Then, Your Honor, in the fourth year of his lease,
2 Mr. Cameron's claims about what the lease meant changed. Until
3 now, he had never mentioned that he thought the lease had
4 terminated after his second year. Until now, there's no
5 evidence that he ever mentioned to John Marshall that he
6 thought he had missed an extension payment of \$83,000 in June
7 of 2010. And until now, there's no evidence that he told
8 anyone that he thought a well was supposed to be drilled within
9 24 months.

10 So what changed? The Utica shale boom. In June of 2008
11 when Mr. Cameron signed this lease, the going rate for leases
12 in the area was \$100 an acre for a bonus and delay rentals. In
13 fact, the \$500 extension that he got was probably above market.
14 But, in just a few years, the Utica shale boom changed
15 everything. And by June of 2011, Mr. Marshall -- I'm sorry --
16 Mr. Cameron was hearing that landowners who had held out until
17 then were now getting \$4,000 an acre as their lease bonus, and
18 he saw firsthand how that kind of money changed their lives.

19 So, in late summer of 2011, according to Mr. Cameron's
20 deposition, he pulled out his lease. According to -- as he
21 said in his deposition, he read the lease on his couch and he
22 must have read it about 20 times and he saw some different
23 things in it. So he took the lease to his attorney, Mr. Gagin.
24 And a couple of weeks later, Mr. Gagin sends a notice of
25 termination letter that claims for the first time, Your Honor,

1 that the lease had terminated way back after the end of year
2 two. The reason Mr. Cameron wanted out of his lease was said
3 right in the letter. The letter said Mr. Cameron wanted a new
4 lease for the going market rate of \$4,000 an acre. Mr. Cameron
5 files this suit and about that time he stopped calling John
6 Marshall.

7 But the evidence doesn't stop there, Your Honor. After
8 filing this suit, Mr. Cameron accepted another delay rental
9 payment which Mr. Gagin just discussed. Now, in fairness, he
10 accepted it under protest, but still to this day he's claiming
11 he's entitled to that money plus the money covering year four
12 plus the money covering year three, which is contrary to the
13 claims in this case that the lease terminated back at the end
14 of its second anniversary.

15 Your Honor, at summary judgment, the Court found that
16 the lease and the order of payment was ambiguous about its
17 terms, but there was no uncertainty between Mr. Marshall and
18 Mr. Cameron when they sat at that kitchen table and agreed and
19 signed the lease back in June of 2008 after Mr. Cameron had had
20 his attorney review it, and the parties' performance confirms
21 that intent.

22 Your Honor, this lease is a five-and-five-year lease and
23 it is still in effect. Thank you.

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2 C E R T I F I C A T E

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4 I, Shawna J. Evans, do hereby certify that the
5 foregoing is a true and correct excerpt of transcript of the
6 proceedings, including the opening statements of counsel only,
7 before the Honorable Algenon L. Marbley, Judge, in the United
8 States District Court, Southern District of Ohio, Eastern
9 Division, on the date indicated, reported by me in shorthand
10 and transcribed by me or under my supervision.

11
12
13 s/Shawna J. Evans
14 Shawna J. Evans, RMR
15 Official Federal Court Reporter

16 July 13, 2016
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