MAY 31 1978
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IOWA DEPARTMENT OF ENVIRONMENTAL QUALITY,)

Appellant,) Filed May 31, 1978

vs.)

PAMPERED BEEF-MIDWEST, INC.,) 464
2-60406

Appellee.)

Appeal from Cherokee District Court - Richard W. Cooper, Judge.

Plaintiff environmental quality agency appeals summary judgment ruling that a confession of judgment filed against defendant corporation is the sole remedy available for violations during a designated period. - Affirmed.

Richard C. Turner, Attorney General of Iowa, James C. Davis, Assistant Attorney General and Clifford E. Peterson, Assistant Attorney General, for Appellant.

Robert R. Eidsmoe, Sioux City, and David Sayre, Cherokee, for Appellee.

Heard by Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Plaintiff Iowa Department of Environmental Quality appeals a summary judgment denying civil penalties for an alleged violation by defendant Pampered Beef of an April 8, 1974 Agreed Order. The trial court ruled that the $25,000 Confession of Judgment filed by the department was the sole remedy available for the designated period. We affirm.

D.E.Q. depends upon a provision in the February 23, 1974 Agreement stating that D.E.Q. could enforce any Agreed Order made subsequent to the Agreement without such enforcement being affected by the entry of any Confession of Judgment. The department argues that the Agreed Order of April 8, 1974, is subsequent to the parties' agreement so the trial court erred in holding that the $25,000 Confession of Judgment was D.E.Q.'s elected remedy for all violations within the designated period. In D.E.Q.'s view, the confession of judgment represents Pampered Beef's penalty for violations of the June 21, 1973 Agreed Order. The department argues it is entitled to separate and additional penalties for the violation of the April 8, 1974 Order.

It is a settled rule in interpreting contracts that if the evidence is so clear that only one conclusion may be reasonably reached the question must be determined by the court as a matter of law. Rector v. Alcorn, 241 N.W.2d 196, 202 (Iowa 1976). Further, the parties' intent controls in constructing written contracts and where the language is without ambiguity their intent is to be determined by what their contract says. Rule 14(f)(14), Rules of Appellate Procedure. The language of the Agreed Order of April 8, 1974, includes the following: "7. All provisions of the Agreed Order of June 21, 1973... shall remain in full force and effect except the construction time schedule thereof." We are satisfied that the only function of the April 8, 1974 Agreed Order was to substitute a new construction-time schedule agreed to by the parties in the February 24, 1974 Agreement. We can find no basis for assessing additional penalties during this time extension on the claim that Pampered Beef has violated the April 8, 1974 Agreed Order by failing to meet construction timetables. The parties' Agreement of February 24, 1974, contemplated that Pampered Beef's failure to comply by August

31, 1974, would allow D.E.Q. to file the $25,000 Confession of Judgment. D.E.Q. filed the confession and secured judgment upon it. No further civil penalty for violations of the timetable agreed to by the parties in the April 8, 1974 Agreed Order may be extracted by D.E.Q. D.E.Q.'s petition has not sought penalty for any continuing violations of the June 21, 1973 Agreed Order after the August 31, 1974 deadline had not been met. Therefore, the issue of penalties which may be due in the remaining months of 1974 is not before us.

AFFIRMED.