IN THE COURT OF APPEALS OF IOWA

No. 1-527 / 91-339

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AGAN FARMS, INC.,

Appellee,

vs.

JAMES E. HUYSER,

Appellant.

Appeal from the Iowa District Court for Marion County, Darrell Goodhue, Judge.

Defendant challenges the district court's ruling which found that provisions in a coal mining lease were ambiguous and entered judgment against defendant. **AFFIRMED.**

David L. Leitner, Des Moines, for appellant.

James Vernon Hicks of Johnston, Hicks, Guiter & Griffith, Knoxville, for appellee.

Considered by Oxberger, C.J., and Sackett and Habhab, JJ.

OXBERGER, C.J.

Plaintiff Agan Farms, Inc. and defendant James Huyser entered into a lease agreement in January 1985. The agreement gave Huyser mining rights to Agan's land in rural Monroe County, Iowa. Huyser agreed to pay $1.00 per ton for all surface-mined coal. Agan was paid on the basis of the gross tonnage extracted, or what has been termed "unwashed" coal.

Huyser had a similar contract with Samuel and Deborah Mathes for land in Monroe and Lucas Counties. That contract only paid $.90 for all surface-mined coal. Agan was interested in buying the Mathes land, but wanted to renegotiate the lease agreement with Huyser first. The parties agreed to increase the royalty to $1.00 per ton. Huyser had the responsibility to draft the new lease, but it was never actually completed. The parties proceeded under the terms of the Mathes lease with the understanding the royalty rate had been increased to $1.00 per ton. Agan purchased the Mathes land in December 1985.

On April 23, 1987, Agan discovered Huyser had been paying it $1.00 per ton of "washed" coal under the new lease. State and federal regulations require that all coal must be washed before it is used by the final consumer. The washing process removes debris, refuse, sulphur and rock. Agan believed that under the terms of the lease it was to be paid $1.00 per ton for the gross tonnage mined before it was washed. Mining continued during 1987 and early 1988. The total mined tonnage was 32,381.74 tons more than the washed product.

The lease provision in question provides:

> LESSEE shall pay to LESSOR on the 25th of each month, tonnage royalty at the rate of Ninety Cents per ton ($.90), or 4 percent of the F.O.B. mine price, whichever is the greater for all surface mined coal and fifteen cents per ton ($.15) or 1 1/2 percent for underground coal F.O.B. mine price whichever is the greater, 10 cents per ton for all stone, sand, gravel, for each ton of 2,000 pounds of stone, sand or gravel mined and sold by LESSEE from the LEASED PREMISES during the preceding calendar month.

The parties agree the royalty rate was actually $1.00 per ton, rather than $.90.

The district court found the terms of the lease were ambiguous because there was no specification as to whether payment would be based on washed or unwashed coal. The court then considered extrinsic evidence. The court noted that under Agan's other lease with Huyser payment had been based on gross coal mined, or the unwashed weight of the coal. Also, an agent of Huyser told Agan that the weighing would be done when the ore truck came out of the pit. Furthermore, the court noted that coal from several different mines was taken to one place to be washed, and there was no method for weighing the washed coal taken from any specific mine. The court found that the lease form had been supplied by Huyser and so should be construed more strictly against him. The court entered judgment against

Huyser for $32,381.74. Huyser's motion for new trial was denied. Huyser now appeals.

Because this action was tried at law, our review is for the correction of errors at law. See Iowa R. App. P. 4. The court's findings of fact are binding upon us if supported by substantial evidence. Anderson v. Aspelmeier, Fisch, Power, Warner & Engberg, 461 N.W.2d 598, 600 (Iowa 1990). We view the evidence in the light most favorable to the trial court's judgment. Id.

The court will not resort to rules of construction where the intent of the parties in expressed in clear and unambiguous language. Pathology Consultants v. Gratton, 343 N.W.2d 428, 434 (Iowa 1984). However, where there is ambiguity in the terms of a contract, the interpretation of the contract becomes a question of fact and extrinsic evidence may be considered. Berryhill v. Hatt, 428 N.W.2d 647, 653 (Iowa 1988). Ambiguity exists when, after application of pertinent rules of interpretation to the face of the instrument, a genuine uncertainty exists concerning which of two reasonable constructions is proper. Id. at 654. Doubts concerning the meaning of an agreement will be resolved against its drafter. Village Supply Co., Inc. v. Iowa Fund, Inc., 312 N.W.2d 551, 555 (Iowa 1981).

We affirm the district court's conclusion that the lease agreement here is ambiguous because it does not

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specify whether payment will be made based on the weight of washed coal or unwashed coal. The phrase "all surface mined coal" is open to two interpretations. This ambiguity should be resolved against Huyser, as the drafter of the agreement. We find there is substantial evidence, based on the extrinsic evidence presented, to support the district court's finding that the contract should be interpreted to provide for payment of $1.00 per ton of gross coal mined. We affirm the judgment entered by the district court.

AFFIRMED.