

**Endeavor Energy Resources, L.P. v. Energen Resources Corporation, et al.**

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*Endeavor Energy Resources, L.P. v. Energen Resources Corporation, et al.*, 615 S.W.3d 144 (Tex. 2020) involved the construction of a continuous development clause in an 11,300 acre oil and gas lease (“Lease”) in Howard County, Texas and addressed how the days between the drilling of wells are calculated. The Lease provided for a three-year primary term followed by a secondary term for as long thereafter as oil and gas is produced in paying quantities subject to the other provisions of the Lease.

The Lease also included a continuous-development program clause (“CDP”), providing that after the primary term, the Lease would terminate as to all non-dedicated acreage unless a subsequent well was commenced within 150 days of the completion of a preceding well. The clock begins ticking on that delay ten days after the rig moves off or after the removal of the completion rig. The CDP continues by providing:

Lessee shall have the right to accumulate unused days in any 150-day term during the continuous development program in order to extend the next allowed 150-day term between the completion of one well and the drilling of a subsequent well.

Following the expiration of the primary term, Endeavor timely drilled twelve wells. After completion of the twelfth well, there was no drilling for 310 days. The Lessor then executed a new Lease to Energen covering the non-dedicated acreage. However, ten days later, Endeavor began drilling a thirteenth well.

Energen and the Lessor argued that the non-dedicated acreage terminated. Endeavor argued that its cumulative unused days during the continuous development program extended the period between its 12th and 13th well by 377 days (150 days [from the CDP] + 227 days [accumulated days under the CDP from the beginning of the CDP]). In the alternative, Endeavor argued that the CDP could not operate as a special limitation because of the ambiguity caused by the two interpretations.

The trial court ruled for Energen and in doing so terminated Endeavor’s leasehold. The Eastland Court of Appeals upheld the judgment of the trial court, stating that Endeavor's lease terminated and that the use of word “next” in the continuous development clause meant that well construction period immediately subsequent to completion of the prior term and not as a cumulative total. The court referred to the Merriam-Webster dictionary definition of “next” as “immediately adjacent (as in place, rank or time).” That is, each 150 day period was a “stand-alone” concept and unused days in the prior 150 day period could only be used on the immediately succeeding 150 day period.

Endeavor applied to the Texas Supreme Court for review, arguing that the lower court failed to harmonize the meaning of the accumulation clause with the remainder of the oil and gas

lease and that the construction failed to give effect to the concept and meaning of accumulation. The Texas Supreme Court agreed and reversed, rendered, and remanded the case.

The Court analyzes the CDP clause and held that if, after applying all pertinent contract construction principles, a contract's language is susceptible to two or more reasonable interpretations, an ambiguity exists as a matter of law. Once an ambiguity arises, objectively determinable facts and circumstances may be considered in arriving at the meaning. In addition, the ambiguous language will not trigger the special limitation to terminate the leasehold. In order to trigger the special limitation, the language must be so clear, so precise, and unequivocal that the court can give it no other meaning. The Texas Supreme Court therefore held that, in light of the circumstances of the case, "the Lease's description of the drilling schedule required to avoid termination is ambiguous," and an obligation so "lacking in definiteness and certainty" could not introduce a limitation into the Lease that would lead to "termination of [a] vested estate." *Id.* at 155 (internal citations omitted). In other words, because the disputed provision was ambiguous, it could not operate as a special limitation in the relevant circumstances of the case.

The Court concluded by warning that "great care should be exercised in drafting [a continuous development clause] to avoid questions of whether the lessee has complied. Had greater care been taken in the drafting of this continuous-development clause, this litigation could have been avoided." *Id.* (internal citations omitted).