

**IN THE COURT OF APPEALS OF OHIO**

SEVENTH APPELLATE DISTRICT  
MAHONING COUNTY

WILDCAT DRILLING, LLC,

Plaintiff-Appellee/Cross-Appellant,

v.

DISCOVERY OIL AND GAS, LLC,

Defendant-Appellant/Cross-Appellee.

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**OPINION AND JUDGMENT ENTRY**  
**Case No. 17 MA 0018**

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Motion to Certify a Conflict

**BEFORE:**

Gene Donofrio, Carol Ann Robb, Kathleen Bartlett, Judges.

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**JUDGMENT:**

Denied

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*Atty. Molly Johnson*, Johnson & Johnson Law Firm, 12 West Main Street, Canfield, Ohio 44406, for Plaintiff-Appellee/Cross-Appellant, and

*Atty. David Detec and Atty. Thomas Hull II*, Manchester Newman & Bennett, LPA, The Commerce Building, Atrium Level Two, 201 East Commerce Street, Youngstown, Ohio 44503, for Defendant-Appellant/Cross-Appellee.

Dated:  
December 27, 2018

**PER CURIAM.**

{¶1} Defendant-appellant/cross-appellee, Discovery Oil and Gas, LLC, has filed a motion asking this court to certify a conflict to the Ohio Supreme Court between this Court's judgment in *Wildcat Drilling, L.L.C. v. Discovery Oil & Gas, L.L.C.*, 7th Dist. No. 17 MA 0018, 2018-Ohio-4015 and the following decisions: the Eleventh District's decision in *Gray v. Petronelli*, 11th Dist. No. 2016-T-0030, 2017-Ohio-2601, the Fifth District's decision in *Protek, Ltd. v. Lake Erie Screw Corporation*, 5th Dist. No. 2005CA00018, 2005-Ohio-5958, and the Eighth District's decision in *Shelly Co. v. Karas Properties, Inc.*, 8th Dist. No., 98039, 2012-Ohio-5416.

{¶2} Discovery asks that we certify the two following questions:

Whether a party in material breach of a contract may still recover contractual prejudgment interests on any balance owed.

Whether parties are free to contract for indemnity without any notice requirements, or whether all indemnification claims must nonetheless meet the common law notice requirements set forth in *Globe Indemn. Co. v. Schmitt*, for common law indemnification claims (internal citation omitted).

{¶3} A court of appeals shall certify a conflict when its judgment is in conflict with the judgment pronounced upon the same question by any other court of appeals in the state of Ohio. Section 3(B)(4), Article V, Ohio Constitution.

{¶4} In order to certify a conflict to the Ohio Supreme Court, we must find that three conditions are met:

First, the certifying court must find that its judgment is in conflict with the judgment of a court of appeals of another district and the asserted conflict *must* be “upon the same question”. Second, the alleged conflict must be on a rule of law-not facts. Third, the journal entry or opinion of the certifying court must clearly set forth that rule of law which the certifying court contends is in conflict with the judgment on the same question by other district courts of appeals.

*Whitelock v. Gilbane Bldg. Co.*, 66 Ohio St.3d 594, 596, 613 N.E.2d 1032 (1993). (Emphasis sic.)

{¶5} Moreover, a motion to certify a conflict “shall specify the issue proposed for certification and shall cite the judgment or judgments alleged to be in conflict with the judgment of the court in which the motion is filed.” App.R. 25.

{¶6} Addressing Discovery’s first proposed question, in this case we held that the contract provided for plaintiff-appellee/cross-appellant, Wildcat Drilling, LLC, to receive prejudgment interest at a rate of 18% per annum. We went on to hold that R.C. 1343.03(A) entitles a creditor to any contracted rate of interest when money becomes due and payable on an instrument of writing.

{¶7} Because both of the cases cited by appellee regarding this proposed question are distinguishable from the case at bar, we must deny the motion to certify this question.

{¶8} In *Gray*, 2017-Ohio-2601, there is no indication that the contract specified that any party was entitled to interest on unpaid sums. Similarly, in *Protek*, 2005-Ohio-5958, there is no indication that the contract specified that any party was entitled to interest on unpaid sums.

{¶9} Addressing Discovery’s second proposed question, in this case we held that Discovery was required to notify Wildcat about the Ohio Department of Natural Resources (ODNR) meeting where Discovery agreed to pay a fine for Wildcat’s drilling practices. Because evidence in the record showed that Discovery intentionally did not notify Wildcat about the meeting, Wildcat was not given a chance to defend against or negotiate the fine. Therefore, Wildcat was not required to indemnify Discovery for the fine.

{¶10} In *Shelley*, 2012-Ohio-5416, a commercial lease required a lessor to indemnify the lessee for any pre-existing environmental violations on the leased property. The lessor and lessee were both charged by the City of Cleveland for illegally placed culverts that obstructed waterways that existed on the property. The lessee individually proposed a remedy to the culverts that was incorporated in both parties’ settlement agreements. Eventually, both parties agreed to pay the exact same amount in fines in addition to remedying the culverts.

{¶11} *Shelley* is factually distinguishable from this case. In *Shelley*, both parties were charged with the illegally placed culverts, both parties engaged in settlement

negotiations, and both parties agreed to pay the exact same fine. In this case, the ODNR only fined Discovery and Discovery was the only party to meet with the ODNR to discuss the fine. Moreover, the evidence in the record indicated that Discovery intentionally did not inform Wildcat about the ODNR meeting where the fine was settled.

{¶12} Because none of the judgments of cases cited by Discovery are in conflict with the judgment of this court upon the same question of law, we must deny Discovery's motion.

{¶13} For these reasons, Discovery's motion to certify a conflict is hereby denied.

**JUDGE GENE DONOFRIO, concurs.**

**JUDGE CAROL ANN ROBB, concurs.**

**JUDGE KATHLEEN BARTLETT, concurs.**

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**NOTICE TO COUNSEL**

**This document constitutes a final judgment entry.**