[Cite as *Belmont Hills Country Club v. Beck Energy Corp.*, 2015-Ohio-1322.]

STATE OF OHIO, BELMONT COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

BELMONT HILLS COUNTRY CLUB	)	CASE NO. 13 BE 18
	)	
PLAINTIFF-APPELLEE	)	
	)	
VS.	)	OPINION
	)	
BECK ENERGY CORP., et al.,	)	
	)	
DEFENDANTS-APPELLANTS	)	

CHARACTER OF PROCEEDINGS:	Civil Appeal from the Court of Common Pleas of Belmont County, Ohio Case No. 11 CV 290
JUDGMENT:	Reversed. Judgment Entered for Appellants.
APPEARANCES: For Plaintiff-Appellee:	Atty. Harry W. White Banker & White 151 West Main Street St. Clairsville, Ohio 43950
For Defendants-Appellants:	Atty. Scott M. Zurakowski Atty. William G. Williams Atty. Aletha M. Carver Atty. Gregory W. Watts Atty. Ryan W. Reaves Krugliak, Wilkins, Griffiths & Dougherty Co., L.P.A. 4775 Munson Street NW P.O. Box 36963 Canton, Ohio 44735-6963 Atty. Karen E. Kahle Atty. James C. Wright Steptoe & Johnson, PLLC 1233 Main Street, Suite 3000 P.O. Box 751 Wheeling, West Virginia 26003-0751

JUDGES:
Hon. Cheryl L. Waite
Hon. Mary DeGenaro
Hon. Carol Ann Robb

Dated: March 31, 2015

WAITE, J.

{¶1} Three appeals arose out of two Belmont County Common Pleas Court judgment entries that involve four separate oil and gas leases. Five Belmont County families and one local business entered into these leases with Beck Energy Corporation ("Beck"). Two of these leases including the lease involved in this appeal, were later assigned to another energy company. As the issues presented in each appeal are identical, the appeals were heard together. Two of the three appeals (Case Nos. 13 BE 33 and 13 BE 34) were consolidated and are discussed within a separate opinion. This matter involves only the Belmont Hills Country Club lease.

{¶2} Appellants assert that the habendum clause and delay rental provision contained in the lease does not render the lease perpetual. As the lease is not perpetual, Appellants argue that it does not offend public policy and is not *void ab initio.* Further, Appellants explain that the lease obligates them to drill or, in the alternative, to pay Appellee Belmont Hills Country Club a delay rental fee. Accordingly, Appellants urge that the lease is also not illusory and does not lack mutuality of obligations. Moreover, Appellants assert that the lease expressly waived all implied covenants. Thus, the trial court erred in finding an implied covenant existed. As the trial court improperly granted summary judgment on these issues,

Appellants argue that the trial court likewise erred in granting the equitable remedy of forfeiture.

{¶3} In response, Appellee disputes Appellants' characterization of the lease. Specifically, Appellee counters that the lease is atypical and ambiguous, particularly when it is read as a whole. As such, Appellee argues that the lease is perpetual, seriously offends public policy, and is *void ab initio.* Appellee also asserts that the lease does not require Appellants' performance and gives Appellants the sole discretion to unilaterally extend the lease, making the lease illusory. Accordingly, Appellee claims that the trial court properly granted its motion for summary judgment and awarded it the equitable remedy of forfeiture. Pursuant to our holding in *Hupp v. Beck Energy Corp.,* 7th Dist. Nos. 12 MO 6, 13 MO 2, 13 MO 3, 13 MO 11, 2014-Ohio-4255, however, Appellants' arguments have merit. Accordingly, the trial court's decision to grant Appellee's motion for summary judgment and deny Appellants' motion for summary judgment is reversed.

Factual and Procedural History

{¶4} Appellee Belmont Hills Country Club ("BHCC") owns 186 acres of land in Richmond Township, Belmont County. On August 24, 2009, BHCC entered into an oil and gas lease with Appellant Beck. This lease was later assigned to Appellant Petroleum Development Corporation ("PDC"). The lease contained a two-tiered habendum clause which created both a primary term and a secondary term. The primary term, which provides a definite term-of-year period for which the lease is effective, was five years.

{¶5} The secondary term allowed drilling to continue after the primary term ended if certain requirements were met. The first requirement was that drilling must have commenced during the primary term. Second, the well must continue to produce in paying quantities after the primary term expired. If both requirements were met, Beck could drill into the secondary term until the well no longer produced, which would cause the lease to automatically expire.

{¶6} The lease also mandated that Beck commence drilling a well within the first six months of the lease. If Beck did not meet that obligation, the lease would expire unless Beck made a delay rental payment to Appellee each year of the primary term until drilling commenced. If Beck did not either drill within the six-month period or pay the delay rental provision, the oil and gas rights would automatically revert back to Appellee.

{¶7} Beck did not commence drilling within the first six months of the lease. In order to preserve their right to drill on the property within the remainder of the primary term, Beck made a delay rental payment to Appellee, which Appellee accepted. Shortly thereafter, Appellee notified Beck that it had allegedly breached the lease by failing to drill a test well.

{¶8} Appellee filed a complaint against Beck while the respective lease was still in its primary term. The complaint alleged that: (1) the lease included an implied covenant to reasonably develop the leasehold; (2) the lease was perpetual; (3) the lease violated public policy and is *void ab initio*; and, (4) the lease lacked mutuality and consideration. Accordingly, Appellee sought the equitable remedy of forfeiture.

{¶9} Both sides filed motions for summary judgment. The trial court granted Appellee's motion after finding that: the lease contained an implied covenant of reasonable development; the lease was perpetual; the lease seriously offended public policy and was *void ab initio*; and the lease lacked mutuality and consideration, thus, was illusory. (9/16/13 J.E., pp. 6-7, 9-10.) The trial court additionally found that although the lease included an implied covenant, Appellants had not violated that covenant. In granting Appellee's motion for summary judgment, the trial court also denied Appellants' motion for summary judgment. Accordingly, the trial court granted forfeiture of the lease. (9/16/13 J.E., p. 12) Both Beck and PDC, who were co-defendants, filed a timely appeal. For purposes of clarity, we will note which arguments are advanced by each Appellant, as they are not identical.

Summary Judgment

{¶10} As an initial matter, an appellate court reviews a trial court's summary judgment decision *de novo*. *Campbell Oil Co. v. Shepperson,* 7th Dist. No. 05 CA 817, 2006-Ohio-1763, ¶8, citing *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). Viewing the facts in a light most favorable to the non-moving party, the trial court must find that: there is no genuine issue of material fact remaining for litigation, the moving party is entitled to judgment as a matter of law, and that reasonable minds can come to only one conclusion, which is adverse to the non-moving party. *Campbell Oil Co.,* ¶8*,* citing *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1977).

{¶11} The moving party bears the initial burden of "identifying those portions of the record which demonstrate the absence of a genuine issue of fact on a material

element of the nonmoving party's claim." (Emphasis deleted.) *Campbell Oil Co.,* ¶9, citing *Dresher v. Burt*, 75 Ohio St.3d 280, 296, 662 N.E.2d 264 (1996). The burden then shifts to the non-moving party, who must set forth specific facts showing that a genuine issue of fact exists and that a reasonable factfinder could rule in that party's favor. *Campbell Oil Co.,* ¶9, citing *Brewer v. Cleveland Bd. of Edn.*, 122 Ohio App.3d 378, 386, 701 N.E.2d 1023 (1997).

BECK ENERGY'S FIRST ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED WHEN IT CONCLUDED THE LEASE WAS SUBJECT TO THE IMPLIED COVENANT TO REASONABLY DEVELOP THE LEASEHOLD.

{¶12} Appellant Beck asserts that Appellee expressly waived all implied covenants in paragraph 19 of the lease. Beck notes paragraph 19 of the lease states that: "It is mutually agreed that this instrument contains and expresses all of the agreements and understandings of the parties in regard to the subject matter thereof, and no implied covenant, agreement, or obligation shall be read into this agreement or imposed upon the parties or either of them." (Lease, Paragraph 19.) Although the trial court found that Beck had not violated any implied covenant, Beck urges that no such covenant exists. Moreover, Beck notes that under Ohio law an implied covenant only exists when the lease is silent on the subject. As paragraph 19 expressly waives all implied covenants, Beck argues that the lease is not silent on the subject.

{¶13} Beck also recognizes that paragraph 17 of the lease states:

> In the event Lessor considers that Lessee has not complied with any of its obligations hereunder, either express or implied, Lessor shall notify Lessee in writing setting out specifically in what respects Lessee has breached this contract. * * * The service of said notice shall be precedent to the bringing of any action by Lessor on said lease for any cause * * *.

Beck argues that paragraphs 17 and 19 do not conflict, inasmuch as they serve different purposes. Beck explains that paragraph 19 expressly waives all implied covenants while paragraph 17 more generally imposes an obligation on Appellee to notify Beck in the event of an alleged breach. Regardless, Beck argues that the delay rental clause supersedes any implied covenant to develop the leasehold.

{¶14} Beck highlights the fact that the lease is still in its primary term; it still has time to drill on the property before the primary term expires. Accordingly, Beck urges that the trial court erred in finding that the lease is subject to an implied covenant to reasonably develop the leasehold.

{¶15} In response, Appellee asserts that a reading of paragraphs one and ten suggest that the lease's purpose is to develop mineral interests. Paragraph one states: "[Lessor] does hereby lease and let exclusively unto the Lessee, for the purpose of drilling, operation for, producing and removing oil and gas and all the constituents thereof * * *". Further, paragraph ten allows a potential consolidation of all leased property into a unit for the purpose of developing those interests. Appellee believes that the combined effect of these paragraphs suggest that the lease's purpose is to develop the interests, which results in an implied covenant to develop

the leasehold. Appellee also urges that as paragraphs 17 and 19 conflict with one another and Beck drafted the lease, any ambiguity must be construed against Beck.

{¶16} Finally, Appellee refutes Beck's argument that the delay rental clause serves as a waiver of an implied covenant to reasonably develop the leasehold. To support its argument, Appellee cites *Ionno v. Glen-Gery Corp.,* 2 Ohio St.3d 131, 443 N.E.2d 504 (1983), which held that compliance with annual payments does not negate a responsibility to develop land within a reasonable time period. Appellee claims that the trial court properly found the existence of an implied covenant of reasonable development pursuant to *Ionno*.

{¶17} We have recently resolved this exact issue in *Hupp, supra.* Similar to the instant case, in *Hupp* the trial court found the existence of an implied covenant of reasonable development. *Id*. at ¶16. On appeal, we reversed the trial court after determining that the leases contained an express waiver of implied covenants. *Id.* at ¶117.

{¶18} The leases in *Hupp* contained provisions quite similar to those in the instant lease. First, the *Hupp* leases included a paragraph stating that all implied covenants were expressly waived. Second, the *Hupp* leases included a paragraph that stated: "[i]n the event the Lessor considers that Lessee has not complied with any of its obligations hereunder, *either expressed or implied*, Lessor shall notify Lessee in writing * * *." (Emphasis sic.) *Id.* at ¶118. We held that these paragraphs were not contradictory. Rather, the former paragraph acted as a waiver clause and the latter expressed a notice requirement clause. *Id.* at ¶120. But even if the

paragraphs could be said to be contradictory, the delay rental clause negated any implied covenant to reasonably develop the leasehold. *Id.*

{¶19} In *Hupp* we held that the trial court erred in relying on *Ionno, supra,* as it was factually distinguishable*. Id.* at ¶110. First, the delay rental clause in the *Hupp* leases created a drilling substitute during the primary period, whereas in *Ionno* the delay rental clause was intended to offset royalties. Second, unlike the *Ionno* lease, the *Hupp* leases required that developmental activities occur during a definite primary term.

{¶20} As the facts of this case and those in *Hupp* mirror one another, a *Hupp* analysis is more appropriate, here. Accordingly*,* we hold that the trial court in this case erred in finding that the lease contained an implied covenant to reasonably develop the leasehold. The lease contains an express waiver of implied covenants which used the exact same language found in *Hupp*. The trial court's contrary finding directly conflicts with our decision in *Hupp* and must be reversed on that basis*.*

{¶21} Therefore, we find that the express waiver language in the lease precludes finding an implied covenant to reasonably develop the interests exists. Accordingly, Appellant Beck's first assignment of error has merit and is sustained.

BECK ENERGY'S SECOND ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED WHEN IT CONCLUDED THAT PARAGRAPHS TWO AND THREE OF THE LEASE CREATE A LEASE IN PERPETUITY.

PETROLEUM DEV. CORP.'S FIRST ASSIGNMENT OF ERROR

> THE TRIAL COURT ERRED WHEN IT CONCLUDED LEASES OF PERPETUAL DURATION VIOLATE OHIO LAW AND ARE THEREFORE VOID AB INITIO.

{¶22} The two Appellants have approached this issue from different perspectives. Appellant Beck asserts that the Ohio Supreme Court has interpreted that a habendum clause is two-tiered: the first tier is the primary term and the second tier is the secondary term. Beck explains that the primary term provides a definite term of years during which the lease will exist while the secondary term follows the primary term and extends the lease only if certain requirements are met. Beck asserts that the secondary term here is triggered by a clause that states:

> * * * so much longer thereafter as oil or gas or their constituents are produced or are capable of being produced on the premises in paying quantities, in the judgment of the Lessee, or as the premises shall be operated by the Lessee in the search for oil and gas and as provided in Paragraph 7 following.

(Lease, Paragraph 2.)

{¶23} Beck argues that the delay rental clause does not operate to extend the lease. Rather, Beck stresses that this clause reserves their right to drill within the primary term in the event that they do not commence a well within the first six months of the primary term. Beck urges that this clause has no effect on the secondary term and does not extend the lease itself. As the delay rental clause does not extend the

primary term, Beck contends that the trial court erred in finding that this clause created a perpetual lease.

{¶24} Beck also claims that the trial court erroneously interpreted the terms "commence" and "paying quantities". According to Beck, "commence" does not mean to merely begin drilling. Beck explains that instead, "commence" means that drilling must begin no later than the last day of the primary term, and then reasonable diligence in developing the interests must continue through the secondary term.

{¶25} In regard to "paying quantities," Beck says that there must be enough oil or gas to yield a profit, however small, even if it means that the operations as a whole will result in a loss to the lessee. Beck urges that there is no ability on their part to abuse the provision granting discretion in determining whether oil and gas exist in paying quantities, as the lease contains a good faith effort on Beck's part that must be used in making such a determination. Even if the lease is considered perpetual, both Appellant Beck and Appellant PDC argue that the Ohio Supreme Court has found that perpetual leases are allowed so long as it was clearly the intent of the parties to create such a lease. Thus, the trial court erred in interpreting any of these terms in a manner which leads to finding the existence of an invalid perpetual lease.

{¶26} Appellee responds by arguing that the habendum clause in this lease is ambiguous and atypical. Appellee explains that a typical habendum clause includes the terms "production" or "drilling operations"; neither of which is found in the lease at issue. Further, Appellee urges that the lease provides Appellants with the sole discretion in determining whether the property is capable of producing oil or gas at

"some undetermined and undeterminable future date." Appellee asserts that as the lease lacks an objective standard for extending the lease, the lease extends in perpetuity.

{¶27} Appellee also believes that Appellants have misinterpreted the trial court's findings. Specifically, Appellee asserts that the terms "commencement" and "paying quantities" do not serve to make the leases perpetual. Instead, Appellee argues that the lease as a whole is perpetual due to its ambiguous and atypical language. Finally, Appellee notes that although the Ohio Supreme Court has held that perpetual leases are enforceable, such leases can be found invalid.

{¶28} Again, our reasoning in *Hupp* resolves this issue. In *Hupp,* we held that a habendum clause contains a primary and secondary term. *Id.* at ¶104. As the primary term is a definite period separate and distinct from the conditional secondary term, a habendum clause does not operate to make a lease perpetual. *Id.* at ¶90. Since the delay rental clause applies only to the primary term and expires once the primary term ends, a lease containing this clause does not extend the lease into perpetuity. *Id.*

{¶29} We also determined that inclusion of the term "paying quantities" does not serve to make a lease perpetual. *Id.* at ¶100. A secondary term only grants additional time to drill in the event that a well has been drilled in the primary term and this well continues to produce oil or gas as the primary term ends. *Id.* at ¶101. Once a well stops producing, the secondary term ends, as does the lease. *Id.* Similarly, the language "in the judgment of Lessee" does not permit a lease to continue in perpetuity at the sole discretion of the lessee. *Id.* at ¶102. Rather, the lessee must in

good faith determine whether it would be economically feasible to continue drilling. *Id.* at ¶103.

{¶30} As we have already determined that a two-tiered habendum clause and delay rental payment do not serve to make a lease perpetual, the trial court erred in finding the lease at issue was perpetual. A comparison of *Hupp* and the instant case reveals that both cases contain exactly the same language in their respective habendum clauses. Thus, as we determined that the habendum clause in *Hupp* did not create a perpetual lease, the habendum clause in this case likewise does not create a lease in perpetuity. Both the instant lease and the *Hupp* leases provided nominal delay rentals. We held that a delay rental clause did not create a perpetual lease in *Hupp*. The same delay rental clause in this case does not, then, create a lease in perpetuity here.

{¶31} Accordingly, Appellant Beck's second and Appellant PDC's first assignments of error have merit and are sustained.

BECK ENERGY'S THIRD ASSIGNMENT OF ERROR

> THE TRIAL COURT ERRED WHEN IT DETERMINED THAT PARAGRAPHS TWO AND THREE OF THE LEASE SERIOUSLY OFFEND PUBLIC POLICY MAKING THE LEASE VOID AB INITIO.

{¶32} As the lease is not perpetual, Appellant Beck argues that it does not violate public policy. And even if the lease could be considered perpetual, Beck urges that the freedom to contract is fundamental and agreements between parties should not be disturbed absent a clear violation of an established public policy. Beck

also argues that the trial court incorrectly relied on *Ionno, supra* as the two cases are factually distinguishable.

{¶33} In response, Appellee cites to the trial court's decision in *Hupp, et al., v. Beck Energy Corp.,* Monroe County Common Pleas Court, No. 2011-345 (July 12, 2012), which held that leases similar to the instant lease seriously offend public policy. Specifically, Appellee contends that the following aspects of the lease violate public policy: (1) the nominal delay rentals; (2) the ability of the lessee to unilaterally extend or cancel the lease; and (3) the failure of the lessee to reasonably develop the mining interests.

{¶34} However, on appeal in *Hupp*, we determined that as the leases were not perpetual, they did not violate public policy. The lease in this case is not perpetual, hence it likewise does not violate public policy. Further, Beck correctly distinguishes this case from *Ionno.* First, the delay rental payment in this case serves as a drilling substitute whereas the delay rental in *Ionno* offset future royalties. Second, the lease in this case required Beck to take specific actions within a definite term. *Ionno* required neither specific action nor set a definite term. Third, unlike the present lease, the *Ionno* leases did not contain an express waiver of implied covenants. And as Beck correctly argues, paragraphs 19 and 17 do not conflict with one another, as one paragraph contains an express waiver of implied covenants and the other sets out a notice requirement.

{¶35} As we have found that the lease is not perpetual, it does not violate public policy. Accordingly, Appellant Beck's third assignment of error has merit and is sustained.

BECK ENERGY'S FOURTH ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED WHEN IT CONCLUDED THAT PARAGRAPHS TWO AND THREE OF THE LEASE LACK MUTUALITY AND CONSIDERATION MAKING THE LEASE ILLUSORY.

PETROLEUM DEV. CORP.'S SECOND ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED WHEN IT CONCLUDED THE LEASE LACKS MUTUALITY AND CONSIDERATION AND IS THEREFORE ILLUSORY.

{¶36} Both Appellants argue that they were required to commence drilling a well within six months of the lease date. Appellants urge that if they failed to meet that requirement, the lease would have been forfeited unless they paid Appellee a delay rental. As they had an obligation to either commence drilling or pay the delay rental, Appellants argue that the lease does not lack mutuality of obligations. Appellants also point out that they have not only paid Appellee consideration for the initial lease and delay rental payments, but that once a well is drilled, they will also be required to pay royalties. Thus, Appellants assert that the lease does not lack consideration. Further, Appellants contend that the lease does not grant them unfettered discretion to extend or terminate the lease.

{¶37} In response, Appellee asserts that the lease gives Appellants arbitrary and subjective discretion and allows Appellants to unilaterally extend the lease.

Further, Appellee claims that Appellants have no obligations under the lease. Thus, Appellee claims that the lease is illusory and lacks mutuality of obligations.

{¶38} We have held that an illusory contract exists "when by its terms the promisor retains an unlimited right to determine the nature or extent of his performance; the unlimited right, in effect, destroys his promise and thus makes it merely illusory." *7 Medical Systems, LLC v. Open MRI of Steubenville,* 7th Dist. No. 11 JE 23, 2012-Ohio-3009, ¶39, citing *Century 21 Am. Landmark, Inc. v. McIntyre*, 68 Ohio App.2d 126, 129–30, 427 N.E.2d 534 (1st Dist.1980). When a party's obligations "are so vague and indefinite that the other party is left to guess at his obligation", the contract is illusory and unenforceable. *Id.,* citing *Natl. Wholisticenter v. The George E. Wilson Co.*, 9th Dist. No. 20928, 2002-Ohio-5039, ¶20.

{¶39} A reading of this lease reveals that it cannot be called illusory. According to the lease:

> This lease, however, shall become null and void and all rights of either party hereunder shall cease and terminate unless within [6] months from the date hereof, **a well shall be commenced on the premises, or unless the Lessee shall thereafter pay a delay rental of [Nine Hundred Thirty Dollars ($930.00)] each year, payments to be made quarterly until the commencement of a well.** * * * (Emphasis added.)

(Lease, Paragraph 3.)

{¶40} This paragraph burdens Appellants with two alternative obligations. Appellants are required to drill a well on the property within the first six months of the

lease date. However, if a well has not been drilled within six months, Appellants must pay Appellee a delay rental each year of the primary term until a well has been drilled. The record reflects that Appellants have paid Appellee at least one delay rental payment thus far. As Appellants' obligations are clearly stated in paragraph 3 of the lease, Appellee is not left to guess at the nature of these obligations.

{¶41} Contrary to Appellee's argument, Appellants have not retained an unlimited right to determine the nature or extent of their performance. Appellants cannot extend the lease past the primary term unless they have drilled a well in the primary term and have found that "oil or gas or their constituents are produced or are capable of being produced on the premises in paying quantities, in the judgment of the Lessee." (Lease, Paragraph 2.) As we emphasized in *Hupp,* the term "capable of being produced" does not look to whether the land has the capability of production. The issue is whether the well is capable of producing. A well either produces or it does not.

{¶42} We acknowledge that Appellants do possess some discretion in determining whether a well is capable of producing. However, it is not in Appellants' economic interest to continue operating a well that is not producing. As Appellants cannot control whether a well will produce and have no economic interest in maintaining a well that does not produce, Appellants' discretion is considerably limited.

{¶43} As the lease does not lack mutual obligations and is not illusory, the trial court erred in granting Appellee's motion for summary judgment and in denying

Appellants' motion for summary judgment. Accordingly, Appellant Beck's fourth and Appellant PDC's second assignments of error have merit and are sustained.

BECK ENERGY'S FIFTH ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED WHEN IT INVOKED THE EQUITABLE REMEDY OF FORFEITURE.

{¶44} Appellant Beck urges that the remedy of forfeiture is disfavored by the courts and whenever possible, ambiguities should be construed in a manner to avoid forfeiture. Beck also asserts that the Ohio Supreme Court has held that a delay rental clause containing forfeiture provisions precludes the equitable remedy of forfeiture. Regardless, Beck contends that the record is devoid of any evidence suggesting that there are insufficient resources available for an award of damages. Beck suggests damages can be calculated in this case by using the average production rates of wells in the area and through expert testimony. For these reasons, Beck concludes that the equitable remedy of forfeiture was improper.

{¶45} Appellee argues in response that the trial court has discretion to grant forfeiture. Appellee asserts that other legal remedies are inadequate and speculative. Thus, forfeiture was proper in this case.

{¶46} Under Ohio law, forfeitures are abhorred. *Eisenbarth v. Reusser*, 7th Dist. No. 13 MO 10, 2014-Ohio-3792, 18 N.E.3d 477, ¶49. When causes for forfeiture are explicitly delineated in the lease, others cannot be implied. *Beer v. Griffith,* 61 Ohio St.2d 119, 121-122, 399 N.E.2d 1227 (1980).

{¶47} As the trial court's decision to grant Appellee's motion for summary judgment and deny Appellants' motion for summary judgment is reversed, this assignment of error is moot.

Conclusion

{¶48} As the habendum clauses and delay rental clauses do not operate to make the lease perpetual, the lease does not violate any public policy. Additionally, Appellants are given multiple obligations under the lease. Hence, it does not lack mutuality of obligations. Finally, a standard is in place that limits Appellants' discretion in extending the lease into the secondary term. In accordance with our holding in *Hupp,* we reverse the trial court's decision to grant Appellee's motion for summary judgment and deny Appellants' motion for summary judgment and instead enter judgment for Appellants. The issue of forfeiture is, then, moot.

DeGenaro, J., concurs.

Robb, J., concurs.