[Cite as *Bentley v. Beck Energy Corp.*, 2015-Ohio-1375.]

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

CRAIG S. BENTLEY, et al. PLAINTIFFS-APPELLEES VS. BECK ENERGY CORP., et al., DEFENDANTS-APPELLANTS	)	CASE NOS. 13 BE 33 13 BE 34 OPINION

CHARACTER OF PROCEEDINGS:	Civil Appeal from the Court of Common Pleas of Belmont County, Ohio Case No. 11 CV 513
JUDGMENT:	Reversed. Judgment Entered for Appellants.
APPEARANCES: For Plaintiffs-Appellees:	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 (the Bentley family, the Menoski family, the Chambers family, the Kuba family, and the Busby family, collectively known as "Appellees") and one local business entered into these leases with Appellant Beck Energy Corporation ("Beck"). Two of these leases were later assigned to another energy company. As the issues presented in each appeal are identical, they were heard together. Two of the appeals (Case Nos. 13 BE 33 and 13 BE 34) were consolidated and are discussed within this Opinion. The remaining appeal (Case No. 13 BE 18) is addressed separately.

{¶2} Appellants assert that the habendum clauses and delay rental provisions contained in each lease do not render the leases perpetual. As the leases are not perpetual, Appellants argue that they do not offend public policy and are not *void ab initio.* Appellants also address the requirement that, under the leases, they have an obligation to drill or, in the alternative, to pay Appellees a delay rental fee. Accordingly, Appellants urge that these obligations negate Appellees' argument that the leases are illusory and lack mutuality. Moreover, Appellants assert that all

implied covenants were waived in the leases and thus, the trial court erred in finding the existence of an implied covenant. As the trial court improperly granted summary judgment on these issues, Appellants assert that the trial court likewise erred in granting forfeiture.

{¶3} In response, Appellees describe the habendum clauses as ambiguous and atypical, particularly when read together with other terms within the leases. As such, Appellees argue that the clauses create perpetual leases. As a result, Appellees assert that the trial court properly found that the leases seriously offend public policy and are *void ab initio.* Further, Appellees argue that Appellants are not obligated to perform under the lease and can exercise their sole discretion to unilaterally extend the leases. Thus, the leases are illusory. Accordingly, Appellees claim that the trial court properly granted their motion for summary judgment and awarded them the equitable remedy of forfeiture. However, 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, Appellants' arguments have merit. Accordingly, the trial court's decision to grant Appellees' motion for summary judgment and deny Appellants' motion for summary judgment is reversed.

Factual and Procedural History

{¶4} There are four separate leases at issue in this appeal: the Bentley lease, the Menoski lease, the Menoski/Chambers/Kuba lease, and the Busby lease. The Bentley family owns 23 acres of land in Richland Township, Belmont County. The Bentleys entered into an oil and gas lease with Beck on July 23, 2009.

{¶5} The Menoski family owns 1.85 acres in Richland Township. On April 12, 2010, they entered into a similar oil and gas lease with Beck. On that same day, the Menoskis, together with the Chambers and Kuba families, entered into a separate oil and gas lease with Beck. The three families each own an interest in 92.88 acres of land in Richland Township.

{¶6} The Busby family owns 1.03 acres of land in Richland Township. The Busbys entered into a similar, but non-drilling oil and gas lease with Beck on June 29, 2010. On November 21, 2011, Beck assigned the Bentley and Busby leases to Petroleum Development Corporation ("PDC") and retained the remaining leases.

{¶7} Each of the four leases involved the removal and extraction of oil and gas from the respective properties and contained a two-tiered habendum clause. The clause created both a primary term and a secondary term. A primary term delineates a definite term-of-year period for which the lease is effective. The primary term for the Bentley lease was ten years and the primary term for the remaining leases was three years.

{¶8} A secondary term is a period of time that immediately follows the primary term and extends the lease. The secondary term is described as indefinite, but does have an expiration process. If drilling commenced before the end of the primary term, the leases may continue into the secondary term.

{¶9} Until drilling commenced during the primary term, a delay rental provision was triggered. Under the delay rental provision, Appellants were required to pay each of the Appellees a specified amount until drilling commenced.

Appellants would then continue to drill until it was determined that the properties would no longer produce in paying quantities. At that point, the leases would terminate without any further action.

{¶10} The Bentley, Menoski, Chambers, Kuba, and Busby families filed a complaint against Beck while the respective leases were still in their primary term. The complaint alleged that: (1) the leases included an implied covenant to reasonably develop the leasehold; (2) the leases were perpetual; (3) the leases violate public policy and were *void ab initio*; and, (4) the leases lacked mutuality and consideration. Accordingly, the families sought the equitable remedy of forfeiture.

{¶11} Both sides filed motions seeking summary judgment. The trial court granted Appellees' motion and denied Appellants' motion. Specifically, the trial court held that: the leases contained an implied covenant of reasonable development; the leases were perpetual; the leases seriously offended public policy and were *void ab initio*; and the leases lacked mutuality and consideration. (9/16/13 J.E., pp. 6-7, 9-10.) The trial court additionally found that although the leases included an implied covenant, Appellants had not violated that covenant. Accordingly, the trial court granted forfeiture of the leases. (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

{¶12} As an initial matter, an appellate court conducts a *de novo* review of a trial court's summary judgment decision. *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).

{¶13} 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 BENTLEY, MENOSKI, AND CHAMBERS LEASES WERE SUBJECT TO THE IMPLIED COVENANT TO REASONABLY DEVELOP THE LEASEHOLDS.

{¶14} Even though the trial court found that Appellant Beck had not violated the implied covenant of reasonable development, Beck maintains that such covenant

does not exist, as each of the Appellees expressly waived all implied covenants in these leases. Specifically, Beck cites to paragraph 19 of the leases which, except for the Busby lease, state 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.) Appellant Beck acknowledges paragraph 17 of the lease, which provides:

> 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 * * *.

{¶15} However, Beck clarifies that paragraph 19 contains an express waiver of implied covenants whereas paragraph 17 sets out a notice clause. Beck urges that the two paragraphs serve different purposes; paragraph 19 limits the terms and waives implied covenants while paragraph 17 imposes an obligation on Appellees to notify Beck of an alleged breach.

{¶16} Beck further asserts that under Ohio law, an implied covenant only arises when a lease is silent on the subject. As the pertinent leases waived all implied covenants, Beck urges that the leases were not silent. Appellant Beck also

argues that the delay rental clause supersedes any implied covenant to develop the leasehold.

{¶17} Regardless, Beck highlights the fact that each of the leases in contention are still in their primary term. Thus, Beck still has time to begin drilling on the properties. Accordingly, Beck contends that the trial court erred in finding that the leases were subject to an implied covenant to reasonably develop the leaseholds.

{¶18} Appellees believe that a reading of paragraphs one and ten suggest that the purpose of each lease 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 * * *". Paragraph ten allows a potential consolidation of the leased property into a unit for the purpose of developing these interests. Appellees assert that the combined effect of these paragraphs suggest that the purpose of each lease is to develop the interests, which results in an implied covenant to develop the leasehold. Appellees urge that paragraphs 17 and 19 conflict with one another and as Appellant Beck drafted the leases, any ambiguous or unclear language must be construed against Beck.

{¶19} Finally, Appellees refute Appellant Beck's argument that the delay rental clauses constitute an express waiver of an implied covenant to reasonably develop the leaseholds. To support their argument, Appellees cite to *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. Appellees claims that the trial court properly found the existence of an implied covenant of reasonable development pursuant to *Ionno*.

{¶20} We have recently resolved this exact issue in *Hupp, supra.* 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.

{¶21} The *Hupp* leases contained paragraphs quite similar to those in the instant case. The first relevant paragraph stated that all implied covenants were expressly waived. Similar to the leases involved in the instant case, the *Hupp* leases also included a separate 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 served as a notice requirement clause. *Id.* at ¶120. But even if the paragraphs could be said to be contradictory, the leases included a delay rental clause which negated any implied covenant to reasonably develop the leasehold. *Id.*

{¶22} We held that the *Hupp* trial court erred in relying on *Ionno, supra,* as it was factually distinguishable. *Id.* at ¶110. First, the *Ionno* leases contained language that offset royalties by means of rental payments, whereas *Hupp* contained language that merely created a drilling substitute during the primary term. *Id*. Second, the *Ionno* leases did not include a primary term that required production

whereas the *Hupp* leases required that developmental activities must occur during a definite primary term.

{¶23} As the facts in *Hupp* mirror the facts in the instant case, a *Hupp* analysis is more appropriate, here. Under the authority of *Hupp,* we hold that the trial court in this case erred in finding that the leases contained an implied covenant to reasonably develop the leasehold. The leases contain an express waiver of implied covenants which used the exact same wording found in the *Hupp* leases. The trial court's contrary finding directly conflicts with our reasoning in *Hupp* and must be reversed on that basis.

{¶24} Therefore, we find that the express waiver precludes a finding that 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 LEASES CREATE LEASES 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.

{¶25} The two Appellants in this case present different arguments as to this issue. Appellant Beck asserts that habendum clauses have been interpreted by the

Ohio Supreme Court as having two distinct terms: a primary term and a secondary. According to Beck, the primary term contains a definite term of years and the secondary term is a period of time after the primary term expires that allows operations to continue only if certain requirements are met. 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.)

{¶26} Beck stresses that the delay rental clause does not extend the primary term. Rather, Beck argues that there is a deadline in each lease that requires Beck to begin drilling within a specified period. The delay rental clause extends that period if Beck pays Appellees a specified amount of money each year of the primary term until drilling commences. As the delay rental clause does not extend the primary term, Beck contends that the trial court erred in finding a perpetual lease.

{¶27} Beck also claims that the trial court erroneously interpreted the terms "commence" and "paying quantities". According to Beck, "commence" does not mean merely to begin drilling, as the trial court determined. Beck argues that the drilling itself 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.

{¶28} In determining the meaning of "paying quantities," Beck asserts 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. Further, Beck urges that there is no ability on their part to abuse this provision, as the leases contain a requisite good faith effort that they must make in determining whether there are paying quantities of oil or gas. Thus, Beck argues that the trial court erred in interpreting these terms to mean that Beck created perpetual leases. Even if the leases are 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.

{¶29} Appellees respond by arguing that the habendum clauses are ambiguous and atypical. Appellees note that a typical habendum clause uses the terms "production" or "drilling operations"; neither of which is found in the leases at issue. Further, the leases give Appellants sole discretion in determining whether the property is capable of producing oil or gas at "some undetermined and undeterminable future date." Thus, Appellees assert that the leases lack an objective standard for their extension and extend into perpetuity.

{¶30} Appellees also believe that Appellants have misinterpreted the trial court's findings. Specifically, Appellees assert that the terms "commencement" and "paying quantities" do not serve to make the leases perpetual. Instead, Appellees

argue that Appellants' use of ambiguous and atypical language throughout the contract make the leases perpetual as a whole. Finally, Appellees note that although the Ohio Supreme Court has held that leases in perpetuity are enforceable, such leases can be found invalid.

{¶31} Again, our reasoning in *Hupp* resolves this issue. In *Hupp,* we held that a habendum clause containing a primary and secondary term did not operate to render a lease perpetual. *Id.* at ¶104. As the primary term contains a definite period separate and distinct from the secondary term, which is conditional, this clause does not serve to make a lease perpetual. *Id.* at ¶90. Further, the delay rental clause only applies to the primary term and is no longer applicable after the primary term ends. Hence this clause also fails to make a lease perpetual. *Id.*

{¶32} We also determined that inclusion of the term "paying quantities" does not serve to make a lease perpetual. *Id.* at ¶100. The secondary term allowed that the lease could be extended if the well is capable of producing, not because the land is capable of production. *Id.* at ¶100-101. Additionally, the leases required developmental activity to take place, as the secondary term granted additional time to drill only in the event that a well had been drilled and continued producing oil or gas into the secondary term. *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 the 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.

{¶33} As we have already determined that a two-tiered habendum clause and delay rental payment do not serve to render a lease perpetual, the trial court erred in finding the leases at issue here were perpetual. A comparison of *Hupp* and the instant matter reveals that the leases in 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 the instant case likewise does not create a lease in perpetuity. Both the instant leases 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 the leases at issue here does not, then, create leases in perpetuity.

{¶34} 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 LEASES SERIOUSLY OFFEND PUBLIC POLICY MAKING THE LEASES VOID AB INITIO.

{¶35} As the leases are not perpetual, Appellant Beck argues that they do not violate public policy. And even if the leases are 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.

{¶36} In response, Appellees cite to the trial court 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 those in the instant case seriously offend public policy. Specifically, Appellees contend that the following aspects of the leases 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.

{¶37} However, on appeal in *Hupp*, we determined that the leases were not perpetual. Hence, they did not violate public policy. We have already found that the leases in this matter are not perpetual. Further, Appellant Beck is correct in distinguishing this case from *Ionno.* First, the rental payment in *Ionno* was used as an offset against future royalties. The rental payments in the instant leases served as drilling substitutes. Second, the *Ionno* leases lacked a primary term during which production was required. In contrast, the instant leases provided definite primary terms that required some action, either the commencement of drilling or paying rentals. Unlike the leases at issue in *Ionno*, these leases contain both a set primary term and a production requirement. Third, unlike the present leases, 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 contains a notice requirement.

{¶38} As we have found the instant leases are not perpetual, they likewise do 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 LEASES LACK MUTUALITY AND CONSIDERATION MAKING THE LEASES 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.

{¶39} Both Appellants argue that they were required to commence drilling a well within six months of the lease date in each lease. Appellants urge that if they failed to meet that requirement, the leases would have been forfeited unless they paid Appellees a delay rental. As they had an obligation to either commence drilling or pay the delay rental, Appellants argue that the leases do not lack mutuality of obligations. Appellants also point out that they have not only paid Appellees consideration for the initial lease and delay rentals, but that once drilling has commenced they will also be required to pay royalties. Thus, Appellants assert that the leases do not lack consideration. Further, Appellants claim that they do not have unfettered discretion in determining whether to extend or terminate the leases.

{¶40} In response, Appellees assert that the arbitrary and subjective discretion provided by these leases allow Appellants to unilaterally extend the leases. Appellees also claim that Appellants have no obligations under these leases. Thus, Appellees claim that these leases are illusory and lack mutuality of obligations.

{¶41} 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.

{¶42} A reading of these leases reveal that they cannot be called illusory. According to the terms of each 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.)

{¶43} This paragraph places alternative obligations on Appellants. Either Appellants must drill a well on the subject property within six months of the lease date, or, if that obligation is not fulfilled, Appellants must pay a delay rental each year of the primary term until a well has been drilled. As Appellants' obligations are clearly listed in paragraph 3 of each lease, Appellees are not left to guess at the nature of these obligations.

{¶44} Moreover, Appellants have not retained an unlimited right to determine the nature or extent of their performance. In order for Appellants to extend the leases past the primary term, they must find 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.) We emphasized in *Hupp* that 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.

{¶45} While it is true that Appellants have some discretion in determining whether a well is capable of producing, it is not in Appellants' economic interest to continue operating a well that is not producing. Thus, as Appellants have no control as to whether a well can produce and have no economic interest in maintaining a well that does not produce, Appellants' discretion is considerably limited.

{¶46} As Appellants have defined obligations and are not given arbitrary discretion in determining how far into the secondary term the lease will continue, the trial court erred in granting summary judgment in favor Appellees. 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.

{¶47} Appellant Beck urges that forfeiture is disfavored by the courts and whenever possible, ambiguities should be construed in a manner to avoid forfeiture. Beck contends that the Ohio Supreme Court has held that a delay rental clause that contains forfeiture provisions precludes the equitable remedy of forfeiture. Additionally, Beck asserts that there is no evidence in the record suggesting that there are insufficient resources for an award of damages. Beck explains that it is possible to calculate damages in this case by using the average production rates of wells in the area and through expert testimony. For these reasons, Beck argues that the equitable remedy of forfeiture was improper.

{¶48} In response, Appellees urge that granting forfeiture is within the trial court's discretion. Appellees argue that other legal remedies are inadequate and speculative. Thus, forfeiture was proper in this case.

{¶49} In Ohio, forfeitures are abhorred in the law. *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).

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

Conclusion

{¶51} Consistent with our holding in *Hupp, supra,* the trial court's decision to grant Appellees' motion for summary judgment and deny Appellants' motion for summary judgment is reversed and the issue of forfeiture is moot. The habendum clauses and delay rental clauses do not operate to make these leases perpetual, thus, the leases do not violate any public policy. Further, Appellants are given multiple obligations under the leases so they do not lack mutuality of obligations. Finally, there is a standard in place limiting Appellants' discretion in determining whether the wells are capable of producing. The Appellants' arguments here are well taken. The decision of the trial court to grant Appellees summary judgment is reversed and summary judgment is entered for Appellants.

DeGenaro, J., concurs.

Robb, J., concurs.