

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

INDEPENDENCE LEAD MINES)	
COMPANY, an Idaho corporation,)	
)	CASE NO. CV-02-04061
Plaintiff,)	
)	OPINION AND ORDER IN RE:
v.)	PLAINTIFF’S MOTION
)	FOR PARTIAL
HECLA MINING COMPANY, an)	SUMMARY JUDGMENT
Idaho corporation,)	OR PRELIMINARY INJUNCTION
)	
Defendant.)	
)	

Plaintiff and Defendant entered into an agreement known as the “DIA Project Agreement” in 1968. Plaintiff seeks termination of the Agreement. Plaintiff moved for Partial Summary Judgment or, alternatively, for a Preliminary Injunction. Motion denied.

Michael Christian, MARCUS, MERRICK, CHRISTIAN & HARDEE, attorneys for Plaintiff.

William F. Boyd, attorney for Defendant.

This lawsuit arises out of a dispute concerning the correct interpretation and application of a contract known as the “DIA Project Agreement,” which was entered into by, among others, Independence Lead Mines (“Independence”) and Hecla Mining

Company (“Hecla”) on February 8, 1968.¹ The parties also entered into a “Unitization Agreement” and a “Vertical Boundary Agreement” at or near the same time.

The DIA Project Agreement covered certain mining claims owned by Independence and others at the time that the Agreement was entered into. The DIA lands are adjacent to lands owned by Hecla and known as the Lucky Friday Mine. The DIA lands are referred to as the “Gold Hunter Project.” Under the DIA Agreement, Hecla was to serve as the “operator.”

There was some exploratory drilling in the 1970s. Thereafter, little occurred in the way of serious development until the early 1990s. In May of 1997, the Board of Directors of Hecla decided to go ahead with production on the DIA lands. That decision eventually led to the instant litigation.

Plaintiff Independence filed a Motion for Partial Summary Judgment. Independence seeks a judgment declaring Hecla to be in default of its obligations, terminating the DIA Project Agreement, terminating the Unitization Agreement, and finding that Hecla committed waste. Alternatively, Independence moves for a Preliminary Injunction prohibiting Hecla from further mining on its mining properties. In support of its Motion, Independence filed multiple affidavits; Independence also submitted a statement of undisputed facts and legal briefs.

Defendant Hecla opposes Independence’s Motion. In opposition, Hecla filed numerous affidavits and submitted a brief. Hecla contends that there are material facts in dispute which preclude summary judgment; Hecla also contends that Independence cannot meet the applicable legal criteria for a preliminary injunction.

¹ The other parties were Day Mines, Inc., and Abot Mining Company. Hecla has since acquired the interests of those two parties.

Summary judgment can only be granted if there are no genuine issues of material fact and, as a matter of law, the moving party is entitled to judgment. **Rule 56(c), Idaho Rules of Civil Procedure.**

On a motion for summary judgment, the facts in the record are to be liberally construed in favor of the party opposing the motion. If the court will be the ultimate trier of fact, the trial judge is free to arrive at the most probable inferences to be drawn from the undisputed evidentiary facts. **Bonz v. Sudweeks**, 119 Idaho 539, 808 P.2d 876 (1991); **Loomis v. City of Hailey**, 119 Idaho 434, 807 P.2d 1272 (1991). When there is a conflict in the evidence which is presented, a determination should not be made on summary judgment if the credibility can be tested by testimony in court before the trier of fact. **Argyle v. Slemaker**, 107 Idaho 668, 691 P.2d 1283 (Ct.App. 1984).

If there are no genuine issues of material fact, the court will determine whether a party is entitled to judgment as a matter of law. **Zumwalt v. Stephan, Balleisen & Slavin**, 113 Idaho 822, 758 P.2d 406 (Ct.App. 1987), *rev. denied* (1988).

With regard to Plaintiff's Motion for Partial Summary Judgment, the record in this case has been thoroughly reviewed. The review indicates that Hecla does not dispute certain of the facts stated by Independence, correspondence between the parties, quotes from reports, or information in prospectuses. On the other hand, Hecla, as the non-moving party, has provided evidence which controverts other facts and has provided evidence of additional relevant facts. Thus, there are genuine issues of material fact which preclude summary judgment.

Independence urges this Court to recognize an implied duty to mine prudently or a prudent operator covenant in this case. Courts, including the Idaho appellate courts,

have held that a duty to diligently explore, develop, and work a mine might be implied in a mining lease. *Alumet v. Bear Lake Grazing Co.*, 119 Idaho 979, 812 P.2d 946 (1991) (*Alumet II*); *Alumet v. Bear Lake Grazing Co.*, 112 Idaho 441, 732 P.2d 679 (Ct.App. 1986) (*Alumet I*); *Archer v. Mountain Fuel Supply Co.*, 102 Idaho 852, 642 P.2d 943 (1982). In such cases, the law imposes an objective standard of reasonableness. The lessee is expected to perform with reasonable diligence, taking those actions which would be expected of a reasonably prudent operator. *Alumet II, supra*.

It must be noted, however, that the cases cited by the parties involved instances in which a lessor was asserting that the lessee had an affirmative duty to develop and mine the property. In the instant case, it is just the opposite. Here, Independence seeks to have the agreement terminated based upon its claims that Hecla should not have commenced commercial production and that Hecla should now cease production.

The Idaho courts have also addressed other implied terms in mining contracts and other types of contracts. The standards in such cases are those that generally apply to determine whether a provision should be implied in a contract. *Star-Phoenix Mining Co. v. Hecla Mining Co.*, 130 Idaho 223, 939 P.2d 542 (1997); *Davis v. Professional Business Services*, 109 Idaho 810, 712 P.2d 511 (1985); *Archer v. Mountain Fuel Supply Co., supra*. It is a well settled rule of law that, “[i]n every contract, there exists not only the express promises set forth in the contract but all such implied provisions *as are necessary* to effectuate the intention of the parties, and as arise under the specific circumstances under which the contract was made. In implying terms to a contract that is silent on the particular matter in question, only reasonable terms should be implied.” (Emphasis added.) *Davis v. Professional Business Services*, 109 Idaho at 813-14.

In *Overbillig v. Bradley Mining Company*, 372 F.2d 181 (9th Cir. 1967), the Ninth Circuit Court of Appeals held that, even if the terms of an agreement gave a mining company general, sole, or absolute discretion to operate the mine, the company still had to act in good faith; if the discretion exercised by the mining company came within that standard, there could be no breach of the agreement so long as the conditions remained the same and the decision was not an attempt to ignore its obligations.

The DIA Project Agreement contained certain terms. Hecla argues that the Agreement should be interpreted in accordance with the intention of the parties, notes that the parties were sophisticated business persons, and contends that the court should not make a better contract for the parties than they made for themselves with regard to expenditures and losses. Citing specific provisions in the Agreement, Independence asserts that the language indicates that the parties contemplated that Hecla would act prudently to minimize costs and maximize profits for all parties.

Regardless of which of the legal standards above are applied and whether or not other express contractual provisions are considered, genuine issues of material fact remain as to (1) whether or not a duty to operate prudently should be implied in the DIA Project Agreement under the particular facts of this case; and (2) if such a duty is implied in the Agreement, whether or not Hecla complied with that duty. Therefore, summary judgment cannot be granted.

In another of its claims, Independence alleges that Hecla has committed waste by operating at a loss and destroying vast amounts of ore. “Waste” has been defined as “the permanent or lasting injury to the estate by one who has not an absolute or unqualified title thereto.” *Consolidated Ag of Curry, Inc. v. Rangen, Inc.*, 128 Idaho 228, 230, 912

P.2d 115 (1996). An action for waste is authorized by *Idaho Code § 6-201*. Based on the rulings above, it is not necessary to address the issue of waste at this time. There are, however, genuine issues regarding the material facts for this claim.

Finally, Independence seeks a preliminary injunction against Hecla's continued mining. A preliminary injunction may be issued under *Rule 65(a), Idaho Rules of Civil Procedure*. The grounds for a preliminary injunction are set forth in *Rule 65(e), Idaho Rules of Civil Procedure*. Injunctive relief is granted or denied in the discretion of the trial court. *Harris v. Cassia County*, 106 513, 681 P.2d 988 (1984). After considering the pleadings and the entire record, the complex law surrounding the issues here, and the number of genuine issues of material fact remaining in the case, injunctive relief must be denied.

ORDER

Based on the foregoing discussion, it is hereby ORDERED that the Motion for Partial Summary Judgment or, alternatively, for a Preliminary Injunction by the Plaintiff, Independence Lead Mines Company, be and the same is hereby denied.

DATED this ____ day of August, 2003.

John Patrick Luster
District Judge

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing OPINION AND ORDER IN RE: PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT OR PRELIMINARY INJUNCTION was mailed, postage prepaid, sent by facsimile transmission, or sent by interoffice mail, on the _____ day of August, 2003, to the following:

Michael Christian
MARCUS, MERRICK, CHRISTIAN & HARDEE
737 North 7th Street
Boise, ID 83702-5595
FAX: (208) 342-2170

WILLIAM F. BOYD
Attorney at Law
601 Sherman Avenue, Suite 1
Coeur d'Alene, ID 83814
FAX: (208) 665-0864

ALL FIRST DISTRICT COURT JUDGES

The Honorable Don L. Swanstrom
Trial Court Administrator
Interoffice Mail

DANIEL J. ENGLISH
Clerk of the District Court

By: _____
Deputy Clerk