

ALMINEX LIMITED AND OTHERS }
 (Defendants) }

APPELLANTS;

1968
 *May 6, 7
 June 3

AND

CANADIAN DELHI OIL LIMITED }
 (Plaintiff) }

RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF
 ALBERTA, APPELLATE DIVISION

Contracts—Unitization agreement—Interpretation.

S P Co. was one of the participants in a unitization agreement made between some 30 companies. The said company, the rights and liabilities of which in relation to the unit were purchased by the plaintiff respondent, drilled an off-target or off-pattern producing well in a part of the lands described in the unitization agreement as the "Buffer Zone". It had previously drilled what, for practical purposes, was a dry hole within the target area.

S P Co. applied for the admission to the unit of the tract on which both wells were situated. It was not admitted. The company then sued for a declaration that it was entitled to have the tract admitted into the unit area as at March 1, 1964, without the application of any penalty factor and with an interim and final participation factor of certain amounts, for specific performance of the unit agreement and the unit operating agreement and damages in lieu of or in addition to specific performance.

The trial judge found that the plaintiff was entitled to have its tract admitted as of March 1, 1964, with a producibility factor of .5, that is with the application of the penalty factor applied by the Oil and Gas Conservation Board to the producing well on the tract. The Board had reduced the economic allowable of this well to 33 barrels per day, as a result of the well having been drilled off target; 66 barrels per day was the economic allowable for on-target wells in this field. The trial judge found that the tract porosity-footage of this well was 81. He awarded the plaintiff damages in the sum of \$60,000.

On appeal, the Appellate Division of the Supreme Court of Alberta varied the trial judgment to permit the plaintiff a full, unpenalized participation in the unit with a tract porosity-footage of 107, and referred the case back to the Trial Division for assessment of the additional sums payable to the plaintiff. An appeal by the defendants from the judgment of the Appellate Division was then brought to this Court.

Held: The appeal should be dismissed.

APPEAL from a judgment of the Supreme Court of Alberta, Appellate Division¹, varying a judgment of Primrose J. Appeal dismissed.

*PRESENT: Cartwright C.J. and Martland, Judson, Hall and Spence JJ.

¹ (1967), 62 W.W.R. 513.

1968

ALMINEX
LTD. *et al.*

v.

CANADIAN
DELHI OIL
LTD.

C. M. Leitch, Q.C., for the defendants, appellants.

J. H. Laycraft, Q.C., for the plaintiff, respondent.

The judgment of the Court was delivered by

MARTLAND J.:—I agree with the reasons and conclusions stated in this case by the Chief Justice of Alberta, who delivered the unanimous judgment of the Appellate Division¹, from which this appeal is brought. Accordingly, I would dismiss the appeal, with costs.

Appeal dismissed with costs.

Solicitors for the defendants, appellants: Macleod, Dixon, Burns, Love, Leitch, Lomas, Charters & Montgomery, Calgary.

Solicitors for the plaintiff, respondent: Chambers, Sauzier, Jones, Peacock, Black, Gain & Stratton, Calgary.

¹ (1967), 62 W.W.R. 513.