

IV.

ARGUMENTS AND AUTHORITIES

The issue for partial summary judgment is whether TMBR/Sharp and the other working interest owners did “that thing” which saved the Original Stokes Leases?²

The New Mexico Supreme Court has stated that the issue of lease termination revolves around the question “[D]id the [Lessee] do that thing permitted by the lease to save it.” *Owens v. Superior Oil Co.*, 105 N.M. 155; 730 P.2d 458 (1986) (citing *Humble Oil & Refining Co. v. Kunkle*, 366 S.W.2d 236 (Tex. Civ. App. 1963)). What did TMBR/Sharp have to do to preserve the Original Stokes Leases beyond their primary term into their secondary term?

The terms of the Original Stokes Leases are unambiguous. “[C]ourts will give effect to the intent of the parties, and when the terms of the Agreement are clear and unambiguous, Courts try to ascertain the intent of the parties from the *ordinary meaning* of the language in the Agreement.” *Continental Potash v. Freeport-McMoran, Inc.*, 115 NM 690, 704; 858 P.2d 66 (1993) (emphasis added). “The purposes, meaning and intent of the parties to a contract is to be deduced from the language employed by them; and where such language is not ambiguous, it is conclusive. The Courts duty is confined to interpretation of the contract which the parties made

² Oil and gas authors and case law indicate that pooling is a contractual relationship and the exercise of the pooling powers is governed by the terms of the lease. For instance, Kuntz states: “many pooling clauses contain no provision whatever as to the formality required in the exercise of the pooling power, whereas other contain specific provisions that vary from lease to lease. . . , if the pooled clause provides that ‘lessee shall execute in writing an instrument identifying and describing the pooled acreage,’ an effective power of the exercise does not require that the instrument be filed for record.” 4 Eugene Kuntz, *Treatise on the Law of Oil and Gas* § 48.3, at 200 (1972) (citing *Tiller v. Fields*, 301 S.W.2d 185 (Tex. Civ. App. - Texarkana 1957, no writ). Therefore, “that thing” TMBR/Sharp had to do to preserve the Original Stokes Leases is governed by the terms of those leases.