

*MARY J. BAKER REVOCABLE TRUST v. CENEX HARVEST STATES, COOPERATIVES., INC.*¹

Before a contract term may be interpreted by a court, an ambiguity must exist.² But how does a court determine whether a term is ambiguous? Previously, Montana case law contained seemingly inconsistent holdings on whether extrinsic evidence could be considered to determine that a contract term was ambiguous.³ In *Mary J. Baker Revocable Trust v. Cenex Harvest States, Cooperatives, Inc.* the Montana Supreme Court clarified that a judge could consider objective, extrinsic evidence to determine whether a contract term is ambiguous.⁴

The case involves a debate over the meaning of terms in a right-of-way agreement.⁵ Cenex Harvest States, Cooperatives, Inc. and its subsidiary, Front Range Pipeline, LLC., (“Cenex”) acquired easements for the Front Range Pipeline, a 320-mile system of pipe that it would use to transport crude oil from Canada to Laurel, Montana.⁶ For most of the distance, a 36-strand fiber optic cable was laid in the same trench as the pipeline.⁷ In 1994 and 1995, Cenex entered right-of-way agreements with Linda Eklund and the Mary J. Baker Revocable Trust (“Landowners”) to place the pipeline and cable on their lands.⁸ The agreements specified that the pipeline would run on the Landowners’ property “together with a buried fiber optic communications cable.”⁹ The agreements also stated “the rights herein granted may be assigned in whole or in part.”¹⁰

¹ *Mary J. Baker Revocable Trust v. Cenex Harvest Sts., Coops., Inc.*, 164 P.3d 851 (Mont. 2007).

² *Id.* at 857.

³ *Id.* at 862.

⁴ *Id.* at 866.

⁵ *Id.* at 856.

⁶ *Id.*

⁷ *Mary J. Baker Revocable Trust*, 164 P.3d at 855.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 855.

In 2003, the Landowners sued Cenex for breach of the agreement because Cenex leased a portion of the fiber optic cable to TRI Touch America (“TRI”).¹¹ The lease gave TRI exclusive use of 32 strands for 25 years with Cenex retaining the four other strands for their own use.¹² The Landowners argued the fiber optic lease exceeded the scope of the right-of-way agreement because they believed the agreement only allowed the cable to be used for monitoring the pipeline.¹³ They claimed the TRI Lease was a revenue-producing scheme that constituted a conversion of money and trespass on the Landowners’ property.¹⁴ Both the Landowners and Cenex moved for summary judgment.¹⁵

Though the Landowners and Cenex both declared the granting language unambiguous, they disputed the meaning of the clause granting Cenex the right to bury the pipeline “together with” the fiber optic cable.¹⁶ The Landowners argued that “together with” meant “in connection with,” and, thus, the cable was supposed to be used “in connection with” the pipeline and limited to monitoring of the pipeline.¹⁷ The Landowners also argued there were circumstances that supported their interpretation and argued that Montana Code Annotated § 1–4–102 (2007) gave the judge authority to consider the circumstances in interpreting the contract.¹⁸ The statute states “For the proper construction of an instrument, the circumstances under which it was made, including the situation of the subject of the instrument and of the parties to it, may also be shown so that the judge is placed in the position of those whose language the judge is to interpret.”¹⁹ In

¹¹ *Id.*

¹² *Id.*

¹³ *Mary J. Baker Revocable Trust*, 164 P.3d at 855.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Mont. Code Ann. § 1–4–102.

contrast, Cenex argued the contract did not limit the use of the fiber optic cable and gave Cenex the right to assign any rights within the contract to a third party.²⁰

The district court agreed with Cenex and held the language was unambiguous and the contract did not limit the use of the fiber optic cable.²¹ The district court also ruled Montana Code Annotated § 1–4–102 only allows judges to consider extrinsic circumstances if the contract language is ambiguous.²² Since the judge held extrinsic evidence could not be considered, the district court awarded summary judgment to Cenex.²³

The Landowners appealed to the Montana Supreme Court alleging in part that the district court failed to consider the circumstances under which the right-of-way agreements were drafted and granted.²⁴ In support of their position, they cited Montana Code Annotated § 1–4–102, claiming the statute allows a judge to take into account outside information when determining whether a contract is ambiguous.²⁵

The Court noted that its previous decisions had taken contradictory stances on whether a contract must be ambiguous for § 1–4–102 to apply.²⁶ The Court clarified its position and held that § 1–4–102 allows a court to consider the circumstances in which the contract was made to determine whether a contract is in fact ambiguous.²⁷ However, the Court limited what evidence would be allowed. The Court stated:

We emphasize, however, that not all “circumstances” are admissible for this purpose. . . . [A]n instrument does not contain an ambiguity simply because the parties have or suggest opposing interpretations thereof or disagree as to whether the language is reasonably open to just one interpretation. Rather, the

²⁰ *Mary J. Baker Revocable Trust*, 164 P.3d at 856.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 854.

²⁵ *Id.*

²⁶ *Mary J. Baker Revocable Trust*, 164 P.3d at 861.

²⁷ *Id.* at 866.

determination of whether an ambiguity exists in a contract is made on an objective basis.²⁸

The Court noted two advantages to allowing objective evidence while excluding subjective evidence. First, subjective evidence can be “self-serving” and “difficult to verify,” but with objective evidence, “the ability of one of the contracting parties to fabricate such evidence is limited.”²⁹ Second, subjective evidence creates a fact question that must be brought before a jury.³⁰ By limiting evidence to objective evidence, a judge can act as a gatekeeper.³¹

The Court outlined the process for how courts should use extrinsic evidence for contract interpretation:

[T]he evidence is considered by the court to enable it to determine whether the contract or clause is ambiguous; if it is not, the inquiry ends and parol evidence is kept from the jury. If, however, the judge is convinced by the extrinsic evidence that an ambiguity exists, the evidence is presented to the jury so that it may determine, on the basis of the written contract, as explained or supplemented by the extrinsic evidence, which of two or more meanings the parties intended.³²

After clarifying its position on the application of § 1–4–102, the Court held that because the Landowners and Cenex agreed the language was unambiguous, there was no need to consider extrinsic evidence to determine whether an ambiguity existed.³³ Without admissible evidence to the contrary, the Court determined the clause was not ambiguous and that the district court had not erred in determining there was no genuine issue of material fact.³⁴

In *Mary J. Baker Revocable Trust*, the Montana Supreme Court provided a clear standard for determining whether a contract is ambiguous. While allowing extrinsic evidence to prove an

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Mary J. Revocable Trust*, 164 P.3d at 866 (citing Richard A. Lord, *Williston on Contracts* vol. 11, § 33:39, 815–816 (4th ed., West 1999)).

³³ *Id.* at 870.

³⁴ *Id.* at 872.

ambiguity, the Court explicitly excluded subjective evidence. By doing so, the Court allowed for extrinsic evidence while preventing every contract dispute from becoming a question of fact.

— *Scott Peterson*