RENDERED: July 11, 2003; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001493-MR

MILLICENT MAY, ROBERT CROOKS,
RUTH BRUNING, TOM SELF, ROBERT
G. SELF, SYDNEY (SELF) PHILLIPS,
THELMA SEALS, GRETCHEN BOGAN,
MARJORIE WENDT, JANICE TANKSLEY,
JUSTINE TRIVETTE, WILLIAM C. ROBINSON,
REBECCA Q. LOGUE, JOHN H. ROBINSON,
AND H. L. ROBINSON, JR. APPELLANTS

v.

APPEAL FROM PIKE CIRCUIT COURT
HONORABLE EDDY COLEMAN, JUDGE
ACTION NO. 00-CI-00001

JOHNSON FAMILY COAL CO.,
MRS. LINDA ANDERSON, AND
DR. WILLIAM JOHNSON APPELLEES

OPINION

AFFIRMING

** ** ** ** **

BEFORE: BUCKINGHAM, JOHNSON, AND DYCHE, JUDGES.

DYCHE, JUDGE. Appellants or their predecessors in title entered into a coal lease with appellees or their predecessors in title for certain lands jointly owned by those parties (appellees were

joint owners, and sole lessees). The lease was dated April 1, 1956, and provided for the payment of a royalty of $.25 per ton of coal mined, to be divided equally by the parties. The lease was subsequently amended to reduce the royalty, and then again informally amended to return the royalty rate to the original. A minimum royalty of $2,000 per year was payable under the lease. There is no allegation that any royalties due appellants, either as a result of mining operations or at the minimum rate, were not paid. Appellants accepted royalty checks under the lease for 44 years without objection.

Appellees, as lessees, eventually subleased the property to another coal operator, receiving $2.00 per ton royalty. Royalty payments as set out in the original lease continued to be paid to appellants. The 1965 amendment to the lease allowed such subleasing of the property without appellants' consent.

Appellants filed the complaint herein alleging that the lease was "grossly unfair, inequitable, and unconscionable." They sought cancellation of the lease. The trial court denied the relief, and this appeal followed.

> In summary, the doctrine of unconscionability is used by the courts to police the excesses of certain parties who abuse their right to contract freely. It is directed against one-sided, oppressive and unfairly surprising contracts, and not against the consequences per se of uneven

> bargaining power or even a simple old-fashioned bad bargain . . . .

Louisville Bear Safety Service, Inc. v. South Central Bell Telephone Company, Ky. App., 571 S.W.2d 438, 440 (1978), quoting *Wille v. Southwestern Bell Telephone Co.*, 219 Kan. 755, 549 P.2d 903 (1976).

Appellants cited to the trial court no valid reason to interfere with the lease except for their dissatisfaction with the bargain that they made, and from which they have accepted the fruits for many years. "One may not select the desirable morsels served by his contract and toss the less choice parts beneath the table." *Northern States Contracting Co. v. Swope*, 271 Ky. 140, 147, 111 S.W.2d 610, 614 (1937). Nor have they made any argument here which would cause us to declare the judgment of the trial court in error.

The judgment of the Pike Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:	BRIEF FOR APPELLEE:
W. Sidney Trivette Pikeville, Kentucky	Herman Lester Pikeville, Kentucky