

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

TERRELL PANKEY and
SMITH COUNTY STONE, LLC

PLAINTIFFS

VS.

Civil No. 4:13-cv-4046

WESTERN ARKANSAS ROCK, INC.

DEFENDANT

ORDER

Before the Court is Plaintiffs' Motion for New Trial. (ECF No. 150). Defendant has filed a response to the motion. (ECF No. 151). The Court finds this matter ripe for consideration.

The jury trial of this matter was held on April 14-17, 2015. (ECF Nos. 129, 131-132 & 134). The jury returned a verdict in favor of Defendant Western Arkansas Rock, Inc. ("WAR"). Specifically, the jury found in favor of WAR on Plaintiffs' breach of contract claim and found in favor of WAR on its counterclaims for breach of contract and deceit. As to WAR's breach of contract counterclaim, the jury awarded WAR unpaid royalties of \$119,664.46 and audit costs of \$1,600.00. As to the counterclaim for deceit, the jury awarded no damages. Because issues of treble damages, interest, and attorney's fees remained, the Court did not enter a judgment on the verdict at the conclusion of the trial. On May 13, 2015, Judgment was entered in favor of Defendant. (ECF No. 149).

At the close of Plaintiffs' case, Plaintiffs moved for a directed verdict on their breach of contract claim against WAR. Plaintiffs argued that "the uncontroverted evidence establishes that [WAR] breached the parties' contract (Mining Lease)" because the lease was allegedly terminated prematurely on insufficient grounds and Plaintiffs were not given proper notice of their alleged defaults or an opportunity to cure those defaults. The Court denied the motion, finding that there was sufficient evidence for a jury to conclude that WAR was not liable for

breach of contract stemming from the termination of the Mining Lease. Plaintiffs later renewed their motion (ECF No. 142) making precisely the same arguments contained in their Motion for Directed Verdict. Plaintiffs argued that the jury's failure to find in favor of Plaintiffs on their breach of contract claim was "against the greater weight of the evidence." The Court denied Plaintiffs' renewed motion on May 13, 2015. (ECF No. 149). Subsequently, Plaintiffs filed a Motion for New Trial (ECF No. 150) which is presently before the Court. The text of Plaintiffs' motion is virtually identical to their Renewed Motion for Judgment as a Matter of Law. (ECF No. 142). The Court has already considered Plaintiffs' arguments and found them to be without merit. Accordingly, the Court finds that Plaintiffs' Motion for New Trial (ECF No. 150) should be and hereby is **DENIED**. There was sufficient evidence before the jury for it to conclude that WAR should not be held liable for breach of contract. For this reason, a new trial is unwarranted.

IT IS SO ORDERED, this 24th day of September, 2015.

/s/ Susan O. Hickey
Susan O. Hickey
United States District Judge