COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

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| PEARL RESOURCES OPERATING CO. LLC, AND PEARL RESOURCES, LLC, | § | No. 08-19-00288-CV |
| Appellants, | § | Appeal from the |
| v. | § | 83rd Judicial District Court |
| TRANSCON CAPITAL, LLC, | § | of Pecos County, Texas |
| Appellee. | § | (TC# P-7797-83-CV) |

**OPINION**

Following a wild-well incident, the responsible drilling contractor hired several companies, including a water-hauling service, to aid in the clean-up. The drilling contractor, however, soon walked off the job, leaving several sub-contractors unpaid, including the water-hauling service. In this suit, the company that purchased the rights to the water-hauling service's invoices sued the mineral lease holders to make good on the unpaid invoices. Its leverage was a potential statutory lien on the mineral lease--which was the sole relief granted to it in the judgment below. But because the mineral lien statute only permits the lien to attach to the extent that the mineral lease holder has not paid its contractor, and here the contractor was paid in full under its contract, the statutory lien is unavailable. As a result, we reverse the judgment of the trial court and remand to the trial court to consider whether to award attorney's fees in the mineral lease holder's favor.

# I. Factual and Procedural Background

## A. The Turnkey Drilling Contract

Appellant Pearl Resources LLC (Pearl Resources) is a lessee and working interest owner of a mineral lease known as the Garnet State Lease in Pecos County, Texas. Appellant Pearl Resources Operating Co., LLC (Pearl Operating) also owns a working interest in the Garnet State Lease, and is the operator of the Garnet State #4 Well. We collectively refer to both entities as "Pearl." In September 2016, Pearl Operating entered into a "Turnkey Drilling Contract" with PDS Drilling LLC (PDS) to drill the #4 Well (the Turnkey Contract). The terms of the contract called for Pearl Operating to pay PDS a total of $928,987 upon the completion of a "successful well" as defined in the contract. However, the contract only obligated Pearl Operating to make an initial upfront payment to PDS of 30 percent of that total amount after PDS positioned a rig at the well site ready to spud. Thereafter, Pearl Operating was required to pay PDS the remaining 70 percent within five business days after PDS had delivered a successful well and had invoiced Pearl Operating for its services. The contract expressly stated that PDS needed to satisfy both conditions before Pearl Operating would have to pay the remaining amounts due.

The Turnkey Contract further provided that PDS was an independent contractor and disclaimed creation of a principal-agent relationship between Pearl Operating and PDS, or their respective agents or employees. The contract added that PDS could not contract or hire persons on behalf of Pearl Operating. In addition, it provided that PDS retained complete control of the wellsite and agreed to "maintain well control equipment in good condition at all times and shall use all reasonable means to prevent and control fires and blowouts and to protect the hole." More specifically, the contract stated that PDS was "liable for the cost of regaining control of any wild well, as well as for cost of removal of any debts and cost of property remediation and restoration, and . . . shall release, protect, defend and indemnify [Pearl Operating] and its suppliers, contractors and subcontractors of any tier from and against any liability for such cost."

### B. The Wild Well Incident and Remediation Efforts

After Pearl Operating made the initial 30 percent payment of $278,696.10, PDS began drilling operations at the #4 Well. In October 2016, and before PDS had drilled to the depth agreed upon in the Turnkey Contract, the well suffered a wild well incident resulting in freshwater erupting out of the #4 Well and an adjacent water well. After another company was engaged to provide emergency services to contain the water flow at the well site, PDS engaged Cannon Oil & Gas, LLC (Cannon) in November 2016 to haul away water that had accumulated at the well site.

In January 2017, PDS notified Pearl Operating that it lacked funds to continue any attempts to either repair the partially drilled wellbore or to drill a replacement well, and that it was abandoning the well. Due to the extensive damage that the well suffered during the wild well incident, Pearl Operating ultimately plugged and abandoned the partially drilled well in February 2017, and subsequently hired a replacement drilling contractor to drill a different well on the Garnet State Lease.

### C. The Mineral Lien

Before PDS's abandonment of the well, Cannon sent two separate sets of invoices to PDS, requesting payment for the services it rendered. After PDS failed to make payment, Cannon transferred all its rights and interest in the invoices to Appellee Transcon Capital, LLC (Transcon). Transcon then sent the unpaid invoices to Pearl and demanded payment of $57,000. Transcon's demand letter to Pearl was the first notice of Transcon's claim against PDS. When Pearl refused payment, Transcon sent Pearl a notice that it intended to file a "Mineral Lien Affidavit" in Pecos County for the amount allegedly owed if Pearl failed to pay within ten days. Pearl again refused payment, informing Transcon that PDS was solely responsible for payment under the Turnkey Contract.

Transcon thereafter filed a lien affidavit in the Pecos County records, reciting that it was the assignee of Cannon, which had been retained by PDS to perform water-hauling services at the well site, and that PDS owed it $57,000, which it had failed to pay. The affidavit stated that it was seeking to impose a mineral lien on the Garnet State Lease under section 56.003 of the Texas Property Code to secure payment of the amount owed.

**D. Pearl's Lawsuit and the Cross-Motions for Summary Judgment**

Upon receiving notice of the lien affidavit, Pearl sued below seeking a declaratory judgment that Transcon's lien was invalid under Chapter 56 of the Property Code.[1] In response, Transcon counterclaimed against Pearl, seeking a declaration that the lien was valid, and seeking to foreclose on the lien. As well, Transcom filed a claim for relief against Pearl under a quantum meruit theory, alleging that Pearl was on notice of the services it rendered at the well site, accepted the services, and benefitted thereby. Transcon also filed a third-party petition against PDS for breach of contract and sworn account, which resulted in a default judgment against PDS.

Pearl moved for summary judgment, arguing that it was entitled to judgment as a matter of law on its claim for declaratory judgment seeking to have the lien declared invalid. In its motion, Pearl argued that Chapter 56 of the Property Code only allows a subcontractor to impose a lien on a mineral owner's property in the amount the property owner owes to its contractor, if any, at the time it receives notice of the lien affidavit, and that Pearl Operating did not owe any money to PDS under the Turnkey Contract at that time. Pearl also sought summary judgment on Transcon's

[1] In its original petition, Pearl named several other defendants who had similarly filed lien affidavits on the Garnet State Lease. After the trial court entered summary judgment for Transcon, it severed the claims involving Transcon from the claims against the other named defendants to make its order a final judgment.

quantum meruit claim, arguing, among other things that Transcon's assignor had an express contract with PDS for the services rendered, and that the existence of that contract precluded Transcon from recovering on its quantum meruit claim.

Transcon cross-moved for summary judgment, conversely claiming that it established its right to a lien under Chapter 56 as a matter of law because Pearl Operating still owed money to PDS in an amount more than the lien requested. Alternatively, Transcon sought summary judgment on its claim for quantum meruit, contending that the invoices it submitted to PDS and Pearl for its services established the requisite elements of that claim.

In response to Transcon's cross-motion, Pearl also claimed that the invoices that Transcon was suing on were "inaccurate or fraudulent" by misrepresenting the amount of water that Cannon had hauled from the well site. Pearl therefore argued that even if Transcon established its entitlement to a lien, a question of fact remained over the amount of any such lien. Further, Pearl argued that Transcon had not presented sufficient evidence to support the elements of its claim for quantum meruit relief.

**E. The trial Court's Judgment**

The trial court granted Transcon's motion. In its final judgment, the trial court: (1) issued a declaratory judgment in Transcon's favor finding that it had a "valid and properly perfected mineral lien," which satisfied the requirements of Chapter 56 of the Texas Property Code on the Garnet State Lease in the amount of $57,000; (2) awarded Transcon an "Order of Sale" for foreclosure on the lien, and stated that Transcon could recover the $57,000 from the proceeds of the sale; and (3) awarded Transcon "reasonable and necessary" attorney's fees and costs, and both prejudgment and post-judgment interest on the award.

In an earlier order, the trial court had also awarded "actual damages" to Transcon in the amount of $57,000, but later issued a corrected final judgment to eliminate that damage award. Based on the concessions made in the parties' briefing to this Court, and the inclusion of a Mother Hubbard clause in the final judgment that denied all relief not expressly granted, we conclude that the trial court only sustained Transcon's statutory lien claim. It denied Transcon's motion for summary judgment for quantum meruit and denied Pearl all the summary judgment relief it sought.

**F. Pearl's Challenge to the Trial Court's Judgment**

In challenging the trial court' judgment, Pearl raises multiple issues for our resolution. Pearl's first two issues contend that the trial court erred in finding that Transon's mineral lien was valid under Chapter 56 of the Property Code. The essence of the argument is that the evidence conclusively established that Pearl did not owe PDS any amount when Transcon gave notice of its lien--an essential requirement of the mineral lien statute. Four of Pearl's remaining five issues are alternative arguments that are germane only if we disagree with its first two issues. It alternatively argues that there was at least a fact question of what it owed PDS (Issue Three and Five); the invoices on which Transcon based its claim were overstated (Issue Four); and Transcon failed to disclose the basis for its attorney's fee claim and to segregate the recoverable from unrecoverable fees (Issue Six). Finally, Pearl contends that even if the trial court granted summary judgment in Transcon's favor on its claim for quantum meruit relief, it erred in doing so (Issue Seven). We can resolve the appeal based on the first two issues and focus our review there.

## II. STANDARD OF REVIEW

We review an order granting summary judgment de novo. *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005). We review the evidence presented in the motion and response in the light most favorable to the party against whom the summary judgment was rendered, crediting evidence favorable to that party if reasonable jurors could, and disregarding contrary evidence unless reasonable jurors could not. *See Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009), *citing City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005). The party moving for traditional summary judgment bears the burden to show that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. *Id*., *citing* TEX.R.CIV.P. 166a(c). To be entitled to a summary judgment, the moving party must conclusively establish that there are no genuine issues of material fact to be decided. *See* TEX.R.CIV.P. 166a(c); *M.D. Anderson Hosp. & Tumor Inst. v. Willrich*, 28 S.W.3d 22, 23 (Tex. 2000) (per curiam). A matter is conclusively established "only if reasonable people could not differ in their conclusions." *City of Keller*, 168 S.W.3d at 816; *see also Triton Oil & Gas Corp. v. Marine Contractors & Supply, Inc.*, 644 S.W.2d 443, 446 (Tex. 1982) ("An issue is conclusively established when the evidence is such that there is no room for ordinary minds to differ as to the conclusion to be drawn from it.").

When, as here, "both sides move for summary judgment and the trial court grants one motion and denies the other, the reviewing court should review both sides' summary judgment evidence and determine all questions presented." *Tex. Mut. Ins. Co. v. PHI Air Med., LLC*, 610 S.W.3d 839, 846 (Tex. 2020), *cert. denied*, 141 S. Ct. 2565 (2021), *quoting FM Props. Operating Co. v. City of Austin*, 22 S.W.3d 868, 872 (Tex. 2000) (internal quotation marks omitted). The reviewing court should then render the judgment that the trial court should have rendered. *Id.*

## III. TRANSCON'S MINERAL LIEN

In its first two issues, Pearl contends that the trial court erred in ruling that Transcon's mineral lien was valid under Chapter 56 of the Texas Property Code. We agree.

### A. Applicable Law

Section 56.002 of the Texas Property Code generally grants "[a] mineral contractor or subcontractor . . . a lien to secure payment for labor or services" related to their "mineral activities." TEX.PROP.CODE ANN. § 56.002. In turn, "mineral activities" is broadly defined to include "digging, drilling, torpedoing, operating, completing, maintaining, or repairing an oil, gas, or water well, an oil or gas pipeline, or a mine or quarry." *Id*. § 56.001(1). A "mineral contractor" is defined as a person "who performs labor or furnishes or hauls material, machinery, or supplies used in mineral activities under an express or implied contract with a mineral property owner . . . ." *Id.* § 56.001(2). And a "mineral subcontractor" is defined as a person who "furnishes or hauls material, machinery, or supplies used in mineral activities under contract with a mineral contractor or with a subcontractor; performs labor used in mineral activities under contract with a mineral contractor; or performs labor used in mineral activities as an artisan or day laborer employed by a subcontractor." *Id.* § 56.001(4)(A)-(C).

A leasehold is subject to mineral lien. *Id.* § 56.003(a)(2). To perfect the lien, a mineral subcontractor claiming a lien must serve on the property owner written notice that the lien is claimed not later than the 10th day before the day the affidavit is filed. *Id*. § 56.021(b).

Central to this appeal, section 56.006 provides a substantive limitation on liens: "An owner of land or a leasehold may not be subjected to liability under this chapter greater than the amount agreed to be paid in the contract for furnishing material or performing labor." *Id.* § 56.006. Similarly, section 56.043 provides that an owner is "not liable to the subcontractor for more than the amount that the owner owes the original contractor when the notice is received." *Id.* § 56.043. That provision further allows the notice of lien to trap any funds that the owner may then owe to the original contractor. *Id.* (the owner "who is served with a mineral subcontractor's notice may withhold payment to the contractor in the amount claimed until the debt on which the lien is based is settled or determined to be not owed.”).

**B. Analysis**

The parties agree, as do we, that PDS fits within the definition of a mineral contractor and that Transcon, as Cannon’s assignee, qualifies as a mineral contractor who performed mineral activities on the Garnett State Lease. Pearl, however, argues that it did not owe any money to PDS when it received Transcon’s notice, contending that it paid PDS all that was owed under the express terms of the Turnkey Contract before that time. Pearl therefore contends that the lien was not valid under Chapter 56 of the Property Code.

We agree with Pearl that if it owed no money under the contract to PDS, Chapter 56 would not support imposing a mineral lien. As our sister court has explained, “Chapter 56 is the statutory scheme for impounding funds in the hands of the mineral property owner, who owes those funds to his contractor for mineral activities by the contractor or subcontractor, through the imposition of a lien.” *Energy-Agri Products, Inc. v. Eisenman Chem. Co., Inc.*, 717 S.W.2d 651, 653 (Tex.App.--Amarillo 1986, no writ), *citing* TEX.PROP.CODE ANN. § 56.002; *see also* Rhett G. Campbell, *A Survey of Oil and Gas Bankruptcy Issues*, 5 Tex. J. Oil Gas & Energy L. 265, 311 (2010) (a subcontractor’s lien in effect serves to “trap, in the owner’s hands, funds payable to the general contractor if the owner receives notice from the subcontractors that they are not being paid.”). Thus, a mineral lien under Chapter 56 is dependent upon the state of the account between the owner and its contractor, and not upon the condition of the account between the contractor and subcontractor, when the owner receives notice of the claim. *See Energy-Agri Products, Inc.*, 717 S.W.2d at 653*; Shell W. E & P, Inc. v. Pel-State Bulk Plant, LLC*, 509 S.W.3d 581, 585 (Tex.App.--San Antonio 2016, no pet.) (same); *see also Pearl Res. LLC v. Charger Services, LLC*, 622 S.W.3d

106, 124-25 (Tex.App.--El Paso 2020, pet. denied) (recognizing that Chapter 56 liens are rooted in contractual rights afforded to mineral contractors and subcontractors).

As a result, when the owner has already paid its contractor all that is owed under a contract by the time the subcontractor serves the owner with notice of its claim, the subcontractor is not entitled to a lien under Chapter 56. *See Energy-Agri Products, Inc.*, 717 S.W.2d at 653, *citing Lonergan v. San Antonio Loan & Trust Co.*, 104 S.W. 1061, 1069 (1907); *cf. Shell W. E & P, Inc.*, 509 S.W.3d at 591 (where evidence established that when operator received subcontractor's lien notice, operator owed its contractor more than the amount of the subcontractor's claim, subcontractor had a valid lien against operator under Chapter 56). Recognizing this limitation on Chapter 56 liens, Transcon makes two arguments to convince us that Pearl still owed PDS money when it received the lien notice.

*1. The early termination provisions in the Turnkey Contract*

First, PDS argues that the Turnkey Contract's early termination provisions contractually obligated Pearl to pay PDS for the work performed by its subcontractors. Paragraph 5.3 addressed the "how" of early termination:

> 5.3 Early Termination:
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> (a) By Either Party: Upon giving of written notice, either party may terminate this Contract when total loss or destruction of the rig occurs or a major breakdown with indefinite repair time necessitates stopping operations hereunder.
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> (b) By Operator: Notwithstanding the provisions of Paragraph 3 with respect to the depth to be drilled. Operator shall have the right to direct the stoppage of the work to be performed by Contractor hereunder at any time prior to reaching the specified depth, even though Contractor has made no default hereunder. In such event, Operator shall reimburse Contractor as set forth in Subparagraph 5.4 hereof.

And in the event of early termination, paragraph 5.4 addresses compensation, and as relevant here, what happens to subcontractor's invoices:

> 5.4 Early Termination Compensation:
>
> (a) Prior to Rig Move in: In the event Operator terminates this Contract prior to rig move in, Contractor shall return Operator's Advance Payment in full and present all 3rd party invoices to Operator for payment within 5 Business Days of Contract Termination. The Operator at its sole option, may or may not take over full operations.
>
> (b) After Rig Move in: If such termination occurs after rig move in, Contractor shall present all unpaid and paid invoices to Operator and Operator shall reimburse Contractor the cost of third party invoices paid by the Contractor. Payment may be considered as part of the Advance Payment. The Operator at its sole option, may or may not take over full operations.

Based on these provisions, Transcon argues that PDS invoked the early termination provisions when it "walked off the job," which then required Pearl Operating to reimburse PDS for any invoices that PDS paid to subcontractors for work performed by them. Although Transcon acknowledges that PDS never paid any such invoices, and was obligated to present them to Pearl Operating for payment, it nevertheless argues that we should interpret this clause to mean that Pearl Operating was "obligated under the Agreement to ensure that third parties [were] compensated for their valuable services after the early termination." We disagree.[2]

First, nothing in the record supports a finding that either Pearl Operating or PDS invoked the early termination clause under the contract, as there is no evidence that either party sent the required written notice required in the contract. An affidavit attached to Pearl's motion for summary judgment avers that PDS breached the contract by first failing to prevent the wild well incident, and by subsequently failing to assume responsibility for the costs of remediation for the

[2] Of the several responses that Pearl raises to this argument, one misses the mark. Pearl argues that we should not consider Transcon's early termination clause arguments because they were raised for the first time on appeal. An appellate court, however, must affirm a trial court's judgment if it can be upheld on any legal theory that finds support in the evidence. *Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990). Thus, an appellee who is satisfied with the trial court's judgment may present other independent legal grounds for affirming the judgment in a cross-point for the first time on appeal, as long as the appellee is not seeking any relief greater than that afforded by the judgment. *See City of Austin v. Whittington,* 384 S.W.3d 766, 789 (Tex. 2012). And since Transcom's legal argument does not seek any additional relief, we may consider it in our analysis.

incident, as it had expressly agreed to do under the contract. The early termination clause, however, was an agreed on method for parties not in breach of the agreement to terminate their relationship; it was not a means for the breaching party to transfer its obligations to the other party.

Next, we agree with Pearl that Transcon misinterprets how sections 5.3 and 5.4 fit together for an early termination under the contract. The early termination provisions begin with section 5.3 that describes two scenarios: 5.3(a) dealing with "total loss or destruction of the rig" or "major breakdown" and 5.3(b) for a *Pearl Operating directed* work stoppage before completion of the well, and only without any default by PDS. The section 5.4 compensation provisions upon which Transcon relies are expressly triggered by a 5.3(b) early termination ("In such event, Operator shall reimburse Contractor as set forth in Subparagraph 5.4 hereof.). Yet a 5.3(b) termination did not occur here, as Pearl did not direct a work stoppage. Rather, PDS walked off the job. So even if PDS walking off the job qualified as a section 5.3(a) early termination, section 5.3(a) does not provide for any early termination compensation and contains no reference to the section 5.4 early termination compensation clause.

Section 5.4 also contains language confirming that it only applies to a Pearl Operating directed shutdown. Sections 5.4(a)--that applies to early terminations prior to a rig move in--expressly provides for payment to the contractor "in the event Operator terminates this Contract prior to rig move in[.]" And section 5.4(b) provides for payment to the Contractor "*if such* termination occurs after rig move in" (emphasis supplied). Reading these provisions together in context, as we must, shows that "such termination" in section 5.4(b) necessarily refers back to a Pearl Operating directed termination as described in Section 5.4(a). And as we note above, Pearl Operating did not direct the termination, PDS did.

We thus conclude that the early termination provisions cannot be read to contractually obligate Pearl to pay PDS for the services provided by Cannon.

*2. The payment structure in the Turnkey Contract*

Transcon next argues that Pearl Operating still owed PDS money under the Turnkey Contract, finding it significant that Pearl Operating only paid PDS 30 percent of the total contract amount. Transon contends that Pearl Operating therefore had the remaining 70 percent "reserved for final payment," meaning that Pearl Operating still had "plenty" of funds available under the contract "for payment to the subcontractors, including Transcon." Transcon, however, overlooks the fact that the express terms of the parties' contract only required Pearl Operating to pay the remaining balance of the contract price upon the completion of a successful well, which never occurred. More importantly, the contract expressly obligated PDS--not Pearl Operating--to pay for any remediation costs required upon a blowout or wild well incident, and to indemnify Pearl Operating against any "liability for such cost." Therefore, we would have to rewrite the parties' contract to make Pearl Operating contractually obligated to pay PDS any other sums beyond the initial advance payment, or to make Pearl Operating contractually liable to compensate PDS's subcontractors for their remediation services. This we may not, and will not do. *See generally Barrow-Shaver Res. Co. v. Carrizo Oil & Gas, Inc.*, 590 S.W.3d 471, 487 (Tex. 2019) (it is not the province of the court to change the terms of a parties' unambiguous agreement), *citing Am. Mfrs. Mut. Ins. v. Schaefer*, 124 S.W.3d 154, 162 (Tex. 2003) ("[W]e may neither rewrite the parties' contract nor add to its language.").

Having concluded that Pearl Operating owed no additional sums to PDS or its subcontractors under the express terms of the Turnkey Contract, we conclude that the trial court erred in finding that Transcon had a valid mineral lien on the Garnet State Lease.[3] And because we conclude that the lien was invalid, we need not consider Pearl's Issues Three, Four, and Five in which it contends that the amount of the lien was incorrect due to inaccuracies in the invoices Cannon submitted to PDS.[4]

The trial court should have granted Pearl's motion for summary judgment on the lien issue. Pearl's Issues One and Two are sustained. Issues Three, Four, and Five, which are procedural attacks on Transcon's motion, are overruled as moot given our disposition of Issues One and Two.

## V. TRANSCON'S QUANTUM MERUIT CLAIM

In Issue Seven, Pearl briefs the issue of whether Transcon's quantum meruit claim should have survived summary judgment, contending that the express contract between PDS and Cannon precludes the quantum meruit theory.[5] Pearl claims that it briefed the question out of an "abundance of caution" and asks us to address it, but only if we find the trial court awarded actual damages to Transcon (as distinct from simply granting a lien). Transcon responds that the trial court did not grant summary judgment on the quantum meruit claim, pointing out that the court did not award any damages to Transcon, and instead only based its final judgment on the validity

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[3] Transcon also finds it significant that Pearl Resources was not a party to the Turnkey Contract, and asserts that this Court could therefore affirm the trial court's judgment as to Pearl Resources. However, Transcon does not explain how it would be entitled to a lien against a party that had no contractual connection to the drilling contractor. To the contrary, the fact that Pearl Resources was not a party to the contract would mean that it owed nothing to PDS under the contract, which by itself obviates imposing the lien.

[4] In light of our ruling, we also need not discuss Pearl's argument that the lien affidavit did not adequately describe the subject property.

[5] The astute reader may recall that a prior decision of this Court arose out of the same wild well incident, and involved claims against Pearl. *Pearl Res. LLC v. Charger Services, LLC*, 622 S.W.3d 106, 110 (Tex.App.--El Paso 2020, pet. denied). That case was ultimately resolved on a quantum meruit theory, but neither party contends on appeal that our prior case controls here, or even that the cases are factually similar.

of the mineral lease. The trial court's final corrected judgment supports that view as it only grants relief germane to the lien, and denies all other relief.

As Pearl's brief states: ". . . Pearl presents this issue in the event the Court finds that the trial court did award actual damages to Transcon. *Otherwise, it need not be addressed*." Appellant's Brf. at p.47. Because the trial court granted neither Pearl's or Transcon's motions for summary judgment on the quantum meruit claim, and because Transcon does not contend that we could affirm the judgment based on its quantum meruit claim, we decline to address the claim.

## VI. THE ATTORNEY'S FEE AWARD

Finally, in Issue Six, Pearl contends that the trial court erred in awarding attorney's fees to Transcon, arguing that neither the Property Code nor the Declaratory Judgment Act supported the award, or in the alternative, that the amount of the fees the trial court awarded was not supported by the record. However, as Transcon itself admits, the award of both attorney's fees and costs was based on the trial court's finding in its final judgment that Transcon was the prevailing party on its claim to enforce the mineral lien. *See* TEX.PROP.CODE ANN. § 53.156 (in any proceeding to foreclose a lien or in any proceeding to declare that any lien or claim is invalid or unenforceable in whole or in part, the court shall award costs and reasonable attorney's fees as are equitable and just). Because we reverse that judgment, we must further reverse the award of attorney's fees and costs. We therefore need not consider Pearl's other challenges to the propriety of the award given our ruling.

Pearl's Issue Six is sustained to the extent set forth above.

## VII. CONCLUSION

We reverse the trial court's judgment and in its place render judgment for Pearl on its claim for declaratory relief finding the mineral lien to be invalid and entering a take-nothing judgment on Transcon's counterclaim against Pearl. We also grant Pearl's request that we remand the matter to the trial court for consideration of whether to grant attorney's fees to Pearl given our ruling.

JEFF ALLEY, Justice

February 17, 2022

Before Rodriguez, C.J., Palafox, and Alley, JJ.