

Opinion issued June 8, 2021



In The
Court of Appeals
For The
First District of Texas

NO. 01-19-00634-CV

OILFIELDTOOLS.NET, INC., Appellant

V.

THE OIL FIELD CONNECTION, INC., Appellee

**On Appeal from County Civil Court at Law No. 2
Harris County, Texas
Trial Court Case No. 1078531**

MEMORANDUM OPINION

Appellee, The Oil Field Connection, Inc. (OFC), sued appellant, Oilfieldtools.net, Inc., for breach of an oral contract. OFC alleged that it provided services in connection with Oilfieldtools.net's purchase of equipment from a third-party supplier, and Oilfieldtools.net failed to pay the entirety of the agreed-upon fee.

The case was presented to a jury, which found that an agreement existed between the parties, Oilfieldtools.net breached the agreement, and OFC was entitled to damages amounting to the unpaid portion of its fees. Oilfieldtools.net filed a motion for directed verdict and a motion for new trial, asserting that the evidence was insufficient to support a finding that a valid, enforceable agreement existed between the parties and that the statute of limitations barred OFC's claim. The trial court denied both motions and rendered judgment based on the jury's verdict.

On appeal, Oilfieldtools.net argues: (1) the trial court erred in denying its motion for directed verdict seeking a judgment that no contract existed; (2) the trial court erred in denying its motion for new trial relating to the existence of a contract; (3&4) the evidence was legally and factually insufficient to support the jury's finding that it entered into a contract with OFC; (5) the trial court erred in denying its motion for directed verdict seeking to bar OFC's claims on limitations grounds; and (6) the trial court erred in denying its motion for new trial on limitations grounds.

Because we conclude that Oilfieldtools.net failed to conclusively establish its affirmative defense of limitations and that the evidence was sufficient to support the jury's finding that a contract existed between the parties, we affirm.

Background

In 2012, Oilfieldtools.net purchased a package of three mud pumps from Weatherford Artificial Lift Systems (Weatherford). OFC alleged that, as part of that

transaction, Oilfieldtools.net agreed to pay a fee to OFC for “sourcing” and consulting on the purchase. Oilfieldtools.net paid Weatherford directly for the pumps. OFC invoiced Oilfieldtools.net \$120,590 for its services. Oilfieldtools.net paid a total of \$40,000 to OFC, with the final payment dated April 25, 2013. When OFC realized that no further payments were forthcoming, it obtained legal counsel and sent a demand letter for the remainder of its fee on November 20, 2013.

On June 3, 2016, OFC filed suit against Oilfieldtools.net for breach of contract and attorney’s fees. Oilfieldtools.net denied the allegations against it, asserting, among other grounds, that no contract existed between the parties and that OFC’s claim was barred by the statute of limitations.

At trial, OFC presented the testimony of its founder and representative Clint Easterling. Easterling testified that when he started OFC with his business partner, they performed manufacturing and installation of electrical equipment on oil rigs and then eventually branched out to manufacturing, installation, and servicing of other oilfield equipment. One of the services that OFC provided was consulting on the purchase and sale of oilfield equipment, using the company’s knowledge and experience to “source” equipment for people in the U.S. and the international market. Easterling testified that when OFC sourced equipment for another company, OFC would purchase the equipment then resell it with its own fee or markup included in the price.

Easterling testified that he had known Michael Husser from Oilfieldtools.net socially for years, and they eventually began to discuss business. Sometime around the end of 2011, Husser gave Easterling a tour of a new facility and mentioned needing three mud pumps. Easterling told Husser that OFC could help him source the pumps. Easterling testified that Husser decided to source the pumps through OFC, rather than seeking to purchase them directly, because OFC had connections with Weatherford, the manufacturer of the pumps. Easterling testified that he put Husser in contact with Weatherford, introduced Husser to the plant manager at Weatherford, and got Husser a tour of Weatherford's plant. He helped facilitate the negotiations between Oilfieldtools.net and Weatherford and acted as a "go-between" for the purchase, including helping with technical specifications for the pumps themselves. Easterling referred to one instance in which Husser emailed him to ensure that the pumps would meet certain specifications as support for his testimony. The email was admitted into evidence at trial.

OFC introduced a purchase order bearing "P.O. Number 300048" and dated May 18, 2012, from Oilfieldtools.net to OFC as the "Vendor." The May 18 Purchase Order set out the specifications for the three pumps and set out a total cost of \$1,548,450. Easterling testified that this total included the price of the pumps themselves plus OFC's fee.

Easterling further testified that, at some point after OFC received the May 18, 2012 purchase order, “Mr. Husser asked me if it was all right to purchase direct from Weatherford so he could establish some type of credit line with Weatherford and that he would pay the difference and my invoice and Weatherford, he would pay my commission from that.” Thus, Easterling testified that he invoiced OFC’s fees separately from the purchase price of the pumps because “Husser had asked [him] to invoice him separately for [OFC’s] fees.”

OFC introduced two additional invoices at trial to support Easterling’s testimony. The first was an invoice dated May 21, 2012, from OFC to Oilfieldtools.net for “Labor” costs totaling \$121,590. The description on this invoice stated that it was for “consulting and engineering on (3) pumps” and identified the Weatherford pumps by description and serial number. The second invoice was from Weatherford to Oilfieldtools.net, dated May 25, 2012, for the three pumps with a total cost of \$1,425,900. Oilfieldtools.net paid this amount directly to Weatherford.

Easterling testified that he obtained two payments of \$20,000 each from Oilfieldtools.net on July 19, 2012 and April 25, 2013. When no further payments were forthcoming, Easterling contacted Husser. Easterling testified that Husser told him “he was waiting on funds and when he got paid that he would pay us.” After waiting a few more months, Easterling decided to obtain legal advice, and on

November 20, 2013, his attorneys sent a demand letter for the unpaid balance of OFC's fee—\$81,590.

Oilfieldtools.net presented the testimony of its principal and representative, Michael Husser. Husser testified that Oilfieldtools.net is also in the business of buying and selling oilfield equipment. He testified that, although he discussed with Easterling the idea of purchasing mud pumps from Weatherford, neither he nor Oilfieldtools.net ever engaged OFC to help with the purchase of the pumps. He disagreed with Easterling's testimony regarding the parties' alleged agreement and unequivocally stated that he did not hire OFC to assist with the transaction.

Husser testified that he worked directly with Weatherford. Husser stated that he did not recognize the May 18 purchase order introduced by OFC that purported to be from Oilfieldtools.net to OFC seeking to purchase the three pumps. He testified that the purchase order came from OFC, not from Oilfieldtools.net. Instead, Oilfieldtools.net presented another purchase order—bearing the same number and date as the one introduced by OFC and identifying the same Weatherford pumps. Oilfieldtools.net's purchase order, however, named Weatherford as the vendor and listed the total price of \$1,425,900 for the pumps.

Husser also testified that he never saw the May 21 invoice from OFC for its consulting and engineering services until after OFC had filed suit. Husser testified that he recognized the July 2012 and April 2013 checks from Oilfieldtools.net to

OFC for \$20,000 each, but when asked why Oilfieldtools.net paid OFC if there was no agreement, Husser testified:

I don't know why these checks were there, but, I mean, we were—you know, at the time we were—and again, that's my accounting department. You know, I don't know what the checks were for or what they were about, but we were doing about a million dollars a month in checks, so. . . .

Husser stated that his CFO at the time must have written the check, but that individual had been let go from Oilfieldtools.net sometime in 2013 or 2014. Husser testified that Oilfieldtools.net itself resold the pumps and that its profit was around \$121,000, so that the fee requested from OFC would equal or exceed the profit that Oilfieldtools.net made on the transaction.

After OFC rested, Oilfieldtools.net moved for a directed verdict, asserting that OFC had presented no evidence to support its claim that a contract existed between OFC and Oilfieldtools.net. Oilfieldtools.net further argued that the statute of limitations barred OFC's claim, noting that OFC filed suit in June 2016 and arguing that the cause of action accrued in May 2012, when OFC created the invoice for its services. OFC responded that its cause of action accrued, at the earliest, sometime after Oilfieldtools.net's final payment in April 2013, and, thus, the claim was filed within the four-year limitations period for breach of contract claims. The trial court denied the directed verdict on both grounds.

The jury found that Oilfieldtools.net and OFC entered into a contract for services, that Oilfieldtools.net breached the contract, and that OFC was entitled to \$81,590 in damages. The trial court rendered judgment on the jury's verdict, and Oilfieldtools.net moved for a new trial, again asserting that the evidence was insufficient to support the jury's finding that there was a contract between the parties and that OFC's claim was barred by the statute of limitations. The trial court denied the motion for new trial, and this appeal followed.

Statute of Limitations

In its fifth and sixth issues, Oilfieldtools.net argues that the trial court erred in denying its motion for directed verdict and motion for new trial asserting that OFC's claims are barred by the statute of limitations.

The statute of limitations is an affirmative defense, and Oilfieldtools.net bore the burden to plead, prove, and secure findings to support its affirmative defense. *See* TEX. R. CIV. P. 94; *Zorrilla v. Aypco Constr. II, LLC*, 469 S.W.3d 143, 156 (Tex. 2015) (holding that party asserting defense, such as affirmative defense of statute of limitations, bears burden of proof "to present sufficient evidence to establish the defense and obtain the requisite jury findings"); *Woods v. William M. Mercer, Inc.*, 769 S.W.2d 515, 517 (Tex. 1988) (affirmative defense of limitations must be proven by asserting party); *Thomas v. California Golden Coast, LLC*, No. 01-15-01046-CV, 2017 WL 2117540, at *3 (Tex. App.—Houston [1st Dist.] May 16, 2017, pet.

denied) (mem. op.). This burden includes establishing when OFC's cause of action accrued. *See Thomas*, 2017 WL 2117540, at *3. "If the jury is not asked to determine when the cause of action accrued for purposes of supporting a limitations defense, the defense is waived unless the date of accrual was conclusively established under the evidence." *Id.* (citing *Holland v. Lovelace*, 352 S.W.3d 777, 788 (Tex. App.—Dallas 2011, pet. denied)).

The applicable statute of limitations for a breach of contract claim is four years from the date the cause of action accrues. *See* TEX. CIV. PRAC. & REM. CODE § 16.051 (four-year residual statute of limitations); *Exxon Corp. v. Emerald Oil & Gas Co.*, 348 S.W.3d 194, 202 (Tex. 2011); *Ammerman v. Ranches of Clear Creek Cmty. Ass'n, Inc.*, 562 S.W.3d 622, 636 (Tex. App.—Houston [1st Dist.] 2018, no pet.). A claim for breach of contract accrues when the contract is breached. *Cosgrove v. Cade*, 468 S.W.3d 32, 39 (Tex. 2015) (citing *Stine v. Stewart*, 80 S.W.3d 586, 592 (Tex. 2002)).

Oilfieldtools.net argues that OFC's cause of action accrued on May 21, 2012—the date of the invoice that OFC sent to Oilfieldtools.net for the \$121,590 in consulting and engineering fees owed in connection with the pump transaction. Oilfieldtools.net points to the statement in the invoice that the referenced amount was "[d]ue on receipt." But the date of the invoice by itself does not conclusively establish the date of Oilfieldtools.net's breach. Husser denied ever receiving the

invoice on behalf of Oilfieldtools.net, testifying that he was not aware that the invoice existed until after OFC had filed the underlying suit. Husser did not know if or when any other employee of Oilfieldtools.net had received the invoice.

OFC presented evidence that Oilfieldtools.net made two payments, including one check for \$20,000 on April 25, 2013. This is at least some evidence that the parties were continuing to perform in April 2013, and Easterling testified that he spoke to Husser after that date to determine when the remaining payment would be made. According to Easterling, Husser stated that Oilfieldtools.net would pay OFC once it received some payments that it was waiting on. Given this evidence, we conclude that Oilfieldtools.net failed to conclusively establish when OFC's breach of contract claim accrued, and it failed to secure jury findings to support its limitations defense. *See Zorrilla*, 469 S.W.3d at 156; *Thomas*, 2017 WL 2117540, at *3.

Because Oilfieldtools.net failed to conclusively establish its affirmative defense of limitations, the trial court did not err in denying the motion for directed verdict or motion for new trial on this ground. *See Prudential Ins. Co. of Am. v. Fin. Review Servs., Inc.*, 29 S.W.3d 74, 77 (Tex. 2000) (holding that "trial court may direct a verdict for the defendant if the plaintiff admits or the evidence conclusively establishes a defense to the plaintiff's cause of action"); *see also* TEX. R. CIV. P. 320 (providing that "[n]ew trials may be granted and judgment set aside for good cause");

Waffle House, Inc. v. Williams, 313 S.W.3d 796, 813 (holding that courts review denial of motion for new trial for abuse of discretion).

We overrule Oilfieldtools.net’s fifth and sixth issues.

Breach of Contract

In its first four issues, Oilfieldtools.net complains that the trial court erred in denying its motion for directed verdict and motion for new trial and in rendering judgment on the jury’s verdict because there was legally and factually insufficient evidence to support the jury’s finding that the parties formed a contract.

A. Standard of Review

We review Oilfieldtools.net’s challenge to the sufficiency of the evidence—whether asserted in its motion for directed verdict, motion for new trial, or as a ground for reversal on appeal—under the same standard. *See City of Keller v. Wilson*, 168 S.W.3d 802, 822–23 (Tex. 2005) (setting out standard for reviewing sufficiency challenges and holding that “the test for legal sufficiency should be the same for summary judgment, directed verdicts, judgments notwithstanding the verdict, and appellate no-evidence review”).

In a legal sufficiency review, we consider the evidence in a light most favorable to the jury’s findings, crediting favorable evidence if reasonable jurors could, and disregarding contrary evidence unless reasonable jurors could not. *Id.* at 824. A party that challenges the legal sufficiency of a finding on which it did not

have the burden of proof—as Oilfieldtools.net does here—must show that no evidence supports the jury’s finding. *Emerald Oil & Gas*, 348 S.W.3d at 215. “Jurors are the sole judges of the credibility of the witnesses and the weight to give their testimony.” *City of Keller*, 168 S.W.3d at 819. Because jurors “may choose to believe one witness and disbelieve another,” we may not substitute our judgment for that of the fact-finder. *Id.*

In reviewing the factual sufficiency of the evidence, we “must consider and weigh all the evidence and should set aside the judgment only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.” *Arias v. Brookstone, L.P.*, 265 S.W.3d 459, 468 (Tex. App.—Houston [1st Dist.] 2007, pet. denied) (citing *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986)). Unlike legal-sufficiency review, factual-sufficiency review requires that we review the evidence that both supports and contradicts the jury’s verdict in a neutral light. *Samson Lone Star Ltd. P’ship v. Hooks*, 497 S.W.3d 1, 11 (Tex. App.—Houston [1st Dist.] 2016, pet. denied) (citing *Cain*, 709 S.W.2d at 176). The trier of fact may choose to “believe one witness and disbelieve others” and “may resolve inconsistencies in the testimony of any witness.” *Id.* (quoting *McGalliard v. Kuhlmann*, 722 S.W.2d 694, 697 (Tex. 1986)).

B. Analysis

The unobjected-to jury charge asked, “Did Oilfieldtools.net, Inc. enter into an agreement where it agreed to pay [OFC] a fee for work performed in connection with the order of pumps from Weatherford Artificial Lift Systems?” The charge instructed, “In deciding whether the parties reached an agreement, you may consider what they said and did in light of the surrounding circumstances, including any earlier course of dealing. You may not consider the parties’ unexpressed thoughts or intentions.” The jury answered yes to this question. Oilfieldtools.net argues in its brief, as it did in its motion for directed verdict and its motion for new trial, that OFC failed to produce sufficient evidence that a contract existed between the parties.

The existence of a valid contract is an essential element of a breach of contract claim. *Fortitude Energy, LLC v. Sooner Pipe LLC*, 564 S.W.3d 167, 180 (Tex. App.—Houston [1st Dist.] 2018, no pet.). The elements of a valid contract are (1) an offer, (2) acceptance, (3) a meeting of the minds, (4) each party’s consent to the terms, and (5) execution and delivery of the contract with the intent that it be mutual and binding. *Prime Prods., Inc. v. S.S.I. Plastics, Inc.*, 97 S.W.3d 631, 636 (Tex. App.—Houston [1st Dist.] 2002, pet. denied). The elements of written and oral contracts are the same and must be present for a contract to be binding. *Tyco Valves & Controls, L.P. v. Colorado*, 365 S.W.3d 750, 771 (Tex. App.—Houston [1st Dist.] 2012), *aff’d*, 432 S.W.3d 885, 894 (Tex. 2014); *Wal-Mart Stores, Inc. v. Lopez*, 93

S.W.3d 548, 555 (Tex. App.—Houston [14th Dist.] 2002, no pet.). “In determining the existence of an oral contract, the court looks to the communications between the parties and to the acts and circumstances surrounding those communications.” *Prime Prods., Inc.*, 97 S.W.3d at 636.

Oilfieldtools.net specifically argues that OFC failed to provide a clear and definite statement of the material terms of the alleged contract. It points to various purported inconsistencies in the evidence presented by OFC through Easterling’s testimony and the documents admitted at trial. Oilfieldtools.net argues that “none of the versions of the alleged contracts advanced by [OFC] provides a formula for calculation which produces a sum equal to the amount [Easterling] testified is the agreed amount owed by [Oilfieldtools.net].” And Oilfieldtools.net argues that Easterling’s testimony was inconsistent and vague, and, thus, failed to establish the specific terms of the parties’ agreement or the parties’ meeting of the minds. These arguments, however, disregard the nature of the evidence and the role of the jury as the finder of fact.

The determination of whether the parties had a meeting of the minds must be resolved utilizing an objective standard; we consider the meaning reasonably conveyed by what the parties said and did, and not on their subjective state of mind. *Parker Drilling Co. v. Romfor Supply Co.*, 316 S.W.3d 68, 73 (Tex. App.—Houston [14th Dist.] 2010, pet. denied). “We view the conduct and circumstances

surrounding the transaction from a reasonable person’s interpretation at that particular point in time.” *Id.* A contract also must be “sufficiently definite to confirm that both parties actually intended to be contractually bound.” *Fischer v. CTMI, L.L.C.*, 479 S.W.3d 231, 237 (Tex. 2016). “To be enforceable, a contract must address all of its essential and material terms with ‘a reasonable degree of certainty and definiteness.’” *Id.* (quoting *Pace Corp. v. Jackson*, 284 S.W.2d 340, 345 (Tex. 1955)). Whether a particular contractual term is essential or material is a question of law. *Sharifi v. Steen Auto., LLC*, 370 S.W.3d 126, 142 (Tex. App.—Dallas 2012, no pet.).

Easterling testified that he and Husser, on behalf of OFC and Oilfieldtools.net, respectively, agreed that OFC would use its connections with Weatherford to help Husser procure three mud pumps. In return, Oilfieldtools.net would pay a markup or fee for these services. Easterling described the nature of OFC’s services to Oilfieldtools.net in various ways, at times calling it “sourcing” or consulting and at other times stating that he acted as a “go-between” with Oilfieldtools.net and Weatherford by using his connections to procure an introduction between Husser and key people at Weatherford. Easterling testified that he usually resold equipment that he procured for his clients at a markup that would include the cost of the equipment from the supplier plus his own fee. That is the arrangement that was reflected in the May 18 purchase order that OFC introduced at trial—showing that

Oilfieldtools.net would purchase the three Weatherford pumps from OFC for a total cost of \$1,548,450.

Easterling further testified that Husser, however, wanted to purchase directly from Weatherford so that he could build independent business with that company. Husser asked that OFC's services be invoiced separately and identified as "consulting and engineering" services. Thus, Weatherford invoiced Oilfieldtools.net \$1,425,900 for the three pumps, and OFC invoiced Oilfieldtools.net \$121,590 for "consulting and engineering" services related to the pumps. Easterling testified that this fee was calculated by starting with the May 18 purchase order from Oilfieldtools.net and subtracting the cost of the pumps from Weatherford, leaving the remaining amount due as OFC's fee.

Given the specific facts of this case and the nature of the transaction, Easterling's testimony supports the jury's finding that "Oilfieldtools.net, Inc. enter[ed] into an agreement where it agreed to pay [OFC] a fee for work performed in connection with the order of pumps from [Weatherford]." Easterling's testimony sets out the material terms agreed to by the parties—OFC would leverage its connections with Weatherford to help Oilfieldtools.net obtain the mud pumps in exchange for a fee. Easterling further testified that this fee was \$121,590, as invoiced to Oilfieldtools.net on May 21, 2012. These terms are sufficiently specific to be enforceable. *See Fischer*, 479 S.W.3d at 237.

Oilfieldtools.net argues that Easterling's testimony and the other evidence at trial contains numerous inconsistencies and deficiencies. For example, it argues that none of the documents make any reference to a "commission" from Oilfieldtools.net to OFC and that OFC's invoice fails to "provide any method of calculation of a commission." The May 21 invoice from OFC to Oilfieldtools.net stated that the \$121,590 fee was for "consulting and engineering," but Easterling acknowledged at trial that he was not an engineer, and his role was as a consultant or "go-between," rather than as an engineer. Oilfieldtools.net further argues that subtracting the cost of the pumps—\$1,425,900—from the amount identified in the original May 18 purchase order from Oilfieldtools.net to OFC as the "vendor" of the pumps—\$1,548,450—results in a fee owed to OFC of \$122,550, not \$121,590 as testified by Easterling at trial. Oilfieldtools.net also argues that Easterling further contradicted himself during his deposition when he testified that his fee was calculated based on 6% of the total cost of the pumps, which would result in a much smaller fee. Easterling testified at trial that, at one point the parties discussed various percentages, but OFC's fee was ultimately determined based on the purchase order it received from Oilfieldtools.net. Easterling testified that he subtracted the actual costs of the pumps from Weatherford from the amount identified in the original purchase order and then invoiced Oilfieldtools.net separately for the consulting fee of \$121,590.

We observe that the jurors were the sole judges of the credibility of the witnesses and the weight to give their testimony, and they were free “to believe one witness and disbelieve another.” *City of Keller*, 168 S.W.3d at 819. We defer to the jury’s resolution of disputed or contradictory facts and will not substitute our judgment for that of the fact-finder. *See id.* Considering the jury’s finding in light of all of the evidence—even the evidence identified by Oilfieldtools.net as contradictory or incomplete—we cannot say that the jury’s finding of the existence of an enforceable agreement was so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *See Cain*, 709 S.W.2d at 176; *Arias*, 265 S.W.3d at 468.

Accordingly, we conclude that the evidence was legally and factually sufficient to support the jury’s finding. *See City of Keller*, 168 S.W.3d at 827; *Cain*, 709 S.W.2d at 176; *Arias*, 265 S.W.3d at 468. We further conclude that the trial court did not err in denying Oilfieldtools.net’s motion for directed verdict or motion for new trial on the ground that the evidence was insufficient to support a finding that a valid, enforceable contract existed between the parties. *See City of Keller*, 168 S.W.3d at 822–23.

We overrule Oilfieldtools.net’s first through fourth issues.

Conclusion

We affirm the judgment of the trial court.

Richard Hightower
Justice

Panel consists of Justices Hightower, Countiss, and Farris.