



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-20-00468-CV

1776 ENERGY PARTNERS, LLC,
Appellant

v.

FREEMPORT-MCMORAN OIL & GAS LLC as Successor in Interest to Plains Exploration &
Production Company and Encana Oil & Gas (USA), Inc.,
Appellees

From the 81st Judicial District Court, Karnes County, Texas
Trial Court No. 13-12-00247-CVK
Honorable Lynn Ellison, Judge Presiding

Opinion by: Irene Rios, Justice

Sitting: Luz Elena D. Chapa, Justice
Irene Rios, Justice
Liza A. Rodriguez, Justice

Delivered and Filed: December 29, 2021

REVERSED AND REMANDED

Appellant 1776 Energy Partners, LLC (“1776 Energy”) appeals the trial court’s summary judgment in favor of appellees Freeport-McMoRan Oil & Gas, LLC and Encana Oil & Gas (USA), Inc. (collectively “FMOG”). 1776 Energy claimed FMOG wrongfully withheld payments from oil and gas production and sought statutory interest on the withheld payments. The trial court determined, as a matter of law, FMOG was entitled to withhold the payments under subsection 91.402(b) of the Texas Natural Resources Code. We reverse the judgment of the trial court and remand the case for further proceedings consistent with this opinion.

BACKGROUND

From November 2011 to March 2012, 1776 Energy and FMOG entered into five joint operating agreements (collectively “the JOAs”) outlining their contractual obligations regarding the development and production of minerals on oil and gas leases owned by the parties.¹ Under the JOAs, FMOG is designated as the operator of the oil and gas wells and 1776 Energy is designated as a non-operator. The JOAs obligate 1776 Energy to pay its proportionate share of operation and development expenses (“Joint Interest Billings”) and, as the minerals are developed and sold, the JOAs obligate FMOG to pay 1776 Energy its proportionate share of the net proceeds from the production of the minerals (“JOA payments”).

In 2011, Longview Energy Company (“Longview Energy”) sued 1776 Energy, formerly known as Riley-Huff Energy Group, LLC (“Riley-Huff”), for breach of fiduciary duty by taking a corporate opportunity (the “Longview suit”).² Longview Energy initially prevailed in the Longview suit. On December 14, 2012, the trial court in the Longview suit rendered an amended final judgment (the “Longview Judgment”) stating in relevant part:

1. Longview [Energy] has an equitable interest in and is granted a constructive trust (the “Constructive Trust”) over all right, title and interest of [1776 Energy] in and to[, among other things, 1776 Energy’s mineral interests and rights to production payments under the JOAs].

....

3. Within thirty days of the entry of this amended final judgment, [1776 Energy] is ORDERED to execute and deliver to Longview [Energy] all instruments and documents and to do all acts and things as may be necessary to fully transfer, convey, grant, or assign to Longview [Energy] the legal title to all of the respective properties, rights and interests (real, personal, mixed, contractual, expectancy, or otherwise) described in paragraph 1, including without

¹ Each JOA pertains to a different unit. Aside from covering different leases, the parties agree the five JOAs are substantially identical.

² In its Third Amended Petition, 1776 Energy states: “On March 28, 2013, Riley-Huff Energy Group, LLC filed a Certificate of Amendment wherein its name was amended to 1776 Energy Partners[, LLC].” Because Riley-Huff and 1776 Energy are the same entity, we refer to them both as 1776 Energy throughout the opinion.

limitation, executing assignments or conveyance of all Leases, Wells, and other properties, assets, rights, or other interests described in paragraph 1 (collectively, the “Conveyance”). . . .

4. The Court further ORDERS that prior to the Conveyance, [1776 Energy] holds the properties, rights, and interests described in paragraph 1 only to the extent of legal title as a constructive trustee for Longview’s use and benefit and that [1776 Energy] holds no equitable interest therein.

1776 Energy appealed the Longview Judgment and posted a supersedeas bond to suspend enforcement of the judgment. At some point after entry of the Longview Judgment, FMOG ceased sending JOA payments to 1776 Energy and held those funds in suspense.

On November 25, 2015, this court reversed the Longview Judgment and rendered a take-nothing judgment in favor of 1776 Energy f/k/a Riley-Huff. *See generally The Huff Energy Fund, L.P. v. Longview Energy Co.*, 482 S.W.3d 184 (Tex. App.—San Antonio 2015) *aff’d sub nom., Longview Energy Co. v. Huff Energy Fund LP*, 533 S.W.3d 866 (Tex. 2017). On June 9, 2017, the Texas Supreme Court affirmed this court’s judgment and mandate issued on December 11, 2017. *See generally Longview Energy Co. v. Huff Energy Fund LP*, 533 S.W.3d 866 (Tex. 2017); FMOG deducted the accrued and unpaid Joint Interest Billings from the suspended funds and released the netted funds to 1776 Energy on December 20, 2017.

While the Longview suit was pending on appeal, 1776 Energy filed the underlying lawsuit claiming FMOG breached the JOAs when it withheld the JOA payments and claiming it was entitled to interest on the wrongfully withheld payments. FMOG filed a motion for summary judgment asserting, as a matter of law, it was entitled to withhold the JOA payments under the safe harbor provisions in subsection 91.402(b) of the Texas Natural Resources Code. The trial court granted FMOG’s summary judgment and, after a trial on attorney’s fees, rendered a final judgment: (1) dismissing 1776 Energy’s claims with prejudice; (2) declaring FMOG as the prevailing party; and (3) awarding FMOG attorney’s fees. 1776 Energy appeals.

STANDARD OF REVIEW

We review a trial court's ruling on a summary judgment motion de novo. *Tarr v. Timberwood Park Owners Assoc., Inc.*, 556 S.W.3d 274, 278 (Tex. 2018). To prevail on a traditional summary judgment motion, the movant must show that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Provident Life & Accident Ins. Co. v. Knott*, 128 S.W.3d 211, 215–16 (Tex. 2003). In reviewing a trial court's summary judgment ruling, we take as true all evidence favorable to the nonmovant, indulging every reasonable inference and resolving any doubts in the nonmovant's favor. *Knott*, 128 S.W.3d at 215. "When a trial court's order granting summary judgment does not specify the grounds relied upon, the reviewing court must affirm summary judgment if any of the summary judgment grounds are meritorious." *See FM Props. Operating Co. v. City of Austin*, 22 S.W.3d 868, 872 (Tex. 2000).

SAFE HARBOR PROVISIONS

1776 Energy argues FMOG failed to establish, as a matter of law, it was entitled to withhold JOA payments without interest under the safe harbor provisions in section 91.402 of the Texas Natural Resources Code.

Subsection 91.402(a) of the Texas Natural Resources Code sets time limits for when "proceeds derived from the sale of oil or gas production from an oil or gas well located in this state must be paid to each payee" by a payor. *See* TEX. NAT. RES. CODE ANN. § 91.402(a). Section 91.403 provides that interest will accrue on payments that have not been made in the time limits specified in subsection 91.402(a). *Id.* § 91.403. However, payments may be withheld without interest beyond the time limits set out in subsection 91.402(a) if there is: (1) a dispute concerning title that would affect distribution of payments; or (2) a reasonable doubt that the payee has clear title to the interest in the proceeds of production. *Id.* § 91.402(b)(1)(A), (b)(1)(B)(ii).

A. Title Dispute Affecting the Distribution of Payments

1776 Energy argues any purported title dispute resulting from the Longview Judgment did not affect the distribution of payments because title to the mineral leasehold interests and production proceeds subject to the JOA belonged to 1776 Energy: (a) as owner of the mineral interests and production proceeds; or (b) as trustee of the constructive trust created by the Longview Judgment. In either scenario, 1776 Energy argues distribution of payments were to be paid to 1776 Energy. In support of its argument, 1776 Energy points out that the Longview Judgment did not divest it of the mineral leasehold interests and production proceeds governed by the JOAs, but rather ordered 1776 Energy to hold the mineral leasehold interests and production proceeds in trust for the benefit of Longview until a proper transfer of the assets could be completed. Because the supersedeas bond suspended enforcement of the Longview Judgment, 1776 Energy argues title was never transferred to Longview Energy and remained with 1776 Energy.

FMOG argues, as a matter of law, it was entitled to withhold the JOA payments without interest because the Longview Judgment created a title dispute that was not resolved until the Texas Supreme Court issued its mandate finally adjudicating the Longview suit on December 11, 2017.

We need not address the effects of the supersedeas bond or whether the Longview Judgment created a dispute concerning title. The safe harbor statute requires more than a mere dispute concerning title before a payor can withhold payments without accruing interest. Under subsection 91.402(b)(1)(A) of the Texas Natural Resources Code, FMOG would be entitled to withhold the JOA payments if there is “a dispute concerning title that would affect distribution of payments.” TEX. NAT. RES. CODE ANN. § 91.402(b)(1)(A). The statute expressly requires the dispute concerning title *affect the distribution of payments*. See *id.*; see also *Tex. Dep’t of Pub.*

Safety v. Deakyne, 371 S.W.3d 303, 305–06 (Tex. App.—San Antonio 2012, pet. denied) (alterations and quotations omitted) (“We give effect to all the words of a statute and do not treat any statutory language as surplusage, if possible.”).

Here, assuming without deciding that the Longview Judgment did create a dispute concerning title—notwithstanding any effect the supersedeas bond may have on the Longview Judgment—this dispute still would not have affected the distribution of payments. “[U]nder the constructive trust doctrine, the party who has been unjustly enriched at another’s expense is treated as a trustee under state law who holds legal title for the injured party’s benefit.” *Swinehart v. Stubbeman, McRae, Sealy, Laughlin & Browder, Inc.*, 48 S.W.3d 865, 883 (Tex. App.—Houston [14th Dist.] 2001, pet. denied). The Longview Judgment clearly established a constructive trust where legal title to the mineral leases covered by the JOAs—and the resulting production payments—remained with 1776 Energy for the benefit of Longview Energy. Further, the Longview Judgment expressly states that 1776 Energy holds “legal title” of the JOA payments “as a constructive trustee for Longview [Energy’s] use and benefit” until 1776 Energy properly conveys legal title of the assets to Longview Energy.

1776 Energy would have been entitled to the JOA payments either: (1) as owner of legal and equitable title; or (2) as trustee, under the Longview Judgment, for the benefit of Longview Energy until 1776 Energy could transfer legal title to Longview Energy. The assets were never transferred to Longview Energy because 1776 Energy posted a supersedeas bond to suspend enforcement of the Longview Judgment. *See* TEX. R. APP. P. 24.1(f). Accordingly, FMOG failed to meet its summary judgment burden on this ground because it failed to establish, as a matter of law, that the Longview Judgment created a dispute concerning title that would affect distribution of payments subject to the JOAs.

B. Reasonable Doubt Payee Has Clear Title to the Proceeds

1776 Energy argues summary judgment was improper because it raised a genuine issue of material fact in its summary judgment response on whether FMOG's doubt that 1776 Energy had clear title to the interests in the production proceeds was reasonable. FMOG argues, as a matter of law, the Longview Judgment created a reasonable doubt that 1776 Energy had clear title to the interests in the production proceeds subject to the JOAs.

Determining whether something is reasonable is often an issue of fact that should be adjudicated by the factfinder because it requires a comparison to surrounding circumstances. *See Nissan N. Am., Inc. v. Tex. Dep't of Motor Vehicles*, 592 S.W.3d 480, 493–94 (Tex. App.—Texarkana 2019, no pet.) (“The definition of the word reasonable suggests that this provision creates a fact question because it requires a comparison to surrounding circumstances.”). Here, 1776 Energy attached the affidavit of Rick Bobigian, the president of 1776 Energy, to its summary judgment response. Bobigian's affidavit stated:

1776 Energy has many oil and gas interests throughout Texas that fell under the purview of the constructive trust purportedly created by the [Longview Judgment]. However, out of all the parties that 1776 Energy was in business with before, after, and during the [Longview suit, FMOG was] the only one[] that suspended payment.

1776 Energy also attached deposition testimony from Annette Hoover, Encana Oil & Gas (USA), Inc.'s corporate representative, who testified: “I believe the language [of the Longview Judgment] states that 1776 [Energy] was the trustee. And then they were to hold the asset for the benefit of Longview.”

We must take these statements as true and indulge every reasonable inference and resolve any doubts in 1776 Energy's favor. *See Knott*, 128 S.W.3d at 215. The statements dispute FMOG's assertion that it had a reasonable doubt that 1776 Energy had clear title to the interests in the production proceeds. When viewing the evidence under the appropriate standard of review,

we conclude 1776 Energy raised a genuine issue of material fact on whether FMOG's doubt was reasonable. Because FMOG failed to establish that it was entitled to judgment as a matter of law, and 1776 Energy presented evidence to the trial court that raised a genuine issue of material fact, we hold summary judgment was improper.

Accordingly, we sustain 1776 Energy's sole issue.

CONCLUSION

The judgment of the trial court is reversed, and the case is remanded for further proceedings consistent with this opinion.

Irene Rios, Justice