

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-17-00079-CV

IN RE BBX OPERATING, LLC

Original Proceeding
1st District Court of Jasper County, Texas
Trial Cause No. 35,155

MEMORANDUM OPINION

In this mandamus proceeding, Relator BBX Operating, LLC (BBX) contends the trial court abused its discretion by issuing two orders enforcing a Rule 11 settlement agreement in a lawsuit concerning oil and gas revenues due to the mineral leasehold working interest owners under a joint operating agreement. BBX argues that: (1) specific performance is inappropriate relief for breach of the settlement agreement; (2) the trial court's orders were entered without following the required procedure for enforcement of a Rule 11 agreement; and (3) BBX is entitled to withhold ordered payment of production revenue due to the real parties in interest's

failure to pay expenses. The real parties in interest, American Fluorite, Inc., GeoSouthern Energy Partners, LP, and GeoSouthern Energy Corporation (collectively, “GeoSouthern”), argue that: (1) the trial court used a procedure requested by BBX; and (2) BBX has an adequate remedy at law because it may move to enforce other portions of the agreement. We hold the trial court abused its discretion by summarily enforcing the settlement agreement without a trial of disputed fact issues.

The parties entered into a written settlement agreement on March 7, 2016. A dispute arose regarding BBX’s right to offset payments due under the agreement when GeoSouthern withheld joint interest billings in reaction to a notice of a third party lien. BBX moved to enforce GeoSouthern’s obligation under the Rule 11 agreement to non-suit its case. GeoSouthern moved to enforce the settlement agreement by requiring payment by BBX of GeoSouthern’s share of production revenue attributable to production in October and November 2016 within five business days. The trial court conducted a hearing in which no testimony was taken. On January 24, 2017, the trial court ordered BBX to pay GeoSouthern “its share of production revenue attributable to production sold in October, November and December 2016” within fifteen days and ordered BBX to comply with paragraph 4 of the agreement, which required subsequent monthly wire transfers of revenue

payments for production attributable to each preceding month. After an additional non-evidentiary hearing on March 1, 2017, the trial court modified the payment date of its January 24, 2017 order and ordered that BBX pay GeoSouthern its “respective shares of production revenue attributable to revenue payable in October, November and December 2016 and January and February, 2017” by March 16, 2017.

A written settlement agreement may be enforced as a claim for breach of contract. *See Padilla v. LaFrance*, 907 S.W.2d 454, 461 (Tex. 1995). The breach of contract claim is subject to the normal rules of pleading and proof. *Id.* at 462. The parties are entitled to conduct discovery. *Ford Motor Co. v. Castillo*, 279 S.W.3d 656, 663 (Tex. 2009). “Due process requires a full hearing before a court having jurisdiction, the opportunity to introduce evidence at a meaningful time and in a meaningful manner, and the right to judicial findings based on the evidence.” *In re Park Mem’l Condo. Ass’n, Inc.*, 322 S.W.3d 447, 450 (Tex. App.—Houston [14th Dist.] 2010, orig. proceeding). A judgment enforcing the settlement agreement involuntarily may only be rendered after a trial on the merits, whether by a bench trial or jury trial, or by summary judgment. *See id.* at 451–52. In this case, the trial court abused its discretion by resolving the dispute without employing one of the procedural vehicles authorized by the Texas Rules of Civil Procedure. *See Barragan v. Nederland Indep. Sch. Dist.*, No. 09-13-00350-CV, 2015 WL 474282, at *3 (Tex.

App.—Beaumont February 5, 2015, pet denied) (mem. op.); *see, e.g.* Tex. R. Civ. P. 166a, 216, 262.

GeoSouthern argues mandamus relief should be denied because BBX invited the error by requesting that the case be dismissed pursuant to the Rule 11 agreement. When a party frames the issue as a legal issue and fails to identify a factual dispute to be resolved, the doctrine of invited error may preclude that party from challenging the trial court's failure to conduct an evidentiary hearing. *See Horton v. Horton*, 335 S.W.3d 862, 865–66 (Tex. App.—Beaumont 2011, pet. denied). BBX's motion states that the settlement agreement had been fully performed except for the non-suit. However, the motion subsequently filed by GeoSouthern establishes that there is a dispute regarding whether there has been full performance. In the first hearing, counsel for BBX complained that a dispute concerning offsets, which required oral testimony to resolve, was beyond the contours of *Padilla* and would require a trial. *See* 907 S.W.2d at 461. We conclude that BBX did not invite error by requesting a non-suit. We sustain issue two.

In issues one and three, BBX claims that specific performance is inappropriate relief for the enforcement of the Rule 11 agreement and argues the trial court abused its discretion by ordering BBX to fully pay production revenue when BBX was entitled to withhold revenue due to GeoSouthern's failure to pay various agreed

expenses. Our holding as to issue two is dispositive of Relator's petition. Therefore, we do not reach issues one and three.

We conditionally grant the writ of mandamus. We are confident that the trial court will vacate its orders of January 24, 2017, and March 1, 2017; therefore, the writ will issue only if the trial court fails to do so. Our stay order issued on March 16, 2017, will be automatically vacated when the trial court complies.

PETITION CONDITIONALLY GRANTED.

PER CURIAM

Submitted on March 28, 2017
Opinion Delivered April 20, 2017

Before McKeithen, C.J., Kreger and Johnson, JJ.