

NO. 12-16-00092-CV
IN THE COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT
TYLER, TEXAS

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|--------------------------------------|---|--------------------------------|
| <i>PERMIAN POWER TONG, INC.,</i> | § | <i>APPEAL FROM THE 441ST</i> |
| <i>APPELLANT</i> | | |
| V. | § | <i>JUDICIAL DISTRICT COURT</i> |
| <i>DIAMONDBACK E&P, LLC,</i> | | |
| <i>APPELLEE</i> | § | <i>MIDLAND COUNTY, TEXAS</i> |

SUPPLEMENTAL MEMORANDUM OPINION

We issued our original opinion in this case on May 31, 2017. After we received a request for clarification of opinion and judgment from Diamondback E&P, LLC, we withdrew our opinion issued on May 31, 2017, and issued a substituted opinion on June 14, 2017. In our opinion issued on June 14, 2017, this Court reversed the portion of the trial court's judgment awarding Diamondback E&P, LLC, \$587,176.97 in replacement damages on its breach of contract claim against Permian Power Tong, Inc., and suggested a remittitur in the amount of \$13,588.64, resulting in \$573,588.33 in replacement damages, thereby reducing total actual damages to \$810,549.33.

We stated that if Diamondback filed the remittitur with the trial court clerk within fifteen days of our opinion and notified this Court of such, we would modify the judgment and affirm the damages award in accordance with the remittitur, thereby obviating the need for a new trial. *See* TEX. R. APP. P. 46.3, 46.5.

On June 19, 2017, Diamondback filed its Notice of Formal Acceptance of Suggestion of Remittitur in this Court, showing that it had timely filed the remittitur with the trial court clerk. Accordingly, we *vacate* our judgment, but not our opinion, dated June 14, 2017, and in accordance with our opinion, we *modify* the trial court's judgment to reflect that the amount of the judgment for mitigation damages awarded to Diamondback is reduced to the sum of

\$573,588.33, resulting in a reduction of total actual damages to \$810,549.33. *See* TEX. R. APP. P. 46.3, 46.5.

We have also sustained the portion of Permian's issue relating to Diamondback's failure to segregate its attorneys' fees. Therefore, we ***reverse*** the portion of the trial court's judgment awarding \$319,761.50 in attorneys' fees incurred through representation at the trial court level, and ***remand*** the cause to the trial court for a determination of the amount of attorneys' fees to be segregated. *See Tony Gullo Motors I, L.P. v. Chapa*, 212 S.W.3d 299, 314 (Tex. 2006). We ***affirm*** the trial court's judgment in all other respects.

This Court's opinion of June 14, 2017, otherwise remains in effect.

BRIAN HOYLE
Justice

Opinion delivered June 30, 2017.

Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(PUBLISH)



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

JUNE 30, 2017

NO. 12-16-00092-CV

PERMIAN POWER TONG, INC.,
Appellant
V.
DIAMONDBACK E&P, LLC,
Appellee

Appeal from the 441st District Court
of Midland County, Texas (Tr.Ct.No. CV-49854)

THIS CAUSE came to be heard on the appellate record and the briefs filed herein, and the same being considered, it is the opinion of this court that there was error in the judgment of the court below insofar as the trial court's judgment awarded \$587,176.97 in replacement damages and \$319,761.50 in attorneys' fees.

It is therefore ORDERED, ADJUDGED, and DECREED that the portion of the trial court's judgment awarding \$587,176.97 in replacement damages be **modified** to reflect an award of \$573,588.33 in replacement damages, thereby reducing total actual damages to \$810,549.33.

It is therefore ORDERED, ADJUDGED, AND DECREED that the portion of the judgment awarding \$319,761.50 in attorneys' fees incurred through representation at the trial court level be **reversed** and the cause **remanded** to the trial court for a determination of the amount of attorneys' fees to be segregated.

It is further ORDERED, ADJUDGED and DECREED that, in all other respects, the trial court's judgment is **affirmed**; all costs of this appeal be assessed one-half against the Appellant, **PERMIAN POWER TONG, INC.**, and one-half against the Appellee, **DIAMONDBACK E&P, LLC**, for which execution may issue; and that this decision be certified to the court below for observance.

Brian Hoyle, Justice.

Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.