

SUPREME COURT OF SOUTH DAKOTA

Grynberg Exploration Corp. v. Puckett

682 N.W.2d 317 (S.D. 2004) · No. No. 22979 · Decided June 9, 2004

SUMMARY

The Supreme Court of South Dakota held that oil and gas interest holders were contractually obligated to pay their proportionate shares of well operating expenses. The court rejected arguments that the transferred interests were merely security interests, that there was no mutual assent, and that an earlier summary-judgment ruling controlled the case. It also held that a defense of failure of consideration was waived and that an alleged reassignment was invalid, and awarded the operator appellate attorney's fees.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Zinter, Justice; Gilbertson, Chief Justice; Konenkamp, Justice; Meierhenry, Justice; Sabers, Justice
JURISDICTION	South Dakota
DECIDED	June 9, 2004
DOCKET	No. 22979
DISPOSITION	affirmed
PROCEDURAL POSTURE	Grynberg sued the defendants to recover their proportionate shares of oil-well operating expenses under theories of breach of contract and, alternatively, quasi-contract. After a trial, the circuit court entered judgment for Grynberg, including interest and attorney's fees. The defendants appealed, challenging factual findings, legal conclusions, and the applicability of the law-of-the-case doctrine; Grynberg sought appellate attorney's fees.
STANDARD OF REVIEW	Findings of fact are reviewed under the clearly erroneous standard; conclusions of law are reviewed de novo. The court also gave deference to the trial court's credibility determinations and weighing of testimony.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Donald Puckett, Nancy A. Puckett, Michael Sweeney, Everett Frerichs d/b/a Everett Frerichs Oil & Gas Company v. Grynberg Exploration

TOPICS

contracts oil and gas mineral rights uniform commercial code appellate procedure

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the assignment from PNC Bank transferred ownership interests in the East Simms Draw oil wells, rather than merely a security interest, and obligated the Pucketts and Sweeney to pay their proportionate operating expenses.
2. Whether the Pucketts and Sweeney's lack-of-contract and lack-of-mutual-assent arguments were barred or defeated by the terms of the assignment, their conduct, and their acceptance of production benefits.
3. Whether the trial court's earlier memorandum opinion denying summary judgment became the law of the case and prevented the court from finding after trial that the transferred interests were more than a security interest.
4. Whether Frerichs waived his failure-of-consideration defense by failing to plead it and, alternatively, whether he received the benefit of the production payments.
5. Whether Frerichs validly assigned his working interest back to Grynberg so as to avoid liability for operating expenses.
6. Whether Grynberg was entitled to appellate attorney's fees under the operating agreements and South Dakota law.

HOLDINGS

1. The Pucketts and Sweeney were contractually obligated to pay their proportionate shares of the East Simms Draw operating expenses because the PNC Bank assignment transferred the oil interests, not merely a security interest, and expressly required them to assume the related obligations.
2. The parties' conduct demonstrated mutual assent to the rights and obligations under the assignment and operating agreement.
3. The law-of-the-case doctrine did not apply to the trial court's earlier memorandum opinion denying summary judgment, and the trial court was free to make a different factual determination after trial.
4. Frerichs waived his failure-of-consideration defense by failing to plead it as an affirmative defense.
5. Even if the failure-of-consideration issue had not been waived, Frerichs received the benefit of the production payments because Eland Energy held the payments for him and the funds were deposited with the court.
6. Frerichs did not establish a valid assignment of his working interest to Grynberg, and the trial court's finding that no assignment occurred was not clearly erroneous.

7. Grynberg was entitled to \$5,620 in appellate attorney's fees because the operating agreements permitted recovery of attorney's fees from non-operators and such fees were allowable at the trial level.

KEY QUOTATIONS

"The rule of the 'law of the case' should not be used to perpetuate an erroneous decision at this stage of the proceedings." (322)

"This conduct demonstrates contemporaneous mutual assent to the rights and obligations under the assignment and the operating agreement." (323)

"Consequently, because Pucketts and Sweeney accepted the benefits of the assignment and operating agreement, they are precluded from repudiating the corresponding obligations." (324)

FACTUAL BACKGROUND

Grynberg operated oil wells in the East Simms Draw and North Hollingsworth fields and paid the operating expenses before billing the working-interest owners for their proportionate shares. The Pucketts and Sweeney acquired the East Simms Draw interests from PNC Bank through an assignment that transferred the oil interests and expressly required them to assume related rights and obligations; they initially accepted production revenues and paid expenses but later refused to pay Grynberg. Frerichs purchased a working interest in the North Hollingsworth field, received monthly expense statements, and did not pay them, later asserting lack of consideration and an assignment of his interest back to Grynberg. The court found that the purported assignment to Grynberg was incomplete, unaccepted, and did not describe the correct property.

PROCEDURAL HISTORY

The circuit court ruled that the Pucketts and Sweeney were contractually obligated to pay their proportionate operating expenses in the East Simms Draw field and that Frerichs was obligated to pay his proportionate expenses in the North Hollingsworth field. The defendants appealed from the resulting judgment. The South Dakota Supreme Court affirmed and awarded Grynberg \$5,620 in appellate attorney's fees.

DISPOSITION

affirmed

CASES CITED

- Grynberg v. Citation Oil & Gas Corp., 1997 SD 121, ¶ 2, 573 N.W.2d 493, 497
- Sherburn v. Patterson Farms, Inc., 1999 SD 47, ¶ 4, 593 N.W.2d 414, 416
- Western States Land & Cattle Co., Inc. v. Lexington Ins. Co., 459 N.W.2d 429, 435 (S.D. 1990)
- Shaffer v. Honeywell, Inc., 249 N.W.2d 251, 260 (S.D. 1976)
- Strom v. Buholz, 73 S.D. 583, 46 N.W.2d 912, 914 (1951)
- Wolff v. Secretary of South Dakota Game, Fish and Parks Department, 1996 SD 23, ¶ 15, 544 N.W.2d 531, 534

- Varga v. Woods, 381 N.W.2d 247, 251 (S.D. 1986)
- Meldrum v. Novotny, 2002 SD 15, ¶ 18, 640 N.W.2d 460, 463
- Hentz v. City of Spearfish, Department of Public Works, Office of Planning & Zoning, 2002 SD 74, ¶ 13, 648 N.W.2d 338, 342

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