

SUPREME COURT OF TEXAS

Evelyn Tittizer, Individually and as Independent Executrix of the
Estate of Louis Tittizer v. Union Gas Corporation

171 S.W.3d 857 (Tex. 2005) · No. No. 04-0100 · Decided August 26, 2005

SUMMARY

The Supreme Court of Texas held that an oil and gas lease requiring the lessee to execute and record an instrument identifying a pooled unit did not authorize retroactive pooling. Accordingly, the pooled unit became effective upon recordation of the designation, and the landowner was not entitled to royalties for production before that date. The court also held that the lessee had sufficiently challenged the reasonableness of the landowner's attorney-fee award and remanded that issue to the court of appeals.

CASE DETAILS

COURT	Supreme Court of Texas
JURISDICTION	Texas
DECIDED	August 26, 2005
DOCKET	No. 04-0100
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Texas Supreme Court reviewed petitions for review from a court of appeals judgment reversing in part summary judgments entered for landowners in an oil-and-gas royalty dispute and affirming the remaining portions of the trial court's judgments.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. The interpretation of an unambiguous oil-and-gas lease is a question of law, and the court enforces the lease as written.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Evelyn Tittizer, Union Gas Corporation v. Evelyn Tittizer, Union Gas Corporation

TOPICS

- oil and gas
- contract interpretation
- appellate procedure
- preservation of error
- standard of review

PRACTICE AREAS

oil and gas

contracts

appellate procedure

real estate

QUESTIONS PRESENTED

1. Whether the pooling clause authorized Union Gas to make the pooled unit effective retroactively from the date of first production rather than from the date the designation was recorded.
2. Whether Union Gas was estopped or barred by invited error from arguing on appeal that pooling became effective upon recordation after seeking a trial-court declaration concerning the earlier date.
3. Whether the court of appeals erred in holding that Union Gas failed to appeal Tittizer's attorneys' fee award because the point of error referred to the Gislens while the supporting argument challenged Tittizer's fees.

HOLDINGS

1. The unambiguous lease authorized pooling only upon recordation of an instrument identifying the pooled unit and did not authorize a retroactive effective date. Tittizer was therefore not entitled to royalties for production between March 27, 2000 and August 7, 2000.
2. Union Gas was not estopped and did not invite the trial court's error by seeking a declaration that pooling was effective from the date of first production.
3. The court of appeals erred in holding that Union Gas failed to appeal Tittizer's attorneys' fee award. The point of error and supporting argument, construed liberally, adequately raised the challenge, and the issue was remanded for consideration of the fees' reasonableness.

KEY QUOTATIONS

“We hold that this lease does not authorize the lessee to execute a pooling designation with a retroactive effect.” (861)

“We affirm in part and reverse in part the court of appeals' judgment and remand the case to the court of appeals to consider Union Gas's challenge to the reasonableness of the attorneys' fees awarded to Tittizer.” (863)

FACTUAL BACKGROUND

Union Gas entered into multiple oil-and-gas leases containing pooling clauses. The Watts-Gisler No. 1 Well began producing on March 27, 2000, but Union Gas did not file or record the Designation of Pooled Unit until August 7, 2000; the designation purported to operate retroactively to the production date. Tittizer and other lessors disputed the retroactive effect and claimed royalties for the period before recordation, while Union Gas sought a uniform declaration of the parties' rights and interpleaded more than \$1.3 million to avoid potential double liability.

PROCEDURAL HISTORY

The trial court granted partial summary judgment to the Gislens and non-drillsite lessors, including Tittizer, holding that pooling was effective from the date of first production and awarding royalties and attorneys' fees. The court of appeals reversed in part, holding that only the Gislens were entitled to royalties for the period before recordation of the pooled-unit designation, but it did not consider Tittizer's challenge to the attorneys' fee award. The Supreme Court affirmed the ruling concerning the pooling effective date, reversed the court of appeals' ruling regarding review of Tittizer's attorneys' fees, and remanded that issue.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the court of appeals to consider Union Gas's challenge to the reasonableness of the attorneys' fees awarded to Tittizer.

CASES CITED

- Provident Life & Accident Ins. Co. v. Knott, 128 S.W.3d 211, 215 (Tex. 2003)
- Anadarko Petroleum Corp. v. Thompson, 94 S.W.3d 550, 554 (Tex. 2002)
- Skelly Oil Co. v. Archer, 356 S.W.2d 774, 778 (Tex. 1961)
- Heritage Res., Inc. v. NationsBank, 939 S.W.2d 118, 121 (Tex. 1996)
- Sun Oil Co. v. Madeley, 626 S.W.2d 726, 728 (Tex. 1981)
- Southeastern Pipe Line Co. v. Tichacek, 997 S.W.2d 166, 170 (Tex. 1999)
- Jones v. Killingsworth, 403 S.W.2d 325, 327-28 (Tex. 1965)
- Sauder v. Frye, 613 S.W.2d 63, 64 (Tex. Civ. App.—Fort Worth 1981, no writ)
- Yelderman v. McCarthy, 474 S.W.2d 781, 782, 784 (Tex. Civ. App.—Houston [1st Dist.] 1971, writ ref'd n.r.e.)
- Tiller v. Fields, 301 S.W.2d 185, 191 (Tex. Civ. App.—Texarkana 1957, no writ)
- Northeast Tex. Motor Lines v. Hodges, 158 S.W.2d 487, 488 (Tex. 1942)
- Ramirez v. State, 973 S.W.2d 388, 392 (Tex. App.—El Paso 1998, no pet.)
- Austin Transp. Study Policy Advisory Comm. v. Sierra Club, 843 S.W.2d 683, 689-90 (Tex. App.—Austin 1992, writ denied)
- Am. Sav. & Loan Ass'n v. Musick, 531 S.W.2d 581, 589 (Tex. 1975)
- Naguib v. Naguib, 137 S.W.3d 367, 375 (Tex. App.—Dallas 2004, pet. denied)
- Neasbitt v. Warren, 22 S.W.3d 107, 112 (Tex. App.—Fort Worth 2000, no pet.)
- Williams v. Khalaf, 802 S.W.2d 651, 658 (Tex. 1990)
- Anderson v. Gilbert, 897 S.W.2d 783, 784 (Tex. 1995)
- Holley v. Watts, 629 S.W.2d 694, 696 (Tex. 1982)
- In re B.L.D. & B.R.D., 113 S.W.3d 340, 350 (Tex. 2003)

- Motor Vehicle Bd. of the Tex. Dep't of Transp. v. El Paso Indep. Auto. Dealers Ass'n, 1 S.W.3d 108, 111 (Tex. 1999)

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