



ORIGINAL

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

W.H. DAVIS FAMILY LIMITED)
PARTNERSHIP and WILLIAM H.)
DAVIS,)

MAY 19 2022

Plaintiffs/Appellants,

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JOHN D. HADDEN
CLERK

vs.

Case No. 119,598

ANCHOR ENERGY, LLC,

Defendant/Appellee.

APPEAL FROM THE DISTRICT COURT OF
BLAINE COUNTY, OKLAHOMA

HONORABLE ALLISON M. LAFFERTY, TRIAL JUDGE

AFFIRMED

Ryan A. Pittman
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For Plaintiffs/Appellants

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For Defendant/Appellee

OPINION BY GREGORY C. BLACKWELL, JUDGE:

W.H. Davis Family Limited Partnership and William H. Davis, individually, (collectively, "Davis"), appeal the district court's grant of summary judgment in favor of Anchor Energy, LLC. Davis argues on appeal that material factual issues remain as to whether an enforceable contract existed between the two parties.

On review, we find that the undisputed facts demonstrate that Anchor timely terminated the contract, and therefore affirm.

BACKGROUND

In 2018, Mr. Davis asked his neighbor, Greg Wallace, to assist him in selling mineral acreage in Blaine County. Wallace, in that capacity, contacted Dustin Freeman, an executive for Anchor, about purchasing the minerals. On February 14, 2019, Freeman sent Wallace an offer by letter to purchase certain minerals purportedly owned by Davis in Blaine County for \$862,923.00, with the understanding that Wallace would deliver the offer letter to Mr. Davis. The offer letter listed the terms of the agreement, including language pertaining to Anchor's right to complete a due diligence review and a requirement that Davis accept the offer by returning to Anchor a "fully acknowledged and agreed to version of this Agreement" by February 18, 2019. The next day, Freeman spoke with Wallace and allegedly informed Wallace that Anchor would "not be moving forward with the deal." Davis, conversely, claims that Anchor was performing due diligence in accordance with the terms of the offer letter. Mr. Davis further alleges that he returned a signed offer letter to Anchor within the effective time period. Anchor denied having received such an acceptance, and did not directly move forward with the deal.

Davis filed a petition against Anchor for breach of contract. Anchor answered and sought a declaratory judgment from the court ruling that Anchor had not accepted the offer or, alternatively, that the offer terminated by its own

terms. After a hearing on the issues, the district court granted Anchor's motion for summary judgment. Davis appeals.

STANDARD OF REVIEW

The appellate standard of review for a summary judgment is *de novo*. *Wing v. Lorton*, 2011 OK 42, ¶ 9, 261 P.3d 1122. All inferences and materials are reviewed in the light most favorable to the nonmoving party. *Id.* Summary judgment will be affirmed only if the appellate court determines that there is no dispute as to any material fact and that the moving party is entitled to judgment as a matter of law. *Horton v. Hamilton*, 2015 OK 6, ¶ 8, 345 P.3d 357.

ANALYSIS

The dispositive question on appeal is whether there is a dispute as to whether Anchor timely terminated the contract. Anchor's offer letter to Davis included a paragraph three that reads:

Due Diligence: Seller understands that the obligations of Buyer to be performed at Closing, including the payment of the Purchase Price, are subject to the requirement that Buyer complete a due diligence review of the Oil and Gas Interests. Buyer's due diligence review of the Oil and Gas Interests shall include, but will not be limited to, a title examination and an encumbrance review. Additionally, Closing is contingent on Seller obtaining a free and clear release of any existing Oil and Gas Leases and the Oil and Gas Interests being Open of Record. Buyer shall be satisfied with its due diligence review as determined in its sole discretion. Notwithstanding the foregoing, if and to the extent that Buyer is not satisfied with its due diligence review of the Oil and Gas Interests, Buyer's sole remedy shall be to terminate this Agreement. Upon a termination by Buyer of this Agreement, neither Buyer nor Seller shall have any further obligation to the other party under this Agreement.

On March 15, 2019, Anchor's counsel sent a letter to Davis's counsel notifying Davis that Anchor believed that the offer terminated because Anchor

did not receive a fully acknowledged and agreed to version of the offer letter by the required date, nor did delivery to Mr. Wallace constitute acceptance because Mr. Wallace was not Anchor's agent. Additionally, Anchor noted that, even if there was a valid acceptance, Anchor was terminating the agreement because Anchor was unsatisfied with its due diligence review of the oil and gas interests.

The record reflects that Anchor was unsatisfied with its due diligence review. Mr. Wallace, who was helping to sell the minerals at issue, stated that Anchor was aware of mineral title issues soon after Anchor began its due diligence. Mr. Freeman, as representative of Anchor, noted that the party that he planned to resell the minerals to upon purchase, "did not feel comfortable with the leases being outstanding." Further, Mr. Davis was aware of a warranty deed that listed the mineral acreage as 137.83 acres, fewer than the some 150 mineral acres described in the offer letter. Indeed, Davis argues on appeal that Anchor ratified the agreement by acquiescing to Anchor's concerns about the leases and title to the oil and gas interests. Davis's efforts to make the mineral acreage marketable was intended to ameliorate the title impediments and outstanding leases on the property.

The record is clear that Anchor was concerned about the title and outstanding leases attached to the mineral acreage in the offer. Anchor's letter to Davis terminating the agreement pursuant to paragraph three was sent to Davis on March 15, 2019, the closing date listed in the offer letter. That closing date, according to paragraph three, was contingent on the release of leases and Anchor's satisfaction with its due diligence review. In Anchor's motion for

summary judgment, Anchor asserted that it had indicated to Davis that Anchor was terminating the agreement pursuant to paragraph three, a material fact which Davis explicitly does not dispute in its response to the motion for summary judgment. Anchor's letter to Davis was thus a valid exercise of its paragraph three power to terminate the agreement, assuming an agreement was properly accepted in the first instance.

On appeal, Davis argues that material facts exist as to whether the offer was accepted, whether Mr. Wallace was Anchor's agent, whether the offer was revoked, and whether Anchor ratified the agreement by conduct. However, because it is there is no dispute as to the material fact that Anchor terminated the agreement with its March 15, 2019 letter, we need not address these questions on appeal. Without a contract in place, there could be no breach. The trial court's judgment is therefore affirmed.

AFFIRMED.

WISEMAN, P.J., and RAPP, J., concur.

May 19, 2022