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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

JUL 21 2022

JOHN D. HADDEN
CLERK

CITIZEN ENERGY III, LLC, a Delaware limited liability company,

Plaintiff/Appellee,

vs.

RAVEN RESOURCES, LLC, an Oklahoma limited liability company; and DAVID STEWART, an individual,

Defendants/Appellants.

Case No. 120,164

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APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY, OKLAHOMA

HONORABLE ALETIA HAYNES TIMMONS, TRIAL JUDGE

AFFIRMED IN PART AND REVERSED IN PART

Travis P. Brown
Zachary J. "Zac" Foster
Scott R. Verplank, Jr.
MAHAFFEY & GORE, P.C.
Oklahoma City, Oklahoma

For Plaintiff/Appellee

Ruston C. Welch
WELCH LAW PLC
Oklahoma City, Oklahoma

For Defendants/Appellants

OPINION BY JANE P. WISEMAN, PRESIDING JUDGE:

Defendants Raven Resources, LLC, and David Stewart appeal the trial court's judgment granting in part and denying in part Plaintiff Citizen Energy III, LLC's amended motion for summary judgment.[1] We consider this appeal according to Supreme Court Rule 1.36, 12 O.S. Supp. 2020, ch. 15, app. 1, without appellate briefing. After review, we affirm in part and reverse in part.

FACTS AND PROCEDURAL BACKGROUND

Plaintiff alleges that in December 2016, Defendant David Stewart, manager of Defendant Raven Resources, contacted Citizen II[2] regarding its interest in a particular oil and gas lease. On December 29, 2016, Citizen II paid Raven for its "interest in and to the Daves Lease equal to 101.334 net leasehold acres at $3,250.00 per net leasehold acre for a total payment of $329,355.00." Defendants admit that they received this payment and admit executing a Term Assignment of Oil and Gas Lease with Citizen II which Citizen II subsequently recorded with the County Clerk of Custer County at Book 1740, Pages 396-398. That same day, Raven executed a Settlement Statement in which it represented it owned an interest

[1] In this order, the trial court (1) denied summary judgment on Plaintiff's actual and constructive fraud claims against Defendants, (2) granted Plaintiff summary judgment and awarded damages on its claim for breach of special warranty of title against Defendant Raven, (3) granted summary judgment and awarded damages to Plaintiff on its unjust enrichment claim against both Defendants. The order also states Plaintiff dismissed without prejudice its actual and constructive fraud claims against Defendants making the order final and appealable.

[2] To avoid confusion with Citizen II, we will refer to Citizen III as Plaintiff.

in the 101.334 acres. Defendants admit the Term Assignment assigned all of Raven's title, interest, estate, and rights to the subject lease.

Plaintiff claims that about a year after closing on the purchase of the lease, it discovered that Raven did not own the interest in the Daves Lease which it purportedly sold because Raven had previously assigned the same interest to other entities in 2002 and early December 2016. In January 2002, Raven admits it conveyed 101.334 acres of the Daves Lease to two entities: W-4 Capital, LLC, and WCT Resources, LLC. This left Raven with only 58.66 net acres of the Daves Lease. Stewart, as Raven's manager, executed this 2002 conveyance which was recorded in Book 1158, Pages 323-339 in the office of the County Clerk of Custer County. Then on December 9, 2016, Raven conveyed the remaining 58.66 net acre interest in the Daves Lease to Cimarex Energy Co., a conveyance Stewart also signed for Raven.

After learning Raven did not own the pertinent interest in order to convey it on December 29, 2016, Plaintiff brought this action against Defendants for actual and constructive fraud, breach of special warranty of title, and unjust enrichment. Plaintiff sought damages totaling $329,355 plus pre-judgment and post-judgment interest, punitive damages, and attorney fees and costs.

In due course, Plaintiff filed an amended motion for summary judgment arguing Stewart, on behalf of Raven, defrauded Plaintiff and Raven breached its

special warranty of title provision in the contract. Plaintiff argued in the alternative that Defendants have been unjustly enriched because Plaintiff paid Raven $329,355 in exchange for an interest in the 101.334 acres it never received.

In response, Defendants first argue Plaintiff's amended motion for summary judgment fails to establish standing because Plaintiff is a separate entity from Citizen II. According to Defendants, Plaintiff is pursuing its claims on behalf of Citizen II but has failed to show "it is a successor-in-interest by assignment from [Citizen II]." Defendants urge that even if Plaintiff's claims were assignable, its fraud claim fails as a matter of law and disputed material facts preclude summary judgment on this issue. Defendants asserted Plaintiff also lacks standing to pursue the other two claims of breach of warranty of title and unjust enrichment. Defendants also deny the warranty was breached and claim disputed material facts preclude summary judgment. Finally, Defendants argue the unjust enrichment claim is premature if Plaintiff has an adequate remedy at law in its special warranty of title claim.

Plaintiff's reply brief states that on November 2, 2017, Citizen II assigned to Plaintiff all its right, title, estate, and interest in the Daves Lease. Plaintiff further restates its arguments from its amended motion for summary judgment.

After a hearing, the trial court denied Plaintiff's amended motion for summary judgment on the fraud claims, but granted Plaintiff's motion on its claim

for breach of special warranty of title against Raven and awarded damages of $329,355 plus pre-judgment and post-judgment interest. The trial court also granted Plaintiff summary judgment on its unjust enrichment claim in the same amount. But the trial court emphasized Plaintiff may recover these damages only once. The trial court also stated that because Plaintiff dismissed without prejudice its actual and constructive fraud claims against Defendants on December 3, 2021, the judgment is final and appealable.

Defendants appeal.

STANDARD OF REVIEW

"Summary judgment is properly granted when there are no disputed questions of material fact and the moving party is entitled to judgment as a matter of law." *Institute for Responsible Alcohol Policy v. State ex rel. Alcoholic Beverage Laws Enforcement Comm'n*, 2020 OK 5, ¶ 10, 457 P.3d 1050. "An appeal on summary judgment comes to this Court as a *de novo* review, as the matter presents only questions of law, not fact." *Id.* We assume "'plenary independent and non-deferential authority to reexamine a trial court's legal rulings.'" *Id.* (quoting *Kluver v. Weatherford Hosp. Auth.*, 1993 OK 85, ¶ 14, 859 P.2d 1081).

ANALYSIS

I. Standing

Defendants argue on appeal that Plaintiff lacks standing to bring claims against them because Plaintiff is an entity separate and distinct from Citizen II, the entity which contracted with Defendants. Defendants assert Plaintiff failed to establish in its amended motion for summary judgment that it is a successor-in-interest to the contractual rights of Citizen II. Plaintiff states in its undisputed material fact number 28: "Citizen Energy III, LLC, *i.e.*, 'Citizen,' here, is the successor-in-interest to Citizen Energy II, LLC as to the Daves Lease. *See* Exhibit 14, Assignment, Bill of Sale, and Conveyance, attached." Defendants dispute this material fact stating that "Exhibit '14' contains only 4 incomplete pages, and although it appears to be an Assignment, Bill of Sale, and Conveyance from CITIZEN II to Plaintiff, it wholly fails to reference the Daves Lease or support the alleged material fact."

Although Plaintiff attached Exhibit 14 (which attaches a list of oil and gas leases assigned by Citizen II to Plaintiff), only part of the intended list is attached and it appears to be the wrong page because it makes no reference to the Daves Lease. But Plaintiff's reply brief appears to correct this omission in its Exhibit 16 by including the correct page of the attached list which clearly references the "Boone H. Daves and Jane Daves, his wife" lease. Although the Assignment, Bill

of Sale, and Conveyance only attaches "Page 10 of 28"—the page listing the Daves Lease—we assume, in the absence of any evidence to the contrary, this to be part of Exhibit A, the list of leases being assigned referenced in the Assignment, Bill of Sale, and Conveyance.

We note that during the hearing on Plaintiff's motion for summary judgment, Defendants did not further dispute the corrected omission with any evidence disputing Plaintiff's statement of material fact that it is the successor-in-interest to Citizen II as to the Daves Lease. "Where the movant presents evidence in a summary judgment motion showing no controversy as to material facts, the burden of proof shifts to the opposing party to present evidence justifying trial on the issue." *Gurley-Rodgers v. Brookhaven West Condo. Owners' Ass'n, Inc.*, 2011 OK CIV APP 64, ¶ 8, 258 P.3d 1190. "'A party resisting a motion for summary judgment may not rely on allegations of its pleadings or bald contentions that facts exist to defeat the motion for summary judgment.'" *West v. Jane Phillips Mem'l Med. Ctr.*, 2017 OK CIV APP 52, ¶ 9, 404 P.3d 896 (quoting *Roberson v. Waltner*, 2005 OK CIV APP 15, ¶ 8, 108 P.3d 567). "A party opposing a motion for summary judgment must show 'the reasonable probability, *something beyond a mere contention,* that the opposing party will be able to produce competent, admissible evidence at the time of trial which might reasonably persuade the trier of fact in his favor on the issue in dispute.'" *Keeler v. GMAC Global Relocation*

Servs., 2009 OK CIV APP 88, ¶ 11, 223 P.3d 1024 (quoting *Davis v. Leitner*, 1989 OK 146, ¶ 15, 782 P.2d 924).

Pursuant to Rule 13(b):

> All material facts set forth in the statement of the movant which are supported by acceptable evidentiary material shall be deemed admitted for the purpose of summary judgment or summary disposition unless specifically controverted by the statement of the adverse party which is supported by acceptable evidentiary material.

Okla. Dist. Ct. Rule 13(b), 12 O.S. Supp. 2020, ch. 2, app. Put simply, making statements of admission or denial is insufficient to raise a question of fact when opposing a summary judgment motion. We agree with the trial court that Plaintiff had standing to bring claims against Defendants as to the Daves Lease on Plaintiff's remaining claims.

II. Reply Brief

Defendants argue the trial court erred in denying their motion to strike Plaintiff's reply brief as required by Oklahoma County Local Rule 37(B) and (E). Rule 37(B) and (E) provide:

> B. All motions, applications and responses thereto, including briefs, if required by Rule 4 of the Rules for District Courts, shall not exceed twenty pages (20) pages in length, excluding exhibits, without prior permission of the assigned judge. *Reply briefs shall be limited to five (5) pages in length. Page limitations herein exclude only the cover, index, appendix, signature line and accompanying information identifying attorneys and parties, and certificate of service.* No further briefs shall

> be filed without prior permission of the assigned judge. The use of footnotes is discouraged.
>
> . . . .
>
> E. *Any motion and/or brief filed in violation of this rule shall not be considered by the assigned judge and shall be stricken from the record.*

(Emphasis added.) Defendants argue the trial court should have stricken the reply brief because it exceeded the five-page limitation. Excluding the caption and signature page, Plaintiff's reply brief was approximately 5½ pages. The last page contained Plaintiff's conclusion. Because it was 5½ pages, Defendants assert the trial court had to strike it based on Rule 37. Defendants conclude that if the trial court had stricken the reply brief and considered only the amended motion for summary judgment and response, it would have concluded that Plaintiff lacked standing to pursue the claims against them. Ostensibly this argument is based on Plaintiff's attachment to its reply brief of the correct portion of the list attached to the Assignment, Bill of Sale, and Conveyance between Citizen II and Plaintiff.

Insisting that the trial court must under all circumstances strike any reply brief in excess of five pages would deprive the trial court of its inherent authority to allow relief from the strictures of such a rule, a deprivation we decline to engage in. In the interest of justice and ascertainment of whether alleged facts are disputed in such a situation as this, the trial court is fully within its authority to allow filings that do not strictly comply with an applicable rule. To require strict adherence to such a rule for a half-page overage is to enforce form over substance. And

Defendants would have been well-suited to seek relief in the form of a surreply brief if they had material with which to counter Plaintiff's reply brief submissions.

We are hard-pressed to see how the trial court's decision to allow and consider Plaintiff's reply brief caused Defendants unfair prejudice. The Assignment, Bill of Sale, and Conveyance originally attached to Plaintiff's amended motion for summary judgment clearly established Citizen II assigned its rights and interests to certain oil, gas, and mineral leases to Plaintiff, and the reply brief simply corrected an oversight. "In the absence of a showing that substantial prejudice has resulted from the action of the court and of its rulings, the reviewing court will ordinarily not interfere." *Hadnot v. Shaw*, 1992 OK 21, n. 20, 826 P.2d 978. Plaintiff initially failed to attach the proper page showing the Daves Lease was included in the Assignment, an oversight it subsequently corrected in Exhibit 16 of the reply brief. We see no error in the trial court allowing and considering the reply brief and refusing to strike it at Defendants' request.

III. Breach of Special Warranty of Title

Defendants argue the trial court erred in granting Plaintiff's amended motion for summary judgment on the special warranty of title claim "by making a factual finding that the scope of the special warranty of title covered 101.33 net acres when the 2016 Raven-CITIZEN II Assignment contained no specific percentage or acreage amount, only conveyed to CITIZEN II 'ALL of [Raven's] right, title and

interest in and to the Oil and Gas Lease described on Exhibit "A" attached hereto . . .' and CITIZEN II did receive Raven Resources' interest in the Daves well." Defendants further assert that, "The scope and intent of any special warranty language in the Assignment should have [been] a question of fact for the jury."

Defendants argue that because the Assignment failed to specify a percentage or acreage amount and only conveys to Citizen II "ALL of [Raven's] right, title and interest in and to" the oil and gas lease described in Exhibit A and because Raven conveyed the remaining .0056 net acre in the Daves Lease, Raven did not breach the Assignment's special warranty of title. Defendants argue it was Citizen II's responsibility to confirm title and Citizen II's due diligence report confirmed such title. The special warranty of title states:

> For the same consideration, the Assignor [Raven] covenants with the Assignee [Citizen II], its successors and assigns, that the Assignor is the lawful owner of and has good title to the interest assigned herein above in and to said Leases, estates, rights and property, free and clear from all liens, encumbrances or adverse claims; that said Leases are valid and subsisting leases on the lands covered thereby and that rentals and royalties, if any, due under said Leases have been paid and all conditions necessary to keep same in full force and effect have been duly performed; that this assignment is made without warranty of title, express or implied, except by, through and under Assignor.

Thus, Defendants argue Plaintiff's special warranty of title claim fails because Raven conveyed .0056 net acres to Citizen II for the price of $329,355.

"A special warranty deed . . . warrants title against any lien imposed against the grantor or any defect arising out of anything done or not done by the grantor." Kraettli Q. Epperson, 5A Vernon's Okla. Forms 2d, Real Estate Ch. 4D Introduction (2d ed. 2021). "Typically, a special warranty deed contains all of the covenants of title which a general warranty deed contains, but limits the grantor's liability to only those problems arising as a result of the grantor's ownership." James R. Strawn, *Use of the Special Warranty in Oklahoma and Texas Oil and Gas Transactions*, 2 Oil & Gas, Nat. Resources & Energy Journal 543, 555 (2017). Thus "[u]nder a special warranty deed, the grantor will not be liable for any defects in title which occurred prior to the grantor's ownership of title." *Id.*

> The buyer's reason for asking for a special warranty is that it expects assurance from the seller, as the party that owns and controls the property, that it has not encumbered the property during its watch. This is not asking much of the seller, who is presumed to know what it has or has not done to encumber the property.

Id. at 548.

With this special warranty of title provision, Raven is liable for all defects occurring in the title during its ownership only: "that this assignment is made without warranty of title, express or implied, except by, through and under Assignor [Raven]." Raven covenanted with Citizen II that it owned 101.334 net

acres. Defendants *admit* Raven assigned 101.334 acres to W-4 Capital and WCT Resources in 2002 and *admit* Raven assigned 58.66 net acres to Cimarex on December 9, 2016.

Defendants correctly point out that the "Term Assignment of Oil and Gas Lease" executed on December 29, 2016, has no specific percentage or acreage amount conveyed to Citizen II and that Exhibit A to the Assignment only references the Daves Lease. However, the "Settlement Statement" executed that same day by representatives of Citizen II and Raven—*i.e.*, David Stewart—contains the same land description of the Daves Lease as Exhibit A to the Assignment. It also clearly describes the 101.334 acres being conveyed at $3,250 per acre for a total of $329,355. Defendants do not dispute this Settlement Statement and its content as described.

What Plaintiff's predecessor actually received in its purchase from Raven was only .0056 net acres which was all Raven had left to convey in the Daves Lease. The record clearly shows Citizen II did not receive what it had bargained for, but paid a significant amount for less than one net acre. Because Raven covenanted with Citizen II that it was "the lawful owner of and has good title to the interest assigned herein above in and to said Leases, estates, rights and property, free and clear from all liens, encumbrances or adverse claims;" a special warranty of title existed that Raven unquestionably breached.

IV. Unjust Enrichment

Defendants next argue the trial court erred in granting judgment for unjust enrichment against both Defendants when Plaintiff "had an adequate remedy at law on breach of contract and for which the Court granted judgment to [Plaintiff] on breach of contract."

"Unjust enrichment arises 'from the failure of a party to make restitution in circumstances where it is inequitable,' or one party holds property 'that, in equity and good conscience, it should not be allowed to retain.'" *American Biomedical Grp., Inc. v. Techtrol, Inc.*, 2016 OK 55, ¶ 27, 374 P.3d 820 (quoting *Harvell v. Goodyear Tire and Rubber Co.*, 2006 OK 24, ¶ 18, 164 P.3d 1028). "Further, a party is not entitled to pursue a claim for unjust enrichment when it has an adequate remedy at law for breach of contract." *American Biomedical Group, Inc.*, 2016 OK 55, ¶ 27.

Although the trial court granted summary judgment on the unjust enrichment claim only at the end of the hearing, the final order being appealed clarified the trial court's ruling. During the hearing, the trial court stated:

> Mr. Foster: Summary judgment sustained on special warranty of title and unjust enrichment?
> The Court: Unjust enrichment.
> Mr. Foster: Okay.
> The Court: That's correct.

The journal entry of judgment states in relevant part:

> 2. The Court GRANTS summary judgment on Citizen's claim for breach of special warranty of title against Defendant Raven Resources, L.L.C. and AWARDS damages to Citizen in the amount of $329,355.00, and, in addition, statutory pre-judgment interest under Okla. Stat. tit. 23, § 6 at the rate of 6% under OKLA. STAT. tit. 15, § 266 from December 29, 2016, through November 12, 2021, in the amount of $96,370.18, for a total money damage award to Citizen in the amount of $425,725.18, plus post-judgment interest as allowed by Oklahoma law;
>
> 3. The Court GRANTS summary judgment on Citizen's claim for unjust enrichment against both Defendants Raven Resources, L.L.C. and David Stewart and AWARDS damages to Citizen in the amount of $329,355.00;
>
> 4. On its breach of special warranty of title claim for relief **or** its unjust enrichment claim for relief, **Citizen is allowed but one recovery**, the total money damage award to Citizen in the amount of $425,725.18, plus post-judgment interest as allowed by Oklahoma law. Defendant David Stewart's individual liability is limited to $329,355.00 of the total money damage award to Citizen in the amount of $425,725.18, plus post-judgment interest as allowed by Oklahoma law. Defendants Raven Resources, L.L.C. and David Stewart will receive a credit for any recovery against the other on the total money damage award to Citizen in the amount of $425,725.18, plus post-judgment interest as allowed by Oklahoma law;

(Emphasis added.) The trial court granted summary judgment on Plaintiff's breach of special warranty of title claim against Raven only and granted summary judgment on Plaintiff's unjust enrichment claim against both Defendants.

However, the journal entry of judgment clearly states Plaintiff may recover these damages only once.

Plaintiff argued alternatively in its summary judgment motion that should the trial court deny its breach of special warranty of title claim, then Defendants were unjustly enriched and the trial court should award damages in its favor and against Defendants jointly and severally. The trial court's award for breach of special warranty of title, however, satisfies Plaintiff's claim and provided Plaintiff an adequate remedy at law. As a result, Plaintiff's alternative claim for unjust enrichment cannot be recognized. *See Krug v. Helmerich and Payne, Inc.*, 2013 OK 104, ¶¶ 32-37, 320 P.3d 1012 (the Supreme Court refused to recognize plaintiffs' alternative claims of constructive fraud and unjust enrichment when plaintiffs had an adequate remedy at law for breach of contract).

CONCLUSION

We affirm the trial court's order granting Plaintiff's amended motion for summary judgment as to all issues except unjust enrichment. Because we affirm the trial court's judgment as to the standing and reply brief issues and its judgment awarding damages on Plaintiff's breach of special warranty of title claim against Raven—a judgment which fully satisfied its claim—we must reverse the judgment for unjust enrichment against both Defendants. We therefore affirm in part and reverse in part.

AFFIRMED IN PART AND REVERSED IN PART.

FISCHER, C.J. (sitting by designation), concurs, and BLACKWELL, J., dissents.

BLACKWELL, J., dissenting:

I agree with the majority's analysis as to Part I (standing) and Part II (reply brief). However, in my view, the trial court erred (1) in finding that the defendant breached any warranty and (2) in granting summary judgment on the claim of unjust enrichment. I therefore respectfully dissent from the affirmance of the trial court's judgment in favor of the plaintiff.

The relevant assignment conveyed only the "right, title, and interest" of the defendant. No specific acreage or percentage of leasehold was conveyed, and none could, therefore, be warranted. The special warranty at issue only warranted that the grantor had not encumbered the interest conveyed—whatever that interest might be.

Additionally, whether the plaintiff has a viable claim for unjust enrichment depends on the resolution of disputed material facts. One significant question is the terms of the parties' contract, if any. Notably, the plaintiff did not sue for breach of contract. Nevertheless, the majority opinion contemplates such a contract, and it appears undisputed that the parties were operating under some agreement. If so, the plaintiff's remedy must be constrained to any breach of that contract, and the equitable remedy of unjust enrichment is not available. Upon remand, the plaintiff

might also prove tort damages under its fraud theory, if that claim is capable of reviver under the pleading code.

For these reasons, I would reverse the trial court's grant of summary judgment and remand for further proceedings.

July 21, 2022