NOT FOR OFFICIAL PUBLICATION
See Okla.Sup.Ct.R. 1.200 before citing.

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

PUMP SYSTEMS MANAGEMENT, INC., an Oklahoma Corporation,

Plaintiff/Appellant,

vs.

IOCHEM CORPORATION, an Oklahoma Corporation,

Defendant/Appellee.

Case No. 121,058

APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE SHEILA STINSON, DISTRICT JUDGE

AFFIRMED

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OPINION BY GREGORY C. BLACKWELL, JUDGE:

Pump Systems Management, Inc., appeals several rulings of the district court. These are (1) the dismissal of Pump Systems' claims against the Toyota Tsusho Corporation of Japan and Toyota Tsusho America Inc. (collectively

Toyota or Toyota entities) on statute of limitations grounds; (2) the dismissal of Pump Systems' abuse of process claim against Iochem Corporation; (3) the court's interpretation of a ninety-day cancellation clause in the Pump Systems' and Iochem's contract; (4) the court's exclusion of the deposition of a witness as rebuttal evidence; (5) the court's refusal to bar oral contract evidence pursuant to the statue of frauds, and (6) the court's purported failure to make necessary findings. On review, we find no error, and affirm.

BACKGROUND

Iochem produces medical iodine by pumping underground brine to the surface and removing the naturally occurring iodine from the brine. As such, it often purchases pump equipment. The record indicates that the Toyota Tsusho Corporation of Japan owns 82% percent of Iochem, with Toyota Tsusho America Inc. owning the remaining 18%. Pump Systems is a pump distribution and consulting company solely owned by Randall Rentzel.

In 1997, Rentzel and Kent Hood—Iochem's executive vice-president—negotiated a contract for Pump Systems to become Iochem's sole source of pump equipment. Much of the business between the entities was evidently carried out by telephone communication between Rentzel and Hood, rather than by written tenders. The relationship between Rentzel and Hood went back longer, and Pump Systems had operated as a distributor and sourced pumps for Hood for some ten years before the sole-source contract was made.

The sole-source agreement ran reasonably smoothly for some twenty years, but tensions eventually developed between the parties in 2017 and 2018.

Iochem maintains that Hood and Rentzel had negotiated an oral "cap" agreement by which, in return for sole-source status, Pump Systems would cap its markup on pumps and supplies. Pump Systems denied such an agreement was ever made. A dispute also arose over failure rates and warranty claims on the equipment Pump Systems was supplying and invoice payments Iochem was purportedly withholding.

These tensions remained unresolved, and on July 23, 2018, Hood contacted Pump Systems and told them—orally—that Iochem was terminating the agreement, effective immediately. Pump Systems sued Iochem, alleging the immediate termination breached the termination notice provisions of the sole-source agreement and sought payment of unpaid invoices and damages for breach of contract and unjust enrichment. Iochem responded with a counterclaim alleging breach of contract, deceit, and constructive and actual fraud regarding the markup cap and unjust enrichment regarding the warranty claims. Pump Systems moved to dismiss these counterclaims on the grounds that they were not distinct from the underlying breach of contract, and that any oral agreement was unenforceable. An agreed dismissal of the counterclaims without prejudice was filed in June 2019, and Iochem filed an amended counterclaim for breach of contract and fraud.

The next year was primarily consumed with motions for summary judgment and discovery disputes. In July 2020, Pump Systems sought leave to amend its petition to add new parties and claims. Pump Systems stated that it had recently discovered that the decision to terminate the agreement had not

been made by Iochem's executive vice-president Kent Hood, but by Iochem's president, Yutaki Imiazuma, and that Imiazuma was an employee of the Toyota entities. Pump Systems sought to amend to allege "economic duress," negligence, breach of the covenant of good faith and fair dealing, tortious interference, and "undue influence" against the Toyota entities and abuse of process against Iochem. The court allowed the amendment. However, in December 2020, it dismissed the claims against the Toyota defendants on statute of limitations grounds and dismissed the abuse of process claim against Iochem.

The case finally went to trial in October 2022. The jury was instructed on Pump Systems' claims and Iochem's counterclaims. The jury found against Pump Systems on its claims, and for Iochem on its counterclaims. However, the jury set Iochem's counterclaim damages at zero dollars. Pump Systems appeals.

STANDARD OF REVIEW

This appeal involves a motion to dismiss on statute of limitations grounds, and a tolling argument. "A statute-of-limitations issue ordinarily presents a mixed question of fact and law." *Volkl v. Byford*, 2013 OK CIV APP 73, ¶ 4, 307 P.3d 409 (quoting *Sneed v. McDonnell Douglas*, 1999 OK 84, ¶ 9, 991 P.2d 1001). However, where the "matter was presented as a motion to dismiss ... the standard of review before the court is *de novo*." *Volkl*, 2013 OK CIV APP 73, ¶ 4, 307 P.3d 409 (citing *Hayes v. Eateries, Inc.*, 1995 OK 108, ¶ 2, 905 P.2d 778). We review questions of law pursuant to a *de novo*, or non-deferential, standard of review. *Barnes v. Okla. Farm Bureau Mut. Ins. Co.*, 2000 OK 55, ¶ 4, 11 P.3d

162, 166. This appeal also involves a dismissal for failure to state a claim which is reviewed *de novo. Fanning v. Brown*, 2004 OK 7, 85 P.3d 841.

"Whether contract language is ambiguous is a question of law for the court." *M.J. Lee Constr. Co. v. Oklahoma Transp. Auth.*, 2005 OK 87, ¶ 11, 125 P.3d 1205, 1210. Such questions of law are reviewed *de novo. Id.* A trial court's ruling on a party's request to present rebuttal evidence is discretionary and is not reversible error on appeal in the absence of a showing of clear abuse of discretion. *Swyden v. Killiam*, 1975 OK 12, ¶ 19, 531 P.2d 1031, 1035.

ANALYSIS

The Dismissal of the Toyota Entities

The court dismissed Pump Systems' claims against the Toyota entities on statute of limitations grounds, finding that the contract was breached on August 13, 2018, the two-year limitation period expired on August 13, 2020, and that Pump Systems' amended petition was not filed until September 18, 2020. Pump Systems argues that some form of equitable tolling should have been applied to the statute of limitations.

Pump Systems relies on an "equitable tolling" theory but is not entirely clear at to *which* tolling theory, *i.e.*, whether it relies on the discovery rule, equitable cases involving concealment or misdirection by a party, or an entirely new theory that filing a motion to amend equitably tolls the statute of limitations. Pump Systems argues that it could not, with due diligence, have found out that a Toyota employee, Yutaki Imiazuma, was Iochem's president and decisionmaker until the deposition of Kent Hood. The discovery rule, to the extent Pump

Systems invokes it, may therefore toll the limitations period until Hood's deposition.

For the purposes of review only, we will take as true Pump Systems' inherent argument that it could not bring tort claims against the Toyota entities, the 100% owners of Iochem, until it found that the president of Iochem was paid directly by Toyota. The discovery rule tolls a statute of limitation "until an injured party knows of, or in the exercise of reasonable diligence, should have known of or discovered the injury, and resulting cause of action." *Weathers v. Fulgenzi*, 1994 OK 119, ¶ 12, 884 P.2d 538 (citation omitted). "'A party generally cannot avoid the bar of the statute of limitations, by virtue of the discovery rule, if he or she had the means to discover the facts giving rise to his or her action.'" *Scott v. Foster*, 2023 OK 112, ¶ 19, 538 P.3d 1180, 1195 (Kuehn, J., dissenting) (quoting 54 C.J.S. *Limitations of Actions* § 136).

In Oklahoma, the discovery rule has developed primarily by case law. The Oklahoma Supreme Court has articulated the purposes behind its application of the discovery rule:

> 1) [T]he negligence was not readily discoverable by a plaintiff utilizing ordinary due diligence; 2) the negligence was hidden from being readily discoverable by the plaintiff; or 3) the plaintiff was prevented from knowing of it, and it did not become apparent until problems arose and the negligence was uncovered without any apparent negligence on the part of the plaintiff.

Morgan v. State Farm Mut. Auto. Ins. Co., 2021 OK 27, ¶ 29, 488 P.3d 743, 751 (quoting *Calvert v. Swinton*, 2016 OK 100, ¶ 15, 382 P.3d at 1034).

Here, it is beyond doubt that Pump Systems *knew of the injury and the resulting cause of action.* It claims to have not known the identity of an *additional*

party allegedly responsible for the same injury. Even if this would be a basis to apply the discovery rule, such information could have been timely discovered by interrogatory. Waiting for a postponed deposition was not necessary. We find no application of the discovery rule here.

Pump Systems next argues that the claims against the Toyota entities should not have been dismissed on limitations grounds because it filed its motions to add parties and add new claims before the statute of limitations expired. Pump Systems filed its motions on July 23, 2020, twenty-one days before the statute of limitations expired. An agreed order granting amendment was entered on August 14, 2020, one day after the limitations period expired. Pump Systems' amended petition was not filed until September 18, 2020.

Statutory law provides for a form of tolling in this situation by the "relation back" provisions found in 12 O.S. § 2015, which governs amended and supplemental pleadings. Section 2015(C) provides, in pertinent part, that relation back is permitted by the law when the party added outside the statute of limitations "[k]new or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him."

The element of a mistake concerning the identity or correct name of the proper party is central to the relation back doctrine.[1] The mistake to which

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[1] *See e.g., Pan v. Bane*, 2006 OK 57, ¶ 20, 141 P.3d 555, 562 (mistake as to who was driving vehicle); *Ellis v. Ascension St. John Med. Ctr., Inc.*, 2023 OK CIV APP 16, ¶ 1, 531 P.3d 665, 666 (mistake as to exact legal name of hospital); *Volkl v. Byford*, 2013 OK CIV APP 73, ¶ 2, 307 P.3d 409, 411(original petition incorrectly named the owner of the vehicle as the driver); *Bluejacket v. City of Tulsa*, 2005 OK CIV APP 26, ¶ 4, 111 P.3d 732, 733 (petition

§ 2015(C)(3)(b) refers is usually one involving "misnomer" or misidentification of the proper party defendant, *i.e.*, where the proper party has simply been misnamed. *Hodge v. Morris,* 1997 OK CIV APP 53, ¶ 10, 945 P.2d 1047, 1050. Further, the Oklahoma Supreme Court has aligned its interpretation of § 2015 with Federal Rule 15. *Roth v. Mercy Health Ctr., Inc.*, 2011 OK 2, ¶ 25, 246 P.3d 1079, 1088. Rule 15 jurisprudence is clear that this exception has been construed narrowly, generally extending only to errors "such as misnomer and misidentification." *Quinn v. Guerrero,* 863 F.3d 353, 363 (5th Cir. 2017). Adding a new defendant based on facts a plaintiff learns during discovery is not "a mistake concerning the proper party's identity." *Ford v. Anderson Cnty., Texas,* 90 F.4th 736, 763 (5th Cir. 2024).[2] We find no mistake or misnomer here, and no basis for an application of the relation back doctrine.

As for an equitable rule that the filing of a motion to amend tolls the statute of limitations, we find no authority, mandatory or persuasive, in either statutory or common law, for such a rule. Nor does Pump Systems cite any statute or case law to that effect. As such, we find no error in the court's dismissal of the claims against the Toyota entities on statute of limitations grounds.

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for review in the trial court, naming "City of Tulsa, A Municipality" related back to original petition mistakenly naming "City Council Department of Finance").

> [2] Rule 15(c) is intended to correct a mistake concerning the identity of a defendant; it does not permit adding a new defendant when the plaintiff did not originally know of that defendant's identity. *Id.* In this case, Plaintiffs sought to add Lieutenant Pierson as a new defendant based on facts that they learned during discovery. This is not a case of "a mistake concerning the proper party's identity," and thus the claim against Pierson is time-barred.
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> *Ford v. Anderson Cnty., Texas*, 90 F.4th 736, 763 (5th Cir. 2024).

The Dismissal of Pump Systems' Abuse of Process Claim Against Iochem

The court also dismissed Pump Systems' abuse of process claim against Iochem on statute of limitations grounds. Pump Systems argues that its abuse of process claim did not accrue until June 17, 2019, and hence was not time barred on September 18, 2020, when it was filed. The statute of limitations for abuse of process claims is two years. *Thacker v. Walton*, 2021 OK CIV APP 5, ¶ 12, 499 P.3d 1255, 1261. We agree that this claim was not time barred. We do not agree that the court erred in dismissing it, however.

The basis of the abuse of process claim, as stated in Pump Systems' amended petition of September 18, 2020, was that Iochem's original counterclaim alleged that Pump Systems had "overcharged" Iochem at a time when Iochem "did not know whether Pump Systems had allegedly overcharged Iochem."[3] Pump Systems alleged that this constituted "bad faith" and that Iochem acted with the "ulterior motive" of causing Pump Systems to dismiss its suit or incur unnecessary expense. *Amended Petition*, R. 584.

The elements of an abuse of process claim are (1) the improper use of the court's process (2) primarily for an ulterior or improper purpose (3) with resulting damage to the plaintiff asserting the misuse. *McGinnity v. Kirk*, 2015 OK 73, ¶ 64, 362 P.3d 186. Abuse of process occurs when "[o]ne who uses a legal

[3] The basis of this the argument is evidently that Kent Hood believed there was an agreement on markups but did not have information *at the time of the counter suit* that Pump Systems had actually marked up products beyond the amount permitted by the alleged agreement. Hood testified at trial that Iochem later *had evidence* that Pump Systems was charging considerably more for products than the alleged markup agreement would allow. The alleged "abuse of process" was evidently not waiting until this was discovered to file the counterclaim.

process, whether criminal or civil, against another primarily to accomplish a purpose for which it is not designed, is subject to liability to the other for harm caused by the abuse of process." *Id.* at ¶¶ 64-65, (quoting Restatement (Second) of Torts, § 682 (1977)). *McGinnity* goes on to explain that this view is consistent with a comment made by the Tenth Circuit Court of Appeals, explaining the elements of abuse of process: "If the action is confined to its regular and legitimate function in relation to the cause of action stated in the complaint there is no abuse, even if the plaintiff had an ulterior motive in bringing the action or *if he knowingly brought suit upon an unfounded claim.*" *Id.* (emphasis supplied). "The quintessence of abuse of process is 'not the wrongfulness of the prosecution, but some extortionate perversion of lawfully initiated process to illegitimate ends.'" *Greenberg v. Wolfberg*, 1994 OK 147, 890 P.2d 895, 905 (quoting *Heck v. Humphrey*, 512 U.S. 477, 486 n.5 (1994)).

Accepting that Iochem "did not know whether Pump Systems had allegedly overcharged Iochem" at the time it made its counterclaim simply does not rise to this level. At most, it may constitute a breach of 12 O.S. § 2011(B)(3) requiring that "[t]he allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery."[4] The proper remedy for a violation of § 2011 is sanctions by the court. We find no error in the court's dismissal of Pump Systems' abuse of process claim.

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[4] Iochem's action was also little different from Pump Systems raising claims for "undue influence" in a simple breach of contract case.

The Ninety-Day Cancellation Clause

Pump Systems next argues that the court erred by interpreting paragraph 3.1 of the parties' contract as a matter of law, and that this was a jury question. The paragraph in question stated:

> 3.1 This agreement shall remain in effect for a period of (1) year and will automatically renew each year on the anniversary date unless either or both parties desire to terminate this agreement. In the event that either party exercises its option to terminate the agreement no less than ninety (90) days written notification of such intent will be given.

Pump Systems argues that this provision was ambiguous, allowing a party to either terminate at any time during the contract period by giving 90 days' notice or only to terminate at the expiration of the one-year term, with a minimum of 90 days' notice prior to the expiration date. We find no explicit ruling by the court on these proposed interpretations, but Pump Systems argues that the court inherently decided on the former interpretation by limiting its damages to those incurred 90 days after termination.

The original contract was evidently made on April 11, 1997, and renewed yearly for twenty years. The court found it was terminated without notice by Iochem on August 13, 2018. Pump Systems therefore argues that the jury should have decided whether Iochem was in breach for 90 days (August 13, 2018, to November 11, 2018) or for 241 days (August 13, 2018, to April 11, 2019).

If the jury had found for Pump Systems, the question of the correct period for assessing damages would be relevant. Given the jury's verdict, the significance of this argument is unclear. The evidence was clearly that Iochem did not give 90 days' notice, 241 days' notice, *or any notice at all*, before

terminating the contract. Nonetheless, the jury found against Pump Systems' breach of contract claim. Unless that verdict was contaminated by some other error, the question of the period of Pump Systems' damages is irrelevant. Hence, we must next examine Pump Systems' two claims of error in the trial.

Witness Nick James

Pump Systems argues that the trial was tainted by error because the court refused to allow the introduction of the deposition testimony of one Nick James. James was an employee of Schlumberger, a vendor that provided equipment to Iochem via Pump Systems. James was apparently intended to give evidence against Iochem's counterclaim that Iochem had not properly received warranty credits for equipment failures. The proposed testimony was that Schlumberger had provided all warranty credits due, and none were outstanding.

On the first day of trial, Pump Systems sought a continuance, stating that it had intended to call James as a "rebuttal witness," and had subpoenaed him but he was unable to attend because of a family emergency. Tr., Vol. I, pp.5-6. Opposing counsel queried how James could be named as a defense "rebuttal witness" on the first day of trial when the plaintiff had not yet introduced any testimony. *Id.* at 6. Pump Systems' counsel insisted again that James was not a witness for Pump Systems' case-in-chief but was an "important witness as our rebuttal witness on their [Iochem's] case in chief." *Id.* at 8. The court noted that the declaration of a "rebuttal witness" before the beginning of trial was improper because rebuttal would be proper only to counter *unexpected* evidence in

Iochem's case in chief. *Id.*[5] The court denied the request for a continuance. *Id.* at 9.

The court later refused to allow the admission of James's deposition testimony as rebuttal on the same basis—that Pump Systems was entirely aware that Iochem had countersued claiming Pump Systems had retained warranty credits, and evidence against this known claim had to be presented in Pump Systems' case in chief, not as "rebuttal." Tr., Vol. III, p. 159. As a compromise, the parties apparently agreed that a stipulation would be made to the jury regarding warranty credits from Schlumberger. A stipulation was given to the jury as follows:

> The parties stipulate that the credits owed by Schlumberger were all issued and exhausted. The parties dispute whether the credits were issued to the benefit of Iochem.

R. 1900.

The admission and exclusion of evidence is within the sound discretion of the trial court. *Jordan v. Gen. Motors Corp.*, 1979 OK 10, ¶ 12, 590 P.2d 193, 196. We will not reverse evidentiary decisions of the trial court absent an abuse

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[5] In the conduct of a trial, "[i]t is the duty of the plaintiff to present all of his evidence to make out his case in chief before resting, and it is not permissible to permit the plaintiff to introduce a portion of his evidence in chief and then to wait to see what the evidence on the part of the defendant is before introducing the rest of his evidence." *Poppy v. Duggan*, 1925 OK 263, ¶ 6, 235 P. 165, 166. Rebuttal evidence is "evidence that becomes relevant only as an effect of some evidence introduced by the other side," *id.*, but does not include "testimony whose purpose is to contradict an expected and anticipated portion of the opponent's case in chief." *State ex rel. Okla. Bar Ass'n v. Busch*, 1998 OK 103, ¶ 15, 976 P.2d 38, 45. The court's logic here was clear: if Pump Systems knew before trial began that it needed James to rebut testimony given on behalf of Iochem in support of its claims, that testimony was not "unexpected."

of discretion which results in prejudice to the proponent. *Mills v. Grotheer*, 1998 OK 33, ¶ 3, 957 P.2d 540, 541.

Although the parties' briefing concentrates on the question of whether James's testimony was subject to the rules on rebuttal, the fundamental question is whether Pump Systems was prejudiced by its exclusion. Pump Systems argues that Iochem presented testimony not only that there were warranty credit issues, but testimony that Pump Systems "pocketed" warranty credits from vendors, including Schlumberger. Pump Systems argues it was not anticipating this testimony, and that James's testimony was necessary to refute it. We are not, however, directed to any offer of proof or evidence that Nick James of Schlumberger had *any knowledge of whether Pump Systems "pocketed" warranty credits issued by Schlumberger.* His proposed testimony appears to be only that all credits owed by Schlumberger were issued and exhausted. This was stipulated to the jury. We find no sufficient showing of prejudice to justify reversal on this issue.

Oral Evidence of a Markup Agreement

Pump Systems finally argues that the court erred in admitting oral evidence of an agreement between Hood and Rentzel to cap Pump Systems' mark-up on equipment it obtained for Iochem. Hood testified that he and Rentzel had always had an oral agreement as to mark-up levels, and it would make no sense for Iochem to enter into a sole-source agreement with Pump Systems without some control over how much Pump Systems could mark-up the products it provided. Rentzel denied any agreement limiting what Pump Systems could

charge Iochem for equipment it sourced or assembled. The question of whether Pump Systems breached an oral markup agreement was presented to the jury.

Pump Systems argues on appeal that (1) the statute of frauds barred any oral agreement on markups and hence the court should not have considered the existence of such an agreement; (2) the written contract was unambiguous in not including a markup cap and represented the entire agreement of the parties; the court could not therefore hear parole evidence on the subject; and (3) the court was required to make a record finding whether the written contract represented the entire agreement of the parties, but failed to do so.

Pump Systems first argues that 12A O.S. § 2-201 prevents the court and jury from considering any oral agreement on markups as part of the contract on the grounds that any such agreement is invalid pursuant to the statute of frauds. Section 2-201 provides in part:

> (1) Except as otherwise provided in this section a contract for the sale of goods for the price of Five Hundred Dollars ($500.00) or more is not enforceable by way of action or defense . . ..

Pump Systems states in its brief that the trial court "should not have allowed Hood's testimony about the alleged oral agreement because the statute of frauds requires the agreement to be in writing."

There was an agreement in writing here, albeit one that appears to be silent on pricing and markups. As the UCC Comments note, the required writing need not contain all the material terms of the contract and such material terms as are stated need not be precisely stated: "All that is required is that the writing afford a basis for believing that the offered oral evidence rests on a real transaction."

(Uniform Commercial Code Comments ¶ 1, as rendered in 12A O.S. § 2-201). There is no doubt that there were some twenty years of "real transactions" between Pump Systems and Iochem based on the written agreement.

Further, Pump Systems' interpretation of § 2-201 could effectively hold that the statue of frauds bars almost all parole evidence in the interpretation of a contract involving over $500 worth of goods. This is not consistent with Oklahoma's contractual and statutory law regarding contract interpretation. We find that Hoods's testimony was not made inadmissible by the statute of frauds.

Regarding parole evidence, the Oklahoma UCC states at 12A O.S. § 2-202:

> Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:
>
> (a) by course of performance, course of dealing or usage of trade (Section 16 of this act); and
>
> (b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

The contract here is not only silent on markups, but silent on the question of equipment pricing entirely. As the *Oklahoma Code Comment* notes, previous Oklahoma decisions held it was presumed that the written contract was intended to include all the terms of the agreement. *See Warren v. Pulley,* 1943 OK 248, 141 P.2d 288 (1943). There is no such presumption under the Uniform Commercial Code, however. The accompanying comments to the UCC are clear that "[t]his section definitely rejects: (a) Any assumption that because a writing

has been worked out which is final on some matters, it is to be taken as including all the matters agreed upon." The same comment notes that "[u]nder paragraph (b) consistent additional terms, not reduced to writing, may be proved unless the court finds that the writing was intended by both parties as a complete and exclusive statement of all the terms." *See Dave Markley Ford, Inc. v. Lair*, 1977 OK 114, n. 1-3, 565 P.2d 671, 673.

Given the entire absence of any terms regarding pricing, the trial court would not be in error to find that the writing was not intended by both parties as a complete and exclusive statement of all the terms. As such, 12A O.S. § 2-202 did not bar the evidence of an oral contract here.

Pump Systems argues, however, that "the court did not make the requisite findings prior to allowing evidence of the alleged contemporaneous oral agreement." *Reply Brief*, pg. 11 (capitalization modified). The required finding Pump Systems refers to is evidently whether the contract was the final expression of the parties' agreement pursuant to § 2-202. The court considered disputed parole evidence, and placed its factual credibility before the jury, which inherently demonstrates that the court found the contract was not a final expression. We found no error in that decision. However, Pump Systems also appears to argue that § 2-202 requires a specific on-the-record finding that the contract was not the final expression.

When the legislature mandates an on-the-record finding, it generally does so with specificity. Title 12A O.S. § 2-202 makes no mention of record findings. Pump Systems cites *Transamerica Oil Corp. v. Lynes, Inc.*, 723 F.2d 758, 764

(10th Cir. 1983) (under Kansas UCC) as requiring such a finding. *Transamerica Oil Corp.* notes that Section 2-202

> declares that when a writing is intended by the parties "as a final expression of their agreement" its terms may not be contradicted by evidence of any prior agreement. The section in essence requires the trial court, before admitting parol or extrinsic evidence, to **determine** whether the parties intended some document—here the invoice—to be a final expression of their agreement on the terms of the sale.

Id. (emphasis supplied).

We do not read either 12A O.S. § 2-202 or *Transamerica Oil Corp.* as changing the requirement that a court *determine* whether a document was the final expression of an agreement to one that the court make an *on-the-record finding* that the document was or was not a final expression. As such, we find no error in the court's application of 12A O.S. § 2-202.

* * *

We find no error in the challenged decisions of the district court. As such, its judgment, entered on a jury's verdict, is **AFFIRMED**.

HUBER, P.J., and HIXON, J., concur.

June 20, 2024