Oil and Gas, Natural Resources, and Energy Journal

Volume 6
Number 2 *The 2020 Survey on Oil & Gas*

October 2020

Texas

Don Hueske

ONE J

Oil and Gas, Natural Resources, and Energy Journal

VOLUME 6 NUMBER 2

TEXAS

Don Hueske[*]

Conveyances

ConocoPhillips Co. v. Ramirez, 599 S.W.3d 298 (Tex. 2020)

Leon Juan and Felicidad Ramirez were devised 7,016 acres in Zapata County, equally. The surface was partitioned and the minerals were severed, so that each owned the surface of 3,508 acres and an undivided

* Don Hueske has spent his entire professional career in the energy industry and focuses his practice in the areas of mineral title law and due diligence for acquisitions and financing issues. He prepares title opinions, and negotiates and drafts leasehold assignments, farmout and joint operating agreements and curative instruments. Don has been Board Certified in Oil, Gas and Mineral Law by the Texas Board of Legal Specialization.

one-half mineral interest in all of the acreage. When Leon Juan died, he devised the surface and minerals separately, one-half to his widow and one-sixth to each of his three children. In 1975, the widow and children partitioned the surface estate only, specifically excluding the mineral interest, with two children jointly acquiring the 1,058 acre 'Las Piedras pasture'. Leonor, who was Leon Juan's widow, later acquired the surface interest of one of the two children. As a result, she owned un undivided one-half interest in the surface of the 1,058 acres comprising Las Piedras and an undivided one-fourth mineral interest in the entire 7,016 acres.

Leonor died in 1988, devising 'Las Piedras Ranch' to her son Leon Oscar Sr. as a life estate, with remainder to his then living children. The residue of her estate was devised to her three children, equally. A dispute arose between Leonor's children and Leon Oscar Sr.'s children as to ownership of the minerals underlying Las Piedras Ranch. The trial court held that the minerals vested in Leon Oscar Sr.'s children following termination of his life estate, and the court of appeals upheld this decision.

The Texas Supreme Court reversed, holding that only the surface estate was devised. This decision was based on a determination of the testator's intent as found within the four corners of the will as of the time of execution; and when open to more than one construction, consideration of circumstances existing at the time of execution. The Court noted use of quotation marks and capitalization of 'Las Piedras Ranch' and concluded that such term had a specific fixed meaning to the family. Considering the title history of the 7,016 acres, the Court found an intent that family members would continue to own undivided mineral interests in the entirety, and further that the exclusion of mineral interests from any of the partition instruments clearly signified that 'Las Piedras pasture' and 'Las Piedras Ranch' consisted of surface interests only.

Copano Energy, LLC v. Bujnoch, 593 S.W.3d 721 (Tex. 2020)

The Bujnochs granted Copano an easement for a single 24 inch gas pipeline in 2011. In 2012, Copano sought an easement for an additional pipeline, and contacted the attorney for the Bujnochs. The attorney's assistant and the Copano landman exchanged a series of emails prior to a meeting between the landman and attorney. After that meeting, the landman emailed the attorney directly for the first time, agreeing (in accordance with the meeting) to pay $70.00 per foot for a second 24 inch pipeline and remedy damages from construction of the first pipeline. In response, the attorney emailed acceptance. Before construction of the second pipeline had begun, Copano was sold and the pipeline was never built.

The Bujnochs sued, claiming an enforceable contract for construction of an easement at $70.00 per foot.

The Texas Supreme Court found that the emails did not satisfy the statute of frauds, holding that although the emails constituted an offer and acceptance, additional essential terms, such as the easement's location and size, were not sufficiently present so as to demonstrate a meeting of the minds and intent to be bound. The emails were viewed as forward looking requests to continue negotiations.

Piranha Partners v. Neuhoff, 596 S.W.3d 740 (Tex. 2020)

Neuhoff owned an undivided 3.75% overriding royalty in an oil and gas lease. In 1999, it sold "[a]ll right, title and interest in and to the properties described on Exhibit 'A'" to Piranha. At the time of the sale, there was one producing well located on the lease. Exhibit "A" attached to the assignment referenced the well, the land, and the lease. After the sale, the lease operator drilled and completed additional wells, but paid Neuhoff's successors the override on production from the new wells, believing Piranha's interest to extend only to production from the well in existence at the time of the sale. Subsequently issued title opinions credited the override to Piranha in all wells, at which time the operator demanded the Neuhoff successors refund all monies previously paid them.

The Neuhoff successors then filed suit, claiming the assignment was only of production from the original well. At trial, Piranha was granted summary judgement on the finding that the assignment covered all of the land described in the lease. The court of appeals reversed, however, holding that the assignment was of an interest in the wellbore only.

The Texas Supreme Court reversed and reinstated the summary judgment, rejecting reliance on various canons of construction and surrounding circumstances, instead basing its analysis on a 'holistic and harmonizing approach' in construing language in the assignment and Exhibit 'A' to find that the assignment conveyed all of Neuhoff's interest in the lease.

Chalker Energy Partners III, LLC v. Le Norman Operating LLC, 595 S.W.3d 668 (Tex. 2020)

Chalker Energy acted as agent for eighteen sellers of oil and gas leases in the Texas Panhandle; the bid process required execution of a confidentiality agreement prior to admission to the virtual data room. The confidentiality agreement provided in part that "[u]nless and until a definitive agreement has been executed and delivered, no contract or agreement providing for a transaction between the Parties shall be deemed to exist … 'definitive

agreement' does not include an executed letter of intent or any other preliminary written agreement or offer, unless specifically so designated in writing and executed by both Parties."

Le Norman signed the confidentiality agreement and submitted a bid for $332 million by email, "subject to the execution of a mutually agreeable purchase and sale agreement ('PSA')." Jones Energy submitted a higher bid, and Le Norman raised its bid to $345 million. The increased offer was rejected, and Le Norman later advised that it would not pursue the acquisition.

Chalker then counteroffered to sell 67% of the assets. Le Norman emailed a $230 million bid and proposed terms, providing a 5:00 p.m. deadline the following day and indicating that it would not entertain further counteroffers. The sellers agreed to the sale prior to the deadline, "subject to a mutually acceptable PSA." Sellers separately sent Le Norman a congratulatory email, and Jones Energy emailed that they "heard we lost the deal again."

Shortly after, Jones Energy submitted the sellers a new offer, and the sellers quickly accepted, executed a PSA, and sold the assets to Jones. Le Norman filed suit for breach of contract, arguing that the exchange of emails constituted an enforceable agreement. The trial court granted Chalker's motion for summary judgment, holding that execution of a PSA was a condition precedent to there being an enforceable contract. On appeal, the Houston First Court of Appeals reversed and remanded, finding questions of fact as to whether the counteroffer was separate from the initial bid process and thus not subject to the 'no agreement' provision of the Confidentiality Agreement, and whether the parties intended to be bound by the terms of the email exchange.

The Texas Supreme Court reversed the appellate holding and rendered judgment in favor of the sellers, finding that by inclusion of the 'no agreement' provision, the parties had agreed that a 'definitive agreement' was a condition precedent to contract formation, which finding was supported by Chalker's acceptance of Le Norman's offer being "subject to a mutually agreeable PSA". The Court noted that email exchanges were akin to a preliminary agreement, and that a number of essential terms remained to be negotiated before a definitive agreement could be reached.

Yowell v. Granite Operating Co., No. 18-0841, 2020 WL 2502181, (Tex. May 15, 2020)

Yowell acquired an overriding royalty in a 1986 lease owned by Granite Operating, covering the mineral rights in a section of land in Wheeler County, Texas. The override was subject to an anti-washout provision

applicable to any extension, renewal, or new lease executed by any leasehold successor. The mineral owner executed a top lease to Amarillo Production Company in 2007, and Amarillo brought suit seeking to have the 1986 lease declared terminated. The parties settled; the 1986 lease was released and the 2007 lease was made effective, and assigned by Amarillo to Granite, reserving a 5% override. Granite established production on the leased acreage but did not pay Yowell's override, claiming that the instrument creating it violated the Rule Against Perpetuities because the term of the anti-washout provision was indefinite. Yowell sued for the refusal to pay its interest.

At trial, the court ruled for the defendants and the Amarillo Court of Appeals affirmed the ruling, holding that the override in a new lease was not certain to vest within 21 years of a life in being. The court also rejected the plaintiff's claim that Section 5.043 of the Texas Property Code required reformation of instruments found to be violative of the Rule, on the grounds that plaintiff's claim was barred by the four year statute of limitations found in Section 16.051 of the Texas Civil Practice and Remedies Code.

The Texas Supreme Court agreed that the anti-washout language created a springing executory interest which violated the Rule; however, it remanded the matter for the purpose of reformation, noting that Property Code Section 5.043 is a judicial mandate to which the statute of limitations does not apply.

Chi. Title Ins. Co. v. Cochran Inv., Inc., 602 S.W.3d 895, (Tex. 2020)

Cotenants executed a mortgage on land owned by them. One of the cotenants then filed bankruptcy; the mortgagee later foreclosed its lien and sold the land at foreclosure to Cochran, who later conveyed by special warranty deed to Ayers, who also obtained a title policy from Chicago Title. The bankruptcy trustee sued to set aside the foreclosure as violative of the automatic stay, joining Ayers. Chicago, as Ayers' subrogee, paid off the trustee and sued Cochran for Ayers' purchase price and its attorney's fees, arguing breach of the implied covenant of seisin. The trial court held for Chicago, and the Fourteenth Court of Appeals held that the deed did not represent that Cochran was the owner of the land and therefore could not imply the covenant of seisin.

The Texas Supreme Court found that it "[n]eed not resolve whether the special warranty deed implies the covenant of seisin, because, even assuming it does, the deed contains a 'qualifying expression' disclaiming liability for the alleged breach." In other words, the Court held that, by its nature, the fact that the special warranty was limited to claims "[b]y, through and under [Grantor], but not otherwise", served as the requisite

qualifying expression and negated the covenant of seisin. In addition, the Court noted that a warranty is a separate and distinct contractual means of indemnification, and not part of the conveyance itself.

WTX Fund, LLC v. Brown, 595 S.W.3d 582 (Tex. App. 2020).

The granting clause of a 1951 mineral deed conveyed "[A]ll of grantor's right, title and interest and estate in and to the leasing rights, bonuses and delay rentals in and to all the oil, gas and other minerals …"; it also stated grantor's intent to convey executive rights, bonuses, delay rentals and "the 7/8 leasing rights or working interest … and all other rights and benefits. …" but "[S]hall not affect any interest … in the future to the non-participating 1/8 royalty in and under said land, but it shall never be necessary for grantors to join in the execution of any instrument pertaining to any past or future oil and gas leases, and shall have no right to any bonuses, delay rentals, oil payments or other benefits under any oil, gas and mineral leases which have been made or which may hereafter be made by grantee.…" WTX was the successor to the grantor.

The dispute centered on whether the deed conveyed the entire mineral estate or reserved a royalty interest, either in whole or in part. Applying a holistic four corners approach, the El Paso Court of Appeals held that the deed reserved the entirety of the royalty, conveying all other attributes of mineral ownership. The court based its decision on the specific grant of leasing rights, bonus and delay rentals, as well as rights of ingress and egress, to support its finding that the grantee received all development rights.

In determining the meaning of 'all other rights and benefits', the court stated that the parties' interchangeable use of 'leasing rights', 'working interest' and a '7/8 interest' (the lessee's historic share of production), evidenced an intent that the interest conveyed did not include royalties. Noting the historic misconception that once leased, the mineral owner owned only a 1/8 royalty, the court next held that the grantors reserved the entire, floating nonparticipating royalty and not a fixed 1/8.

In re Estate of Ethridge, 594 S.W.3d 611 (Tex. App. 2019).

A 1990 will devised all of the decedent's 'personal effects' to her nephew Davis, and her residence and homestead to a third party. The will did not include a residuary clause. Following her death, royalties attributable to her mineral interest were paid to her estate. The nephew, who was also executor of the estate, then paid those royalties to himself.

Heirs of the decedent learned of the royalty interests and sought removal of the executor and an accounting, claiming the mineral interest passed to

them under intestacy. The trial court ruled that 'personal effects' were limited to personal property and that the mineral interests therefore passed through intestacy to the heirs.

The appellate court agreed, noting that 'personal effects' is "customarily defined as a subset of personal property … generally referring to articles bearing intimate relation or association to the person of the testator", such as clothing and jewelry. Inasmuch as mineral interests are real property, and since the will did not include a residuary clause, the court was unable to identify an intent by the testator that the phrase 'personal effects' should mean anything other than its commonly understood meaning. The court therefore held that the mineral interests were not personal effects within the meaning of the will, and passed through intestacy.

Oil and Gas Leases

HJSA Ltd. P'ship v. Sundown Energy LP, 587 S.W.3d 864 (Tex. App. Aug. 16, 2019)

HJSA executed a lease to Sundown containing a continuous development provision providing, in part, that "[N]o more than 120 days to elapse between completion or abandonment of operations on one well and commencement of drilling operations on the next ensuing well." Sundown drilled 14 wells between February 2006 and March 2015.

In January 2016, HJSA notified Sundown that the lease had terminated as to certain portions of the leased premises, since, on five separate occasions between 2007 and 2013, more than 120 days had elapsed without the drilling of additional wells. Sundown responded by pointing out that under another paragraph of the lease, 'drilling operations' were defined so as to include reworking and reconditioning operations, which it had conducted during the relevant time periods. Suit was filed, and Sundown was awarded partial summary judgment holding that its reworking operations maintained the lease.

On appeal, the El Paso Court of Appeals construed the lease as defining a continuous drilling program as commencing with the spudding in of the first such well and not more than 120 days elapsing between completion or abandonment of that well, and the commencement of the next ensuing well. The court disagreed with Sundown's contention that the separate definition of 'drilling operations' was applicable to continuous drilling, pointing out that specific provisions control over general ones, and that the definition of 'drilling operations' was general whereas the continuous development provision was specific.

Samson Expl., LLC v. T.W. Moak and Moak Mortg. and Inv. Co., No. 09-18-00463-CV, 2020 WL 239538 (Tex. App. Jan. 16, 2020)

Samson formed and operated a pooled unit in which Moak acquired interests through foreclosure sale. Moak brought suit seeking an accounting and to quiet title, and claiming conversion, unjust enrichment, and negligence. The parties stipulated that Moak did not own an interest in the pooled acreage when the unit was formed and was not a party to any agreement pertaining to unit operations. The parties also stipulated that the deeds of trust covering the land which Moak later bought at foreclosure were never subordinated to the respective oil and gas leases, with the result that pooling of the leases ended when the deeds of trust were foreclosed and the leases expired.

Moak argued that because the pooling provisions in the prior leases pooled the land, rather than the leases themselves, termination of the leases did not end its participation in the pooled unit.

At trial, Defendants' motion for summary judgment as to the claim for an accounting was granted; the other issues continued to trial and Moak was awarded $43,188.88 on the claims of conversion and unjust enrichment, but that it take nothing with respect to its claims for quiet title and negligence. Both sides appealed.

On appeal, the Beaumont Court of Appeals affirmed the granting of summary judgment, but reversed the equitable damages, noting that following foreclosure, the defendants had no right to pool any part of the land covered by the leases and also that in the absence of a contractual relationship, there was no right to an accounting.

Executive Rights

Geary v. Two Bow Ranch Ltd. P'ship, No. 04-18-00610-CV, 2020 WL 354763 (Tex. App. Jan. 22, 2020)

Grantors in a 1981 deed conveyed the surface estate and "[O]ne-half of all oil, gas and other minerals and related executory rights and interests associated therewith[in]…." and to 2,614 acres of land, further providing that "[G]rantee may control the executory rights pertaining to the minerals provided the Grantors and Grantee share equally in any and all proceeds related thereto." The grantors further reserved and excepted the remaining undivided one-half mineral interest.

Two Bow succeeded to the interest of the grantee and executed an oil and gas lease in 2011, receiving $174,498 as bonus for doing so. The grantors to the 1981 deed filed suit, alleging that Two Bow had breached its

duty to lease the grantors' one-half mineral interest for the same terms, or, alternatively, that Two Bow had breached its duty to share lease proceeds. At trial, Two Bow moved for and received summary judgment on a finding that the 1981 deed created a personal interest to the grantee in the executive right, which was not assignable to subsequent owners.

On appeal, the court held that the 1981 deed only conveyed the executive right associated with the mineral interest conveyed, that being all that was 'related' and 'associated therewith'. Such holding was further supported by the grantors' reservation of "[o]ne-half of all oil, gas and other minerals and related executory rights and interests associated therewith."

Use of the word 'may' in the language pertaining to the grantee's executive right was deemed to be conditional permission to exercise same on behalf of the grantors, but not an obligation to do so. Additionally, since the grant was to the grantee and his successors and assigns, but the conditional permission language specific to the grantee (and not extending to his successors and assigns), the court held that the 1981 deed did not convey an ownership interest in the executive right to the reserved mineral interest. Since the executive right was not assignable, no contractual or fiduciary duty existed, and Two Bow was not liable for claimed breach of same.

Legal Descriptions

Crawford v. XTO Energy, Inc., No. 02-18-00217-CV, 2019 WL 6904298, (Tex. App. Dec. 19, 2019)

A 1964 conveyance of 8.235 acres out of a larger 145.99 acre tract, reserved "[t]he right to all oil, and gas in and under the land conveyed but expressly waive all rights of ingress and egress for the purpose of drilling for or producing oil and/or gas…provided that wells opened on other land may be bottomed on the [conveyed tract]." In 1984, the grantor conveyed 76 acres also out of the 146.99 acre tract which adjoined the 8.235 acres to the north and south, without mineral reservation and without reference to the 8.235 acre tract.

The grantor of the two deeds executed an oil and gas lease shortly before her death, and Crawford inherited the tract and ratified the lease; XTO is the successor to the original lessee. A title opinion obtained by XTO indicated that the 1984 deed divested the grantor of mineral interest under the 8.235 acre tract under the doctrine of strips and gores. Crawford brought suit claiming breach of lease, conversion and seeking removal of an alleged cloud on title, among other grounds. XTO was granted summary judgment.

On appeal, the appellate court's analysis focused on the requirement that to be included as part of a larger tract under the doctrine of strips and gores, a narrow, isolated strip must have ceased to be of any benefit or importance to the grantor at the time of the conveyance. The court found no practical benefit to the grantor retaining the minerals underlying the 8.235 acres in 1984 due to the surface rights thereto having been waived in the 1964 deed; noting that until the advent of horizontal drilling, minerals without surface access were of no practical benefit or value.

Atmos Energy Corp. v. Paul, 598 S.W.3d. 431 (Tex. App. 2020)

A 1960 easement and right of way granted the right to 'construct, maintain and operate' pipelines over and across a 137 acre tract of land, and a single pipeline was built shortly after. In 2017, Atmos developed plans to construct a second pipeline crossing the 137 acres along a different route and at considerable distance from the original pipeline. Paul denied access, and Atmos filed suit. At trial, Paul was awarded summary judgment on the finding that the agreement created only one easement or right of way but permitted construction of multiple pipelines along that easement.

On appeal, the court found that the agreement created a 'blanket easement' by its express terms, since no course or route was specified. In addition, the court found that the granting clause permitted multiple pipelines. Finding a reasonable necessity for the construction of the proposed pipeline and failing to find that installation of the pipeline was not unreasonably burdensome to the servient surface owner resulted in the summary judgment being reversed and remanded.

Regulatory

Flower Mound v. EagleRidge Operating, LLC, No. 02-18-00391-CV, 2019 WL 3955197 (Tex. App. Aug. 22, 2019)

The city of Flower Mound enacted an ordinance limiting site development to certain prescribed days and times and limiting deliveries of equipment and materials accordingly, making exception for emergencies such as fires, blowouts and explosions. In addition, the ordinance allowed operators to seek exceptions or variances.

EagleRidge, which operated gas wells within city limits, requested a variance which would allow it to transport produced water. EagleRidge was issued a citation and fined for hauling salt water in violation of the ordinance. It requested and won a temporary injunction prohibiting the city from restricting the hours in which EagleRidge could haul produced water.

On appeal, the injunction was dissolved and the case remanded on a finding that the trial court lacked subject matter jurisdiction to grant the injunction, since the ordinance was penal in nature, requiring EagleRidge to show irreparable injury to a vested property right.

*NGL Water Sol. Eagle Ford v. R.R. Comm'n, N*o. 03-17-00808-CV, 2019 WL 6336178 (Tex. App. Nov. 27, 2019.)

NGL operated a salt water disposal well permitted by the Railroad Commission. Blue Water applied to the Commission for a permit to operate an injection well nearby, and on learning of the pending application, NGL protested the application. Blue Water and NGL were competitors, and the respective and proposed wells were more than one-half mile from one another.

At the Commission hearing, the examiners and administrative law judges found that NGL was not an 'affected person' under Statewide Rule 9, which defines an affected person as "a person who has suffered or will suffer actual injury or economic damage other than as a member of the general public or as a competitor, and includes surface owners of property on which the well is located and commission-designated operators of wells located within one-half mile of the proposed disposal well." 16 Tex. Admin. Code § 3.9(5)(E)(ii)(year). The Commission approved and issued Blue Water's permit.

NGL filed suit, seeking judicial review and declaratory judgments, and the Commission filed a plea to the jurisdiction. The Third Court of Appeals affirmed the challenged order and dismissed NGL's claims for declaratory relief, noting that absent proof of actual injury or economic damages, NGL was not an affected person under Statewide Rule 9.

Adverse Possession

Scribner v. Wineinger, No. 02-19-00208-CV, 2019 WL 5251134, (Tex. App. Oct. 17, 2019)

Scribner acquired a working interest in a lease from his father in 2002; in 2010 and unknown to Scribner, his father's executor conveyed the same interest to Latigo Drilling. Following a series of conveyances, Wineinger and its predecessors succeeded to the interest of Latigo, and at all times between 2010 and 2016 operated and paid taxes on the lease.

In 2016, an attorney for Wineinger's predecessor learned of the assignment to Scribner and contacted him, requesting execution of a conveyance to remove the potential cloud on title.

After learning of Wineinger's claim to ownership of the lease, Scribner sued in 2018 under theories of trespass to try title, trespass, conversion, claiming to have superior title to the lease, and seeking an accounting and damages. Wineinger claimed perfection of adverse possession under the five year statute of limitations and counterclaimed. At trial, Wineinger was awarded the leasehold in its entirety and the 2002 assignment to Scribner declared void.

The Fort Worth Court of Appeals affirmed, holding that title perfection by adverse possession is not affected by subsequent acknowledgment of a potential competing claim.

Liens

ELG Oil, LLC v. Stranco Serv., No. 04-19-00088-CV, 2019 WL 5030260 (Tex. App. Oct. 9, 2019)

ELG contracted with Turn-Key Specialists, Inc. for the construction of natural gas storage tanks, and Turn-Key subcontracted with Stranco. Stranco later filed suit, alleging, among other claims, foreclosure of its mineral lien against ELG's property, and was awarded summary judgment.

On appeal, the summary judgment was reversed on a finding that Stranco did not effectively prove its work was 'used in' mineral activities as required by Chapter 56 of the Texas Property Code, inasmuch as the summary judgment evidence did not establish a link between the storage tanks and pipelines. The Texas Property Code grants mineral subcontractors a lien for material, machinery, supplies and labor used in mineral activities, including digging, drilling, operating, completing, maintaining or repairing oil or gas pipelines. Here, however, the evidence did not establish a link between the tanks Stranco worked on and the pipelines.

Partnership and Joint Venture

Glassell Non-Operated Int., Ltd. v. EnerQuest Oil & Gas, L.L.C., 927 F.3d 303 (5th Cir. 2019)

An Area of Mutual Interest agreement required parties to notify other participants within 30 days of its acquisition of an interest within the AMI, whereupon those parties so wishing could elect to acquire their proportionate share of same. EnerQuest acquired interests within the area subject to the AMI but did not offer the other parties, whereupon litigation followed. The district court granted plaintiffs summary judgment, and EnerQuest appealed.

On appeal, the Court found that the letter agreement regarding the AMI provision was initially applicable to lands within the specified area acquired after the effective date, and expressly excluded interests owned by a party prior to the effective date. Since the interests acquired by EnerQuest were owned by parties to the letter agreement prior to the AMI's effective date, those interests were excluded from the AMI, and thus EnerQuest had no duty to offer the interests to other AMI participants.

Energy Transfer Partners, L.P. v. Enter. Prod. Partners, L.P., 593 S.W.3d. 732 (Tex. 2020)

Enterprise and ETP entered into confidentiality and letter agreements exploratory to joint development of a crude oil pipeline. One of the terms provided that "[n]o binding or enforceable obligations shall exist …unless and until the Parties have received their respective board approvals and definitive agreements memorializing the terms and conditions of the Transaction have been negotiated, executed and delivered.…" and further that either party could discontinue or terminate negotiations at any time without liability. The agreement also disclaimed creation of a joint venture, partnership, corporation or taxable entity.

Enterprise ended its relationship with ETP and eventually entered into a similar deal with Enbridge. ETP filed suit, claiming a common law partnership had been created and that Enterprise was in breach its duty of loyalty. At trial, ETP was awarded $535,794,777.00, whereupon Enterprise appealed.

On appeal, the appellate court reversed and rendered judgment for Enterprise. The Texas Supreme Court held that parties may contractually preclude the formation or creation of a partnership or other combination without satisfaction of a specific condition precedent, and thereby avoid application of the statutorily codified common law elements of a partnership at Section 152.052(a) of the Texas Business Organizations Code. Failing to find evidence of waiver or satisfaction of the condition precedent, the Supreme Court agreed with the appellate court that no partnership had been created.