

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

April 29, 2020

Lyle W. Cayce
Clerk

No. 19-60179

NANCY ELSAS, Individually, as personal representative of the Estate of Louis Jacob Elsas II, and as Trustee of the Residuary Trust of the Louis Jacob Elsas II, Management Trust U/A, September 28, 2011,

Plaintiff - Appellee

v.

YAKKASSIPPI, L.L.C., also known as Yakka or Yac,

Defendant - Appellant

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 5:15-CV-28

Before SMITH, HO, and OLDHAM, Circuit Judges.

PER CURIAM:*

Nancy Elsas entered into an agreement with Yakkassippi, L.L.C. as representative of her deceased husband's estate, agreeing to sell the estate's mineral interests for \$500,000. But Yakkassippi subsequently refused to execute the deed and make the agreed-upon payment. The district court found

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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Yakkassippi liable for breach and ordered specific performance. On appeal before us for the second time, we affirm.¹

Yakkassippi is a limited liability company formed to purchase mineral interests in southern Mississippi's Tuscaloosa Marine Shale Zone. It made unsolicited offers to purchase the Elsas family's mineral interests. Relevant for this case are the interests held in undivided, one-quarter shares by four members of the family. The initial transactions with Herbert Alan, Katharine, and Nancy Elsas closed pursuant to a purchase and sale agreement with an aggregate payment of \$1,500,000 to the Elsas in return for their mineral rights.

The last transaction involved the estate of deceased family member Louis Jacob and was set to close following certain probate matters. The agreement to purchase the mineral rights from Louis Jacob's estate called for closing the purchase within 90 days. Before 90 days elapsed, Nancy let Yakkassippi know she was ready and able to tender the mineral deed. But Yakkassippi declined to purchase the mineral rights, claiming Nancy should be barred from enforcing the contract for a variety of reasons.

Nancy filed suit in state court seeking specific performance or, in the alternative, other remedies. Defendants removed the case to federal court and asserted various defenses.

Elsas sought and received summary judgment by the district court on both liability and damages. Our court affirmed on liability but remanded on damages, holding that it would be a windfall to order full contractual payment to Elsas without also requiring execution of the deed. *Elsas v. Yakkassippi LLC*, 746 F. App'x 344, 346–48 (5th Cir. 2018). We instructed the district court to consider specific performance on remand. *Id.* at 348. The district court duly

¹ We also deny Elsas's motion to dismiss the appeal for lack of jurisdiction.

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considered, and then ordered, specific performance. Yakkassippi now appeals again, raising many of the same arguments previously dismissed by both the district court and the Fifth Circuit.

Yakkassippi claims Nancy should not be able to recover under the doctrine of unclean hands. It is not clear this issue is properly preserved, but even if it is, Yakkassippi fails on appeal to distinguish this claim from the anticipatory repudiation claim our court already rejected. *Id.* at 347. As such, this claim is barred. *See Medical Center Pharmacy v. Holder*, 634 F.3d 830, 834 (5th Cir. 2011); *see also Art Midwest, Inc. v. Clapper*, 805 F.3d 611, 614 (5th Cir. 2015) (“It is common to rule that a question that could have been but was not raised on one appeal cannot be resurrected on a later appeal to the same court in the same case.”) (quoting 18B Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 4478.6 (2d ed. 2013)).

Next, Yakkassippi suggests that the district court should not have ordered specific performance because Elsas had an adequate remedy at law. But, as we recognized in the first appeal, “[s]pecific performance is a common remedy in real property cases.” *Elsas*, 746 F. App’x at 348; *see also Rus-Ann Dev., Inc. v. ECGC, Inc.*, 222 S.W.3d 921, 927 (Tex. App.—Tyler 2007, no pet.) (“It is well understood that specific performance is more readily available as a remedy for the sale of real estate than for the sale of personal property. This is because damages are generally believed to be inadequate in connection with real property.” (citation omitted)). And we review an award of specific performance for abuse of discretion. *Horner v. Bourland*, 724 F.2d 1142, 1144–45 (5th Cir. 1984). Yakkassippi’s conclusional assertion that “damages are easily ascertained” does not demonstrate that the district court abused its discretion. *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 310 (5th Cir. 2008) (en banc).

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Yakkassippi also claims the district court’s judgment should be set aside as deficient because it attempts to grant both monetary damages and specific performance in relief. But this misreads the district court’s judgment ordering specific performance. The district court explained its “intention was to award specific performance of the [agreement], which requires Yakkassippi to pay the Estate \$500,000 in exchange for the mineral interests.” To that end, the district court entered an amended judgment clarifying that the relief it ordered constituted specific performance.

We affirm.