

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-7418

HOUSTON PETROLEUM COMPANY, ET AL.,

Plaintiffs,

HOUSTON PETROLEUM COMPANY,

Plaintiff-Appellee,

VERSUS

GRAHAM ROYALTY, LIMITED, ET AL.,

Defendants,

GRAHAM ROYALTY, LIMITED,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(CA-G90-85)

(December 20, 1993)

Before GARWOOD and BARKSDALE, Circuit Judges, and WALTER,¹ District Judge.

BARKSDALE, Circuit Judge:²

Graham Royalty, Ltd. challenges the district court's refusal to award it judgment, contending that, upon being held not required

¹ District Judge of the Western District of Louisiana, sitting by designation.

² Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

to purchase two of three properties covered by a purchase agreement, it was entitled under the agreement to terminate the transaction. We **REVERSE**.

I.

By an "Agreement for Purchase and Sale of Oil and Gas Properties" with Houston Petroleum Company (HPC), Royalty contracted to purchase, for \$1.25 million (preliminary), HPC's interest in (leases for) three properties (two producing; one undeveloped) in the Algoa Field in Texas.³ After completing its due diligence, Royalty notified HPC of title defects for each of the properties. HPC denied the existence of some defects, and represented that others would be cured before closing. At the closing, Royalty advised HPC that it did not consider the defects cured, and refused to perform.

HPC sued Royalty in Texas state court for breach of contract (other defendants and claims were later dismissed). After removing the action to district court, Royalty moved twice unsuccessfully for summary judgment, claiming that title defects for the two producing properties entitled it to terminate the Agreement without liability. On the second motion, the district court held, as a matter of law, that Royalty could refuse to close on the producing properties because HPC's interest (leases) in them suffered from title defects; it refused, however, to allow Royalty to terminate the entire transaction. The district court later granted partial

³ The Agreement allocated \$866,313 of the purchase price to the two producing properties; \$383,687 to the undeveloped property.

summary judgment for both parties, holding that Royalty was obligated to purchase HPC's interest in the undeveloped property, but that it was not obligated to purchase HPC's interest in the two producing properties.

A bench trial was held on Royalty's failure to close on the undeveloped property. The district court denied Royalty's motions for judgment and awarded HPC damages of \$54,387 and attorneys' fees of \$248,906.

II.

HPC did not cross-appeal the partial summary judgment awarded Royalty. Hence, it does not (indeed, cannot) dispute that Royalty was not required to purchase HPC's interest in the producing properties because of significant title defects. Specifically, the district court held that those leases "may have expired" and that Royalty "had good cause to reject reliance on ratification as the basis for the validity of the leases."⁴

The principal issue at hand is whether the district court erred in concluding that Royalty was not entitled to terminate the entire Agreement because of those defects. Of course, this is a question of contract interpretation, which we freely review. *E.g.*, ***American Totalisator Co. v. Fair Grounds Corp.***, 3 F.3d 810, 813

⁴ The district court held in pertinent part:

The documentation provided by [HPC] to ... Royalty indicates that both the Winton lease, and the off-site Cooper "B" gas leases may have expired. In the light of Texas case law, [Royalty] had good cause to reject reliance on ratification as the basis for the validity of the leases.

(5th Cir. 1993). And, under Louisiana law, if the terms of the Agreement are unambiguous, they must prevail.⁵ *Id.*; see also *Complex, Div. of U.S. Indus. Inc. v. Louisiana Dep't of Transp. & Dev.*, 439 So.2d 567, 570 (La. Ct. App. 1983). The district court determined implicitly that the terms were unambiguous.⁶ We agree; however, we part company with the district court on their interpretation.

Article XII of the Agreement provides, in pertinent part:

This Agreement ... may be terminated ... by [Royalty] if the conditions set forth in Article X are not satisfied ... as of the Closing Date.

(Emphasis added.) Article X ("PURCHASER'S CONDITIONS PRECEDENT TO OBLIGATIONS"), in turn, provides that

the obligations of [Royalty] ... at the Closing shall be subject, at its option, to: (i) the condition that *all representations and warranties* and other statements of [HPC] herein are at the date hereof and as of the Closing Date, true and correct

(Emphasis added.) Article VI lists those representations and warranties; one (VI(1)) is that "[e]ach of the Leases is in full force and effect." As discussed *supra*, the leases on the producing properties were not in full force and effect; thus, Royalty had the option to terminate the Agreement.

The district court did not give effect to Article XII. It ruled that Article IV ("INSPECTION AND TITLE EXAMINATIONS") was

⁵ It is undisputed that Louisiana law governs.

⁶ Because the district court did not hear evidence on the meaning of the terms, it necessarily determined that the Agreement was not ambiguous.

more specific, and therefore refused to allow Royalty to exercise its termination rights. Section 4.3(B) of Article IV provides that "Defective Interest[s] shall be excluded from the Oil and Gas Properties to be purchased by [Royalty] ... and the Preliminary Purchase Price shall be reduced" according to other provisions of the Agreement. Likewise, § 4.3(C) provides that "[i]n determining which portions of the Oil and Gas Properties are Defective Interests, it is the intent of the parties to include ... only that portion of the Oil and Gas Properties affected by the defect."

Had Royalty wished to proceed under the Agreement, the affected properties would be excluded by operation of Article IV, and the price would be adjusted accordingly. But, to conclude that this was the *only* way Royalty could proceed unnecessarily eviscerates Article XII. The termination right under that Article can be given effect in the title defect context. Specifically, it is consistent for the Agreement to provide both a right of termination for Royalty, if HPC fails to provide a valid lease for one or more of the properties, *and* a right to excise the tainted property and close on the remainder. In other words, Royalty had a choice: terminate the Agreement or close on the undeveloped acreage.

This interpretation is consistent with the requirement under Louisiana law that we "aim ... to discern a compatible meaning to all provisions of an agreement" so as to "avoid neutralizing any provision". See ***Terra Resources v. Federated Energy Comm'n***, 465 So.2d 127, 129 (La. Ct. App.) (citations omitted), *writ. denied*,

468 So.2d 1212 (1985); see also *Southwestern Engineering Co. v. Cajun Electric Pow. Coop., Inc.*, 915 F.2d 972, 980 (5th Cir. 1990) (citing LA. CIV. CODE ANN. art. 2050 (West 1985) for proposition that "each provision in a contract be interpreted in the light of other provisions so that each is given the meaning suggested by the contract as a whole").

In sum, the leases on the producing properties were not in full force and effect. Under the Agreement, those properties precipitated out. Royalty could have proceeded to close on the undeveloped acreage, but chose not to. Rather, it terminated the entire transaction, as was its right under the Agreement. Because judgment should have been awarded Royalty on all of HPC's claims, HPC was not entitled to damages or attorneys' fees.

III.

For the foregoing reasons, the judgment is **REVERSED** and judgment is **RENDERED** for Graham Royalty, Limited.

REVERSED and RENDERED