IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-2801

CHARLES D. DYER, ET AL.,

Plaintiffs-Appellants,

versus

CONOCO, INC., ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the
Southern District of Texas
(CA-H-88-910 c/w 88-1747, 88-1748,
89-1059, 90-1051 & 90-352)

(February 21, 1995)

Before Judges GARWOOD, JOLLY, and STEWART, Circuit Judges.

E. GRADY JOLLY, Circuit Judge:[*]

In response to pressure from the residents and the city government of Mont Belvieu, Texas, an association of several petroleum companies developed and implemented a buyout program to purchase residential properties that were adversely affected by their industrial operations. The association's attempt to ease the political and social pressure and to end ensuing litigation in fact

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[*]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 Pursuant to that Rule, the court has determined that this opinion should not be published.

spawned this suit: Mont Belvieu property owners returned to court claiming that the buyout program violated state tort law, state and federal antitrust law, and federal civil rights law prohibiting racial discrimination. The district court rejected those claims, entering summary judgment on the antitrust issues and judgment as a matter of law after a jury trial on the remaining claims. The plaintiffs appeal the adverse determination of the antitrust and discrimination claims. We hold that the plaintiffs lack standing to assert their antitrust claims, and that the statute of limitations bars their discrimination claims. Accordingly, we affirm the judgment of the district court.

I

Mont Belvieu, Texas, sits atop the Barbers Hill Salt Dome, a geological feature that provides a cost-effective facility for hydrocarbon storage. Several petroleum companies have operations at Mont Belvieu, but none has purchased land for hydrocarbon storage since 1980.

The operations of the companies have exposed nearby residents to considerable danger. Following explosions, gas leaks, and other industrial accidents during the 1970s and early 1980s, the city urged the petroleum companies to relocate its citizens to safer areas. In 1985, the city and several residents filed suit seeking damages and an injunction requiring the companies either to halt their operations or to relocate affected citizens. On April 30,

1986, an association of the petroleum companies announced the buyout program that is the basis for this suit.

Only owners of houses, churches, and other residential lots were eligible for the program. Under the terms of the program, several companies would acquire in joint tenancy the surface estates within a designated area on the salt dome, plus exclusive easements of access to the mineral estates. In exchange, the association would pay the replacement cost of improvements, plus one dollar per square foot of surface land. The association also offered an additional ten percent of the purchase price as a moving allowance. Participation was voluntary. Through the program, the petroleum companies acquired approximately 175 homes, 19 mobile home lots, and 6 church properties.

Because Pablo Street was not within the designated area, its residents were not eligible to participate in the buyout program. When the main buyout program was announced, however, Warren Petroleum announced a separate buyout program for the residents of Pablo Street. Warren's program was identical to the main buyout program with two exceptions: the buyout would occur only if all the residents agreed to participate, and the moving allowance was contingent on each seller's promise to relocate more than two miles from Pablo Street.

Pablo Street is adjacent to Warren Petroleum Company's fractionation plant. Until the buyout, it was home to a predominantly black community that already had been relocated once

by Warren. The community had resided previously in "The Quarters," a tract of Warren's property located near its operations, but Warren relocated the community in 1958.

II

This litigation began March 14, 1988, when Charles Dyer, Mary Beth Dyer, and J. R. Oliver filed suit alleging that the operations of the petroleum companies had damaged their property. After five additional complaints were filed, including the first civil rights claim filed April 3, 1989, the district court consolidated the suits and ordered the filing of a joint complaint. The joint pretrial order, filed December 1, 1992, alleged constitutional violations and causes of action sounding in trespass, nuisance, negligence, gross negligence, violations of state and federal antitrust law,[1] and race discrimination.[2] On the

[1]The pertinent Texas statute, Tex. Bus. & Com. Code Ann. § 15.05, is analogous to §§ 1 and 2 of the Sherman Antitrust Act. Texas's antitrust laws are to be "construed in harmony with federal judicial interpretations of comparable federal antitrust statutes to the extent consistent with this purpose." Tex. Bus. & Com. Code § 15.04; Caller-Times Pub. Co. v. Triad Communications, Inc., 826 S.W.2d 576, 580 (Tex. 1992). Therefore, we will discuss the plaintiffs' state and federal antitrust claims without distinguishing among them.

[2]More than one hundred plaintiffs were named in the consolidated complaint, which ran some three hundred pages. The defendants initially numbered thirty-one: included were the City of Mont Belvieu and thirty industrial companies. The district court ruled that the city was immune from suit, and that ruling is not at issue here. Accordingly, the defendants are: the Mont Belvieu Program; the Mont Belvieu Industry Association Steering Committee; Conoco, Inc.; Conoco Mont Belvieu Holdings, Inc.; Tenneco, Inc.; Tenneco Oil Co.; Chevron Corp.; Chevron U.S.A., Inc.; Warren Petroleum Co, a Division of Chevron, U.S.A., Inc.;

eve of trial, the district court granted the companies' motion for summary judgment on the antitrust claims. The remainder of the case was tried before a jury from December 1, 1992, to January 10, 1993. A day later, the court granted the companies' motion for judgment as a matter of law on the remaining claims and, on September 23, 1993, the district court entered final judgment in favor of the companies. This appeal followed.

The plaintiffs challenge the district court's disposition of their antitrust and race discrimination claims. The antitrust claims were brought against all of the petroleum companies; the discrimination claims were brought against Warren Petroleum Company for its separate buyout of the Pablo Street residents. We will deal with them in order.

III

The petroleum companies all face the antitrust claims based upon their participation in the buyout program. The plaintiffs claim that the program constitutes an agreement to fix prices and,

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Warren Petroleum, Inc.; Enterprise Mont Belvieu Program Co.; Enterprise Companies, Inc.; Enterprise Petrochemical Co.; Lyondell Petrochemical Co.; Lyondell Refining Co.; Diamond Shamrock Refining and Marketing Co.; Enterprise Products Co.; Exxon Pipeline Co.; Texas Eastern Transmission Corp.; XRAL Storage and Terminaling Co.; Chambers County Land Co.; Arco Mont Belvieu Corp.; Atlantic Richfield Co.; Belvex, Inc.; D-S Mont Belvieu, Inc.; Mont Belvieu Land Co.; Oxy Fractionators, Inc. f/k/a Cities Services Fractionators, Inc.; Shell Pipe Line Corp.; Mobil Chemical Co.; and Chaparral Pipeline (NGL Co. d/b/a West Texas Chaparral Pipeline NGL Co.) f/k/a Santa Fe Pipeline Co.

alternatively, a conspiracy or attempt to monopolize in violation of §§ 1 and 2 of the Sherman Antitrust Act.[3]

The district court disposed of the antitrust claims via summary judgment, holding that the plaintiffs lacked standing to assert the antitrust claims and that in any event, their claims failed as a matter of law. The plaintiffs challenge the district court's rulings both on standing and on the merits.

A

Because we are considering the propriety of summary judgment, our review is de novo: we accord no deference to the district court's view of the matter, we use the same standards the district court used, and we draw inferences in favor of the plaintiffs. See, e.g., Hopper v. Frank, 16 F.3d 92, 96 (5th Cir. 1994); DFW Metro Line Servs. v. Southwestern Bell Tel. Corp., 988 F.2d 601, 603-04 (5th Cir.), cert. denied sub nom. U.S. Metroline Servs. v. Southwestern Bell Tel. Co., __ U.S. __, 114 S.Ct. 183 (1993). Although we draw inferences favorably to the plaintiffs, there is a limit: the inferences must be reasonable in the light of competing inferences that might be drawn from the factual context. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,

[3]Section 1 outlaws "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations." 15 U.S.C. § 1. Section 2 similarly punishes "Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations." 15 U.S.C. § 2.

587, 106 S.Ct. 1348, 1356 (1986). Accordingly, in antitrust cases, "if the factual context renders the plaintiff's claims implausible--if the claim is one that simply makes no economic sense--[the plaintiffs] must come forward with more persuasive evidence than would otherwise be necessary." Id.

Summary judgment is appropriate, and we will affirm, only if the pleadings, depositions, answers to interrogatories, admissions, and affidavits reveal no dispute of material fact and that the petroleum companies are entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). A party moving for summary judgment must inform the district court of the basis for its motion and identify those parts of the record supporting its assertion that no genuine dispute of material fact exists. Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S.Ct 2548, 2553 (1986). The party may satisfy that burden by "pointing out to the district court . . . that there is an absence of evidence to support the nonmoving party's case." Id. at 325, 106 S.Ct at 2554. Doing so shifts the burden to the nonmoving party who, to forestall summary judgment, must establish the existence of a genuine issue of material fact to be decided at trial. Fed. R. Civ. P. 56(e); Hopper, 16 F.3d at 96. Summary judgment is mandated unless the nonmoving party brings to the court's attention--either by referring to material already in the record or by submitting affidavits in accordance with Rule 56--evidentiary facts that tend to show the existence of a genuine

dispute of material fact to be decided by a jury at trial. Hopper, 16 F.3d at 96.

B

In their motion for summary judgment, the defendant companies pointed out that the plaintiffs had failed to produce evidence of any restraint on competition, and that, consequently, they lack standing to assert their antitrust claims. In response, the plaintiffs offered expert affidavits advancing their theory of the case.[4]

Since the commencement of this suit, the plaintiffs' theory has undergone several changes--the plaintiffs might say their theory has matured--including a material change between the court's entry of summary judgment and submission of the case on appeal.[5] At first the plaintiffs alleged, among other things, that the city government had conspired with the petroleum companies to manipulate

[4]In fact, at oral argument, when asked to state specifically what evidence supported their case, counsel for the plaintiffs pointed only to the affidavits of their experts.

[5]The plaintiffs argue on appeal that, although the plaintiffs retained ownership of the mineral estate, the petroleum companies "locked up" their properties by acquiring exclusive ingress and egress easements to the mineral estates as part of the buyout program. In the district court, the plaintiffs advanced the proposition (via their expert in his affidavit) that the purchase of any interest in real property effectively "locked up" the hydrocarbon storage facility development rights, and that forcing conveyance of the ingress and egress rights to the mineral estate merely solidified that control.

its zoning laws. As the case now comes to us, and distilled to its essence, their theory is as follows:

Hydrocarbon storage facility development, the plaintiffs contend, is the highest and best use--in fact, the only use--of the plaintiffs' properties, because the operations of the petroleum companies have rendered the properties useless for any non-industrial purpose. In addition, by virtue of the proximity of the petroleum companies to the residents on the salt dome, the companies faced a risk of substantial regulatory and safety expenditures and liability exposure. The companies determined that the best means of eliminating that risk was to remove the residents from the dome, and that buying their properties was the most appropriate means of doing so. Each individual defendant company had both the financial means and the incentive to effect the buyout and removal on its own, but none did so. Instead, in violation of the antitrust laws, the defendant companies banded together in a cartel and agreed that they would jointly purchase certain properties at a price fixed by a formula that they jointly devised.

The plaintiffs assert that the individual defendant companies constitute the sole demand for their product, which is real property on the salt dome that is suitable for developing hydrocarbon storage facilities.[6] By combining and conspiring

[6]The plaintiffs supplied this product definition, and the defendants stipulated to this definition in their motion for summary judgment.

together, the members of this cartel eliminated competition for their product and forced the plaintiffs to accept, on a nonnegotiated, take-it-or-leave-it basis, a lower price for their properties than they would have received if the individual companies had competed and negotiated with each plaintiff to purchase his or her property.[7]

C

We find that the question of standing is dispositive. Although § 4 of the Clayton Act, 15 U.S.C. § 15, is broadly phrased, giving a private right of action to "any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws," it has been construed narrowly to vindicate the policy underlying the antitrust laws. (Emphasis added). The design of the Sherman Antitrust Act is "to protect the public from the failure of the market." Spectrum Sports, Inc. v. McQuillan, ___ U.S. ___, ___, 113 S.Ct. 884, 892 (1993). To that end, a strict set of standing requirements limits the types of plaintiffs that may assert antitrust claims. In general, whether a plaintiff may seek relief under the antitrust laws depends upon the nature of its alleged injury, the directness of that injury, the degree to which the harm is speculative, the risk of

[7]The plaintiffs also argue that the program's requirement that the plaintiffs convey an exclusive easement of access to the mineral estate enabled the companies to "lock up" the properties for hydrocarbon storage facility development, further depriving them of a competitive market in which to sell their product.

duplicative recovery, and the complexity in apportioning damages between injured parties. Bell v. Dow Chem. Co., 847 F.2d 1179, 1183 (5th Cir. 1988). A plaintiff must establish standing even when the alleged anticompetitive conduct falls within the category of practices that are condemned per se. Atlantic Richfield Co. v. USA Petroleum Co., 495 U.S. 328, 341-42, 110 S.Ct. 1884, 1893 (1990).

Although the articulation of the test may lack precision,[8] its application is exacting. First, we focus on claims that are attributable to the alleged anticompetitive practices and pare away other claims of injury, as they are not subject to redress under the antitrust laws. See, e.g., Associated Gen. Contractors, Inc. v. California State Council of Carpenters, 459 U.S. 519, 526-27, 103 S.Ct. 897, 902-03 (1983) (determining that various breaches of collective bargaining agreements and diversions of business may state causes of action under breach of contract, fraud or deceit, or unfair labor practice, but not under antitrust law). Thus, here, we will focus on the buyout program itself and exclude from our consideration injury to the plaintiffs that stem from the operations of the petroleum companies. In weighing the nature of the alleged injury, we evaluate the plaintiffs' harm, the alleged wrongdoing by the defendants, and the relationship between them.

[8]Areeda and Turner, for instance, comment that distinguishing among antitrust injury, causation, and standing "is often pointless," and note that the Supreme Court "often uses one term to include another." ¶ 334.3 (1993 supp.).

Associated Gen. Contractors, 459 U.S. at 535, 103 S.Ct. at 907. To support standing, the injury itself must be an antitrust injury, "which is to say injury of the type the antitrust laws were intended to prevent and that flows from that which makes defendant's acts unlawful." Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc., 429 U.S. 477, 489, 97 S.Ct. 690, 697 (1977). Put another way, the plaintiffs must show that the conduct of the defendants had an anticompetitive effect upon them. Bell, 847 F.2d at 1182 n.4.

D

The plaintiffs characterize the buyout program as a buying cartel or oligopsony or, alternatively, a monopsony,[9] for their product, which is real property in Mont Belvieu that is suitable

[9]The terms "monopsony" and "oligopsony" refer to the reverse of the more familiar terms "monopoly" and "oligopoly." In the usual antitrust case, buyers complain about oppression from one or a few sellers using their market power to reduce supply; in the monopsony or oligopsony situation, sellers complain about oppression from one or a few buyers. Whether the oppressive conduct comes at the hands of the sellers or buyers, the effect is the same: a diversion of resources from their highest and best uses, to the detriment of society. See Richard A. Posner and Frank Easterbrook, Antitrust 148-150 (1981); Roger D. Blair and Jeffrey L. Harrison, Antitrust Policy and Monopsony, 76 Cornell L. Rev. 297 (1991). Posner and Easterbrook explain that "[t]he ability to monopsonize depends on the existence of resources having substantially greater value in some uses than others," and conjecture that, because most resources have more than one use, the probability that a monopsony or oligopsony can wield substantial power is remote. Id. at 150. Because the plaintiffs' theory posits that their real estate has only one use, this case could present, in theory, the exceptional situation in which a monopsony or oligopsony quite possibly could wield substantial power. However, as developed below, we find no evidence that the companies did so.

for developing hydrocarbon storage facilities. They assert that they are sellers to that monopsony or oligopsony.

Our cases have recognized that sellers to a monopsony or oligopsony can establish antitrust injury. See, e.g., In Re Beef Industry Antitrust Litigation, 600 F.2d 1148 (5th Cir. 1979). They can do so because "[i]n the monopsony or oligopsony price fixing case . . . the seller faces a Hobson's choice: he can sell into the rigged market and take the depressed price, or he can refuse to sell at all." Id. at 1158; See also Phillip Areeda and Donald F. Turner, Antitrust Law ¶ 340.1f (1993 Supp.). The oligopsony or monopsony, by virtue of its ability to dictate the price, thus, can force the seller to bear a loss. If the plaintiffs' evidence supports their theory, i.e. that the buyout program effectively eliminated competition for their properties and thereby reduced the price the defendant companies would have paid if they had acted independently, their claims should suffice to establish an antitrust injury.[10]

As explained above, the plaintiffs argue that the evidence shows that through the buyout program, the petroleum companies fixed prices so that the property owners received less for their

[10]Although they are analytically distinct, the plaintiffs' § 1 and § 2 claims depend on the same acts. Accordingly, if we determine that the plaintiffs have failed to produce evidence of antitrust injury to support its § 1 claim--the buying cartel or oligopsony claim--it follows that they lack standing to assert § 2 claims--the monopsony claim--as well. See J.T. Gibbons, Inc. v. Crawford Fitting Co., 704 F.2d 787, 797 (5th Cir. 1983).

property than they would have received in the absence of the buyout. They argue, therefore, that the combination of the defendant companies--the only potential purchasers of their real estate for the purpose of hydrocarbon storage facility development--into the buyout cartel eliminated all competitive bidding for their product. They assert that the district court simply failed to recognize that fact. If it had recognized that the combination had the effect of eliminating competitive bidding for their properties, the plaintiffs contend, the district court would have determined that the plaintiffs had established an antitrust injury.[11]

We disagree. As explained above, to establish antitrust injury, the plaintiffs must show some economic loss or harm as a result of the alleged combination and conspiracy. The plaintiffs have conceded that their properties have no value as residential real estate, and that the highest and best use of their properties--indeed, the only use, and, consequently, the only value, of their properties--is for the development of hydrocarbon

[11]The plaintiffs also argue that the district court's analysis did not properly consider the relevant market. (The companies stipulated in their motion for summary judgment to the plaintiffs' definition of the relevant market, i.e., real property on the salt dome that is suitable for the development of hydrocarbon storage facilities.) We agree that the district court's references to the relevant market could have been clearer, but we find the record sufficiently clear that, on plenary review and in the light of our determination that the plaintiffs produced no evidence of an antitrust injury, the district court committed no reversible error in this respect.

storage facilities. They do not challenge the petroleum companies' assertions that no such facilities were developed in the six years preceding the buyout, and that property purchased for hydrocarbon storage facilities before 1980 remains undeveloped. The plaintiffs' expert admits that the companies have no present need for additional storage capacity and offers only conjecture of demand for the foreseeable future. Indeed, the plaintiffs acknowledge that the companies were spurred to make offers for their properties to rid themselves of the risks that arise when petroleum companies operate next to residential areas.

In sum, the plaintiffs have failed to adduce any evidence that the defendant companies, presently or in the foreseeable future, individually or in combination, have any desire, demand, or economic motive for acquiring the properties to develop hydrocarbon facilities. In other words, the plaintiffs have not produced any evidence that would permit even an inference that any of the defendants (who are the sole potential demand for the plaintiffs' properties) would have paid a higher price for their respective properties without the buyout program than the plaintiffs received through the program. As a consequence, we hold that the plaintiffs have not adduced evidence that the defendant companies' alleged combination or conspiracy had any anticompetitive effect on them. They therefore have not established an economic loss--an antitrust injury--stemming from the buyout program. Because they have failed to adduce any evidence of an antitrust injury, the plaintiffs lack

standing to assert their antitrust claims.[12] Accordingly, the judgment of the district court on the antitrust claims is affirmed.

IV

There remain the civil rights claims. These claims are alleged only against Warren Petroleum and are based on its separate buyout program offered to the Pablo Street residents, who are black. These plaintiffs argue that their offers were discriminatory because the terms of their buyout differed from the terms offered to citizens in the main buyout program. Specifically, the Pablo Street residents allege that Warren

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[12]As explained in footnotes 5 and 7, the plaintiffs argue that the fact that the buyout program required them to convey easements giving the defendant companies exclusive access to the mineral estates means that the defendant companies, through the buyout program, "locked up" the properties for development in the indefinite future. It is clear to us that the required conveyance of easements does not help to establish an antitrust injury.

To the extent that obtaining the easements might otherwise allow an inference that the companies have some interest in future development, we find such an inference in this case to be improbable and in any event of no significant weight in the light of competing inferences that might be drawn from the factual context. Cf. Matsushita, 475 U.S at 587, 106 S.Ct. at 1356. Most conveyances of real property include an easement of access to the mineral estate when, as in these conveyances, the seller retains the right to the mineral estate. By obtaining the easements of access, the defendant companies have acted reasonably to ensure that, if the plaintiffs decide to convey or otherwise to exploit their respective mineral estates, the use of the surface estate will not be at the mercy of the mineral estate owners.

Thus, the fact remains that the plaintiffs have pointed to no evidence suggesting that the defendant companies have or will have any desire, demand, or economic motive to develop additional hydrocarbon storage facilities. On these facts, then, and without "more persuasive evidence," id., we decline to infer any anticompetitive intent or effect from the conveyance of the easements of access.

Petroleum violated 42 U.S.C. §§ 1981[13] and 1982[14] when it (1) required the residents to agree to relocate at least two miles away from Pablo Street in exchange for the moving allowance (the "distance requirement"), and when it (2) made each contract of sale contingent on full participation by the other Pablo Street residents (the "all-or-nothing requirement").[15] Those requirements--which were not imposed on whites--had the effect, the residents argue, of destroying their community.

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[13]"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts . . . as is enjoyed by white citizens." § 1981(a). That right extends to "the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms and conditions of the contractual relationship." § 1981(b).

[14]Section 1982 provides that "all citizens of the United States shall have the same right, in every state and territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

[15]Claude Hamilton, the plaintiffs' acknowledged spokesman, explained on direct examination that the all-or-nothing requirement prompted the residents of Pablo Street to accept the buyout offer:

> Q. Did the requirement that all the people sell or nobody sell, did that cause conflict within the community?
> A. I don't know whether it caused conflict, but I know it was a decision that we had to make among ourselves, and rather one to go against the other, we would accept most anything.
> Q. So because some of the people were truly frightened and wanted to get out of there, the rest of the people didn't want to hold up the deal?
> A. Right.
> Q. And did that make people feel like they they were being forced to accept something they didn't want?
> A. Yes. Without a choice.

The court did not reach the merits of this claim. Instead, it held that the statute of limitations barred the claim and accordingly entered judgment as a matter of law.

A

Because the district court's entry of judgment as a matter of law is at issue, our review is de novo: we view the record in the light most favorable to the plaintiffs, drawing all reasonable inferences in their favor; and we apply the same legal standard as did the district court. See, e.g., Omnitech Int'l v. Clorox Co., 11 F.3d 1316, 1322-23 (5th Cir.), cert. denied, __ U.S. __, 115 S.Ct. 71 (1994). We will affirm only if the evidence would not permit a reasonable jury to return a verdict in favor of the non-movant. Fed. R. Civ. P. 50(a); See also Boeing Co. v. Shipman, 411 F.2d 365, 374-75 (5th Cir. 1969) (en banc).

These civil rights claims, although involving contracts, most closely resemble personal injury claims sounding in tort. Goodman v. Lukens Steel Co., 482 U.S. 656, 661-62, 107 S.Ct. 2617, 2621 (1987). Thus, as the residents acknowledge, Texas's two-year personal injury limitations period applies to a § 1981 claim. Tex. Civ. Prac. & Rem. Code Ann. § 16.003 (Vernon 1986); see, e.g., Price v. Digital Equipment Corp., 846 F.2d 1026 (5th Cir. 1988).

The residents signed contracts to sell their properties in September 1986 and closed these real estate transactions a year later in September 1987. The first complaint in this case that

asserted civil rights violations was filed April 3, 1989. Because these civil rights claims are subject to a two-year statute of limitations, the plaintiffs can raise these civil rights claims only if they accrued and the limitations period began to run on or after April 3, 1987.

Under federal law, a cause of action for a civil rights violation accrues when the plaintiffs come to know, or have reason to know, that their civil rights have been violated. See, e.g., McGregor v. Louisiana State Univ. Bd. of Supervisors, 3 F.3d 850, 863 (5th Cir. 1993). We focus on knowledge of the act or acts of discrimination, not knowledge of their subsequent effects. Chardon v. Fernandez, 454 U.S. 6, 8, 102 S.Ct. 28, 29 (1981). Here, the claims are founded upon two terms specifically spelled out in the Pablo Street residents' contracts, which are not in the other contracts: accordingly, their cause of action accrued when they knew or had reason to know that the terms of their contracts were different from the terms of the main buyout program. In this case, if the evidence would permit a reasonable jury to find that the plaintiffs neither knew nor should have known of these differences until after April 2, 1987, then the jury might have returned a verdict in their favor. In that event, we will reverse the district court's entry of judgment as a matter of law. On the other hand, if the evidence does not permit such a finding, but instead would lead a reasonable jury only to find that the plaintiffs knew or should have known of the differences before

April 3, 1987, then the statute of limitations would prohibit the jury from returning a verdict in favor of the plaintiffs. In that instance, we will affirm the judgment of the district court.

B

The district court reasoned that because the allegedly discriminatory terms were plain on the face of the contracts, simply reading the contracts made or should have made the residents aware of Warren's allegedly discriminatory intent. As a consequence, the district court held that the cause of action accrued no later than when the contracts were signed, and accordingly determined that the limitations period began to run in the fall of 1986. Because neither claim had a limitation period longer than two years, and the first claim asserting a civil rights violation was filed April 3, 1989, the court held that all claims were barred.

Having reviewed the evidence in the light most favorable to the plaintiffs, and with all reasonable inferences drawn in their favor of the plaintiffs, we conclude that a reasonable jury could only find that the plaintiffs knew or should have known before April 3, 1987, that their contracts contained terms that were different from the contracts offered to the participants in the main buyout program. The evidence shows that Claude Hamilton, the plaintiffs' acknowledged spokesperson and a party to the earliest civil rights complaint, attended the April 30, 1986 general meeting at which the buyout offers, including Warren's buyout of Pablo

Street, were announced.[16] The evidence shows that Hamilton then met separately with representatives of Warren to discuss the terms of their buyout.[17] Hamilton therefore knew that the Pablo Street buyout program was separate from the main program, and he knew the terms of Warren's buyout program of which the plaintiffs complain. In addition, the evidence shows that, at sometime no later than September 1986 (when the Pablo Street residents accepted the offers), Hamilton complained to a Chevron official that their terms were different from the terms in the main buyout program.[18]

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[16]On direct examination, Hamilton testified:

> I went up to the meeting and they had the meeting telling the people on the hill [the residents within the designated area of the main buyout program] that they were going to buy them out. * * *
> I thought we [Pablo Street residents] were left out, but when they closed with their meeting, the same man that got me up, which was Art Spencer, had carried me up to the room, he got up and made the statement that they would be buying out the Warren Addition or Pablo Street.

[17]Hamilton testified that he met with representatives of Chevron and Warren after the main meeting. In relevant part, the testimony was as follows:

> Q. Did you express a concern about the all-or-nothing aspect of the buyout that everybody had to sell or they wouldn't buy anybody?
> A. Yes.
> Q. And what was their response to that?
> A. This was the stipulation of the buyout for the Pablo Street, that it would be one hundred percent, two miles away, or lose your ten percent, or do not -- or they wouldn't buy nobody out.

[18]Q. Did you complain to Art Spencer that the two mile restriction, the all or nothing restriction was different than the program that was being offered to the white people on the top of the hill?
A. Yes, I did.

Further, the evidence shows that Hamilton made statements to a newspaper reporter a few days before signing the contracts that indicate that he knew or should have known of the civil rights violation. Hamilton was quoted in the September 16, 1986 edition of the Baytown Sun, a nearby newspaper, as saying "We [Pablo Street residents] feel we have every right to be hostile. We felt we could fight on the ground of discrimination. There's people who could stay here and fight, but we're taking it as is because of our people." (emphasis added). Hamilton's statement indicates that he considered the buyout to be racially discriminatory, especially in the light of the fact that the Pablo Street residents were black.[19]

Q. Did he have any explanation as to why they were treating people on the top of the hill differently than the people on Pablo Street?
A. No more than this was the plan that Warren had accepted or leave it.
Q. "That's just the way it is, and you're going to have to accept it"; is that correct?
A. Yes.

[19]The plaintiffs characterize Hamilton's use of "discrimination" as a synonym for unfairness, and assert that he was complaining about the general unfairness of the terms offered by Warren, but not indicating awareness of a civil rights violation. At trial, Hamilton was not cross-examined as to the meaning of his statement to the reporter. When asked, however, to explain the basis of his feeling that Warren Petroleum had discriminated against the Pablo Street community, Hamilton responded

> I really think [Warren] felt like they had done such a good job on us the first time [referring to the move in 1958] that they would try it again. And this was a group of people--and I use this term loosely--was not a fighting bunch of people. I don't know how anybody could present this kind of thing to them, racially. This is the only thing I say, because there was no other place for us to go.

In addition, the evidence indicates that Hamilton specifically was on notice of the fact that the terms were different when he spoke to the newspaper reporter. The two paragraphs immediately preceding his statement in the newspaper described how the buyouts differed:

> Besides the provision that all residents must accept the offer in order for them to move, the offer included a provision that residents must move at least two miles away from where they now live. * * *
>
> Homeowners living on the Barbers Hill and receiving buyout offers from the Mont Belvieu Program . . . were able to decide individually whether to accept or reject their particular offers. There was no provision that those accepting Mont Belvieu Program offers must move a certain distance from where they now live.

The article places Hamilton's quoted statement in context. The evidence further establishes that a copy of the newspaper article was in the possession of Hamilton's wife. Taking into account this evidence as a whole, we conclude that a reasonable jury could only decide that the Pablo Street plaintiffs knew or should have known of the discrimination forming the basis of their civil rights claims before April 3, 1987.[20]

In the light of this subsequent explanation at trial, Hamilton's statement to the newspaper reporter is naturally read to reflect a view that racial animus existed on the part of Warren. It is, however, neither probative of nor responsive to the question of his knowledge that the terms of the respective buyouts were different.

[20]The residents argue that they did not become aware of the alleged discrimination, and their causes of action did not accrue, until they saw white people moving into areas within two miles of Pablo Street (areas off-limits to them by the terms of their buyout) some time after April 2, 1987. In addition to being inconsistent with the evidence, this argument, we think, is incomplete: although it might explain the means by which the

C

In an effort to avoid application of the principle that the cause of action accrued when the plaintiffs knew or should have known of the discriminatory terms of their contracts, the plaintiffs raise two arguments to support their assertion that the limitations period did not run until after April 2, 1987. Both arguments, we find, are unavailing.

First, the plaintiffs assert that a § 1982 claim for discrimination in the transfer of property does not accrue until the transaction closes. Because the transactions at issue did not close until after April 3, 1987, the plaintiffs contend, their § 1982 claims accrued after April 3, 1987, and thus are not barred by the statute of limitations. This argument raises an issue of first impression, as we have not squarely decided when a § 1982 claim accrues.

Although § 1981 and § 1982 are separate provisions, they overlap in that the latter provision outlaws discrimination in the transfer of property, while the former concerns discrimination in the making of any contract. Courts have read them together. See, e.g., Tillman v. Wheaton-Haven Recreation Ass'n, Inc., 410 U.S. 431, 440, 93 S.Ct 1090, 1095 (1973) ("In light of the historical interrelationship between § 1981 and § 1982, we see no reason to

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plaintiffs became aware that the distance requirement was in fact discriminatory, it fails to explain when the plaintiffs became aware of the allegedly discriminatory all-or-nothing requirement.

construe these sections differently when applied [to] these facts"). At issue here are allegedly discriminatory terms in contracts, which in particular convey real property. For purposes of applying the statute of limitations, we see no logical reason to construe §§ 1981 and 1982 differently. Accordingly, we hold that, when based on the same facts, a cause of action for a claim under § 1982 accrues precisely when the cause of action for a claim under § 1981 accrues.[21]

Second, the residents argue that, under two principles of Texas law, their cause of action accrued after April 3, 1987. Under Texas contract law, they argue, the claims should not have accrued until the obligation to perform the contracts had matured. Alternatively, they argue that the alleged discrimination constituted a continuing tort for which, under Texas law, the statute of limitations does not begin to run until the tortious acts cease. Irrespective of whether these arguments have merit under Texas law, they are meritless for purposes of our decision

[21]The residents rely on Suthoff v. Yazoo County Indus. Dev. Corp., 722 F.2d 133 (5th Cir. 1983), cert. denied, 467 U.S. 1206, 104 S.Ct. 2389 (1984). We do not read Suthoff to require a departure from the principle that the cause of action accrues when the plaintiffs first know or have reason to know of the injury that forms the basis of their claims. In Suthoff, a cause of action under § 1983 for civil conspiracy involving the transfer of real estate accrued upon closing. The facts in Suthoff, however, showed that the closing date was the date the plaintiffs knew or had reason to know of the injury that was the basis of the claim. 722 F.2d at 138. Instead of standing for the wooden proposition that a claim for discrimination in the transfer of property claim accrues upon closing, then, we read Suthoff to reflect the principle we apply here.

today because federal law, not state law, determines when the cause of action accrues. See, e.g., Murphy v. Kellar, 950 F.2d 290, 292 n.5 (5th Cir. 1992).

D

For the above reasons, we conclude that the statute of limitations bars these race discrimination claims, and that the district court properly entered judgment as a matter of law.

V

In conclusion, we hold that the plaintiffs lack standing to assert an antitrust claim because they suffered no economic injury in the light of their failure to adduce evidence to show that there was any demand for their properties. Given the fact that there was no injury, summary judgment was therefore proper as to the antitrust claims. We hold further that a reasonable jury would conclude that the civil rights claims pressed by the Pablo Street residents accrued before April 3, 1987. The district court properly entered judgment as a matter of law on the civil rights claims. Accordingly, the judgment of the district court is

A F F I R M E D.[22]

[22]Also pending before this court is a motion by the petroleum companies to dismiss appellants who were not named in the notice of appeal. In the circumstances of this case, we DENY the motion.