

JOSEPH LEON MADDOX and wife, §
PATTI LYNN MADDOX, DAVID §
RICHEY, and wife, JOYCE RICHEY, §
and LINDA FAYE WEBER §

IN THE DISTRICT COURT OF

v. §

TARRANT COUNTY, TEXAS §

VANTAGE ENERGY, LLC, and THE §
CAFFEY GROUP, LLC §

67TH JUDICIAL DISTRICT §

ORDER ON DEFENDANTS' TRADITIONAL AND NO-EVIDENCE
MOTIONS FOR SUMMARY JUDGMENT

CAME TO BE HEARD ON February 17, 2011, Defendant Vantage Energy, LLC ("Vantage"), and The Caffey Group, LLC's ("Caffey") (collectively, "Defendants") Traditional and No-Evidence Motions for Summary Judgment, including Defendants' Supplement to Their Traditional and No-Evidence Motion for Summary Judgment. Having considered the Motions, Responses, the arguments of counsel, the pleadings and summary judgment evidence and being fully advised in the premises, the Court makes the following conclusions of law:

1. No legally valid contract was made or exists between Defendants and Southwest Fort Worth Alliance ("SFWA").

2. Even if a legally valid contract were made or existed between Defendants and SFWA, Plaintiffs would not be entitled to recovery under a third party/intended beneficiary theory because (1) Plaintiffs do not qualify as third-party beneficiaries to the alleged contract and (2) the alleged contract is otherwise unenforceable because it does not comply with the statute of frauds.

3. The theories of promissory estoppel, full performance, and partial performance do not legally excuse the alleged contract between SFWA and Defendants from the statute of frauds.

4. Plaintiffs' third party/intended beneficiary claim fails because there is no evidence that Plaintiffs Joseph Leon Maddox, Patti Lynn Maddox and Linda Faye Weber qualify as third party/intended beneficiaries of the alleged contract between SFWA and Defendants.

5. Plaintiffs' promissory estoppel claim fails because there is no evidence that (1) Defendants made a promise to sign an already existing written agreement that would itself satisfy the requirements of the statute of frauds or (2) that Plaintiffs relied on such a promise.

6. Plaintiffs' negligent misrepresentation claim fails because there is no evidence that (1) Defendants made material misrepresentations of existing fact to Plaintiffs, or that (2) Plaintiffs consequently suffered out-of-pocket damages.

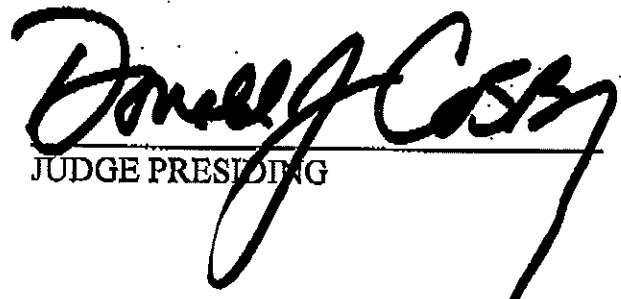
7. Defendants' No-Evidence Motion for Summary Judgment is improper under TRCP 166a(i) to the extent it rests on the affirmative defense of non-compliance with the statute of frauds.

The foregoing conclusions of law dispose of all claims asserted in Plaintiffs' Fourth Amended Original Petition. It is **THEREFORE ORDERED, ADJUDGED and DECREED** that Defendants' Traditional and No-Evidence Motion for Summary Judgment against Plaintiffs Joseph Leon Maddox, Patti Lynn Maddox, and Linda Faye

Weber (collectively, "Plaintiffs") be and the same is GRANTED, except as indicated in paragraph 7 above.

It is FURTHER ORDERED, ADJUDGED and DECREED that the claims of Plaintiffs Joseph Leon Maddox, Patti Lynn Maddox, and Linda Faye Weber, as stated in Plaintiffs' Fourth Amended Original Petition, be and the same are DISMISSED with prejudice.

SIGNED this 10th day of April, 2011.


JUDGE PRESIDING

*Reulings on objections are found in March 24, 2011
Order*

DK

**OBJECTIONS TO EVIDENCE OFFERED IN PLAINTIFFS' RESPONSE TO
DEFENDANTS TRADITIONAL AND NO-EVIDENCE MOTION FOR
SUMMARY JUDGMENT**

A. OBJECTION TO AFFIDAVIT OF DOUGLAS ARTHUR

Defendants lodge the following objection to Plaintiffs' Affidavit of Douglas Arthur:

1. Defendants object to the entirety of Plaintiffs' Affidavit of Douglas Arthur because it is being used to determine the adequacy of the property description in Plaintiffs' so called contract. This is improper because such a determination is a question of law for the Court to decide. *See Mayor v. Garcia*, 104 S.W.3d 274, 280 (Tex. App.—Texarkana 2003, pet. dismissed w.o.j.) (“The adequacy of a property description in a land sales contract is a question of law within the purview of the statute of frauds”).

SUSTAINED DX

OVERRULED _____

2. Defendants object to Mr. Arthur's conclusion in paragraph 6(b) because Mr. Arthur is relying on extrinsic and parol evidence in making his conclusion regarding the property description of the subject properties.

SUSTAINED DX

OVERRULED _____

3. Defendants object to Mr. Arthur's statement that the documents identified in paragraph 6(a) constitute a “nucleus description” on the basis that such a statement constitutes a legal conclusion.

SUSTAINED DX

OVERRULED _____

4. Defendants object to Mr. Arthur's conclusion in paragraph 7 because Mr. Arthur is relying on extrinsic and parol evidence in making his conclusion regarding the property description of the subject properties.

SUSTAINED DX

OVERRULED _____



5. Defendants object to Mr. Arthur's reliance of Exhibits D, E, F, and G as such documents constitute inadmissible extrinsic and parol evidence.

SUSTAINED DX OVERRULED _____

6. Defendants object to the admission and consideration of Exhibit D to the affidavit because it constitutes inadmissible hearsay.

SUSTAINED DX OVERRULED _____

7. Defendants object to the admission and consideration of paragraphs 5-7 because the documents on which said paragraphs state that Mr. Arthur relied are inconsistent with those stated in the first full paragraph on page 33 of Plaintiffs' Response to Traditional MSJ.

SUSTAINED DX OVERRULED _____

8. Defendants object to the admission and consideration of paragraphs 5-7 because they do not stand for the proposition that Plaintiffs are "third party beneficiaries" as offered by Plaintiffs in the second to last sentence of the last paragraph of page 48 of Plaintiffs' Response to Traditional MSJ.

SUSTAINED _____ OVERRULED DX

B. OBJECTION TO AFFIDAVIT OF W. THAD MURLEY, III

Defendants lodge the following objection to Plaintiffs' Affidavit of W. Thad Murley, III:

1. Defendants object to the entirety of Plaintiffs' Affidavit of W. Thad Murley, III because it is being used to determine the adequacy of the property description in Plaintiffs' so called contract. This is improper because such a determination is a question of law for the Court to decide. *See Mayor v. Garcia*, 104 S.W.3d 274, 280 (Tex. App.—Texarkana 2003, pet. dismissed w.o.j.) ("The adequacy of a property description in a land sales contract is a question of law within the purview of the statute of frauds").

SUSTAINED DX OVERRULED _____

2. Defendants object to Mr. Murley's conclusion in paragraph 6(b) because Mr. Murley is relying on extrinsic and parol evidence in making his conclusion regarding the property description of the subject properties.

SUSTAINED DX OVERRULED _____

3. Defendants object to Mr. Murley's statement that the documents identified in paragraph 6(a) constitute a "nucleus description" on the basis that such a statement constitutes a legal conclusion.

SUSTAINED DX OVERRULED _____

4. Defendants object to Mr. Murley's conclusion in paragraph 7 because Mr. Murley is relying on extrinsic and parol evidence in making his conclusion regarding the property description of the subject properties.

SUSTAINED DX OVERRULED _____

5. Defendants object to Mr. Murley's reliance of Exhibits D, E, F, and G as such documents constitute inadmissible extrinsic and parol evidence.

SUSTAINED DX OVERRULED _____

6. Defendants object to the admission and consideration of Exhibit D to the affidavit because it constitutes inadmissible hearsay.

SUSTAINED DX OVERRULED _____

7. Defendants object to the admission and consideration of paragraphs 5-7 because the documents on which said paragraphs state that Mr. Murley relied are inconsistent with those stated in the first full paragraph on page 33 of Plaintiffs' Response to Traditional MSJ.

SUSTAINED DX OVERRULED _____

8. Defendants object to the admission and consideration of paragraphs 5-7 because they do not stand for the proposition that Plaintiffs are "third party beneficiaries"

as offered by Plaintiffs in the second to last sentence of the last paragraph of page 48 of Plaintiffs' Response to Traditional MSJ.

SUSTAINED _____

OVERRULED DX

C. OBJECTION TO AFFIDAVIT OF TOLLI THOMAS

Defendants lodge the following objection to Plaintiffs' Affidavit of Tolli Thomas:

1. Defendants object to the third and fourth sentences of paragraph number 3 because the statements are irrelevant, conclusory, speculative, and constitute inadmissible hearsay and inadmissible parol evidence.

SUSTAINED _____

OVERRULED DX

2. Defendants object to the last sentence of paragraph number 3 because the statement constitutes inadmissible hearsay and parol evidence, and is speculative and conclusory.

SUSTAINED _____

OVERRULED DX

3. Defendants object to the first, second and third sentences of paragraph number 4 because the statements are conclusory and constitute inadmissible hearsay and inadmissible parol evidence.

SUSTAINED DX

OVERRULED _____

4. Defendants object to the last sentence of paragraph number 4 because the statement is speculative and the witness lacks personal knowledge.

SUSTAINED _____

OVERRULED DX

5. Defendants object to the heading before paragraph 5 because it is conclusory.

SUSTAINED DX

OVERRULED _____

6. Defendants object to paragraph number 5 because the statement is conclusory and is inadmissible parol evidence.

SUSTAINED _____

OVERRULED DX

7. Defendants object to the heading before paragraph 6 because it is conclusory.

SUSTAINED DX

OVERRULED _____

8. Defendants object to the first and second sentence of paragraph 7 because the statements are conclusory and speculative

SUSTAINED DX

OVERRULED _____

9. Defendants object to part (3) of the last sentence of paragraph 7 because it is speculative and conclusory.

SUSTAINED DX

OVERRULED _____

10. Defendants object to the first sentence of paragraph 8 because it is speculative and conclusory.

SUSTAINED DX

OVERRULED ~~DX~~

11. Defendants object to sentences three and four of paragraph 8 because they constitute inadmissible hearsay.

SUSTAINED _____

OVERRULED DX

12. Defendants object to the fourth and fifth sentences of paragraph 9 because they constitute inadmissible hearsay and are inadmissible parol evidence.

SUSTAINED _____

OVERRULED DX

13. Defendants object to the first sentence of paragraph 10 because it is conclusory.

SUSTAINED ~~DX~~

OVERRULED DX

14. Defendants object to the first and second sentences of paragraph 10 because they are conclusory and speculative.

SUSTAINED _____

OVERRULED DX

15. Defendants object to the third and fourth sentences of paragraph 10 because they constitute inadmissible hearsay.

SUSTAINED _____

OVERRULED DX

16. Defendants object to the first sentence of paragraph 11 because it constitutes inadmissible hearsay.

SUSTAINED DX

OVERRULED _____

17. Defendants object to the first sentence of paragraph 12 because it constitutes inadmissible hearsay.

SUSTAINED _____

OVERRULED DX

18. Defendants object to the second sentence of paragraph 12 because it is not the best evidence.

SUSTAINED _____

OVERRULED DX

19. Defendants object to the third and fourth sentences of paragraph 12 because they are speculative, inadmissible parol evidence, and constitute inadmissible hearsay.

SUSTAINED _____

OVERRULED DX

20. Defendants object to the last sentence of paragraph 12 because it is speculative.

SUSTAINED _____

OVERRULED DJK

21. Defendants object to paragraph 13 because it constitutes inadmissible hearsay.

SUSTAINED _____

OVERRULED DJK

D. OBJECTIONS TO VE00013263, VE00013264, VE00013269, VE00013270, VE00013349, TCGL0057051, V-223, V-256, V-269, V-286, AND EXHIBIT B-17 (of TOLLI THOMAS'S AFFIDAVIT)

1. Defendants object to Plaintiffs' use of VE00013263, VE00013264, VE00013269, VE00013270, VE00013349, TCGL0057051, V-223, V-256, V-269, V-286, and Exhibit B-17 (of Tolti Thomas's Affidavit) as a means of providing a property description of the subject properties because such documents constitute inadmissible extrinsic and parol evidence.

SUSTAINED DJK

OVERRULED _____

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