

CAUSE NO.: 067-241738-09

WILLIE BOOTH and CARMEN BOOTH

Plaintiffs,

v.

**XTO ENERGY, INC., CHESEPEAKE
EXPLORATION COMPANY, LLC,
VANTAGE ENERGY, LLC, TITAN
OPERATING, LLC, CHIEF OIL & GAS,
LLC, QUICKSILVER RESOURCES,
INC., RED OAK ENERGY PARTNERS,
LLC, KEYSTONE EXPLORATION,
LTD., CARRIZO OIL & GAS, INC.,
TRINITY EAST ENERGY, LLC,
PERMIAN LAND COMPANY, a Division
of DEVONIAN ENTERPRISES, INC.,
FRED W. JONES, individually and/or
d/b/a DEVONIAN ENTERPRISES, INC.,
JACK HUXEL, JAY VAN ZANDT,
DALE PROPERTY SERVICES, LLC,
THE CAFFEY GROUP, LLC, FOUR
SEVENS ENERGY CO., LLC, BRYSON
KUBA, LP, LLANO OPERATING,
CORP., and CHEAHA LAND
SERVICES, LLC**

Defendants.

IN THE DISTRICT COURT OF

TARRANT COUNTY, TEXAS

67TH JUDICIAL DISTRICT

PLAINTIFFS' FIRST AMENDED PETITION AND CLAIM FOR DAMAGES

TO THE HONORABLE COURT:

Now come Willie Booth and wife Carmen Booth, Plaintiffs herein, and files this, Plaintiffs' First Amended Petition and Claim for Damages, complaining of XTO ENERGY INC., PERMIAN LAND COMPANY, a division of DEVONIAN ENTERPRISES, DEVONIAN ENTERPRISES, INC., FRED W. JONES and JACK HUXEL, and for cause of action would show this Honorable Court as follows:

1.0 Discovery Level

1.01 Plaintiffs intend to conduct discovery in this case as a Level 2 case pursuant to Rule 190.3 of the Texas Rules of Civil Procedure.

2.0 Jurisdiction and Venue

2.01 Jurisdiction and venue are proper in this Court.

3.0 Parties

3.01 Plaintiffs have nonsuited all defendants except for the following parties who will remain as Defendants herein: XTO Energy, Inc. (“XTO”), Permian Land Company (“Permian”), a division of Devonian Enterprises, Devonian Enterprises, Inc., Fred W. Jones and Jack Huxel.

3.02 Plaintiffs are individual Texas residents residing within Tarrant County, Texas. Plaintiffs are husband and wife.

3.04 Defendants have all been served and answered herein. The firm of K&L Gates represents all the remaining defendants. No service is necessary on such defendants other than serving their attorneys of record with a copy of this amended pleading.

4.0 Factual & Procedural Background

4.01 Plaintiffs are the owners of real property located within Tarrant County, Texas known as [REDACTED] (“the Property”) which is a part of the Meadow Vista Estates Addition Neighborhood. This lawsuit arises as a result of Defendant XTO's breach of a lease between the Plaintiffs and XTO due to XTO's failure and refusal to pay the agreed upon signing bonus to Plaintiffs. XTO, through its lawyers, has for months denied the existence of a valid and enforceable lease, but has now chosen to recognize and admit that there was a valid lease agreement between the Plaintiffs and

XTO. However, this judicial admission was not made until January 28, 2010 when XTO's lawyer, Jeffrey King, finally made such admission after months of denial and despite the fact XTO's pleadings still deny each and every such allegation. This judicial admission was intended to, and did, dramatically change the course of this case. Numerous factual and background statements have been removed from the Original Petition in light of this new admission

4.02 In August 2008, Plaintiffs accepted the terms XTO offered and Plaintiffs signed a lease on the form and on the terms XTO required, and Plaintiffs have complied with every term of that contract. They have done everything XTO and its agents have asked of them. Plaintiffs have executed a lease with XTO and all conditions precedent to enforcing this contract have been met. At the time Plaintiffs executed the lease, they received a check for Four Thousand Two Hundred Sixty Nine and 23/100 Dollars (\$4,269.23) allegedly representing payment of the agreed bonus of Twenty Six Thousand, Five Hundred Seventeen and no/100 Dollars (\$26,517.00) per net mineral acre. However, Plaintiffs later discovered that XTO had attempted to short change them and they should have received a bonus check in the amount of Four Thousand Nine Hundred Thirty Two and 16/100 Dollars (\$4,932.16), and that they had not received the full amount of the bonus they were entitled to based upon the Property's acreage amount. Plaintiffs then met with Jay Van Zandt, an agent of XTO, and explained the inaccuracy in the check's amount. Van Zandt agreed that the bonus had been miscalculated, and Van Zandt then took back the original bonus check and advised Plaintiffs that they would receive a new bonus check for the correct amount shortly thereafter. From that point forward, the Plaintiffs had signed a lease with XTO but had received no signing bonus. XTO had them in an

impossible position at that time: they could not legally sign another lease with one of the competitors who were still seeking leases from the Plaintiff's neighbors but they also had not received their agreed signing bonus.

4.03 Plaintiffs contacted Defendant Permian on September 13, 2008 to demand their bonus check as promised, and on that day made written demand upon Permian and XTO for payment of the full bonus payment.

4.08 On or about October 15, 2008, Plaintiffs received a letter from Permian enclosing a check payable to the Plaintiffs in the amount of Six Hundred Sixty Two and 93/100 Dollars (\$662.93). This is approximately one-eighth of the agreed signing bonus. However, despite repeated requests and demands, Defendants have inexplicably failed and refused (*until January 28, 2010*) to provide the entire agreed signing bonus. Even now, the signing bonus offered is inadequate because it does not include interest and does not include an accounting for all royalties, if any, that are currently due the Booths for drilling activities that may have occurred in the Booths' neighborhood since they signed the lease in 2008.

4.09 Shortly after receiving the supplemental check, Permian and XTO contacted Plaintiffs and advised them not to cash the supplemental check because their lease, and all lease acquisition activity in the Plaintiffs' geographical area, was being terminated. Plaintiffs have not cashed the supplemental check and have still not received a replacement check for the amount of bonus and interest owed.

4.10 Plaintiffs executed the Lease in good faith based upon the representations made by XTO, Permian, their employees and agents, that they would receive the agreed upon bonus. Plaintiffs reasonably relied upon such representations and did not accept other offers to

lease the Property in reliance upon the Defendants' representations that Defendants were leasing the Property. Plaintiffs then lost the opportunity to lease to other persons and/or entities because the market has changed dramatically due, at least in part, to the conduct of the Defendants as described herein.

4.11 In the summer of 2009, XTO's agents again contacted the Plaintiffs and again offered them a mineral lease, but this time XTO tried to repudiate the 2008 lease and tried to get the Plaintiffs to agree to accept no signing bonus at all. The Plaintiffs again demanded full payment of their signing bonus, but XTO refused despite the fact the Plaintiffs had signed a lease and been provided a check for partial payment a year earlier.

5.0 Vicarious Liability

5.01 XTO is directly liable to the Plaintiffs and is vicariously liable for all the conduct of all the Defendants remaining in this lawsuit.

6.0 First Cause of Action - Breach of Contract and Specific Performance

6.01 Plaintiffs incorporate Paragraphs 4.01 through 5.01 as if set forth herein again verbatim.

6.02 Plaintiffs have executed a legal and valid lease for the development of oil, gas and other minerals with Defendant XTO. The lease constitutes a binding contractual agreement with XTO, and Plaintiffs are entitled to specific performance of the terms and conditions of the lease. Plaintiffs here and now sue for specific performance of all terms and conditions of the lease.

7.0 Second Cause of Action -- Fraud

7.01 Plaintiffs incorporate Paragraphs 4.01 through 6.02 as if set forth herein again verbatim.

7.02 Plaintiffs would show that the actions described herein constitute fraud for which Plaintiffs are entitled to recover damages. These Defendants made representations to the

Plaintiffs which they knew were false at the time they were made or which in the exercise of ordinary care such Defendants should have known were false. Such representations include, but are not limited to, the representation that Plaintiffs would receive another bonus check for the correct amount of bonus owed to them. Such representations were also made with the intention of preventing Plaintiffs from leasing the Property to anyone other than XTO and its agents and with the intention that it be relied upon by the Plaintiffs. Plaintiffs justifiably relied upon such representations to their harm, detriment and economic injury.

7.03 Plaintiffs here and now sue for recovery of all actual, consequential, exemplary and other damages permitted for fraud pursuant to the laws of the State of Texas.

8.0 Third Cause of Action - Negligent Misrepresentation

8.01 Plaintiffs incorporate Paragraphs 4.01 through 7.03 as if set forth herein again verbatim.

8.02 Plaintiffs would show that the actions of the defendants constitute negligent misrepresentation for which Plaintiffs are entitled to recover damages. Defendants made representations to the Plaintiffs which they knew were false at the time they were made or which were made with reckless disregard for whether they were true or not. Such representations include, but are not limited to, the representation that Plaintiffs should receive another bonus check for the correct amount of bonus owed to them. Such representations were also made with the intention of preventing Plaintiffs from leasing the Property to anyone other than XTO and its agents and with the intention that it be relied upon by the Plaintiffs. Plaintiffs justifiably relied upon such representations to their harm, detriment and economic injury.

8.03 Plaintiffs here and now sue for recovery of all actual, consequential, exemplary and other damages permitted for negligent misrepresentations pursuant to the laws of the State of Texas.

9.0 **Fourth Cause of Action - Fraud in Connection with the Sale of Real Estate**

9.01 Plaintiffs incorporate Paragraphs 4.01 through 8.03 as if set forth herein again verbatim.

9.02 Plaintiffs would show that the actions of defendants constitute fraud in connection with the sale of real estate as Texas law holds that the execution of an oil and gas lease effectuates a sale of the minerals with a potential right of reverter. Plaintiffs were induced to sell their minerals through representations made by one or more of the Defendants, and would not have entered into the lease/sale of such minerals but for the representations made by one or more of these Defendants, including but not limited to the representation that Plaintiffs would receive a bonus in the amount of Twenty Six Thousand Five Hundred Seventeen and 00/100 Dollars (\$26,517 .00) per net mineral acre as a signing bonus. Defendants, with full knowledge that the Plaintiffs had signed a valid lease in 2008, then contacted Plaintiffs in 2009 and attempted to fool them into signing a new lease with no signing bonus. Plaintiffs have not received the promised bonus, and accordingly, have been damaged in the amount of the bonus owed although they have allegedly conveyed title to their minerals to XTO.

9.03 Plaintiffs here and now sue for recovery of all actual, consequential, exemplary and other damages permitted for fraud in connection with the sale of real estate pursuant to the laws of the State of Texas including but not limited to Texas Business and Commerce Code Section 27.01. *et seq.*

10.0 **Fifth Cause of Action - Civil Conspiracy**

- 10.01** Plaintiffs incorporate Paragraphs 4.01 through 9.03 as if set forth herein again verbatim.
- 10.02** Plaintiffs would show that during the summer of 2008, Defendants and others engaged in acquiring leases in the Barnett Shale area recognized that the amounts being paid for bonuses in the Barnett Shale area, particularly in the Tarrant County area, were far higher than had been paid historically for the acquisition of leases in the State of Texas. Defendants and others concluded there was no likelihood that these amounts were going to stabilize unless some concerted action on behalf of all the major entities, including but not limited to these Defendants, was taken. Upon information and belief, Defendants and others conceived a plan or scheme in concert with each other and other gas companies in the area which was intended to, and did, drive the bonus and royalty payments down to a far lower amount than was being paid when the Plaintiffs signed their lease in 2008.
- 10.03** The object of such plan, or scheme was to prevent the natural market forces which had been setting prices for the bonus and royalty payments from continuing, and instead substituting an artificially low price for bonus and royalty payments, thereby increasing the profits each participant would receive at the expense and injury of individual landowners such as the Plaintiffs.
- 10.04** In furtherance of this plan or scheme, Defendants and other participants made a collective decision to terminate virtually all lease agreements covering the Barnett Shale formation in Tarrant County, and announced the decision to terminate the agreements reached with SEACTX and other similar neighborhood coalitions. Each of these Defendants and other participants made such announcements within days of each other.

10.05 As a direct and proximate result of this conspiracy, Plaintiffs have been harmed and injured by not being able to lease the Property at a fair and reasonable market driven rate for the bonus and the royalty payments.

10.06 As members of a civil conspiracy, each of the Defendants is jointly and severally liable for the acts and/or omissions of the other Defendants.

11.0 **Sixth Cause of Action - Violation of the Texas Free Enterprise and Antitrust Act of 1983**

11.01 Plaintiffs would show that the agreement(s) between the Defendants and others constitutes an agreement with the intended purpose and effect of lessening competition in the market to lease lands within the geographic boundaries of the Barnett Shale including the Property, by keeping prices for bonus payments and royalty payments at an artificially low level.

11.02 Such agreement(s) constitute an improper contract, combination or conspiracy in restraint of trade or commerce in violation of Section 15.01 *et seq* of the Texas Business and Commerce Code, commonly referred to as the Texas Free Enterprise and Antitrust Act of 1983. This conduct caused injury to the Plaintiffs, thereby automatically entitling them to recover three times the amount of their actual damages from the date of injury until full payment is made to the Plaintiffs, including treble damages, attorneys' fees, and costs of litigation.

11.03 Plaintiffs are persons as defined by the Texas Free Enterprise and Antitrust Act of 1983, and are entitled to pursue their claims for damages and injuries pursuant to Section 15.21(a)(1), and bring this action pursuant to such section.

- 11.04 Simultaneously with the filing of this action, Plaintiffs provided notification of their claims to the Texas Attorney General pursuant to Section 15.21(c) of the Texas Business and Commerce Code.
- 11.05 Plaintiffs would show that pursuant to the terms and conditions of Section 15.01 *et seq* of the Texas Business and Commerce Code, Plaintiffs are entitled to recovery of treble damages, together with interest thereon, as well as the award of attorneys' fees. This award of treble damages is automatic once the antitrust injury occurs, which occurred here by no later than November 1, 2008.
- 11.06 Plaintiffs would show that the agreement(s) between Defendants and others was/were entered into willfully or flagrantly in violation of the rights of the Plaintiff and others similarly situated, and that such actions merit a finding by the trier of fact that Defendants conduct was willful or flagrant entitling the Plaintiffs to additional punitive damages.

13.0 Attorneys' Fees

- 13.01** Plaintiffs are entitled to recovery of attorneys' fees pursuant to Section 38.001 *et seq.* of the Texas Civil Practice and Remedies Code as well as pursuant to Section 15.01 *et seq.* and Section 27.01 *et seq.* of the Texas Business and Commerce Code. Plaintiffs have agreed to pay the undersigned counsel a fair and reasonable fee for the services rendered in connection with the preparation, prosecution, and, if necessary, the appeal of this case. Plaintiffs seek recovery of attorneys fees in addition to the damages set forth herein.
- 13.02** Defendant XTO by their Notice of Deposit of Funds Into Registry of Court filed with this court on January 28, 2010 admitted that Plaintiffs herein are entitled to the amount of \$4,932.16 which was payable under the terms of the lease Plaintiffs executed in favor of Defendant XTO in August 2008. Defendant XTO has also paid the aforementioned

amount into the Registry of the Court. This payment represents just one-third of the post-trebled damages the Plaintiffs suffered as a result of the Defendants' unlawful conduct, but Plaintiffs agree to accept the lease agreement they signed in August 2008 and the signing bonus of \$4,932.16 as *partial payment* of the damages they have incurred. Accordingly, pending a resolution of claims for attorneys' fees, interest, court costs and expenses related to Plaintiffs' contract and statutory fraud claims, XTO's admission will make moot all other claims that Plaintiffs have against all Defendants who are still parties to this lawsuit.

13.03 Plaintiffs presented Defendants with a demand for all amounts due under the lease contract and for performance of Defendants' obligations under the contract in accordance with Tex. Civ. Prac. & Rem. Code 38.001 and 38.002. Plaintiffs made the required demand to Defendant XTO originally in person and over the telephone on several occasions in 2008 and again, in writing, via its retained counsel on August 19, 2009.

13.04 Defendants failed to make the payment as due under the lease within the 30 days following the demand.

13.05 Plaintiffs request and move that the Court require Defendant XTO to pay all attorneys' fees and costs of court, including interest and expenses related to the prosecution of this claim on Plaintiffs' behalf. These attorneys' fees and costs of court will be detailed in a Supplemental Motion that Plaintiffs will file with this Court.

14.0 **Request for Jury Trial**

14.01 Plaintiffs have previously requested a jury trial and have paid the required jury fee.

15.0 **Requests for Disclosure**

15.01 Plaintiffs request that the Defendants provide all information responsive to Texas Rules of Civil Procedure Rule 194.2 (a) through (l) in accordance with such rules.

16.0 **PRAYER**

16.01 WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray;

16.01.4 That Defendant XTO be ordered to specifically perform in accordance with the Lease terms and issue a check to the Plaintiffs in the full amount owed for the bonus payment of Twenty Six Thousand Five Hundred Seventeen and no/100 Dollars (\$26,517.00) per net mineral acre, plus interest.

16.01.5 That Defendants be found jointly and severally liable for the harm and damage they have caused to Plaintiffs by engaging in and carrying on the conspiracy to keep bonus and royalty payments to Plaintiffs and others similarly situated artificially low.

16.01.6 That Plaintiffs be awarded attorneys' fees in accordance with Section 15.01 *et seq.* and/or Section 27.01 *et seq.* of the Texas Business and Commerce Code and/or Section 38.001 *et seq.* of the Texas Civil Practice and Remedies Code, including interest, costs, and expenses of litigation.

16.01.7 That the Court enter a finding that Defendants acted willfully or flagrantly and that Plaintiffs damages, including attorneys' fees, be trebled in accordance with Section 15.01 *et seq.* of the Texas Business and Commerce Code.

16.01.8 That Plaintiffs recover their damages and treble damages, attorneys' fees, costs of court, interest on all damages as permitted by law and for such other and further relief, both general and special, at law or in equity to which Plaintiffs may show themselves justly entitled.

Respectfully submitted,

PETROFF & ASSOCIATES

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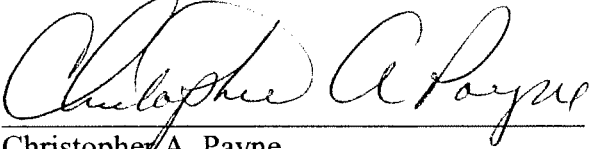
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CERTIFICATE OF SERVICE

I hereby certify that that this document was served via US Mail and e-mail transmission on counsel of record for XTO and the Permian Defendants on the 8th day of March, 2010, in accordance with the Texas Rules of Civil Procedure.



Christopher A. Payne