IN THE SUPREME COURT OF THE STATE OF NEVADA

NEVADA LAND AND RESOURCE COMPANY, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Appellant,
vs.
PRIZE ENERGY RESOURCES, L.P., A DELAWARE LIMITED PARTNERSHIP,
Respondent.

No. 50568

FILED

DEC 14 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an amended judgment of the district court entered after a bench trial in a real property contract action. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Appellant Nevada Land and Resource Company, LLC (NLRC), is the owner of a 1,220,000-acre property (Property) in Nevada. NLRC's predecessor in interest entered into a Lease Option Agreement (Agreement) with Santa Fe Energy Company for the exploration and production of oil and gas. Santa Fe merged with Devon Merger Company and failed to notify NLRC about the merger. Devon then attempted to have NLRC issue oil and gas leases on behalf of respondent Prize Energy Resources, L.P. NLRC refused to issue any leases, and Devon subsequently assigned its interest in the Agreement to Prize. Prize then attempted to have NLRC issue oil and gas leases for the entire Property,

but NLRC again refused to do so, arguing that the Agreement had been terminated by Devon's failure to notify NLRC of its assigned interest.[1]

On appeal, NLRC argues that the district court erred in determining that: (1) the failure of Prize's predecessor in interest, Devon, to notify NLRC of its assigned interest in the Agreement was not a material breach; (2) Prize did not act in bad faith in attempting to have NLRC issue oil and gas leases on the entire Property; and 3) the district court had the authority to extend the Agreement for four years.[2] We conclude that all of NLRC's arguments are without merit, and as such, affirm the order of the district court.

Standard of review

"This court reviews the district court's findings of fact for an abuse of discretion, and this court will not set aside those findings 'unless they are clearly erroneous or not supported by substantial evidence.'" NOLM, LLC v. County of Clark, 120 Nev. 736, 739, 100 P.3d 658, 660-61 (2004) (quoting Sandy Valley Assocs. v. Sky Ranch Estates, 117 Nev. 948, 954, 35 P.3d 964, 968 (2001), overruled on other grounds by Horgan v. Felton, 123 Nev. 577, 170 P.3d 982 (2007)). "Substantial evidence is described as evidence that a reasonable person could accept as adequately

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[1]The parties are familiar with the facts, and we do not recount them further here except as necessary to our disposition.

[2]NLRC also argues that the district court erred in determining that: 1) Paragraph 15 of the Agreement should be interpreted such that the lands, which were subject to expired oil and gas leases, were still subject to the Agreement; and 2) the lands sold by NLRC during the period of non-notification by Devon were still subject to the encumbrances of the Agreement. We conclude that these arguments are without merit and require no further discussion.

supporting a conclusion." Flamingo Hilton v. Gilbert, 122 Nev. 1279, 1282, 148 P.3d 738, 740 (2006).

Merger between Santa Fe and Devon

Prize argues that the merger of Santa Fe into Devon did not trigger an assignment under the Agreement.[3] NLRC argues that the merger triggered an assignment and that the district court erred in finding that Devon and Prize's failure to notify it of the merger was not a material breach. We conclude that the district court did not err because the transfer of assets from Santa Fe to Devon was done by operation of law and thus was not an assignment that triggered the notification requirement under the Agreement.

Under the Nevada merger statute, NRS 92A.250, the constituent, or merging, entity merges into the surviving entity and the surviving entity assumes all the liabilities of the constituent entity. We have interpreted this statute in another context to approve the theory that the surviving corporation in a merger assumes the rights of the merging corporation by operation of law. See HD Supply Facilities Maint. v. Bymoen, 125 Nev. ___, ___, 210 P.3d 183, 187 (2009) (citing Corporate Exp. Office Products v. Phillips, 847 So. 2d 406, 414 (Fla. 2003)).

We conclude that the merger between Santa Fe and Devon resulted in Devon assuming Santa Fe's interest in the Agreement by law and not by assignment and, as such, no notice was required to be given by

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[3]We note that NLRC did not address this issue in either of its briefs. However, because of the importance of whether the merger was an assignment for the purpose of the resolution of the remaining issues presented, we begin with this question.

Devon or Prize to NLRC of this change in corporate structure.[4] As such, we conclude that NLRC has failed to show that the district court abused its discretion in finding that Devon and Prize's failure to notify NLRC of the merger was not a material breach of the Agreement. Therefore, we affirm the decision of the district court on this issue.

Bad faith

NLRC argues that the district court erred in finding that Prize's request for oil and gas leases on the entire Property did not constitute bad faith because Prize's action was in contravention to the purpose of the Agreement—to provide for exploration, development, and production of oil and gas. Thus, NLRC maintains that Prize was required to perform scientific research prior to obtaining an oil or gas lease under the Agreement. We disagree because we conclude that there is no specific provision in the Agreement requiring scientific testing of the Property before an oil and gas lease could be issued.

"In interpreting a contract, we construe a contract that is clear on its face from the written language, and it should be enforced as written." Attorney General v. Dist. Ct. (Phillip Morris), 125 Nev. ___, 199 P.3d 828, 832 (2009).

We conclude that NLRC's argument is without merit because there is no specific provision in the Agreement that required scientific testing of the Property before an oil and gas lease could be issued. NLRC is correct that the recital of the Agreement states that it was being

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[4]We note that even if notice was required in this context, Devon and Prize's failure to do so was immaterial, and the district court did not abuse its discretion in finding that notice of the merger was not required.

entered into for the purpose of "exploration, development and production of oil and gas." But without a provision specifically stating that scientific testing was necessary before an oil and gas lease would be issued, the district court's finding that Prize did not act in bad faith is supported by substantial evidence. Specifically, the district court found that Prize was simply attempting to exercise its rights under the Agreement.

Additionally, NLRC relies on a United States Supreme Court case, Sauder v. Mid-Continent Corp., 292 U.S. 272, 281 (1934), for the proposition that a lessor is entitled to cancel a lease when the lessee has no intention of exploring and developing the leased premises for oil and gas. However, NLRC's reliance on Sauder is misplaced because the reasoning of the United States Supreme Court in that case does not apply to the facts presented here.[5] NLRC does not point to any statement by Prize that would indicate that Prize did not intend to explore or develop the Property. Thus, the core issues, which the United States Supreme Court relied on to support it's holding in Sauder, 292 U.S. at 281, are not present here.

As such, we conclude that NLRC's argument is without merit and affirm the decision of the district court on this issue.

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[5] The facts of Sauder are that a lease had expired that included a clause that allowed for the lessee to continue leasing the property as long as oil and gas could be procured at paying quantities. 292 U.S. at 273-79. At the end of the lease-term, the lessor sought to cancel the lease because the lessee had not diligently explored and developed the land such that the lease was profitable. Id. at 275-76. The Court approved the cancelling of the lease because the lessee asserted that it had no intentions of drilling at any time in the near or distant future. Id. at 281.

Extension of the Agreement

NLRC argues that the district court abused its discretion by extending the term of the Agreement for an additional four years. NLRC argues that the Agreement is not ambiguous as to length, and that the district court did not have the legal authority to alter the terms of an unambiguous agreement. We disagree because we conclude that Prize tried to exercise its rights under the Agreement but was prevented from doing so by NLRC's actions, and as such, the district court did not abuse its discretion in extending the length of Agreement to allow Prize to exercise its rights under the Agreement.

"Generally, when a contract is clear on its face, it 'will be construed from the written language and enforced as written.'" Canfora v. Coast Hotels & Casinos, Inc., 121 Nev. 771, 776, 121 P.3d 599, 603 (2005). As such, "[t]he court has no authority to alter the terms of an unambiguous contract." Id.; see also Kaldi v. Farmers Ins. Exch., 117 Nev. 273, 281. 21 P.3d 16, 21 (2001) (stating that this court is not free to modify or vary the terms of an unambiguous contract).

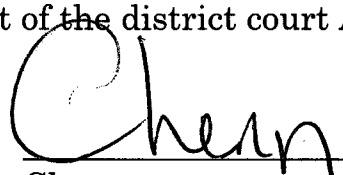
However, this court has stated that "[e]quity regards as done what in good conscience ought to be done." Carcione v. Clark, 96 Nev. 808, 811, 618 P.2d 346, 348 (1980). Further, the extension of the term of a contract concerning oil and gas leases has been approved where the owner of the land refused to allow the other party to explore the land as was that party's right under the contract. See Bingham v. Stevenson, 420 P.2d 839, 842 (Mont. 1966).

Under the circumstances here, we conclude that NLRC's argument is without merit. While NLRC is correct in its contention that an unambiguous contract generally cannot be altered by a district court, the district court's determination that equity demanded the extension of

the lease was not an abuse of discretion. Specifically, it was not an abuse of discretion for the district court to find that, because NLRC had breached the Agreement by refusing to issue oil and gas leases to Devon on behalf of Prize for at least a period of four years, that equity should extend the term of the Agreement by four years in order to give Prize the benefit of the Agreement. Therefore, we conclude that NLRC has failed to show an abuse of discretion on the part of the district court, and as such, we affirm the order of the district court on this issue.

In light of the foregoing discussion, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Cherry

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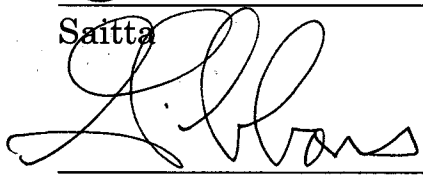

_____, J.
Gibbons

cc: Hon. Connie J. Steinheimer, District Judge
Madelyn Shipman, Settlement Judge
Allison, MacKenzie, Pavlakis, Wright & Fagan, Ltd.
Woodburn & Wedge
Washoe District Court Clerk