

IN THE SUPREME COURT OF THE STATE OF NEVADA

SAGUARO POWER COMPANY, A
CALIFORNIA LIMITED
PARTNERSHIP,
Appellant,
vs.
BURLINGTON RESOURCES
TRADING, INC., A DELAWARE
CORPORATION,
Respondent.

No. 38076

FILED

JUN 18 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Saguaro Power Company appeals from a judgment in an action for breach of contract and declaratory relief following a bench trial in favor of Burlington Resources Trading, Inc. On appeal, Saguaro challenges the district court's judgment on various grounds. We conclude that all of Saguaro's contentions lack merit.

First, Saguaro contends that the district court misconstrued and misapplied Texas law governing a requirements contract. We have consistently provided that the district court's findings of fact will not be disturbed on appeal if they are supported by substantial evidence.¹ However, we review the district court's conclusions of law de novo.²

A requirements contract is one in which the buyer agrees to purchase his requirements exclusively from the seller, and the seller, in

¹See Pandelis Constr. Co. v. Jones-Viking Assoc., 103 Nev. 129, 130, 734 P.2d 1236, 1237 (1987); Hobson v. Bradley & Drendel, Ltd., 98 Nev. 505, 506-07, 654 P.2d 1017, 1018 (1982).

²Blaich v. Blaich, 114 Nev. 1446, 1447-48, 971 P.2d 822, 823 (1998); Bopp v. Lino, 110 Nev. 1246, 1249, 885 P.2d 559, 561 (1994).

turn, agrees to fill all the buyer's requirements during the period of the contract.³ Such a contract imposes upon the buyer an obligation to act in good faith.⁴ Saguaro argues that under Texas law, when the seller challenges the reductions by the buyer in a requirements contract, the seller must demonstrate that the buyer acted without a valid business reason and in good faith. We disagree. "The essential ingredient of good faith in the case of the buyer's reducing his estimated requirements is that he not merely have had second thoughts about the terms of the contract and want to get out of it."⁵ Certainly, the buyer may reduce its requirements to any amount, including zero.⁶ But the buyer must have "had a legitimate business reason for eliminating its requirements, as opposed to a desire to avoid its contract,"⁷ in order to meet the good faith standard for a requirements contract.

³See Stacy A. Silkworth, Quantity Variation in Open Quantity, 51 U. Pitt. L. Rev. 235, 237 (1990).

⁴Texas Business & Commerce Code Ann. § 2.306 (Vernon 1994) (identical to section 2-306 of the Uniform Commercial Code); see also Southwest Natural Gas Co. v. Oklahoma Portland C. Co., 102 F.2d 630, 632-33 (10th Cir. 1939).

⁵Empire Gas Corp. v. American Bakeries Co., 840 F.2d 1333, 1340-41 (7th Cir. 1988).

⁶See Brewster of Lynchburg, Inc. v. Dial Corp., 33 F.3d 355, 364-65 (4th Cir. 1994).

⁷Brewster of Lynchburg, Inc., 33 F.3d at 366 (quoting NCC Sunday Inserts, Inc. v. World Color Press, Inc., 759 F. Supp. 1004, 1009 (S.D.N.Y. 1991)).

Saguaro asserts that the Texas Supreme Court, in Northern Natural Gas Co. v. Conoco, Inc.,⁸ created a two-pronged good faith test for requirements contracts, requiring that the seller prove both that the buyer reduced its requirements without a valid business reason and that the buyer acted in bad faith. We conclude that Saguaro's argument lacks merit because the court in Northern Natural Gas Co., specifically stated that Texas Business & Commerce Code section 2.306 did not apply to the contract in that case because the contract involved services and not sales of goods.⁹ Although the court discussed good faith and output/requirements contracts, the court was applying the common law good faith standard.¹⁰ Therefore, we conclude that Texas does not have a two-pronged good faith test for requirements contracts.

Notwithstanding, we conclude that, contrary to Saguaro's contention, the district court did not equate an invalid business reason with bad faith. The district court found that Saguaro received payments for not purchasing the required energy, and that Saguaro only granted Nevada Power Company releases when Saguaro's contract price for gas was higher than the open market price. Consequently, the district court concluded that Saguaro did not enter into the releases for a business necessity, but that Saguaro entered into the releases for economic dispatch to earn more money at the expense of Burlington; Saguaro acted in bad

⁸986 S.W.2d 603, 608-09 (Tex. 1998).

⁹Id. at 607.

¹⁰Id. at 608. See also Aquila Southwest Pipeline v. Harmony Explo., 48 S.W.3d 225, 234 (Tex. App. 2001) (noting that the court in Northern Natural Gas Co., stated that section 2.306 did not apply because the contract involved services, not sales).

faith when it granted the releases, as it only granted the releases when the market price was lower than the contract price; and Saguaro's reductions were without a valid business reason and were in bad faith.

We further conclude that substantial evidence supports the district court's findings that Saguaro acted in bad faith when it granted the releases, and that Saguaro breached the terms of the Gas Sales Agreement when it entered into the amended Power Purchase Agreement. First, the evidence adduced at trial established that Saguaro's sole motivation when it entered into the releases with Nevada Power Company was to make more money. Also, the evidence established that the releases were attempts to avoid the gas price set forth in the Gas Sales Agreement. Under the amended Power Purchase Agreement, Saguaro had the sole discretion to grant Nevada Power Company releases and Saguaro was not limited in exercising its discretion. Moreover, Saguaro did not exercise "reasonable efforts" regarding its gas requirements. When it entered into the amended Power Purchase Agreement, Burlington requested to be included in the settlement negotiation, but Saguaro denied Burlington's request. And, when Saguaro reduced its gas requirements in April 1999 because it entered into a release with Nevada Power Company, Saguaro told Burlington that the reductions were because of maintenance, not a release.

Next, Saguaro contends that the district court erred in admitting parol evidence. We disagree. When a court construes a contract, Texas courts require the court to ascertain the parties' true

intent as expressed in the agreement.¹¹ In determining the parties' intent, the court must examine the four corners of the document.¹² Accordingly, extrinsic evidence may not vary the terms of an unambiguous contract.¹³ In addition, parol evidence prohibits evidence of a prior agreement or a contemporaneous agreement that contradicts the contract terms.¹⁴ However, in Texas, course of performance is admissible to explain or supplement the terms of the contract.¹⁵

Here, the district court admitted evidence of course of performance to explain or supplement the Gas Sales Agreement. In particular, the district court admitted testimony to explain the term "100% of Saguaro's gas requirements." Thus, we conclude that the district court did not abuse its discretion in admitting this evidence.¹⁶

¹¹Kelley-Coppedge, Inc. v. Highlands Ins., 980 S.W.2d 462, 464 (Tex. 1998).

¹²Esquivel v. Murray Guard, Inc., 992 S.W.2d 536, 543 (Tex. App. 1999).

¹³Highlands Manage. Co. v. First Interstate, 956 S.W.2d 749, 756 (Tex. App. 1997).

¹⁴See J. Parra e Hijos, S.A. de C.V. v. Barroso, 960 S.W.2d 161, 167-68 (Tex. App. 1997); see also Texas Business & Commerce Code Ann. § 2.02 (Vernon 1994) (providing that a valid integrated contract prevents enforcement of prior or contemporaneous agreements that are inconsistent with the integrated contract).

¹⁵See Texas Business & Commerce Code Ann. §§ 2.02(1), 2.208(a)-(b) (Vernon 1994).

¹⁶See Petty v. State, 116 Nev. 321, 325, 997 P.2d 800, 802 (2000) (reviewing the district court's evidentiary determination for abuse of discretion).

Saguaro next contends that the district court's ruling that Saguaro will breach the Gas Sales Agreement if it enters into future releases with Nevada Power Company is an erroneous advisory opinion. We agree that whether future releases constitute bad faith is not an appropriate determination in an action for declaratory judgment because such a determination depends on the facts and circumstances of each release.¹⁷ However, we conclude that the district court did not err on this issue because the district court ruled that the amended Power Purchase Agreement and its release provision breached the Gas Sales Agreement.


Finally, Saguaro contends that the district court's finding of damages in Burlington's favor is not supported by substantial evidence. We conclude that the district court did not abuse its discretion in awarding Burlington damages because such award is supported by substantial evidence, as Burlington's damages witness testified regarding the damages Burlington suffered as a result of Saguaro's bad-faith reductions.¹⁸ We also conclude that Saguaro's challenge to Burlington's attorney fees award is without merit.


¹⁷Cf. Cox v. Glenbrook Co., 78 Nev. 254, 266-67, 371 P.2d 647, 655 (1962) (stating that whether future use of an easement in connection with a proposed subdivision would cause an unreasonable burden on a servient estate could not be the subject of a declaratory judgment because such a determination would depend on the facts as to the actual use existing in the future).


¹⁸See Flamingo Realty v. Midwest Development, 110 Nev. 984, 987, 879 P.2d 69, 71 (1994) (upholding the district court's award of damages absent an abuse of discretion).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

cc: Hon. Lee A. Gates, District Judge
Gibson, Dunn & Crutcher LLP
John H. Cotton & Associates, Ltd.
Andrews & Kurth LLP
Rooker Gibson & Later
Clark County Clerk