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NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Colorado Court of Appeals, Division VI.

RENEGADE OIL & GAS COMPANY, LLC, Plaintiff-Appellant,
v.
ANADARKO PETROLEUM CORPORATION, a Delaware corporation; Anadarko Land Corporation, a Nebraska corporation; Anadarko E&P Onshore LLC, a Delaware limited liability company; Kerr-McGee Gathering LLC, a Colorado limited liability company; and Western Gas Holdings LLC, a Delaware limited liability company, Defendants-Appellees.

Court of Appeals No. 23CA0129
|
Announced March 7, 2024

Adams County District Court No. 17CV31603, Honorable Mark D. Warner, Judge

Attorneys and Law Firms

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Opinion

Opinion by JUDGE LUM

***1** ¶ 1 Plaintiff, Renegade Oil & Gas Company, LLC (Renegade), appeals the district court's entry of summary judgment in favor of defendants, Anadarko Petroleum Corporation (Anadarko Petroleum); Anadarko Land Corporation (ALC); Anadarko E&P Onshore LLC (AEP); Kerr-McGee Gathering LLC (KMG); and Western Gas Holdings LLC (Western).

¶ 2 We affirm.

I. Background

A. Parties

¶ 3 Renegade and defendants are all involved in the production or processing of oil and gas in the Denver-Julesburg field of northeast Colorado (the basin). Anadarko Petroleum is the parent company of all other defendants. ALC and AEP lease oil and gas rights to Renegade (Anadarko leases). Renegade also has oil and gas leases with various third parties (third-party leases). KMG, with Western as its former corporate parent, previously processed and sold Renegade's oil and gas through a series of gas contracts. [1]

B. Oil and Gas Production

¶ 4 The Anadarko leases, along with the third-party leases, allow Renegade to operate wells to produce oil and gas in the basin. The Anadarko leases terminate if Renegade stops producing oil and gas, although the leases contain options for Renegade to delay terminations.

¶ 5 The oil and gas that Renegade produces require transportation and processing before they are sold to third-party purchasers. Accordingly, Renegade had twenty-six gas purchase contracts with KMG (the gas contracts).

¶ 6 Under the gas contracts, Renegade delivered gas to KMG, and KMG used a system in the basin (the gathering system) to transport, process, and sell the gas. KMG then paid Renegade a percentage of the proceeds. The gas contracts included termination provisions that permitted either party to terminate the contracts with written notice.

¶ 7 Eventually, KMG decided to shut down and abandon the gathering system, and as a result, KMG delivered Renegade written notices of termination of the gas contracts. KMG then ceased operation of the gathering system before the end of the gas contracts' termination notice periods.

C. District Court Proceedings

¶ 8 As relevant here, Renegade brought claims against all defendants for (1) breaching the implied covenant of good faith by terminating the gas contracts for an improper purpose and (2) tortious interference. [2] Renegade also brought a claim against ALC, AEP, and Anadarko Petroleum for breach of the Anadarko leases, and it requested a declaratory judgment that ALC and AEP breached the Anadarko lease terms. Additionally, Renegade brought a civil conspiracy claim against all defendants.

¶ 9 At the heart of Renegade's claims is KMG's termination of the gas contracts. While KMG asserted that it shut down the gathering system for economic and safety reasons, Renegade claimed that defendants had conspired to shut down the system to prevent Renegade from processing and selling gas. According to Renegade, this would force it to cease oil and gas production, which would result in automatic termination of the Anadarko leases and interfere with Renegade's performance of its third-party leases. Defendants could then renegotiate more favorable leases or develop the oil and gas interests themselves.

***2** ¶ 10 Defendants counterclaimed, requesting determination of a question of law under C.R.C.P. 56(h) that Colorado's Uniform Commercial Code (UCC), §§ 4-1-101 to 4-13-306, C.R.S. 2023, limited damages for breach to the gas contracts' termination provisions. [3]

¶ 11 In a series of orders on defendants' motions for summary judgment, the district court dismissed Renegade's claims for breach of implied covenant, tortious interference, breach of the Anadarko leases, and civil conspiracy. The court further determined as a question of law that the UCC applied to the gas contracts and limited Renegade's damages to the unexhausted notice period in the applicable contract.

¶ 12 Renegade appeals, claiming that the district court erred by (1) dismissing Renegade's claims on summary judgment; (2) determining the UCC limited Renegade's damages; and (3) prohibiting a deposition during discovery.

II. Summary Judgment Claims

¶ 13 Renegade contends that the district court erred by dismissing the claims of breach of implied covenant of good faith and fair dealing, tortious interference with third-party leases, breach or anticipatory repudiation of the Anadarko leases, and civil conspiracy. We are not persuaded.

A. Standard of Review

¶ 14 We review a district court's order granting summary judgment de novo. *Westin Operator, LLC v. Groh*, 2015 CO 25, ¶ 19.

¶ 15 Summary judgment is appropriate when the pleadings and supporting documents fail to establish a genuine issue of material fact and there is a clear showing that the moving party is entitled to judgment as a matter of law. *Salas v. Grancare, Inc.*, 22 P.3d 568, 571 (Colo. App. 2001).

¶ 16 The moving party bears the burden of showing the absence of a genuine issue of fact. *People in Interest of S.N. v. S.N.*, 2014 CO 64, ¶ 16. If the moving party meets its initial burden, the burden shifts to the opposing party to show that a genuine dispute of material fact exists. *Rome v. Mandel*, 2016 COA 192M, ¶ 18. "[T]he nonmoving party may not rest on mere allegations or demands in its pleadings but must provide specific facts demonstrating a genuine issue for trial." *Rocky Mountain Expl., Inc. v. Davis Graham & Stubbs LLP*, 2018 CO 54, ¶ 27; *see* C.R.C.P. 56(e). The nonmoving party is entitled to the benefit of all favorable inferences that may be reasonably drawn from the facts presented, and all doubts must be resolved against the moving party. *Martini v. Smith*, 42 P.3d 629, 632 (Colo. 2002).

¶ 17 Summary judgment is a drastic remedy, inappropriate even when the existence of a genuine issue of material fact is "extremely doubtful." *Westin*, ¶ 21 (quoting *Mancuso v. United Bank of Pueblo*, 818 P.2d 732, 736 (Colo. 1991)).

B. Implied Covenant of Good Faith

¶ 18 Renegade claims defendants breached the implied covenant of good faith when they terminated the gas contracts in order to cause termination of Renegade's oil and gas leases.

¶ 19 As an initial matter, we note that Renegade brought this claim against all defendants, even though the only defendant who is a party to the gas contracts is KMG. Renegade does not explain, and we cannot discern, how the other defendants can breach a contract to which they are not parties. On that basis alone, we affirm the district court's grant of summary

judgment regarding breach of the gas contracts as to all defendants except KMG. We evaluate Renegade's claims pertaining to KMG below.

1. Applicable Law

***3** ¶ 20 Under Colorado law, every contract contains an implied duty of good faith and fair dealing. *Amoco Oil Co. v. Ervin*, 908 P.2d 493, 498 (Colo. 1995). This doctrine gives effect to the parties' intent and honors their reasonable expectations under a contract. *City of Golden v. Parker*, 138 P.3d 285, 292 (Colo. 2006).

¶ 21 "The duty of good faith and fair dealing applies when one party has discretionary authority to determine certain terms of the contract, such as quantity, price, or time." *Amoco*, 908 P.2d at 498. It applies "only when the manner of performance under a specific contract term allows for discretion on the part of either party." *Id.* But the covenant cannot "contradict terms or conditions for which a party has bargained." *Id.* Further, it "does not inject new substantive terms into a contract or change its existing terms." *Soderlun v. Pub. Serv. Co. of Colo.*, 944 P.2d 616, 623 (Colo. App. 1997).

2. Analysis

¶ 22 Twenty-five of the twenty-six gas contracts Renegade had with KMG included one of the following termination clauses:

- "The Agreements shall continue in full force and effect until January 31, 2016 and month to month thereafter unless cancelled by either party with 30 days written notice."
- "Commencing on October 1, 2017, the term of the Agreement shall be on a month-to-month basis. Either Party may terminate the Agreement by delivering written notice of such termination to the other Party no later than the 30th day preceding such termination date."

The twenty-sixth contract had the following termination clause:

- "Either party shall have the right to terminate this Contract at the expiration of ten (10) years from the date hereof or on any subsequent anniversary of said date by giving the other party sixty (60) days prior written notice."

The original ten-year term in the twenty-sixth contract expired on August 11, 1993.

¶ 23 The parties agree, as do we, that an implied covenant of good faith applies generally to the gas contracts. But Renegade contends that the doctrine applies specifically to bar KMG from terminating the contracts unless the gathering system is unsafe or unprofitable for KMG to run. Thus, Renegade claims that KMG breached the implied covenant because it terminated the gas contracts on a bad faith basis of trying to "drive Renegade out of its leases with KMG's affiliates."

¶ 24 We reject Renegade's contention. According to the termination provisions, the only condition for termination of the gas contracts is delivery of written notice. Requiring KMG to show an economic or safety justification (or indeed any justification) for termination would add a new substantive condition to all the contracts because it would essentially require specific cause (and apparently, proof of that cause acceptable to Renegade). Furthermore, requiring cause to terminate directly contradicts the contractual language specifying that (1) the term of the contract is "month-to-month" or (2) either party may terminate on "any subsequent anniversary" of August 11, 1993, so long as written notice is provided. Because the covenant of good faith does not permit adding to or varying the substantive terms of a contract, we cannot apply the doctrine in the way Renegade suggests. *See* *Soderlun*, 944 P.2d at 623.

***4** ¶ 25 Still, Renegade asserts that, according to *Amoco*, the good faith obligation cannot be precluded, waived, or rejected; hence, the implied covenant must apply to KMG's decision to terminate the contract at any time upon written notice.

¶ 26 But this case is distinguishable from *Amoco*. The *Amoco* court explained that "[t]he concept of discretion in performance 'refers to one party's power after contract formation to set or control the terms of performance.' " 908 P.2d at 498 (citation omitted). The doctrine of good faith may then be applied to

> protect a "weaker" party from a "stronger" party.... "The relative strength of a party exercising discretion typically arises from an agreement of the parties to confer control of

> a contract term on that party. The dependent party then is left to the good faith of the party in control."

Id. at 498-99 (citation omitted). The court then concluded that the duty of good faith and fair dealing applied when one party to the contract retained the discretion to modify the amount of rent it would collect from lessees. The court reasoned that (1) the parties left a term of performance — the rental amount — open and (2) the open-ended rental amount made the lessees dependent on the lessor's good faith. *Id.* at 499.

¶ 27 By contrast, the gas contracts did not leave any term of performance open. In addition to specific provisions relating to quantity and price, each contract specified the term of the agreement. For twenty-five of the contracts, the term was "month-to-month," and for the twenty-sixth contract, the term was for ten years and then terminable on any anniversary thereafter. In addition, the contract specified the requirements for a party to exercise its right of termination, i.e. written notice. *Cf. Miller v. Bank of N.Y. Mellon*, 2016 COA 95, ¶¶ 44-46 (concluding that (1) promissory note language stating that the note holder "may require" payment in full upon default did not confer "discretionary" power such that it triggered duty of good faith and fair dealing and (2) the language specifically "gave [the note holder] the right to foreclose in the event of default and did not require [it] to consider or agree to a [loan] modification"). Further, even if the termination provision could be considered "open," this is not a circumstance where an "open" term created a "weaker" and a "stronger" party. Rather, the termination provisions are entirely reciprocal: *either* party has the right to terminate the gas contracts upon written notice. *See* *Amoco*, 908 P.2d at 498.

¶ 28 Renegade next contends that the district court erred by entering summary judgment because it ignored extrinsic evidence about "the parties' " reasonable expectations, which were that KMG "could not abandon [the gathering system] unless the system was uneconomic." Renegade asserts that this evidence renders the termination clauses ambiguous. In support of its claim, Renegade points to affidavits signed by Renegade's president attesting to his own expectations at contract formation. But while some Colorado decisions hold that a court may consider extrinsic evidence when deciding whether a contract is ambiguous, [4] a court "may not consider the parties' own extrinsic expressions of intent." *Cheyenne Mountain Sch. Dist. No. 12 v. Thompson*, 861 P.2d 711, 715 (Colo. 1993) (quoting *KN Energy, Inc. v. Great W. Sugar Co.*, 698 P.2d 769, 777 (Colo. 1985)). Moreover, the termination provisions are not ambiguous. Given their plain language, the only reasonable expectation is that, upon written notice, either party could terminate the contract for any reason or no reason at all. *See Miller*, ¶¶ 45-46 (where note holder had authority to foreclose in the event of default, no reasonable expectation that holder would refrain from foreclosure efforts while negotiating a loan modification). Accordingly, to the extent the district court concluded that the termination provisions were unambiguous and declined to consider Renegade's own expressions of intent in reaching that conclusion, it did not err. [5]

***5** ¶ 29 For these reasons, the district court did not err by dismissing Renegade's breach of contract claim against KMG.

C. Tortious Interference

¶ 30 The tort of intentional interference with a contract requires the defendant to have "intentionally and improperly induced a party to breach the contract or improperly made it impossible for a party to perform." *Warne v. Hall*, 2016 CO 50, ¶ 25. However, "[n]o liability attaches ... where the act claimed to have caused the breach is undertaken in the exercise of an absolute right, that being conduct which the actor has a definite legal right to engage in without qualification." *Radiology Pro. Corp. v. Trinidad Area Health Ass'n*, 39 Colo. App. 100, 102, 565 P.2d 952, 954 (1977), *aff'd*, 195 Colo. 253, 577 P.2d 748 (1978).

¶ 31 Renegade claims that defendants acted improperly by "terminating the Gas Gathering Contracts with the intent, in whole or in part, of orchestrating the termination of the Third Party Leases." But as explained above, under the gas contracts, either party had a contractual right to terminate upon written notice. Because contractual entitlements are "absolute rights," *see Omedelena v. Denver Options, Inc.*, 60 P.3d 717, 721 (Colo. App. 2002), KMG's exercise of that right — and the other defendants' alleged participation in that exercise — cannot form the basis of a tortious interference claim. *Radiology*, 39 Colo. App. at 102, 565 P.2d at 954.

D. Breach of Leases

¶ 32 Renegade asserted its breach of lease claim against ALC, AEP and Anadarko Petroleum.

¶ 33 The Anadarko leases between Renegade and ALC and AEP terminate after Renegade stops producing oil or gas on the leased land. However, the leases allow Renegade to delay termination by paying shut-in gas royalties, requesting amendments that extend the leases, or relying on force majeure clauses. [6]

¶ 34 Renegade contends that KMG's termination of the gas contracts impeded Renegade's ability to produce oil and gas because the production became too expensive and burdensome without KMG's gathering system. According to Renegade, this impedes or prohibits Renegade's performance under the Anadarko leases, resulting in the "functional[ ] equivalent [of] having no lease at all."

¶ 35 The district court entered summary judgment dismissing Renegade's breach of lease claim, reasoning that Renegade assumed the risk that KMG could terminate the gas contacts at any time upon written notice. We affirm, but on different grounds. *See* *Rush Creek Sols., Inc. v. Ute Mountain Ute Tribe*, 107 P.3d 402, 406 (Colo. App. 2004) ("[W]e may affirm the trial court's ruling based on any grounds that are supported by the record.").

¶ 36 Renegade does not contend that ALC, AEP, or Anadarko Petroleum breached any specific lease provision. Instead, as best we can discern, Renegade contends that ALC, AEP, and Anadarko Petroleum breached the Anadarko leases by orchestrating, encouraging, or participating in KMG's decision to terminate the gas contracts. Renegade asserts that, under this theory of liability, a "plaintiff need[ ] only demonstrate the defendant committed an affirmative, willful act which unreasonably interfered with plaintiff's contract performance" and "[d]efendants are therefore obligated not to impair Renegade's exclusive oil and gas lease rights." *See* 17 Am. Jur. 2d *Contracts* § 703, Westlaw (database updated Feb. 2024) ("Where a party to a contract does something that prevents the other party from performing, such prevention is a breach of a contract that results in the party guilty of it being liable for damages.").

***6** ¶ 37 Assuming, without deciding, that Renegade's theory of liability by interference would apply in Colorado under these circumstances, it nevertheless fails. It is undisputed that ALC and AEP are not parties to the KMG gas contracts; therefore, they had no contractual authority to terminate them. And Renegade doesn't identify any evidence that ALC or AEP participated in *any* capacity in the decision to terminate.

¶ 38 Instead, Renegade points to evidence that it says shows that "[Anadarko Petroleum] officers and directors" used meetings with Western (KMG's former corporate parent) to mastermind the shutdown of the gathering system. But Anadarko Petroleum is not a party to the Anadarko leases and is therefore incapable of breaching those leases.

¶ 39 Renegade appears to contend that, because the entities were in a conspiracy with each other, it can lump them together and thereby impute KMG's or Anadarko Petroleum's actions to ALC and AEP. However, Renegade does not cite, and we have not found, any legal authority supporting this theory, and Renegade did not argue in the district court that the corporate veil should be pierced between Anadarko Petroleum and its subsidiaries. Moreover, Renegade's civil conspiracy claim is predicated upon a showing that the corporate entities are separate and distinct from one another. *See* *Friedman & Son, Inc. v. Safeway Stores, Inc.*, 712 P.2d 1128, 1131 (Colo. App. 1985) (holding civil conspiracy cannot be maintained if one corporation is "but an instrumentality" of the other).

¶ 40 For these reasons, we conclude that there is no genuine issue of material fact as to the breach of the Anadarko leases claim. [7]

E. Civil Conspiracy

¶ 41 "Civil conspiracy is a derivative cause of action that is not independently actionable." *Bd. of Cnty. Comm'rs v. Park Cnty. Sportsmen's Ranch, LLP*, 271 P.3d 562, 572 (Colo. App. 2011). Because we affirm dismissal of Renegade's other claims, we affirm dismissal of the civil conspiracy claim as well. [8]

III. UCC Limitation on Damages

¶ 42 Recall that, after sending Renegade notices of termination of the gas contracts, KMG shut down its gathering system and stopped accepting Renegade's gas before the end of the contracts' notice periods.

¶ 43 Following the summary judgment rulings, the parties agreed to allow Renegade to bring an additional claim[9] for breach of contract against KMG for terminating its gas collection prior to the exhaustion of the notice periods, and KMG stipulated to liability. In light of the district court's prior C.R.C.P. 56(h) ruling that the UCC governed the gas contracts and that Renegade's damages were limited to those suffered during the unexhausted notice period, the parties also stipulated to the amount of damages that occurred during that timeframe.

***7** ¶ 44 Renegade appeals the underlying C.R.C.P. 56(h) ruling, asserting that the district court erred by determining that the UCC (1) applies to the gas contracts and (2) limits damages to KMG's failure to perform during the notice period. We are not persuaded.

A. Standard of Review

¶ 45 We review de novo a ruling on a C.R.C.P. 56(h) motion for a determination of law. *Henisse v. First Transit, Inc.*, 247 P.3d 577, 579 (Colo. 2011). An order deciding the question is proper "[i]f there is no genuine issue of any material fact necessary for the determination of the question of law." C.R.C.P. 56(h). The nonmoving party is entitled to all favorable inferences. *Henisse*, 247 P.3d at 579.

B. Analysis

1. Application of UCC

¶ 46 Renegade contends that the UCC did not apply to the gas contracts because the contracts were primarily for processing services, not for the sale of goods.

¶ 47 "A contract for the sale of minerals or the like (including oil and gas) ... or its materials to be removed from realty is a contract for the sale of goods ... if they are to be severed by the seller ...." § 4-2-107(1), C.R.S. 2023. We note that at least one prior Colorado opinion has concluded that "[a] contract for the delivery of natural gas is a sale of goods within the meaning of [the UCC]." *KN Energy*, 698 P.2d at 778 n.10. However, we agree with Renegade that this case is at least somewhat distinguishable because *KN Energy* involved sales of gas to an end-user and did not contemplate any gas-related processing services. In contrast, the gas contracts here involve KMG processing Renegade's gas and paying Renegade a share of the profits KMG receives from the eventual sale.

¶ 48 When determining if a contract involving the exchange of both goods and services is for the sale of goods, courts consider "whether the primary purpose of the sales transaction was the sale of goods with the rendition of labor or service only incidentally involved or whether, in contrast, the rendition of services was the primary or dominant purpose of the sale." *Persichini v. Brad Ragan, Inc.*, 735 P.2d 168, 174 (Colo. 1987). To determine the primary purpose of the transaction, our analysis is guided by the factors set forth in *Colorado Carpet Installation, Inc. v. Palermo*, 668 P.2d 1384, 1388-89 (Colo. 1983).

¶ 49 First, we consider the contractual language. *Id.* at 1388. In some ways, the language is equivocal as to whether the contracts are primarily for goods or services. Initially, we note that the contracts contain conflicting titles. Some contracts are entitled "Gas Processing Agreement," and some are entitled "Gas Purchase Agreement." In addition, the terminology that refers to the type of agreement — "processing" or "purchase" — sometimes varies within the same contract.[10] Additionally, the contracts declare that Renegade will "market to [KMG] all Gas that it owns or controls" so that KMG can "gather, process and treat [Renegade's] Gas produced from [the leased lands] through pipeline gathering facilities connecting [the leased lands] and [KMG's] gas system."

¶ 50 However, in addition to the more equivocal language, the contracts include exhibits that contain extensive requirements relating to the quality of gas Renegade is required to deliver to KMG and provide KMG with the right to refuse delivery of any gas that does not meet such specifications. Moreover, the contracts contain requirements relating to how the gas quality is measured. While the contracts also include some minor requirements relating to processing technique, these requirements appear to be tied to the measuring of the quantity and quality of Renegade's gas. And in any event, they are not as extensive and do not entitle Renegade to stop delivering gas if they aren't complied with. On balance, this contractual language slightly favors the conclusion that the gas contracts are primarily for the sale of goods.

***8** ¶ 51 Second, we consider whether the overall price is for goods and labor or whether there is separate billing for each. *Id.* Here the billing is determined by the following provision:

> The price to be paid by Processor to Producer for gas delivered hereunder shall be an amount equal to seventy percent (70%) of the net sales proceeds received for the liquefiable hydrocarbons and residue gas saved and sold by Processor which is attributable to Producer's gas as determined in Article V hereof, less the fees attributable thereto. Liquefiable hydrocarbons and residue gas attributable to Producer shall be sold at such time and place and pursuant to such terms and conditions as Processor, in its sole good faith judgment, considers prudent.

The overall price paid to Renegade (70% of KMG's proceeds) is determined based on the quantity of gas Renegade delivers that is eventually sold. We acknowledge that the cost of processing the gas is implicitly included in the price because KMG's operating costs affect its net sales proceeds. However, it is clear that the contracts do not contain a separate line item for KMG's processing services. Moreover, the percentage of proceeds Renegade receives for the gas increases based on the quantity of gas delivered to KMG. As a whole, this factor also weighs in favor of concluding that the contracts are primarily for the sale of goods.

¶ 52 Third, we look to KMG's reasonable expectation of acquiring a property interest in goods. *Id.* at 1389. This factor strongly indicates sale of goods contracts because the contracts provide that "title to said Gas and all constituent components therein shall pass from Producer to Processor at [the points of delivery]." *See id.*; *see also* § 4-2-106(1), C.R.S. 2023 (defining sale of good as consisting of "the passing of title from the seller to the buyer for a price"). Additionally, after receiving title, KMG retains sole discretion to determine, in good faith, the time, place, and terms and conditions of the eventual sale of the gas. [11]

¶ 53 Weighing these factors together, we conclude that the primary purpose of the contracts is the sale of gas from Renegade to KMG. Accordingly, the district court did not err by concluding that the UCC applies to the gas contracts.

2. Limitations Imposed by UCC

¶ 54 Renegade next contends that, even if the gas contracts are governed by the UCC, the district court erred by limiting its damages to those suffered during the unexhausted notice period. We disagree.

¶ 55 When a contract "is terminable at any time on notice and it is terminated without notice, the damages that the aggrieved party may recover are limited to the notice period." 25 C.J.S. *Damages* § 112, Westlaw (database updated Aug. 2023); *see also* *Friedman*, 712 P.2d at 1130. [12] And subject to exceptions not applicable here, the UCC generally bars a seller from recovering consequential damages, which are defined as those that

> ***9** do not arise within the scope of the immediate buyer-seller transaction, but rather stem from losses incurred by the nonbreaching party in its dealings ... which were a proximate result of the breach, and which were reasonably foreseeable by the breaching party at the time of the contracting.

Jelen & Son, Inc. v. Bandimere, 801 P.2d 1182, 1186 (Colo. 1990) (quoting *Petroleo Brasileiro, S.A. Petrobras v. Ameropan Oil Corp.*, 372 F. Supp. 503, 508 (E.D.N.Y. 1974)).

¶ 56 Renegade's argument that it was entitled to future lost profits and that the future profits reflect the benefit of Renegade's bargain is dependent upon the argument that KMG could not exercise its right to terminate upon notice unless it showed that it was terminating because the gathering system had become unprofitable or unsafe. Because we rejected that argument, we necessarily reject this one as well. Accordingly, the district court did not err by determining that Renegade is limited to damages from the unexhausted notice period.

IV. Prohibited Deposition

¶ 57 Finally, Renegade claims that the district court erred by not permitting it to depose R.A. Walker, Chairman and Chief Executive Officer of Anadarko Petroleum.

¶ 58 Renegade sought to depose Walker during discovery, contending that Walker had information pertaining to Anadarko Petroleum's alleged control over the decision to terminate the gas contracts despite Walker's affidavit attesting that, while Walker attended certain board meetings during which the termination was discussed, he did not make any decisions relating to termination. Defendants opposed the request.

¶ 59 Defendants provided unredacted copies of meeting minutes for the district court to review in camera. After its review, and after a hearing, the court determined Walker had no unique personal knowledge about the termination of the gas contracts. The court then granted a protective order that prohibited Renegade from deposing him.

¶ 60 We need not review Renegade's claims of error relating to the deposition because any error is harmless. C.R.C.P. 61 ("The court ... must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties."). Because KMG had the unequivocal right to terminate the gas contracts upon written notice for any reason or for no reason at all, Walker's knowledge (if any) about Anadarko Petroleum's involvement in that decision is irrelevant to Renegade's claims relating to breach of the gas contracts and tortious interference. Further, as explained above, Anadarko Petroleum is not a party to the Anadarko leases and is incapable of breaching those leases regardless of its involvement in the KMG termination. Therefore, Walker's purported knowledge is also irrelevant to the breach of lease claim. *See infra* Part II.D. Given all this, we discern no reversible error in the district court's ruling on this issue.

V. Disposition

¶ 61 We affirm the district court's judgment.

JUDGE WELLING and JUDGE YUN concur.

All Citations

Not Reported in Pac. Rptr., 2024 WL 4034188

Footnotes

1 Western was named as a defendant due to its affiliation with KMG and participation in corporate meetings with the other defendants; Renegade does not claim that Western is a party to the leases or the contracts at issue.

2 Renegade also brought claims for specific performance and permanent injunction. Renegade does not appeal the district court's dismissal of those claims.

3 Defendants also brought a counterclaim for tortious interference, which they withdrew.

4 Colorado Supreme Court decisions have reached differing conclusions on this issue. *See, e.g.*, *Lazy Dog Ranch v. Telluray Ranch Corp.*, 965 P.2d 1229, 1237 (Colo. 1998) (holding that extrinsic evidence may be used to determine whether a contract is ambiguous). *But see, e.g.*, *Am. Fam. Mut. Ins. Co. v. Hansen*, 2016 CO 46, ¶ 4 ("An ambiguity must appear in the four corners of the document *before* extrinsic evidence can be considered.").

5 We decline to review as undeveloped Renegade's assertion that the "context and surrounding circumstances" of the gas contracts rendered the termination clauses ambiguous. *See* *Antolovich v. Brown Grp. Retail, Inc.*, 183 P.3d 582, 604 (Colo. App. 2007) (declining to address undeveloped arguments).

6 Renegade appears to concede below that none of the Anadarko leases have yet terminated.

7 For the same reasons, we reject Renegade's argument, to the extent it makes it, that the district court erred by dismissing Renegade's request for declaratory judgment that ALC and AEP breached the leases.

8 Judgment was entered on renegade's breach of contract claim relating to the shutdown of the gathering system before the expiration of the termination provisions, *see infra* Part III, but that claim was brought after the court had dismissed Renegade's original civil conspiracy claim. Renegade did not bring a separate civil conspiracy claim based on the breach of notice period.

9 The court later dismissed a second, related claim by agreement of the parties.

10 In their briefing, the parties rely on a specific "Gas Processing Agreement between Bird Oil Corporation, and Koch Hydrocarbon Company" as representative of the other gas contracts.

11 We do not consider a fourth factor, "the ratio that the cost of goods bears to the overall contract price," because neither party directs us to sufficient record information to facilitate meaningful analysis. *Colo. Carpet Installation, Inc. v. Palermo*, 668 P.2d 1384, 1388 (Colo. 1983).

12 We decline to address the issue Renegade also raised for the first time in its reply brief that common law supplants the UCC regarding recovering lost profits — which somehow affects the holding in *Friedman & Son, Inc. v. Safeway Stores, Inc.*, 712 P.2d 1128 (Colo. App. 1985). *See Sandra K. Morrison Tr. v. Bd. of Cnty. Comm'rs*, 2020 COA 74, ¶ 30.

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