

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

THOMAS F. CHARLES, DENNIS L. CHARLES and	:	NO. 09 - 00,067
DARLA K. ZIMMERMAN,	:	
Plaintiffs	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
GEORGE SGAGIAS and JAMES HALKIAS,	:	Non-Jury Trial
Defendants	:	

**OPINION AND VERDICT**

As explained more completely in an Opinion and Order dated September 29, 2010, this controversy involves an agreement of sale for approximately 380 acres of land in Clinton County. The agreement provided for the inclusion of oil and gas rights to the property and after a title search disclosed a reservation of mineral rights in the late 1800's, the anticipated closing did not occur and the agreement expired. It was revived, however, by an addendum dated June 13, 2008, which provided as follows: "Closing date is date is changed to October 15, 2008 or sooner to allow buyers the right to pre-lease the Oil & Gas rights to be effective on closing, said Oil & Gas rights to be leased to Buyer's (sic) satisfaction with out (sic) any warranty of title." In the Order of September 29, 2010, in response to cross-motions for summary judgment, this Court interpreted the addendum to set forth a condition precedent. The issue of an alleged breach of the sales agreement was reserved for trial. Since the parties subsequently agreed to have the matter tried non-jury, a bench trial was held November 17, 2010. At trial, counsel agreed that the sole issue before the Court was whether the buyers made a good faith effort to fulfill the condition precedent; that is,

whether they attempted in good faith to obtain a gas lease to their satisfaction. Considering the testimony presented, the Court finds that the buyers did indeed make such an effort.

Defendant Halkias testified, and the Court finds his testimony credible, that he investigated the leasing possibilities and eventually received an offer from Chesapeake Oil & Gas. After negotiations between Defendant Halkias, his attorney and Chesapeake, a lease was prepared and sent to Defendant Halkias for signature.<sup>1</sup> That lease provided for a bonus payment of \$1500 per acre and an approval period of ninety days. Defendant Halkias testified that because he had been told by the realtor who listed the property that the sellers had been offered \$2100 per acre, he believed he could negotiate a higher bonus payment and thus was not satisfied with \$1500 per acre. He also indicated that he wanted a lease that provided for payment at the time of signing as he was concerned, based on a prior experience, that the lease might not be honored, and that the ninety day approval period was thus unsatisfactory. Defendant Halkias testified that he thus attempted to negotiate those terms to his satisfaction with the landman for Chesapeake, but that he was told that \$1500 was the most Chesapeake would pay, and that while he, the landman, would try to have the bonus payment paid before the ninety days, he could not guarantee such. The landman also told Defendant Halkias that submitting a lease to Chesapeake which contained the terms sought by Defendant Halkias would be a “waste of time.” Although he and Defendant Sgagias signed the lease,<sup>2</sup> it was not submitted to Chesapeake. The sales price

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<sup>1</sup> Although the lease was to be entered into by both Defendants, it appears Defendant Halkias was responsible for the negotiation of such.

<sup>2</sup> Defendant Halkias testified that he was advised by the landman that although he did not have to send the lease in until later that year, he should have the lease signed and notarized by August 15, 2008, so that in the event he decided to accept Chesapeake’s terms, the lease would be acceptable to the company.

was then lowered<sup>3</sup> and a closing date set and although Defendant Halkias was now satisfied with the bonus payment based on the lower sales price, he still was not willing to accept the ninety day approval period, and he went to the closing with the intention of attempting to negotiate a method of transacting the deal which would place the risk of non-payment of the lease on both the sellers and the buyers. That offer was relayed to the sellers, who were not present at the closing, but was rejected, and the parties were unable to thereafter consummate the transaction.

Plaintiffs contend that because sending the lease in to Chesapeake was the only way Defendants could have obtained a gas lease with Chesapeake, they did not act in good faith because they never sent it in. Plaintiffs further contend that if the terms as written were unsatisfactory, Defendants should have modified the terms to suit them and sent in a modified version. Defendant Halkias' explanation as to why he did not submit a modified version, that the landman had told him it would be a waste of time, is met by Plaintiffs with the argument that landmen have no authority. Plaintiffs' own witness testified, however, that the landman has a sense of what the company would do, and the Court finds it reasonable that Defendant Halkias relied on the landman's representations in this instance.

The Court also finds Defendant Halkias' explanation of why he did not send in the lease as written and go through with the sale as proposed, even after the sales price was lowered and he became satisfied with the bonus payment, reasonable under the circumstances: Defendant Halkias was still concerned that the lease might not be honored and that he and Defendant Sgagias might end up

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<sup>3</sup> Defendant Halkias testified that the sales price was lowered after he complained to the realtors about "lying

with a property with no oil and gas rights,<sup>4</sup> and he was also concerned that there was no written (enforceable) agreement respecting the lower sales price. Thus, the Court finds that Defendant Halkias acted in good faith even though he did not send in the lease.

After the closing, the \$250,000 deposit was retained in escrow by the realtors and the Court finds that such should be returned to Defendants under the terms of the sales agreement. Accordingly, the Court enters the following:

**VERDICT**

AND NOW, this 19<sup>th</sup> day of November 2010, for the foregoing reasons, the Court hereby finds in favor of Defendants and against Plaintiffs. Fish Real Estate is directed to return to Defendants (through counsel) the \$250,000 deposit plus any interest earned since being placed in an interest-bearing account in accordance with the addendum to the parties' agreement.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Michael Dinges, Esq.  
James Kollas, Esq., Kollas and Kennedy  
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Gary Weber, Esq.  
Hon. Dudley N. Anderson

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about the \$2100 bonus payment”.

<sup>4</sup> The issue of whether the prior reservation of mineral rights affected the sellers' oil and gas rights had never been resolved.