



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

PROPOSAL FOR DECISION

OIL AND GAS DOCKET NO. 04-0298156

THE COMPLAINT OF BENITO R. VILLAREAL ALLEGING THAT GREEN EXPLORATION COMPANY (OPERATOR NO. 330179) DOES NOT HAVE A GOOD FAITH CLAIM TO OPERATE THE VILLAREAL (245754) LEASE, WELL NO. 1, SEJITA, WEST FIELD, DUVAL COUNTY, TEXAS

APPEARANCES

FOR THE COMPLAINANT:

Mr. Omar Villareal, proxy for Benito R. Villareal, *Pro Se*
Mr. Mario Villareal, proxy for Benito R. Villareal, *Pro Se*

FOR GREEN EXPLORATION COMPANY:

Mr. Mark R. Paisley, Attorney at Law
Mr. John Cantu, President

PROCEDURAL HISTORY:

Notice of Hearing:	March 1, 2016
Hearing on the Merits:	May 2, 2016
Proposal for Decision:	June 17, 2016
Heard by:	Ryan M. Lammert, Administrative Law Judge Brian K. Fancher, Technical Examiner

However, Complainant offered testimony demonstrating that the Well had ceased production as early as November 30, 2013, and the subject oil, gas and mineral lease expired by its own terms as early as November 30, 2014, for lack of production.⁴

Lastly, during the hearing on the merits, the Examiners took official notice of online Commission records—reflecting the production history of the Well—provided by Complainant in an affidavit subscribed and sworn to by Benito R. Villareal, on April 21, 2016.⁵

Online Commission records reflect that the Well had zero (0) reported production beginning September 2015 through December 2015, and no reported production beginning January 2016 through April 2016.⁶

GREEN EXPLORATION COMPANY

Green offered no evidence to contradict the assertion that the Well has ceased production, and, in fact, conceded that it is not in production.⁷ Rather, Green elected to assert, as an affirmative defense, arguments relating to the “force majeure” clause contained within the subject oil, gas and mineral lease.⁸

First, Green submitted into evidence an oil, gas and mineral lease dated December 2012, between Benito R. Villareal, as Lessor, and Green Exploration, as Lessee, covering 80 acres of land, including the Well, for a one (1) year primary term (“Lease”), demonstrating that Green and Complainant entered into a valid lease agreement on that date.^{9, 10} Green specifically cites to paragraph 10 of the Lease as evidence that the Lease in fact contains a “force majeure” clause.¹¹

Paragraph 10 of the Lease states: ¹²

Should Lessee be prevented from complying with any express or implied covenant of this lease, from conducting drilling or reworking operations thereon or from producing any oil, gas or minerals therefrom by reason of scarcity of or inability to obtain or to use equipment or material, or by operation of force majeure, and Federal or state law or any order, rule or

⁴ Tr., pgs. 7-8; Tr., pg. 12.

⁵ Tr., pgs. 16-17.

⁶ Ex. 3 to Official Notice Ex. 1.

⁷ Tr., pg. 8.

⁸ Tr., pgs. 8-9.

⁹ Green Ex. 1.

¹⁰ It should be noted that the Lease only lists as its effective date “_____ day of December, 2012 . . .” Accordingly, the Examiners are unable to identify the precise date by which the primary term of the Lease was to take effect.

¹¹ Tr., pg. 20.

¹² Green Ex. 1.

[Q]: So have you been working the last couple of years to get where gas from this well can be pipelined and sold out?

[A]: Yes, I have.

...

[A]: It was – I purchased 21,000 feet of – of line, and we’re ready to tie into the – to the end of Duval’s pipeline when we were told not to.

...

[A]: . . . Fritz Hofstetter, now owns the surface of the property where the end of Duval Gas Gathering line is, so he said for me not to cross and tie the line in, even though, according to Exhibit 2, I should have the right to. So I haven’t crossed.

Green also submitted into evidence two letters dated February 8, 2014, and June 27, 2014, from Green’s attorney, Mr. Paisley, to Fritz Hofstetter and Ed Pickett, respectively.^{17, 18} Green contends that those letters demonstrate its position that the Right-of-Way Agreement dated June 18, 1966, is still in full force and effect permitting Duval (a Cantu owned company) “the right to enter onto your property for those pipeline purposes”, but that, nonetheless, it “wants to have and keep a good relationship with [the surface owners]” and therein offered additional compensation to the surface owners because of the “general inconvenience.”¹⁹

Green attached a Pipeline Easement and Right of Way Agreement to those letters for the surface owners to execute.²⁰ However, Green testified that the offers contained in those letters were subsequently rejected by the surface owners.²¹

Green concluded its case contending that the Lease is still in effect because of the “force majeure” clause contained therein, arguing that the above described events were unforeseeable to Green precluding it from producing from the Lease.²²

¹⁷ Green Ex. 4.

¹⁸ Green Ex. 5.

¹⁹ Green Exs. 4 and 5.

²⁰ Green Ex. 6.

²¹ Tr., pg. 31.

²² Tr., pgs. 33-34.

Lastly, the Texarkana Court of Appeals observed that, “The force-majeure clause will be interpreted based on the plain, ordinary, and generally accepted meaning of the language.”²⁷

Again, Paragraph 10 of the Lease states that:²⁸

Should Lessee be *prevented* from complying with any express or implied covenant of this lease, from conducting drilling or reworking operations thereon or *from producing any oil, gas or minerals therefrom by reason of scarcity of or inability to obtain or to use equipment or material, or by operation of force majeure*, and Federal or state law or any order, rule or regulation of governmental authority, then while so prevented, Lessee’s obligation to comply with such covenant shall be suspended, and Lessee shall not be liable in damages for failure to comply therewith; and this lease shall be extended while and so long as Lessee is prevented by any such cause from conducting drilling or reworking operations on or from producing oil or gas from the lease premises; and the time while Lessee is so prevented shall not be counted against Lessee, anything in this lease to the contrary notwithstanding.

In the instant Docket, Green stipulates that production has ceased from the Well; but because it is precluded—by virtue of its inability to obtain an easement—from connecting to the pipeline system, Green is excused from non-performance of lease obligations. However, because Green only generally cites to Paragraph 10 (and, not to specific language contained therein), the Examiners are left to interpret the Lease without guidance from Green. Accordingly, the Examiners have assumed the italicized language above to be the relevant section of Paragraph 10 Green relies on to assert its “force majeure” defense.

The Examiners are not persuaded by Green’s argument.

First, it should be noted that neither party asserts that the Lease is held by production from the Well. The Examiners also note that the Lease had zero (0) production beginning September 2015 through December 2015, and had no reported production since January 2016.

Second, the record evidence demonstrates that Mr. Cantu is the owner of both Green Exploration Company and Duval Gas Gathering Corporation, and exercises control over both entities. That is important because—in the same sentence—Mr. Cantu asserts (presumably as the owner of Duval) that it has a valid easement across the tract of land necessary to connect the Well to the pipeline system, but states that Green is somehow prevented from crossing same because the surface owner has withheld consent. Therefore, even if it is accepted by the Commission that lack of an easement *prevents production* from the Well, Green is only prevented from doing so because Duval has not

²⁷ *Id.*

²⁸ Green Ex. 1 (emphasis added).

4. Green is the P-4 Record Operator of the Villarreal (ID No. 245754) Lease, Well No. 1, Sejita, West Field, Duval County, Texas.
5. On September 11, 2015, Complainant Benito R. Villarreal submitted to the Commission a request for the Villarreal (ID No. 245754) Lease, Well No. 1, Sejita, West Field, Duval County, Texas, to be plugged.
6. The Villarreal (ID No. 245754) Lease, Well No. 1, is physically located in the southeast portion of the Ynojosa, J M Survey, Abstract No. 623, Duval County, Texas.
7. On September 11, 2015, Complainant Benito R. Villarreal submitted to the Commission an unrecorded oil, gas and mineral lease dated November 30, 2012, from Benito R. Villarreal to Green Exploration.
 - a. The oil, gas and mineral lease provided for a one (1) year primary term.
 - b. The oil, gas and mineral lease covers eighty (80) acres of land – including land surrounding the Villarreal (ID No. 245754) Lease, Well No. 1, Sejita, West Field.
 - c. Evidence of lease perpetuation was not submitted to the Commission.
8. Green has an active Form P-5 and has financial assurance in place in the form of a \$50,000.00 cash deposit, which expires on November 30, 2016. Green is the operator of 97 wells, of which 36 are in Statewide Rule 14(b)(2) [16 TEX. ADMIN. CODE § 3.14(b)(2)] inactive status.
9. Green is Commission designated operator of the Villarreal (ID No. 245754) Lease, Well No. 1, Sejita, West Field, Duval County, Texas.
10. The Villarreal (ID No. 245754) Lease, Well No. 1, Sejita, West Field, Duval County, Texas had zero (0) production beginning September 2015 through December 2015, and had no reported production since January 2016.
11. A “good faith claim” is defined in Commission Statewide Rule 15(a)(5) as “a factually supported claim based on a recognized legal theory to a continuing possessory right in the mineral estate, such as evidence of a currently valid oil and gas lease or a recorded deed conveying a fee interest in the mineral estate.” [16 TEX. ADMIN. CODE § 3.15(a)(5)].
12. Green failed to successfully assert a “force majeure” defense, to excuse it from non-performance of Lease obligations.

RECOMMENDATIONS

The Administrative Law Judge and Technical Examiner recommend the Commission enter an order cancelling the plugging extension for the Villarreal (ID No. 245754) Lease, Well No. 1, Sejita, West Field, Duval County, Texas.

The Administrative Law Judge and Technical Examiner also recommend the Commission enter an order directing Green Exploration Company to plug the Villarreal (ID No. 245754) Lease, Well No. 1, Sejita, West Field, Duval County, Texas.

RESPECTFULLY SUBMITTED,



RYAN M. LAMMERT
Administrative Law Judge



BRIAN FANCHER
Technical Examiner