

ELEVENTH JUDICIAL DISTRICT COURT
COUNTY OF SAN JUAN
STATE OF NEW MEXICO

CARMEN WOOD, and
ACTION OIL COMPANY, INC.
A New Mexico Corporation,

Plaintiffs,

vs.

JOHN CUNNINGHAM,
JOHNNY CUNNINGHAM, d/b/a
R&J ENTERPRISES,
MARY CUNNINGHAM,
RICHARD L. BALDWIN, and
DEBBIE D. BALDWIN,

Defendants.

**ORDER GRANTING DEFENDANTS'
JOINT MOTION FOR SUMMARY JUDGMENT**

THIS MATTER, having come before the Court on Motions for Summary Judgment, and the Court being duly advised,

**FINDS THAT THERE IS NO GENUINE ISSUE AS TO THE FOLLOWING
MATERIAL FACTS:**

1. All of the parties hereto are residents of, or are doing business in, San Juan County, New Mexico. The agreements between the Plaintiffs and Defendant's Cunningham were executed in San Juan County New Mexico.

2. On December 31, 1997, Plaintiffs and Defendant's Cunningham entered into a Purchase and Sale Agreement wherein Plaintiff's sold to Defendant's their interest in the following oil and gas leases:

NOO-C-14-20-0603-639 (Navajo)
NOO-C-14-20-0603-903 (Navajo)
14-20-604-90 (Ute Mountain Ute)

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3. The Defendant's Cunningham paid to Plaintiff's the consideration provided for in the Purchase and Sale Agreement.

4. Paragraph 2 of the Agreement provides:

"2. Transfer of Title- Seller shall transfer title to the Property to Buyer pursuant to appropriate assignment instruments and bills of sale which shall be prepared by Buyer. The assignment instruments shall be in form acceptable to the Bureau of Indian Affairs and the Ute Mountain Indian and Navajo Indian Tribes and in form recordable in San Juan County, New Mexico. Properly executed assignment instruments shall be delivered by Seller to Buyer at the time of closing. Buyer shall have full and complete responsibility for the recording or filing of all instruments of conveyance."

5. Plaintiff Action Oil Company executed on Assignment, Bill of Sale and Conveyance on February 11, 1998 (effective December 31, 1997), which was recorded with the San Juan County Clerk's office on March 17, 1998, at Book 1255/Page 774. Also on February 11, 1998, Action Oil executed the Bureau of Indian Affairs Assignment of Mining Lease forms for the three tribal leases.

6. The requests for approvals for the assignments of the three Indian oil and gas leases remain pending before the BIA. None of the requests for approval has been denied or approved.

7. Defendant Cunningham took possession of the leases and wells in February, 1998, plugged and abandoned a number of the wells, and has operated the remaining wells ever since. Subsequently, Cunningham assigned the lease on the Ute

Mountain Ute lands to the Defendants Baldwins who now operate the wells located on that lease acreage.

8. The pendency of the BIA's approval does not affect the relationship between the Buyer and Seller under the Agreement, and that compliance with the bonding requirements was not the essential controlling consideration under the agreement.

9. Section 5 of the Agreement is entitled "Consideration", but contains no requirement that Cunningham furnish bonds. The obligation to furnish bonds is stated in a separate section of the Agreement, Section 6, which provides, *inter alia*, as follows: "Buyer shall comply with all bonding requirements imposed by applicable state or federal laws and regulations. Until such time as Buyer secures the required bonding, Seller shall maintain in full force and effect its current bonds." No time for the performance of these obligations is stated in the Agreement.

10. The Defendant's , at all times, have complied with the bond requirements set out in the in the Purchase and Sale Agreement.

11. To date, Action Oil has not initiated the procedures to obtain the release of its bonds by the Bureau of Indian Affairs, the Minerals Management Service and the Bureau of Land Management.

12. At no time has the BIA or the BLM made any claims against the bonds on the properties. At no time since the Defendants have operated the three leases has the Bureau of Land Management issued any demand for the plugging and abandonment of any well that has not been satisfied or otherwise resolved.

13. There has been no need for the Plaintiffs to invoke the indemnification and hold-harmless provisions of Section 5 of the Agreement and the Plaintiffs have not done so.

14. The substance of the Agreement has remained intact and has not been affected by any matter relating to the bonds or by the pendency of the Secretary's approvals of the assignments.

15. Paragraph 18 of the Agreement provides:

"18. Entire Agreement. This Agreement constitutes the entire agreement between Seller and Buyer and shall not be modified, changed, or amended in any manner except by an instrument in writing executed by the parties hereto. If any term or provision of this Agreement shall be invalid or unenforceable, the remainder of the Agreement shall not be effected thereby. Each term and provision of the Agreement shall be valid and be enforced to the full extent as permitted by law."

16. Plaintiffs neither allege nor seek damages in their Complaint.

**FROM THE FOREGOING FINDINGS OF FACT THE COURT MAKES THE
FOLLOWING CONCLUSIONS OF LAW:**

1. The Court has jurisdiction over the subject matter and the parties.
2. Governmental approval of the lease assignments was not a condition precedent to either the formation of, or performance under, the Agreement. The Agreement in this case continues to be a valid and binding contract between the Seller and the Buyer.
3. The Agreement does not set forth a deadline by which the approvals of the assignments must be obtained. Neither does the Agreement address the contingency of a failure to obtain governmental approval.

4. The requirement under Section 6 of the Agreement to provide bonding is a provision of the Agreement separate and independent from the Consideration Section.

5. Approval of the assignments reaches only to the lessor/lessee relationship between the governmental lessor and the assignee.

6. For these reasons, rescission of the Agreement is not warranted and the Defendants are entitled to judgment as a matter of law. The Defendants' Joint Motion For Summary Judgment should accordingly be granted and the Plaintiffs' Verified Motion For Summary Judgment Regarding Rescission should be denied.

WHEREFORE, it is ORDERED as follows:

1. Judgment is entered in favor of Defendants and against Plaintiffs.
2. The Plaintiffs' Complaint for Rescission is dismissed with prejudice.
3. The Plaintiffs' Verified Motion for summary Judgment Regarding Rescission is denied.
4. Jurisdiction is retained for the entry of such further orders the Court deems appropriate.



John A. Dean, District Judge

ccs: Thomas Montoya
J. Scott Hall
Kyle Finch