

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

FILED

JUN 4 1985

CHARLES W. VAGNER, Clerk
By *SM* Deputy

DOYLE HARTMAN, JAMES A DAVIDSON,
MICHAEL L. KLEIN and JOHN H.
HENDRIX CORPORATION, a Texas
Corporation,

Plaintiffs,

VS.

SUN EXPLORATION AND PRODUCTION
COMPANY,

Defendant.

BEFORE EXAMINER CATANACH
OIL CONSERVATION DIVISION

Chandler EXHIBIT NO. *7*

CASE NO: *8859*

NO. MO 85 CA 105

DEFENDANT'S ANSWER AND COUNTERCLAIM

COMES NOW Defendant Sun Exploration and Production Company,
and as and for its Answer to the Complaint filed herein by
Plaintiffs would show this Court as follows:

1. Answering Paragraph 1 of said Complaint, Defendant
denies that its principal place of business is in a state other
than the state of Texas and affirmatively alleges that its
principal place of business is in Dallas, Texas, and that it is
therefore a citizen of the state of Texas for purposes of diver-
sity jurisdiction under 28 U.S.C. § 1332. Defendant admits the
remaining allegations of said Paragraph 1 of Plaintiffs' Com-
plaint.

2. Answering Paragraph 2 of Plaintiffs' Complaint, Defen-
dant admits that Plaintiffs allege that the amount in controversy
exceeds the sum of \$10,000.00 exclusive of interest and costs,
denies all of the remaining allegations of said Paragraph 2 and

6
2

affirmatively alleges that neither the Securities Act of 1933, 15 U.S.C. § 77(a) et seq., the Securities and Exchange Act of 1934, 15 U.S.C. § 78(a) et seq., or the Racketeering and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., are involved, implicated, or have been violated in any way whatsoever by this Defendant.

3. Answering Paragraph 3 of Plaintiffs' Complaint, Defendant, without waiving the question of subject matter jurisdiction and the implication of the Securities Act of 1933, the Securities Exchange Act of 1934, and the Racketeering and Corrupt Organization Act, admits that assuming the existence of subject matter jurisdiction in this Court venue is proper.

4. Answering Paragraph 4 of Plaintiffs' Complaint, Defendant admits that Plaintiff, Doyle Hartman, apparently was conveyed, by the instrument referred to, certain interests from the Prudential Insurance Company of America, affirmatively alleges that said instrument of conveyance together with the base document between the Prudential Insurance Company of America and Joseph E. Seagram and Sons, Inc., speaks for itself, admits that it has succeeded to certain rights and interests of Joseph E. Seagram and Sons, Inc., in and to a number of the properties in which Plaintiff, Doyle Hartman, received an interest pursuant to the conveyance from Prudential Insurance Company which is attached as Exhibit "A" to Plaintiffs' Complaint and is without knowledge and information sufficient to form a belief as to the remaining allegations of said Paragraph 4 and therefore denies same.

5. Answering Paragraph 5 of Plaintiffs' Complaint, Defendant admits that Section 3.01 of the Agreement between Seagram and the Prudential Insurance Company of America sets forth certain duties, some of which are encompassed in Subparagraphs (a) through (g) of said Paragraph 5 of Plaintiffs' Complaint. Defendant denies the remaining allegations of said Paragraph 5.

6. Defendant denies the allegations of Paragraphs 6, 7, 9 and 10 of said Complaint.

7. Answering Paragraph 8 of Plaintiffs' Complaint, Defendant admits that it has sold certain properties to various operators and denies the remaining allegations of said Paragraph 8.

FIRST DEFENSE

Plaintiffs' Complaint should be dismissed for failure to state a claim upon which relief can be granted.

SECOND DEFENSE

Plaintiffs' Complaint should be dismissed as this Court lacks subject matter jurisdiction over the causes of action alleged therein due to lack of diversity of citizenship and the non-existence of any bona fide federal question.

THIRD DEFENSE

Defendant, pursuant to the express terms and conditions of that certain instrument of conveyance between the Prudential Insurance Company of America and Joseph E. Seagram & Sons, Inc., dated April 1, 1966, a true and correct copy of which is attached to Plaintiffs' Complaint as Exhibit "B", has the full and complete right to divest itself of any interests in the properties

encompassed by the terms of said instrument of conveyance in whole or in part. As a result thereof, Plaintiffs' request for injunctive relief or damages as a result of said divestiture or potential divestiture is unfounded.

FOURTH DEFENSE

Assuming, but not admitting, that Plaintiffs have sustained any damages whatsoever, Plaintiffs have undertaken no effort to mitigate said damages.

FIFTH DEFENSE

Although requested, on numerous occasions, to consent to the expenditure of amounts in excess of \$5,000.00 in an effort to maximize efficient production of oil and gas from the properties encompassed by the Prudential-Seagrams Agreements, Plaintiffs have unreasonably refused to give said consent. Any damages claimed by Plaintiffs by reason of said expenditure are therefore barred.

SIXTH DEFENSE

The practical construction of the contract by Defendant's and Plaintiffs' predecessors in title does not support the construction and interpretation given the Seagrams Agreement by Plaintiffs.

SEVENTH DEFENSE

The acts and omissions of Plaintiffs are the sole cause or a contributing proximate cause of their difficulties with any purchasers of interests from Defendant.

WHEREFORE, Defendant prays that this Court dismiss Plaintiffs' action with prejudice to the refiling of same, for all

costs incurred herein, for its attorneys fees herein expended and for such other and further relief as the Court deems just and proper.

COUNTERCLAIM

COMES NOW Defendant-Counterclaimant, Sun Exploration and Production Company (hereinafter "Sun"), and as and for its Counterclaim against Plaintiffs Doyle Hartman, James A. Davidson, Michael L. Klein and John H. Hendrix Corporation, a Texas corporation, Plaintiffs-Counter Defendants (hereinafter "Hartman"), would show this Court as follows:

I.

JURISDICTION AND VENUE

1. Sun is a Delaware corporation with its principal place of business in Dallas, Texas.

2. Upon information and belief, Hartman-Counter Defendants are citizens of the state of Texas.

3. Assuming, but not admitting, that this Court has jurisdiction over the claim brought by Hartman against Sun, this Court has jurisdiction, either ancillary or pendent, over this Counterclaim as it arises out of the same series of facts, circumstances and transactions as Hartman's claim.

4. Venue is proper in this Court.

II.

GENERAL ALLEGATIONS

1. Sun, by mesne conveyances, has been conveyed the interest of Seagrams which is burdened by the net profits overriding royalty interest in which Hartman claims an interest, a copy of

said Agreement setting forth the rights and obligations of the parties being attached to Hartman's Complaint herein as Exhibit "A" incorporated by reference herein for all purposes (hereinafter "Seagrams Agreement").

2. Hartman, by mesne conveyances, has succeeded to the rights, duties and obligations of Prudential under said Seagrams Agreement.

3. Said Seagrams Agreement specifically contemplates, and in no way restricts, the ability of Seagrams or its successors in title to alienate, sell, divest itself of or otherwise transfer in whole or in part its interest in those properties burdened by the net profits overriding royalty interest.

4. Sun has heretofore conveyed its interest in certain of the properties under the Seagrams Agreement burdened by said net profits overriding royalty interest to third parties.

5. Sun anticipates selling or offering to sell to additional third parties, in the future, its interest in the remaining properties under the Seagrams Agreement burdened by the net profits overriding royalty interest.

6. Upon information and belief, Sun alleges that Hartman has heretofore made various statements consisting of misrepresentations of facts, to parties who had bid on certain of the properties subject to the net profits overriding royalty interest which have heretofore been sold, which misrepresentations caused said parties to revoke their bids.

7. Upon information and belief, Sun alleges that said misrepresentations consisted of untrue statements of material

fact concerning the rights and obligations of Hartman and Sun, which led said third parties to question the value and desirability of the properties that they had bid upon.

8. Sun, by reason of said misrepresentations, has been damaged in an amount which is incapable of ascertainment but exceeds the sum of \$10,000.00, exclusive of interest and costs.

9. Sun fears that unless Hartman is enjoined and restrained from making similar misrepresentations in the future that Sun will be hampered and adversely affected in its attempt to market its interests in the properties under the Seagrams Agreement at the most advantageous price. Absent an Order of this Court enjoining Hartman from making said misrepresentations, Sun will be irreparably damaged. Sun has no adequate law to redress these violations of its legal rights.

III.

FIRST CLAIM FOR RELIEF

As and for its First Claim for Relief against Hartman, Sun would show the Court as follows:

1. The allegations in Sections I and II are hereby incorporated herein by reference for all purposes.

2. The activity of Hartman, as complained of, constitutes an interference with the prospective contractual relationships of Sun.

3. Sun had the reasonable probability of entering into advantageous contracts with third parties which probability was frustrated by the activities of Hartman, as alleged.

4. Hartman, upon information and belief, acted with malice in intentionally interfering with Sun's prospective contractual relationships in an attempt to harm Sun.

5. The activities of Hartman were not, in any way, privileged.

WHEREFORE, Sun prays that upon final hearing this Court find that Hartman has intentionally interfered with its prospective contractual relationships, for damages in excess of \$10,000.00 as a result of said interference, for its costs and attorney's fees herein expended and for such other and further relief as the Court deems just and proper.

IV.

SECOND CLAIM FOR RELIEF

As for its Second Claim for Relief against Hartman, Sun would show the Court as follows:

1. The allegations of Sections I and II are hereby incorporated herein by reference for all purposes.

2. Hartman, by reason of his activities as aforesaid, has disparaged both the quality and the quantity of Sun's title in and to the properties which it seeks to sell.

3. Said disparagement is not privileged or justified.

WHEREFORE, Sun prays that upon final hearing this Court find that Hartman has disparaged Sun's title, for damages in excess of \$10,000.00, for its costs and attorney's fees herein expended and for such other and further relief as the Court deems just and proper.

V.

THIRD CLAIM FOR RELIEF

As and for its Third Claim for Relief against Hartman, Sun would show the Court as follows:

1. The allegations of Sections I and II are hereby incorporated herein by reference for all purposes.

2. If Hartman's activities, as herein alleged, do not breach any duty owed by Hartman to Sun, Hartman has still committed a prima facie tort, for engaging in said activities for the sole motive and purpose of interfering with Sun's prospective business relationships with third parties.

3. Hartman's actions, as aforesaid, were neither privileged nor justified.

WHEREFORE, Sun prays that upon final hearing this Court find that Hartman has committed a prima facie tort, for damages in excess of \$10,000.00, for its costs and attorney's fees herein expended, and for such other and further relief as the Court deems just and proper.

VI.

FOURTH CLAIM FOR RELIEF

As and for its Fourth Claim for Relief against Hartman, Sun would show the Court as follows:

1. The allegations of Sections I and II are hereby incorporated herein by reference for all purposes.

2. Hartman, having succeeded to the rights, duties and liabilities of Prudential under the Seagrams Agreement, now stands in the place of Seagrams under said Agreement and in privity with Sun.

3. Sun, at all times material hereto, has fully and faithfully complied with each and every term of the Seagrams Agreement, as interpreted and construed by the parties hereto and their predecessors in title.

4. Implied in said Seagrams Agreement is the duty of all parties thereto to act in good faith, each one to the other.

5. As a result of Hartman's activities, as aforesaid, Hartman has violated his duty to act in good faith.

WHEREFORE, Sun prays that upon final hearing this Court find that Hartman has violated his duty of good faith in excess of \$10,000.00, for its costs and attorney's fees herein expended, and for such other and further relief as the Court deems just and proper.

VII.

FIFTH CLAIM FOR RELIEF

As and for its Fifth Claim for Relief against Hartman, Sun would show the Court as follows:

1. The allegations of Sections I and II are hereby incorporated herein by reference for all purposes.

2. If Hartman were to continue the misrepresentations and disparagement, as aforesaid, in conjunction with any further attempts by Sun to market or sell its interest in the properties, Sun will be irreparably and irretrievably damaged in its efforts to sell said properties.

3. Sun has no adequate remedy at law to address the problems of continuing misrepresentations by Hartman.

WHEREFORE, Sun prays that upon final hearing this Court permanently enjoin Hartman from, in any way whatsoever, making any representations or comments to any third parties concerning the Seagrams Agreement, or any parties rights, obligations or duties thereunder, for its costs and attorney's fees herein expended, and for such other and further relief as the Court deems just and proper.

Respectfully Submitted

HINKLE, COX, EATON, COFFIELD & HENSLEY

By Richard E. Olson
RICHARD E. OLSON
P.O. Box 10
Roswell, New Mexico 88201
(505) 622-6510

By: Deborah Norwood
DEBORAH NORWOOD
P.O. Box 3580
Midland, Texas 79701
(915) 683-4691

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that on this 4th day of June, 1985, copies of the foregoing Defendant's Answer and Counterclaim were served on the following attorneys of record by United States mail, Certified, Return Receipt Requested, at the addresses shown:

Atwood, Malone, Mann & Turner
P.O. Drawer 700
Roswell, New Mexico 88201

Rassman, Gunter & Boldrick
1801 West Wall
Midland, Texas 79701
Attention: Mr. James P. Boldrick

ATTORNEYS FOR PLAINTIFFS

Deborah Norwood
Deborah Norwood