CADDO OIL CORPORATION : NUMBER: 518,976, “B”

VERSUS : FIRST JUDICIAL DISTRICT COURT

MOKULUA OIL & GAS, LLC AND ERIC

PEARSON : CADDO PARISH, LOUISISANA

**REASONS FOR JUDGMENT**

 Plaintiff Caddo Oil Corporation (Caddo Oil)[[1]](#footnote-1) failed to make an appearance at trial set March 22, 2011, and the Court ordered the plaintiff’s claims against Defendants Mokulua Oil and Gas, LLC (Mokulua) and Eric Pearson (Pearson) dismissed. Trial commenced on the reconventional and third party demands filed by Mokulua and Pearson against Caddo Oil and A.H. “Ace” Park (Park). The Court heard testimony from Pearson, Park and Fred Sarkozi and received into evidence a number of exhibits, notably the several contract to purchase and operating agreements, various e-mails between Park and Pearson, and the criminal conviction documents pertaining to Park. On the third party demand, for reasons which follow, the Court concludes that Pearson has not carried his burden of proof and therefore judgment shall be rendered in favor of Park.

**BASIC FACTS**

 In about 2003 Pearson, a veterinarian domiciled in Hawaii, saw an advertisement in Wall Street Journal pertaining to the sale of oil and gas wells located in Louisiana. As a result of this advertisement he initiated contact with Park. In 2006 Park and Pearson renewed contact which led to Park offering for sale the 35% revenue interest and 100% of the working interest in one of Caddo Oil’s wells. In the fall of 2006, Pearson met Park in Dallas and the two men drove to Louisiana to view the various wells which Caddo Oil was offering for sale. Besides examining well sites, the two had several hours of discussion during the Louisiana/Dallas, Texas round trip. The Court does not believe that Park disclosed his extensive criminal and civil litigation history nor does the Court believe that Pearson inquired about it[[2]](#footnote-2). Park also did not accurately disclose information about the nature of a working interest in an oil well nor the substantial expenses, labor and risks associated with a stripper well; however, it is unclear what inquiries were actually made by Pearson. Pearson formed Mokulua Oil and Gas, LLC and on October 1, 2006, Mokulua entered into agreements with Caddo Oil for the purchase of 100% of the working interest and 35% and 38% of the net revenue interest in the Soniat lease and wells as well as the Wappler-P lease and wells, respectively. Only two of the five contracts were actually signed by Pearson, who invested more than $600,000.00 in these transactions.

**FINDINGS BY THE COURT**

 It is stunning to the Court that Pearson, a well-educated man with prior real estate investment experience and assets of over a million dollars, would choose to enter these transactions without sufficient inquiry, investigation or diligence. Specifically, Pearson declined to retain an oil and gas attorney to advise him – at least to review the contracts drafted by Park; he declined to seek advice from a CPA with basic knowledge of oil and gas matters; he declined to retain an expert in the oil and gas field to advise him about fundamental concepts of working interests and stripper wells. He disregarded the cautionary advice from his CPA that such investments are risky and instead relied upon random information from an undisclosed source on the Internet – an unknown person in Virginia who claimed to be knowledgeable in oil and gas matters.

The law expects that the buyer/investor exercise a reasonable amount of common sense and diligence before entering into a transaction. This basic premise leads to several observations: First, Pearson testified that Park told him that he would net $2,220.00 per month for 40 years from the Nettie Soniat wells which he purchased for $28,900.00. As counsel for Park argues, this is “contrary to Third Party Plaintiffs’ original allegations and simply absurd…simply ridiculous…”[[3]](#footnote-3) The Court agrees with counsel that if Park told Pearson that he would profit to that extent from this investment, then the reasonable and common sense question by Pearson would necessarily be why wouldn’t Caddo Oil keep the wells for itself? As Park’s counsel asked Pearson, “why would Park sell this golden goose?”

It should be noted that while the Court believes that the transactions were clearly dismal investments for Pearson and clearly “not standard” for the industry, there is no expert testimony in the trial record to substantiate and establish that fact; specifically, while Fred Sarkozi provided the observation that he would not expect to make a profit by owning only a 35% net revenue interest while being responsible for 100% of expenses as a working interest owner, he was not tendered and accepted as an expert. Pearson surely can’t offer an opinion as to this critical matter at issue, and obviously Park was not going to concede the fact that this was a poor investment.

 Moreover, and with specific reference to the fraud allegations, Pearson could have ascertained the truth without difficulty, inconvenience or special skill, as contemplated by La. Civ. Code art. 1954, notwithstanding the fact that, as his lawyer argued, he was the “antithesis of a sophisticated oil and gas investor”[[4]](#footnote-4). Not only could Pearson have spent minimal time with an attorney, CPA or oil and gas expert but he could also have checked the public records and learned of Park’s previous felony conviction – as his lawyer in this litigation has done – as well as the civil proceedings against Park. The fact that Pearson lives 8000 miles from Louisiana is irrelevant especially in view of present technology. A modicum of effort to ascertain the facts would not have been difficult nor inconvenient. The special skill in terms of expertise would have likely cost less than 1% of the amount of money Pearson sent Park. This lack of even a minimal degree of diligence by Pearson is mind-boggling and precludes recovery by him.

**EVIDENCE OF PRIOR CONVICTIONS AND WRONGS/CREDIBILITY FINDINGS**

 In pre-trial and post-trial memoranda counsel for Park has understandably spent much time addressing Park’s conviction as well as his civil judgments.

 The proper use of a felony conviction in a civil case is set forth by Louisiana Code of Evidence art. 609 A provides:

1. General civil rule. For the purpose of attacking the credibility of a witness in civil cases, no evidence of the details of the crime of which he was convicted is admissible. However, evidence of the name of the crime of which he was convicted and the date of conviction is admissible if the crime:
2. Was punishable by death or imprisonment in excess of six months under the law under which he was convicted, and the court determines that that probative value of admitting this evidence outweighs its prejudicial effect to a party; or
3. Involved dishonesty or false statement, regardless of the punishment.
4. Time limit. Evidence of a conviction under this Article is not admissible if a period of more than ten years has elapsed since the date of the conviction.

Park’s counsel has written:

Park is a convicted felon. On March 31, 1997, Park filed a voluntary petition in bankruptcy in the United States District Court for the Eastern District of Texas, Sherman Division. After receiving a discharge of significant debt, Park’s bankruptcy was reopened by the United States Trustee after it was determined that Park had committed fraud through the concealment of substantial assets through corporations owned and controlled by Park. On May 9, 2001, Park was indicted on four counts, including one count of bankruptcy fraud, two counts of making false oaths in a bankruptcy proceeding, and one count of fraudulent concealment in a bankruptcy proceeding. Park thereafter pled guilty to one count of bankruptcy fraud under 18 U.S.C. §157 in exchange for dismissal of the remaining three counts of the indictment. Park was sentenced to one year in jail, fined $10,000, and ordered to make restitution in the amount of $88,000. Upon his release from prison in June of 2003, Park was placed on supervised probation for three years through June of 2006[[5]](#footnote-5).

 Clearly, evidence of Park’s conviction is admissible under Louisiana Code of Evidence art. 609 as Park’s crime was a felony; it involved dishonesty or false statements; not more than ten years has elapsed since the conviction; and the probative impeachment value outweighs the prejudicial effect. Pearson’s counsel also introduced as evidence the 1999 civil proceeding ruling in Collin County, Texas and the 2010 Texas Securities Board rulings.

 The Court deems Park impeached, not credible in this case and generally dishonest. However, such evidence may not be considered to demonstrate that Park acted in conformity with his criminal history or his prior civil cases as such is prohibited by the Code of Evidence.[[6]](#footnote-6) Stated differently, the conviction cannot be extended in this civil proceeding to necessarily demonstrate that Park acted in this case in conformity with his criminal act or in accord with his prior civil cases.

While Pearson is a credible and nice man, he at times appeared unclear in his testimony, inconsistent with regard to allegations in his petition and prior statements in his deposition-blaming this lack of clarity in both deposition and trial on “jet lag”. In a trial where he is seeking an award of more than half a million dollars, Pearson’s inability to provide compelling testimony coupled with the lack of expert testimony and his choice not to “ascertain the truth” by exercising a minimal amount of diligence leads the Court to conclude that he has not carried his burden of proof.

**CHOICE OF LAW**

Pearson agreed to Section 11(C) of the contract to purchase and operating agreements, as follows: “[t]he laws of the State of Texas shall govern the validity, enforcement and interpretation” with regard to any dispute between the parties and that the “exclusive venue for any legal action arising out of [the] agreement shall be Dallas County, Texas”. Yet, incredibly, Pearson now requests a Louisiana state court disregard what he signed and agreed upon, praying that this Louisiana court apply Louisiana laws and render a judgment of more than half-million dollars. This Court concludes that causes of action under the Louisiana Securities Act and the Louisiana Unfair Trade Practices Act are inappropriately pled in light of the fact that Pearson previously agreed that Texas law would apply and that venue would be proper in Dallas County, Texas. The operating agreements, which do reference Louisiana law, are irrelevant to the causes of action asserted in this lawsuit.

**CONCLUSION**

The Court believes that Pearson is a gentleman who in this particular case was blinded by greed and encumbered by arrogance. The Court believes that Park is anything but a gentleman; however, as third party defendant, Park has no burden of proof. In his claim for an award of more than a half-million dollars, the burden of proof is on Pearson; sadly, it is a burden which he has not met.

Counsel shall submit a formal Judgment in accordance with La. Dist. Ct. R. 9.5.

Signed this 26th day of April, 2011 in Shreveport, Caddo Parish, Louisiana.

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 SCOTT J. CRICHTON

 DISTRICT JUDGE

DISTRIBUTION:

Frank H. Spruiell, Jr., Counsel for Mokulua Oil and Gas, LLC and Dr. Eric Pearson

Bernard S. Johnson, Counsel for A. H. Park

Kristina B. Gustavson, Counsel for A. H. Park

1. The attorney who filed the petition, G. Warren Thornell, withdrew on July 16, 2008. Lee H. Ayres enrolled August 5, 2008; and for reasons asserted in a Motion to Withdraw on July 15, 2009 and a motion for continuance on August 4, 2009, the Court allowed the Ayres firm to withdraw on January 4, 2010. The sole shareholder of Caddo Oil Corporation, Manjit Singh Sahota, chose not to retain new counsel and chose not to participate in the proceedings which his corporation commenced. Accordingly, Caddo Oil’s claims are dismissed with prejudice and any lien or privilege filed by Caddo Oil with the Clerk of Court shall be cancelled. [↑](#footnote-ref-1)
2. From a business ethics standpoint, such disclosure would be appropriate but not legally required. [↑](#footnote-ref-2)
3. Post-trial brief, page 3. [↑](#footnote-ref-3)
4. Mokulua’s/Pearson’s Proposed Findings, Page 5. [↑](#footnote-ref-4)
5. See post-trial brief, pages 1-2. [↑](#footnote-ref-5)
6. Code of Evidence art. 404C actually applies to criminal proceedings in which the prosecution obtains pre-trial approval to present “other crimes, wrongs, or acts” to prove motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake. Notwithstanding that in this civil case there was no pre-trial request by Pearson to present the previous conviction or the several previous wrongs or acts of Pearson for the purposes set forth by CE Art. 404C - even assuming the article’s applicability in a civil proceeding – the Court treats the conviction history as impeachment evidence, not as wrongs or acts designed to prove motive, opportunity, modus operandi, plan, etc. [↑](#footnote-ref-6)