IN THE SUPREME COURT OF TEXAS

No. 05-0870

T. MICHAEL QUIGLEY, PETITIONER,

v.

ROBERT BENNETT, RESPONDENT

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE FOURTH DISTRICT OF TEXAS

JUSTICE JOHNSON delivered the opinion of the Court, in which CHIEF JUSTICE JEFFERSON, JUSTICE O'NEILL, JUSTICE WAINWRIGHT, and JUSTICE MEDINA joined.

JUSTICE BRISTER filed an opinion concurring in part and dissenting in part, in which JUSTICE HECHT and JUSTICE WILLETT joined.

JUSTICE GREEN did not participate in the decision.

In this case we consider whether evidence of the value of a royalty interest in minerals can be considered in determining compensation for geologic services when the services were not rendered pursuant to a written agreement. We determine that it cannot.

In early 1997, Michael Quigley decided to sell his interest in oil and gas leases known as the Samano leases. Robert Bennett, a geologist, agreed to help Quigley by analyzing the leases and assisting with a sales presentation to Louis Dreyfus Natural Gas. Bennett did not expect to be paid; he agreed to do the presentation as a favor to a sick colleague who had been working with Quigley. While Bennett was preparing for the presentation, Quigley asked him to do additional work as to the leases, including preparing more color graphs and maps.

Bennett testified that when he told Quigley he did not have time to do the additional work because he had his own projects to work on, Quigley told him, "Don't worry Bennett, I'll take care of you." Bennett spent three or four days working on the maps and graphs and then participated in the presentation to Dreyfus in April or May of 1997. Dreyfus decided not to purchase the leases, but Quigley kept the maps Bennett prepared. Quigley continued to market his leases and in April 1998, Coastal Oil & Gas bought them. Quigley secured an overriding royalty interest as part of the transaction.

After the leases sold to Coastal, Bennett mentioned his compensation to Quigley but the two did not discuss the matter in depth. Around August 2001, after Coastal drilled two producing wells on the Samano leases, Quigley and Bennett met for the purpose of determining Bennett's compensation. The issue was not resolved.

In February 2002, Bennett sued Quigley, asserting causes of action for quantum meruit, conversion and fraud, and seeking attorneys' fees. The case was tried to a jury. Bennett presented evidence that he was a generating geologist, and generating geologists are usually compensated by receiving overriding royalty interests in the prospects they generate. He testified that he personally only accepted mineral prospect work for compensation of a royalty interest in the prospect. Proof was offered at trial that the value of a 1% royalty interest in the past and estimated future production of the Samano leases was approximately $4 million. Evidence was presented that geologists who worked for cash compensation rather than overriding royalty interests earned between $500 a day and $20,000 per job.

The jury found in Bennett's favor on all three theories of liability. Damages were found in the amount of $2,500 on the quantum meruit claim,[1] $1 million on the fraud claim,[2] and $1 million on the conversion claim.[3] In connection with the quantum meruit claim the jury found that (1) by August 2001 Bennett should have discovered that Quigley was not going to pay, and (2) Quigley fraudulently concealed from Bennett that Quigley was not going to pay,

thereby causing Bennett to delay filing suit. The jury also found reasonable attorney's fees for Bennett in the amount of $185,000 for trial and appeal. Bennett elected to recover on his fraud claim because that gave him the greatest recovery. The trial court entered judgment based on the jury findings in response to the fraud questions and answers.

Quigley appealed. He asserted that Bennett's recovery on his fraud claim violated the statute of frauds, the parties had no "binding agreement" to support a fraudulent inducement claim, and the quantum meruit and conversion claims were barred by limitations. He also asserted legal and factual sufficiency challenges. The court of appeals, based in part on Quigley's having told Bennett "well do us a favor, work what you can . . . and I'll pay you for your time doing it," determined that Quigley had an agreement with Bennett for Bennett to provide geological services, affirmed the judgment on Bennett's fraud claim, and did not address the other jury findings. The court of appeals held that the fraud damages question submitted an improper measure of damages but Quigley did not object to the submission; Quigley did not preserve error as to the proper measure of damages; and there was evidence to support the jury finding based on the charge submitted. ___ S.W.3d ___.

In this Court Quigley asserts, in part, that the court of appeals erred in affirming the award based on fraud.[4] Referencing *Haase v. Glazner*, 62 S.W.3d 795, 798-99 (Tex. 2001), he argues that there was no agreement for Bennett to receive a royalty interest as compensation. Bennett does not disagree. In his brief Bennett says that "[b]ecause Bennett did not claim an express agreement giving him an overriding royalty interest, Bennett sought, under quantum meruit and fraud, restitution damages based on the value of the services he performed." But Quigley also urges that allowing Bennett to recover damages based on the value of an overriding royalty interest, under these facts, violates the statute of frauds. Bennett disagrees with the latter position; we do not.

An overriding royalty interest in an oil and gas lease is considered an interest in real estate that falls within the statute of frauds. *Consol. Gas & Equip. Co. v. Thompson*, 405 S.W.2d 333, 336 (Tex. 1966). Absent a writing, an agreement to transfer such an interest is unenforceable. *See id.* Allowing recovery of the value of a royalty interest when the interest itself could not be recovered because the statute of frauds bars recovery would circumvent protections of the statute. *Haase*, 62 S.W.3d at 798-99 (noting that when the bargain violates the statute of frauds and is unenforceable, allowing recovery for benefit-of-the-bargain damages would deprive the statute of any effect). Thus evidence of the value of a royalty interest, which was what Bennett contended for as compensation, cannot be given any weight or effect and legally cannot be considered as evidence supporting the jury's finding. *See id.* at 799; *see also Merrell Dow Pharm., Inc. v. Havner*, 953 S.W.2d 706, 711 (Tex. 1997) (noting, in part, that a no evidence assertion will be sustained if the court is barred by rules of law from giving weight to the only evidence offered to prove the matter at issue).

Absent evidence of the value of a royalty interest, the only evidence of damages was testimony as to cash-based compensation for a geologist. The testimony regarding cash-based compensation is some evidence of the value of Bennett's work. It is, however, legally insufficient to support the entire $1 million fraud damages finding and the court of appeals' judgment must be reversed. *See Formosa Plastics Corp. USA v. Presidio Eng'rs and Contractors, Inc.*, 960 S.W.2d 41, 51 (Tex. 1998).

As noted above, there is some evidence that Bennett suffered damages from Quigley's actions which the jury found constituted fraud. Thus, we cannot render judgment for Quigley on the fraud claim.

Citing *Scott v. Walker*, 170 S.W.2d 718 (Tex. 1943), the concurring and dissenting justices would render judgment for Bennett on the quantum meruit findings. They note that when suit was filed in February 2002 it was timely as a matter of law. The reasoning is that

Bennett's quantum meruit cause of action did not accrue until the leases were sold in April 1998 when the unenforceable promise to transfer a royalty interest was breached and the obligation to pay value which the law substitutes for the unenforceable promise was also breached. We disagree that *Scott* supports rendition for Bennett. In *Scott*, the Walkers lived with and rendered housekeeping and personal services to A.E. Bower over a period of years until Bower died. *Id.* at 720. The Walkers sought compensation for fourteen years of services rendered to Bower. They also contended that Bower agreed to compensate them, in part, by devising his house and property to them when he died. The Court noted that such an oral agreement to transfer real property would be unenforceable because it violated the statute of frauds, but that if such an agreement existed the law would substitute an obligation to pay value for the services rendered in exchange for the promise to devise property. The Court further stated that it was important that the Walkers establish an agreement by Bower to devise property because the Walkers' cause of action for breach of the substituted obligation to pay for their services would accrue at the time the oral agreement to transfer property was breached: at Bower's death. Otherwise, limitations would begin to run on their claims for compensation at the time the services were rendered. *Id.* The Court held that there was no jury finding that Bower made the claimed agreement to devise his house to the Walkers, and that the Walkers' claims to be compensated were barred by limitations except for the final two years. *Id.* at 722.

In this case, neither Bennett nor Quigley takes the position that there was an agreement for Bennett to receive a royalty interest when the leases sold. Bennett specifically claims only compensation measured by the value of a royalty interest. The jury was not asked to determine if Bennett and Quigley agreed that Bennett would receive payment upon sale of the leases or on any other particular date. Nor was there a jury finding as to such a date. We disagree that

under the record before us *Scott's* holding mandates a conclusion that Bennett's quantum meruit cause of action accrued when the leases sold.

We believe the proper course is to remand the case to the court of appeals for consideration of the issues and contentions of the parties which that court did not previously address. Accordingly, we grant the petition for review and without hearing oral argument reverse the court of appeals' judgment. *See* TEX. R. APP. P. 59.1. The case is remanded to the court of appeals for further consideration in light of this opinion.

Phil Johnson
Justice

OPINION DELIVERED: June 8, 2007

[1] The quantum meruit damages question was as follows:

> Question No. 3
>
> What is the reasonable value of such compensable work at the time and place it was performed?
>
> Answer in dollars and cents, if any: _____

[2] The fraud damages question was as follows:

> Question No. 7
>
> What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Robert Bennett for his damages, if any, that resulted from such fraud?
>
> Consider the following elements of damages, if any, and none other.
>
> Answer separately in dollars and cents, if any, for each of the following:
>
> The reasonable value of Robert Bennett's compensable work at the time and place it was performed.
>
> Answer in dollars and cents: _____

[3] The jury found that Quigley converted Bennett's property. It also found that Bennett should have discovered this conversion in June 1998. Bennett did not challenge this finding and conceded in the court of appeals that the jury's finding would preclude any recovery for conversion due to limitations. Neither party has addressed the conversion claim in this Court.

[4] In his brief Quigley refers to fraudulent inducement. There was one jury question concerning fraud and one damages question conditioned on an affirmative finding to the fraud question. The fraud question submitted actual fraud.