

CAUSE NO. DC-14-01443

TRINITY EAST ENERGY, LLC,	§	IN THE DISTRICT COURT
	§	
<i>Plaintiff,</i>	§	
v.	§	
	§	DALLAS COUNTY, TEXAS
CITY OF DALLAS, TEXAS,	§	
	§	
<i>Defendant.</i>	§	_____ JUDICIAL DISTRICT

PLAINTIFF’S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Trinity East Energy, LLC files this its Original Petition and complains of Defendant City of Dallas, Texas, and for cause of action would respectfully show the Court the following:

**I.
STATEMENT OF THE CASE**

1. This case concerns the actions of the City of Dallas, Texas (the “City”) in taking the property of Plaintiff Trinity East Energy, LLC (“Trinity”) without just compensation in violation of the Texas Constitution, the City’s breach of a binding contract, and the City’s fraudulent actions committed in connection with the oil and gas lease at issue. In 2008 the City, acting in its proprietary capacity, sold Trinity more than 3,600 acres of oil and gas mineral interests. In doing so, the City was paid more than Nineteen Million Dollars (\$19,000,000.00) and the right to receive royalties from production from Trinity. In selling this real property interest to Trinity, the City knew that Trinity could only benefit from this contract if Trinity was actually allowed to drill a number of wells to produce gas. The City also knew that for drilling and production to occur, the City would be required to issue certain permits and other authorizations. Despite representations and promises by the City, as well as the City’s

contractual obligation, that Trinity would be allowed to drill and produce minerals, the City refused to grant Trinity the necessary approvals to conduct drilling and production operations. Trinity spent over \$30 million in reliance upon the City's promises and lost hundreds of millions more in lost profits. By this suit, Trinity seeks to hold the City accountable for its conduct and to recover the damages caused by the City's unconstitutional actions, its blatant breach of the agreement between the parties and its fraudulent conduct.

II. PARTIES

2. Plaintiff Trinity East Energy, LLC ("Trinity East") is a Texas limited liability company with its headquarters in Tarrant County, Texas.

3. Defendant City of Dallas, Texas is a home rule city duly organized and existing under the laws of the State of Texas. Rosa Rios, City Secretary for the City of Dallas, can be served with process at City Hall, 1500 Marilla, Room 5DS, Dallas, Texas 75201. The Texas Attorney General will be served with notice of the alleged unconstitutionality of the City's actions through Greg Abbott, Attorney General at 300 W. 15th Street, Austin, Texas 78701 pursuant to Texas Civil Practice and Remedies Code § 37.006.

III. JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to the Texas Government Code because this is a breach of contract and inverse condemnation suit requesting damages in excess of the minimum jurisdictional limits of this Court. Venue is proper in Dallas County because the City is located in Dallas County. Venue is also proper in Dallas County due to the express venue clause set forth in the agreement that is the subject of this suit.

**IV.
DISCOVERY PLAN**

5. Discovery in this case is intended to be conducted under Level 3 of Rule 190 of the Texas Rules of Civil Procedure.

**V.
STATEMENT OF FACTS**

6. “No good deed goes unpunished.” In 2007, the City of Dallas faced a significant budgetary shortfall with an initial projected revenue gap of approximately \$90,000,000.00. As a result, the City faced the dilemma of severely curtailing services or raising taxes. Important City officials decided that obtaining revenue from gas wells drilled on City-owned land would help relieve the shortfall. On or about September 12, 2007, the Dallas City Council adopted a gas drilling ordinance requiring special use permits (“SUP”) and removing a prohibition against drilling on park land. The 2007-08 City of Dallas budget included \$20 million in revenue from gas leases.

7. The City also issued several requests for proposals to drill on various City-owned land. In the requests for proposal, the City solicited oil and gas companies to purchase, via oil and gas lease, City-owned oil and gas interests. In doing so, the City specifically invited Trinity to submit a proposal. In response to the City’s solicitation, Trinity submitted a bid on five packages, including the packages known as Group 1 and Group 2A which are the subject of this lawsuit. The bid responses were made contingent on the negotiation of lease terms, title review, and other matters.

8. On or about February 27, 2008, after negotiations with Trinity, the Dallas City Council expressly authorized City Manager Mary Suhm (“Suhm”) to negotiate and execute an oil and gas lease with Trinity. The City locked in its bonus amount per acre and its royalty amount for the leases and gave Trinity a 90-day period to conduct its title work in return for a

\$1.75M deposit which would be forfeited if Trinity did not complete the leasing process due to reasons other than title defects. In order to effectuate the transaction, Trinity needed two surface tracts known as the Radio Tower Tract and Gun Club Tract as part of the transaction. The Radio Tower Tract is a 22 acre tract of land on the west side of the City-owned Luna Vista Golf Course. This parcel of land is situated in a semi-rural portion of the City where the nearest structures are used for industrial purposes or liquor sales and was an integral part of the discussions between the City and Trinity because it was a key location desired by Trinity for surface operations.

9. On or about June 25, 2008, the City Council unanimously supported a Chapter 26 public hearing regarding the leasing of City park land. The City Council was informed that surface drilling would not be allowed on city park land and that only sub-surface drilling would be permitted. At this meeting, the Council was also informed by staff that the Radio Tower Tract was included in Trinity's proposed lease. City staff members told the Council that surface use of the Radio Tower Tract would require separate Council approval of a new lease agreement and a separate Chapter 26 hearing.

10. Trinity representative Steve Fort ("Fort") told staff that it was necessary for the City to provide for the use of the Radio Tower Tract and the Gun Club Tract (which is also adjacent to the Luna Vista Golf Course) as drill sites in order to proceed. Staff assured Trinity that the City would make that happen on the Radio Tower Tract and would attempt to get approval on the Gun Club Tract.

11. On or about August 15, 2008, City Manager Mary Suhm signed two lease agreements with Trinity that expressly included the Radio Tower Tract as a proposed drill site ("Lease Agreements"). In exchange for the oil and gas leases, the City received \$19,028,375 as

a lease bonus from Trinity and the right to receive royalties from production. The royalties to be received by the City were 25% of the oil or gas produced, i.e. an in-kind royalty, to be delivered to the City by Trinity or, at the City's option, a cash royalty equal to 25% of the market value of the gas produced and sold. The produced oil or gas to be delivered to the City, unless the City exercised the cash option, constitutes personal property and goods.

12. The same day, Suhm signed a letter to Trinity officials stating that she was "reasonably confident" the company would obtain the right to use the Radio Tower Tract for drilling operations. Without that assurance, Trinity would not have proceeded with the closing. This letter was consistent with numerous City representations and promises that the City would provide any and all necessary approvals to allow Trinity to perform under the Lease Agreements. In reliance upon the City's representations, Trinity East paid \$19,028,375 to the City and began the necessary engineering and planning activities for the drilling of the mineral leasehold acres obtained from the City.

13. The Lease Agreements constitute written contracts conveying real property interests, i.e. the severed mineral estates for tracts described in the leases in fee simple determinable. These contracts also state the essential terms of the agreement for providing goods or services to the City and were properly executed on behalf of the City. As a matter of law, when the City signed the Lease Agreements it conveyed the oil and gas minerals described in the leases to Trinity in fee simple determinable thus making Trinity the owner of the minerals to the exclusion of all others – including the City. Further, the City conveyed to Trinity, as a matter of law and as expressly set forth in the Lease Agreements, the exclusive right to explore for and produce oil and gas from the lands described in the leases. This exclusive right includes the right to the reasonable use of the surface to explore for and produce oil and gas.

14. On or about August 20, 2008, subsurface drilling activities into parkland were approved by the City Council after a Chapter 26 public hearing process. Trinity then began the lengthy process of designing a system of drill sites, roads and pipelines to allow the drilling and production of the minerals underlying the City's land. This was done in concert with the Dallas Parks Department staff, U. S. Corp of Engineers, Dallas Floodplain Administrator, and the Dallas City Real Estate division staff. After spending a substantial amount of time and money on engineering, surveying, and planning, Trinity filed three (3) SUP Applications numbered Z101-220, 221 and 248 in March and April 2011 in accordance with applicable law for use of the Radio Tower Tract, Gun Club Tract, and the privately owned Luna South Tract as surface locations for drilling and production operations. As a part of this process, Bonnie Meeder, Assistant Director, Sustainable Development & Construction Real Estate Division, signed letters to the City of Dallas Current Planning Division stating that the City of Dallas, being the surface owner of property subject to the two SUP Applications covering City owned land, "hereby authorizes, approves, adopts and consents to, the subject application, and agrees to submit, upon request, supplemental information in support of the Application".

15. On or about June 16, 2011, the Park Board authorized a Chapter 26 public hearing to consider surface drilling and production use at the Radio Tower and Gun Club proposed drilling sites. Further, on or about June 22, 2011, the City Council authorized an approximately thirty-month extension of the Lease Agreements. The amended lease terms would expire on February 15, 2014.

16. The City has a professional planning staff that makes recommendations on specific zoning applications. The general provisions for a Specific Use Permit in Section 51A-4.219 of the Dallas Development Code state:

- (1) The SUP provides a means for developing certain uses in a manner in which the specific use will be consistent with the character of the neighborhood;
- (2) Each SUP application must be evaluated as to its probable effect on the adjacent property and the community welfare and may be approved or denied as the findings indicate appropriate;
- (3) The city council shall not grant an SUP for a use except upon a finding that the use will: (A) complement or be compatible with the surrounding uses and community facilities; (B) contribute to, enhance, or promote the welfare of the area of request and adjacent properties; (C) not be detrimental to the public health, safety, or general welfare; and (D) conform in all other respects to all applicable zoning regulations and standards.

17. The existing or planned uses and facilities which surrounded the drill sites were identical both when the leases were granted and when the SUP Applications were submitted and denied. They did not change. When the City executed the Lease Agreements with Trinity and received the more than \$19,000,000 in bonus money, it took the position that Trinity's proposed uses did not have an adverse impact on the surrounding zoning and land use issues. On or about December 20, 2012, the City's planning staff issued staff recommendations on Trinity East's applications and found that the SUPs each met the ordinance requirements for SUP approval:

- A. Recommending the approval of SUP Z101-220, (Gun Club Tract), zoned an "IR Industrial Research District." Staff noted that the nearest residential lot was approximately 1,500' to the northwest in the City of Irving.
- B. Recommending the approval of SUP Z101-221, (Radio Tower Tract), on the south side of Royal Lane, west of Luna Road, zoned an "IR Industrial Research District." Staff noted that the nearest residential lot was approximately 2,400' to the northwest and 3,000' to the southwest in the City of Irving.
- C. Recommending the approval of SUP Z101-248, (Luna South site), on the east side of Luna Road, zoned an "IR Industrial Research District." Staff noted that the nearest residential lot was approximately 5,000' to the west and being in the City of Irving.

18. In complete disregard of the City's constitutional and contractual obligations and the City staff's recommendations of approval, on or about December 20, 2012, the City Planning Commission ("CPC") voted 11 – 1 to deny Trinity's SUP request. By a 6 – 5 vote, however, the CPC voted to reconsider the denial on January 7, 2013. These hearings were postponed again on February 7, 2013. Finally, on or about March 21, 2013, the requests were again denied by a 9 – 6 vote. Pursuant to city ordinance, Trinity had a right to appeal the denial of the SUPs to the City Council. In accordance with the City's ordinance, Trinity East appealed the SUP denials to the City Council.

19. Due to the CPC denial, however, 3/4ths of the City Council membership was required to vote to approve the application in order to grant Trinity the necessary permissions to drill. Again ignoring its constitutional and contractual obligations, however, only a simple majority of the Dallas City Council voted on or about August 28, 2013, to approve the SUP applications, thus failing to meet the 3/4ths vote approval requirement. The City's refusal to approve the SUPs was arbitrary and capricious. Recognizing that the City had probably just breached a contract, committed fraud and taken Trinity's property without just compensation, City Mayor Rawlings stated on the record that the City was subjecting itself to significant litigation risk. Despite Mayor Rawlings' understanding of the City's considerable liability, the City has not attempted to compensate Trinity for the loss of value of the taken property or to pay Trinity the damages it suffered as a result of the City's actions. The City's refusal to allow Trinity to perform under the Lease Agreements is a breach of contract and has deprived Trinity of its constitutionally protected property rights.

VI.
PLAINTIFF'S CLAIMS FOR RELIEF

Count 1: Breach of Contract

20. The allegations in Paragraphs 1 through 19 above are realleged and incorporated herein by reference as if set forth in this Count.

21. Defendant City breached the Lease Agreements by preventing Trinity from drilling on the leased tracts. Plaintiff requests the Court to declare that the City has breached the Lease Agreements, and pay damages to Plaintiff for the breach. Plaintiff meets the essential elements of a breach of contract cause of action because:

- A. The Lease Agreements are valid contracts;
- B. Plaintiff performed or tendered performance according to the terms of the Lease Agreements;
- C. Defendant breached the Lease Agreements; and
- D. Plaintiff sustained damages as a result of the breach.

Governmental and sovereign immunity is waived for proprietary activities such as the sale of City-owned minerals and the drilling for gas on City-owned land. In the alternative, immunity for breach of contract is waived under § 271.152, Tex. Loc. Govt. Code.

22. The City's breach caused Trinity damages in excess of the minimum jurisdictional limits of this Court, for which Trinity now sues.

Count 2: Inverse Condemnation

23. The allegations in Paragraphs 1 through 22 above are realleged and incorporated herein by reference as if set forth in this Count.

24. The actions of the City constitute a taking by damaging and/or destroying all of Plaintiff's property rights for, or application to, public use without having made adequate compensation. Accordingly, such actions violate Article I, Section 17 of the Constitution of

Texas. The City has deprived Plaintiff of (a) its reasonable investment backed expectations (depriving Plaintiff of all use and enjoyment of its fee simple determinable property interest); (b) all of its determinable fee simple property interests in the City of Dallas; and (c) its property interests for the City's acquisitory intent. Because of the nature of a fee simple determinable interest in minerals, the City's actions constitute an actual taking of mineral interests. By preventing Trinity from conducting the operations necessary to effectuate the Lease Agreements and extract the minerals, Trinity's mineral interests will revert to the City upon the expiration of the leases. In the ultimate irony, the City's actions have allowed the City to get paid over \$19,000,000.00 for these mineral rights, while orchestrating the return of those minerals to the City, leaving Trinity with nothing.

25. Immunity is waived for constitutional violations.

26. The City's taking damaged Trinity in an amount in excess of the minimal jurisdictional limits of this Court, for which Trinity now sues.

Count 3: Common Law Fraud

27. The allegations in Paragraphs 1 through 26 above are realleged and incorporated herein by reference as if set forth in this Count.

28. The City's conduct meets the elements of a cause of action for common law fraud:

- A. The City made material representations to Trinity to induce Trinity to enter into the Lease Agreements;
- B. The material representations were false;
- C. When the material representations were made the City representatives

- (1) knew that the material representations were false; or
 - (2) made the material representations recklessly without any knowledge of their truth and as a positive assertion;
- D. The City representatives made the material representations with the intent that they should be acted upon by the person to whom the speaker made the representations;
 - E. Trinity acted in reliance upon the representations; and
 - F. Trinity suffered injury and damage.

29. In the alternative, the City's conduct meets the elements of a cause of action for fraud by nondisclosure:

- A. The City failed to disclose facts to Trinity;
- B. The City had a duty to disclose those facts;
- C. The facts were material to the Lease Agreements;
- D. The City knew Trinity did not have an equal opportunity to discover the facts;
- E. The City representatives were deliberately silent when they had a duty to speak;
- F. By failing to disclose the facts, the City intended to induce Trinity to pay \$19,000,000.00 to the City;
- G. Trinity relied on the City's nondisclosure; and
- H. Trinity was injured as a result of acting without that knowledge.

30. Immunity is waived for torts associated with proprietary activities.

31. The City's fraud caused Trinity damages in excess of the minimum jurisdictional limits of the Court, for which Trinity now sues.

32. The City's actions were also taken with the requisite mental intent to justify the award of exemplary damages, for which Trinity now sues.

Count 4: Statutory Fraud

33. The allegations in Paragraphs 1 through 32 above are realleged and incorporated herein by reference as if set forth in this Count.

34. The Lease Agreements are real estate transactions subject to Section 27.01 of the Texas Business and Commerce Code. The City's conduct meets the elements of Section 27.01 statutory fraud in a real estate transaction:

- (1) The City falsely represented past or existing material facts:
 - (A) to Plaintiff for the purpose of inducing Plaintiff to enter into the Lease Agreements; and
 - (B) Plaintiff relied on the false representations in entering into the Lease Agreements; or, alternatively,
- (2) The City falsely promised to do an act, and the false promise was:
 - (A) material;
 - (B) made with the intention of not fulfilling it;
 - (C) made to Plaintiff for the purpose of inducing Plaintiff to enter into the Lease Agreements; and
 - (D) Plaintiff relied on the false promise in entering into the Lease Agreements.

35. Immunity is waived for torts associated with proprietary activities.

36. The City's fraud caused Trinity damages in excess of the minimum jurisdictional limits of this Court, for which Trinity now sues.

Count 5: Negligent Misrepresentation

37. The allegations in Paragraphs 1 through 36 above are realleged and incorporated herein by reference as if set forth in this Count.

38. The City's conduct meets the elements of negligent misrepresentation:

- A. The City provided information to Trinity or in the course of the transaction in which it has a pecuniary interest;

- B. The information that the City would fulfill its lease obligations was false;
- C. The City did not exercise reasonable care or competence in obtaining or communicating the information;
- D. Trinity justifiably relied on the information; and
- E. Trinity suffered damages proximately caused by its reliance on the false information.

39. Immunity is waived for torts associated with proprietary activities.

40. The City's misrepresentations caused Trinity Damages in excess of the minimum jurisdictional limits of the Court, for which Trinity now sues.

Count 6: Attorney's Fees

41. The allegations in Paragraphs 1 through 40 above are realleged and incorporated herein by reference as if set forth in this Count.

42. Under the authority of § 38.001, *et seq.*, Texas Civil Practice and Remedies Code, § 271.153, Texas Local Government Code, and the contract at issue, Plaintiff additionally claims reasonable attorney's fees, both in the trial of this cause and in connection with any subsequent appeal.

**VII.
CONDITIONS PRECEDENT**

43. All conditions precedent to Plaintiff being entitled to bring each of these causes of action and recover the relief requested herein have been performed, have occurred or have been waived.

**VIII.
RESERVATION OF FEDERAL CLAIMS**

44. Plaintiff reserves its federal claims pending resolution of its state law claims in this litigation. These federal constitutional claims include, but are not limited to, deprivation of Plaintiff's constitutionally protected rights under Articles 5 and 14 of the U.S. Constitution.

Plaintiff's federal statutory claims include, but are not limited to, claims under Sections 1983, 1984, 1985, and 1988 of the U.S. Civil Rights Act against the City.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests as follows:

1. That the Court find and declare that Trinity has suffered an inverse condemnation or regulatory taking;
2. That the Court find and declare that the City breached the Lease Agreements;
3. That the Court find that the City committed fraud and/or negligent misrepresentation;
4. That the Court award damages in excess of the minimum jurisdictional limits;
5. That the Court award cost of suit, attorney's fees, and prejudgment and post judgment interest as provided by law; and
6. That the Court award such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

/s/ Arthur J. Anderson

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