

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CHEETAH GAS CO., LTD.,	§	C. A. NO. 4:08-CV-03237
Plaintiff/Counterclaim-Defendant,	§	
	§	
v.	§	HON. NANCY F. ATLAS
CHESAPEAKE LOUISIANA, L.P. and	§	
CHESAPEAKE OPERATING, INC.,	§	
Defendants/Counter-Claimants.	§	JURY TRIAL REQUESTED

SECOND AMENDED COMPLAINT

Plaintiff/Counterclaim-Defendant Cheetah Gas Co., Ltd. complains and for causes of action alleges as follows:

THE PARTIES

1. Plaintiff **Cheetah Gas Co., Ltd.** (“Cheetah”) is a Texas limited partnership with its principal place of business in Houston, Texas.

2. Defendant **Chesapeake Louisiana, L.P.** (“CLLP”) is an Oklahoma limited partnership with its principal place of business in Oklahoma City, Oklahoma. CLLP has appeared and answered herein.

3. Defendant **Chesapeake Operating, Inc.** (“COI”), an Oklahoma corporation, is CLLP’s general partner and has its principal place of business in Oklahoma City, Oklahoma. COI has appeared and answered herein.

JURISDICTION

4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332. Complete diversity of citizenship between the parties exists because the plaintiff is a Texas resident and defendants are Oklahoma residents, and the matter in controversy exceeds the \$75,000 minimum jurisdictional requirements, exclusive of interest, attorneys’ fees, and/or punitive damages.

5. This Court has both specific and general jurisdiction over both defendants because CLLP and COI each took actions in connection with this contract that subject them to the jurisdiction of Texas courts. Each solicited the contracts at issue in this case in the state of Texas with full knowledge that a Texas limited partnership would be the contracting counter-party. Each forwarded forms of contracts to Texas for execution in Texas and those contracts were in fact executed here. Partial payment of the contracts was made in Texas and due diligence occurred, in part, in Houston Texas. Closing was contemplated to occur, in whole or in part, in Texas and the parties chose to apply the law of the State of Texas to their transactions.

6. In addition, both CLLP and COI have generally and systematically conducted business within the state of Texas and therefore have submitted themselves to the jurisdiction of Texas courts. On information and belief, COI has drilled and/or become the operator of thousands of wells within the state of Texas and has routinely contracted with any number of Texas-based third party providers to secure services for them. CLLP regularly seeks to enter into and has entered into leases with Texas citizens who happen to own property in Louisiana. COI or other Chesapeake affiliates have, on behalf of CLLP, on information and belief, contracted with Texans for services related to site work, drilling, fracing, completing, and producing wells within the Haynesville shale. Finally, COI and/or other Chesapeake affiliates have, on behalf of CLLP, contracted to transport CLLP's "working interest" gas through Texas pipelines and sell that gas to Texas buyers.

7. For all of the foregoing reasons this court has personal jurisdiction over both COI and CLLP.

VENUE

8. Venue is appropriate in the United States District Court for the Southern District of Texas, Houston Division, pursuant to 28 U.S.C. § 1391(a), because a substantial part of the events or omissions giving rise to the claim occurred in the Southern District of Texas, and this venue is both the home and principal place of business of plaintiff Cheetah.

BACKGROUND

9. Cheetah, a Texas limited partnership, owns certain oil and gas leases located in DeSoto and Caddo Parishes, Louisiana, and holds them by ongoing production operations. CLLP and COI are, upon information and belief, both affiliates of Chesapeake Energy Corporation, a publicly traded exploration and production company. In the summer of 2008, CLLP approached Cheetah and expressed the desire to acquire interests in certain formations beneath certain of Cheetah's leases in DeSoto and Caddo Parishes in Louisiana. The properties are part of the "Haynesville" shale that extends through northeastern Texas and northwestern Louisiana.

10. Ultimately, Cheetah agreed to sell CLLP two three-year term assignments of oil and gas leases. CLLP made cash deposits for each of the contracts and set closing dates of October 31, 2008, for the Caddo Parish transaction and November 28, 2008, for the DeSoto Parish transaction.

11. By October 2008, CLLP and COI apparently believed that they could acquire Cheetah's acreage, or its functional equivalent, at a fraction of the price at which they originally contracted to buy it. As a result, CLLP gave notice that it would not close on the contracts but would instead offer only approximately 10 percent of the original contract price. Cheetah rejected this offer. CLLP and COI unequivocally

indicated that they would not appear at closing and would not close either the Caddo Parish or DeSoto Parish transaction.

12. Cheetah met all conditions precedent and was at all times ready, willing, and able to close on the transactions.

13. CLLP breached the contracts by failing and refusing to: (1) advise Cheetah of any defects in marketable title so that Cheetah could cure them or obtain the necessary consents to pass title; (2) fund and close upon the contracts; and, (3) perform the obligations under the lease agreements that were the subject of the contracts.

14. COI was at all times the general partner of CLLP and is fully liable for its breaches.

15. Cheetah has suffered three types of losses: (1) the loss of bonus payments; (2) the loss of overriding royalties to which CLLP and COI committed in the contract and which are not now available in the market; and (3) the loss of "participation" rights under which Cheetah could participate as a working interest owner in any wells drilled upon the leases to be transferred under the contract. Cheetah was and is ready, willing, and able to respond to and participate in joint working interest activities upon the leases.

16. Because of CLLP and COI's breaches, Cheetah has been required to retain the undersigned counsel to protect its interests and enforce the contracts. Cheetah has therefore suffered additional loss due to the payment of reasonable and necessary attorneys' fees under Texas Civil Practice and Remedies Code section 38.001 *et seq.* Cheetah has made a presentment of its demand as required by

Texas law (contemporaneously with this filing), but CLLP and COI continue to fail and refuse to perform.

FIRST CLAIM FOR RELIEF: BREACH OF CONTRACT

17. Pursuant to Federal Rule of Civil Procedure 8, Cheetah is entitled to judgment against defendants, jointly and severally, for:

- a. Specific performance of the contracts; or
- b. Alternatively,
 - i. forfeiture of the cash down-payments made by CLLP and/or COI in connection with the contracts;
 - ii. the full remaining bonus due at closing under the contracts, minus the residual value of the leases;
 - iii. the full value of overriding royalty interests provided for in the contracts but no longer available in the lease market; and
 - iv. the full value of “back-in rights” provided for in the contracts but no longer available in the lease market;
- c. the reasonable and necessary attorneys’ fees incurred by Cheetah to enforce its rights in connection with this action;
- d. prejudgment interest at the rate and for the time allowed by law; and
- e. post-judgment interest at the rate and for the time allowed by law.

SECOND CLAIM FOR RELIEF: REFORMATION

18. Cheetah believes the Caddo Parish and DeSoto Parish agreements are enforceable written contracts and pleads this claim in the alternative out of an abundance of caution in accordance with Federal Rule of Civil Procedure 8. To the

extent the property descriptions in the agreements are insufficient to identify the property conveyed, Cheetah is entitled to reformation so the agreements correctly reflect the intentions of the parties. Both Cheetah and CLLP believed the property descriptions prepared by CLLP and COI were legally and factually sufficient to describe particular and identified leasehold interests. The parties intended the agreements and term assignments to accurately describe the leases, units, acreage, and depths assigned in the designated sections, township, and range. To the extent the parties were mutually mistaken in their belief that the property descriptions were sufficient for that purpose or if the writing did not correctly express their agreement due to a mistake as to the contents or effect of the writing, reformation is appropriate. The property description should be reformed to include additional descriptive detail, if any, necessary to property reflect their agreement. Cheetah is entitled to enforce the agreements through specific performance or alternatively, to recover damages, and incorporates all other legal and equitable relief requested in its claim for breach of contract.

THIRD CLAIM FOR RELIEF: PROMISSORY FRAUD

19. Cheetah believes the Caddo Parish and DeSoto Parish agreements are enforceable written contracts and pleads this claim in the alternative out of an abundance of caution in accordance with Federal Rule of Civil Procedure 8. CLLP and COI drafted the agreements and property descriptions and represented to Cheetah that the contracts were binding. CLLP promised to purchase the leases with the intention, design, and purpose of deceiving Cheetah and with no intent to perform the agreements. CLLP and COI intended to tie up the leases by fraudulently promising bonus terms, royalty terms, and other contractual terms that it never intended to honor. CLLP and COI expected and intended that Cheetah would rely on its promises by taking

the leases off the market. In reliance on these promises, Cheetah declined opportunities to assign the leases to EXCO Resources, Petrohawk, and other prospective purchasers on favorable bonus and royalty terms during the peak of the leasing market, resulting in substantial losses.

20. CLLP and COI's intent not to perform the agreements is evident from its failure and refusal to close, denials that the agreement was binding, and repeated attempts to renegotiate the cash bonus for a fraction of the original price. After tying up the leases through what it represented were binding contracts, CLLP intentionally drove down lease prices in the Haynesville Shale so it could re-acquire the acreage for a fraction of the original contract price. CLLP and COI's intent not to perform the agreements with Cheetah is also shown by its pattern and course of conduct in over half a dozen transactions of record in 2008 where it entered binding contracts and commitments to lease acreage in the Haynesville Shale, but wrongfully refused to close.

21. Cheetah is entitled to recover actual and exemplary damages for promissory fraud. Cheetah is entitled to actual damages including benefit of the bargain damages for fraud in connection with a contract, forfeiture of cash down-payments, and the full value of the bonus, overriding royalties, and participation rights provided for by the contracts, and the full value it would have earned if CLLP and COI had performed the agreements as promised. Cheetah is entitled to recover lost profits it would have earned by assigning the leases to EXCO Resources, Petrohawk, or another purchaser but for fraud by CLLP and COI. In addition to actual damages, Cheetah is entitled to exemplary damages against CLLP and COI in an amount sufficient to deter such

conduct in the future under applicable guiding legal principles. Cheetah is also entitled to recover prejudgment and post-judgment interest, and costs.


JURY DEMAND

22. Cheetah makes demand for a trial by jury under Federal Rule of Civil Procedure 38(b).

PRAYER

For the above reasons, Cheetah prays that the Court grant all of the relief set forth in its claims for relief, and such other and further relief, either at law or in equity, to which it may show itself justly entitled.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that service of this document on counsel of record will be accomplished automatically through Notice of Electronic Filing on February 4, 2009, as follows:

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