

November 16, 2021

An ALM Publication

TEXAS

MCMULLEN COUNTY

VERDICT

Plaintiff

Oil and gas operator sought return of overpaid royalties

Amount \$1,466,095**CASE** SEA Eagle Ford, LLC and Sundance Energy, Inc. v. Mark Libersat and Roxanne Marie Gilton, No. M-18-0046-CV-B**COURT** McMullen County District Court, 156th, TX**DATE** 11/16/2021**PLAINTIFF****ATTORNEY(S)** Corey F. Wehmeyer; Santoyo Wehmeyer P.C.; San Antonio TX for Sundance Energy Inc., SEA Eagle Ford, LLC
John W. Ellis; Santoyo Wehmeyer P.C.; San Antonio TX for Sundance Energy Inc., SEA Eagle Ford, LLC**DEFENSE****ATTORNEY(S)** Robert L. Theriot; Liskow & Lewis; Houston, TX for Mark Libersat, Roxanne Marie Gilton

FACTS & ALLEGATIONS In 2018, plaintiff SEA Eagle Ford, LLC, an oil and gas producer, and its parent, plaintiff Sundance Energy Inc., demanded a return of overpaid royalties for six division orders pertaining to wells in McMullen County. Three of the payments had been issued to Roxanne Gilton. Her division orders indicated a one-fourth interest, but in fact, she owned one-twelfth. The other three payments had been issued to Mark Libersat. His division orders indicated a one-sixth interest, but in fact, he owned none. Gilton and Libersat did not return the overpayments.

SEA and Sundance sued Gilton and Libersat. The lawsuit alleged breach of the division orders.

Plaintiffs' counsel contended that, by signing the division orders, Gilton and Libersat certified that the amount of their interest, or "entitlement decimal," was correctly stated. The division orders also included a promise to reimburse any overpayment if the entitlement decimal later proved incorrect. The orders also included a promise to indemnify SEA and Sundance against any expenses resulting from overpayment.

The defense argued that the payments were "voluntary payments" made with knowledge

of all relevant facts and circumstances, but the court did not allow submission of a jury question on that issue.

INJURY The plaintiffs sought recovery of overpaid royalties. Against Libersat, they sought \$639,486.18, and against Gilton, they sought \$646,608.92. They also sought \$90,000 in attorneys' fees against each defendant.

RESULT The jury found breach of contract by the defendants. It determined that the plaintiffs' damages totaled \$1,466,095.10.

SEA Eagle Ford, LLC and Sundance Energy Inc.

\$ 646,608.92 overpaid royalties (Gilton)

\$ 639,486.18 overpaid royalties (Libersat)

\$ 90,000 attorneys' fees (Gilton)

\$ 90,000 attorneys' fees (Libersat)

\$ 1,466,095.10 Plaintiff's Total Award

SEA Eagle Ford, LLC

Sundance Energy Inc.

EDITOR'S NOTE This report is based on information that was provided by plaintiffs' counsel. Defense counsel declined to contribute.