United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

JOSHUA ROPA, BETHANY ROPA	§	
	§	
	§	Civil Action No. 4:16-CV-00752
v.	§	Judge Mazzant
	§	
MATTHEW FOX, WAYNE ENERGY, LLC	§	
	§	

MEMORANDUM OPINION AND ORDER

Pending before the Court is Plaintiffs Joshua Ropa and Bethany Ropa's (collectively, "Plaintiffs") Application for Preliminary Injunction (Dkt. #7). After considering the relevant pleadings, testimony, and exhibits from the preliminary injunction hearing, the Court finds that Plaintiffs' application should be granted.

On October 13, 2016, the Court held an evidentiary hearing on Plaintiffs' Application for Preliminary Injunction. Having found that Plaintiffs satisfied the requirements of Rule 65 of the Federal Rules of Civil Procedure, the Court granted the preliminary injunction. The Court sets forth the following findings of fact and conclusions of law to support its grant of the injunction, which is based on Plaintiffs' submissions in connection with the preliminary injunction, as well as exhibits and testimony presented at the injunction hearing. Defendants Matthew Fox and Wayne Energy, LLC did not present any evidence at the hearing or make any submission to the Court in opposition of the injunction.

BACKGROUND

This case arises from a Joint Venture Agreement entered into between Plaintiffs, Matthew Fox ("Fox"), and Wayne Energy, LLC ("Wayne Energy") (collectively "Defendants"). Plaintiffs are residents New York and were introduced to Fox in April 2015. Fox owned Wayne

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Energy, a company involved in oil and gas investments in Texas. Plaintiffs were interested in investing into a Wayne Energy project. The project was to purchase, rework, and recomplete an oil and gas well in Upshur County, Texas, called the Glover #1B Well (the "Glover Well"). Fox explained that a 1% working interest in the Glover Well could be purchased for $25,000.

During initial negotiations, Plaintiffs received a Joint Venture Agreement by which Wayne Energy was the Managing Venturer and Plaintiffs were Venturers. Plaintiffs eventually signed this agreement, and Fox signed on behalf of Wayne Energy. Plaintiffs also received a Confidential Information Memorandum ("CIM") that provided the capitalization period for the project. According to the CIM, Wayne Energy was partially capitalizing the Glover Well. However, Plaintiffs later learned that Wayne Energy did not put any money into the project but was taking a 25% working interest for itself and raising funds for the other 75% working interest.

On April 26, 2015, Fox sent Plaintiffs an email and told them the Glover Well would take no longer than forty-five days to complete, with first revenue checks distributed within sixty days of that. This email exchange revealed that this project was Wayne Energy's first drilling venture. Fox told Plaintiffs that his prior company, Frisco Exploration, had drilled seventeen wells. Further, the CIM stated that Wayne Energy was a licensed operator with the State of Texas Railroad Commission. But, according to the Texas Railroad Commission, Wayne Energy was not a licensed operator. Fox represented Frisco Exploration's operator number as Wayne Energy's.

Through oral statements, emails, the Joint Venture Agreement, and the CIM, Plaintiffs believed the project would soon be completed and would start returning profits, so they invested an initial $25,000 for a 1% interest in the Glover Well. In a June 2015 email, Fox said there was a hold-up in funding, and he requested from investors an additional 10% ($250,000) so the

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Glover Well could be set for production in forty-five days. Plaintiffs invested additional amounts of $25,000 and $37,500 in reliance that these amounts were needed to move the project forward—gaining a 5.5% working interest.

By September 2015, Fox provided Plaintiffs with a list of work that had been done on the Glover Well, telling them it would be completed in about thirty days. Five months later, Fox said the well was drilled and logged. In March 2016, Fox stated he needed extra money for additional site work to bring the well online. Plaintiffs paid $50,000 for a 2% working interest, with an additional 2% being gifted to them. The next month, Fox convinced Plaintiffs to invest $25,000 for a 4% working interest, with an additional 1.5% being gifted. Fox said the site work was nearly complete, and he was just a few weeks away from commencing production. By this point, Plaintiffs had a total working interest of 16%.

Plaintiffs decided to fly down to the Glover Well site in May 2016. Plaintiffs met with Fox, and after particulars were discussed, they felt better about the project. The next month, Fox told Plaintiffs he was selling some of his interest to fund the purchase of adjacent mineral leases. Fox said if he waited until after the Glover Well came online and was reported with the railroad commission, the price of the adjacent lease interests would go up or someone else would outbid him. Plaintiffs wanted the project finished, so they invested an additional $77,000 for a 4% working interest, bringing their total working interest to 20%.

By email on July 17, 2016, Fox told Plaintiffs the well was only days from being online. Unknown to Plaintiffs, Wayne Energy had not purchased the Glover Well from Graward Operating of Tyler, Texas ("Graward Operating"), which owned 100% of the well. Also, operation of the Glover Well had not been transferred to Wayne Energy.

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Plaintiffs visited the Glover Well again on July 23, 2016, with Fox. Once on-site, Plaintiffs noticed little work had been done and were suspicious of Fox's representations. Fox assured Plaintiffs the well would be online by the end of the month. He said there were a few outstanding action items, but the project was done raising capital and all the work to be done on site had been prepaid. However, based on information from John Graham ("Graham"), President of Graward Operating, virtually nothing had been done to rework or recomplete the Glover Well. In fact, none of the work represented to Plaintiffs in prior communications had been completed.

Following Plaintiffs' visit to Texas, Fox provided Plaintiffs with the investor log for the Glover Well. According to Fox, the "Move over SG2" entries were investments in the South Gilmer 2 Well that were moved over to the Glover Well joint venture, because the South Gilmer 2 Well investment did not work out. Also, Fox claimed only $452,500 in capital had been raised for the Glover Well project. Based on Plaintiffs' actual investment and those whose working interests were moved over from South Gilmer 2, about $740,000 had been raised for the Glover Well. Graham projected the Glover Well could be purchased and the project completed for $600,000.

Plaintiffs hired an attorney in Tyler, Texas, Steve Mason ("Mason"). On August 26, 2016, Plaintiffs and Mason met with Fox and asked him questions about the Glover Well project. Fox stated the entire amount of funds raised for the project was around $450,000, and all investment funds were paid to Graham for work on the Glover Well, which was paid in full. Fox also stated Wayne Energy did not have its P-5 operator status from the Texas Railroad Commission but was using Graham as its operator. Fox assured Plaintiffs that work would be done the following week.

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According to Graham, he was not engaged as operator of the Glover Well, the Glover Well had not been paid in full—$81,000 was still owed to him to complete the lease assignment—and none of the investment funds had been paid to him for work done. At the October 13, 2016 preliminary injunction hearing, Graham testified that Defendants had finally paid the full purchase price for the Glover Well.

Plaintiffs invested a total of $239,500 to Fox and Wayne Energy and received a 20% working interest in the Glover Well. To learn where their money was spent, Plaintiffs exercised their right to review books and records under the Joint Venture Agreement upon forty-eight hours' notice. Fox failed to produce the books and records as demanded when Mason arrived at Fox's office.

Plaintiffs filed their complaint against Defendants Fox and Wayne Energy on September 29, 2016 (Dkt. #1). Plaintiffs allege claims against Defendants for: (1) common law fraud; (2) statutory fraud; (3) breach of contract; (4) breach of fiduciary duties; (5) imposition of an express, resulting, and/or constructive trust; (6) conversion; (7) statutory theft; (8) violation of Texas securities laws; (9) violation of the Texas Deceptive Trade Practices Act; and (10) unjust enrichment.

ANALYSIS

Under Rule 65 of the Federal Rules of Civil Procedure, "[e]very order granting an injunction and every restraining order must: (A) state the reasons why it issued; (B) state its terms specifically; and (C) describe in reasonable detail . . . the act or acts sought to be restrained." FED. R. CIV. P. 65(d). Plaintiffs seeking injunctive relief must show: (1) a substantial likelihood of success on the merits; (2) a substantial threat that plaintiffs will suffer irreparable harm if the injunction is not granted; (3) that the threatened injury outweighs any

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