

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Greggory G. Tank,)	
)	
Plaintiff and Appellee,)	
)	
vs.)	Supreme Court No. 20130375
)	
Citation Oil & Gas Corp., Citation 2004)	McKenzie County
Investment Limited Partnership, Northern Oil and)	Case No. 27-2011-CV-00154
Gas, Inc., Otter Creek, LLC, G.G. Rose, LLC,)	
Ralph Cuellar and Sylvia Cuellar, DJB)	
Investment Company, LLC, Kevin P. Doyle,)	
Cyan Brakhage, Barbara Boaz, Margaret Sumter,)	
Petro-Hunt, L.L.C., Pillar Energy, LLC, Sasrana)	
Oil and Gas, Howard Gray, Linda Goldner, Scot)	
Farber, Paladin, Inc., Thomas Family Limited)	
Partnership, BB Management, LLC, Magic)	
Merlin Energy Investments LLC, Blue Ridge)	
Energy, LLC, BF Energy LLC, M Code, LLC, J)	
and J Energy, LLC, Jim Whitehead Oil & Gas)	
LLC, and other persons/companies "John Doe")	
whose interest does not appear of record,)	
)	
Defendants and Appellants.)	

APPEAL FROM THE MCKENZIE COUNTY DISTRICT COURT
SUMMARY JUDGMENT ORDER DATED APRIL 15, 2013 (FILED APRIL 17, 2013)
AND JUDGMENT DATED SEPTEMBER 19, 2013

NORTHWEST JUDICIAL DISTRICT

BRIEF OF APPELLANTS PETRO-HUNT, L.L.C. AND PILLAR ENERGY, LLC

John W. Morrison (ND ID #03502)
Paul J. Forster (ND ID #07398)
CROWLEY FLECK PLLP
100 West Broadway, Suite 250, P.O. Box 2798
Bismarck, North Dakota 58502
Telephone: 701.223-6585
Email: jmorrison@crowleyfleck.com
pforster@crowleyfleck.com
Attorneys for Appellants Petro-Hunt, L.L.C. and Pillar Energy, LLC

TABLE OF CONTENTS

Page No.

TABLE OF CONTENTS..... ii

TABLE OF AUTHORITIES iii

Paragraph No.

ADOPTION OF APPENDIX 1

STATEMENT OF ISSUES 2

STATEMENT OF CASE 3

STATEMENT OF FACTS 4

STANDARD OF REVIEW 6

LAW AND ARGUMENT 7

CONCLUSION..... 10

CERTIFICATE OF SERVICE 11

TABLE OF AUTHORITIES

	<u>Paragraph No.</u>
N.D.R.App.P. 28(j)	2
N.D.R.App.P. 30	1

ADOPTION OF APPENDIX

¶1 The Appendix filed by Defendants-Appellants Citation Oil & Gas Corp., et al. is hereby adopted pursuant to Rule 30 of the North Dakota Rules of Appellate Procedure.

STATEMENT OF ISSUES

¶2 The Statement of Issues set forth in the Brief of Defendants/Appellants Citation Oil & Gas Corp., et al. (“Citation Brief”) is hereby adopted.¹

STATEMENT OF CASE

¶3 The Statement of Case set forth in the Citation Brief is hereby adopted.

STATEMENT OF FACTS

¶4 As admitted in the Complaint, Defendants-Appellants Petro-Hunt, L.L.C. (“Petro-Hunt”) and Pillar Energy, LLC (“Pillar”) are the owners of working interests in the oil and gas lease at issue in this action (the “Subject Lease”). *See* Compl. ¶ 4; App. 18, Exh. A to Compl.

¶5 For the remainder of their Statement of Facts, Petro-Hunt and Pillar adopt the Statement of Facts set forth in the Citation Brief.

STANDARD OF REVIEW

¶6 The Standard of Review set forth in the Citation Brief is hereby adopted.

¹ Various portions of the Citation Brief are adopted pursuant to Rule 28 (j) of the North Dakota Rules of Appellate Procedure.

LAW AND ARGUMENT

[¶7] The Law and Argument set forth in the Citation Brief is hereby adopted.

[¶8] As a summary, the District Court erred when it held that the Subject Lease expired as to the SW1/4 of the Subject Lands by virtue of a Pugh Clause in the Subject Lease. This conclusion was incorrect because the Pugh Clause here expressly provided that it could result in a partial expiration of the lease only “at the end of the one year period from the end of the primary term” of the lease. App. 21, Subject Lease ¶ 16. In other words, the Pugh Clause was only effective at a single moment in time—at the one-year mark from the end of the primary term of the lease. As explained in the Citation Brief, there was production on both the NW1/4 and the SW1/4 of the Subject Lands at the end of the one-year period following the end of the primary term, and so the Pugh Clause did not cause the Subject Lease to expire as to the SW1/4 of the Subject Lands. Citation Brief at ¶¶ 20-32. The District Court also erred in finding that the Pugh Clause severed the Subject Lease, because the Subject Lease did not contain language directing a severance. Citation Brief at ¶¶ 33-40. Finally, the District Court failed to give effect to a continuous operations clause in the Subject Lease. As explained in the Citation Brief, even if the Pugh Clause operated to divide the Subject Lease, continuous operations have been prosecuted on spacing units encompassing the SW1/4 of the Subject Lands. Citation Brief at ¶¶ 41-48.

[¶9] Thus, the Subject Lease was sustained as a matter of law.

CONCLUSION

[¶10] For the reasons set forth above, Defendants-Appellants Petro-Hunt, L.L.C. and Pillar Energy, LLC respectfully request that this Court REVERSE the District Court's Judgment dated September 19, 2013 and ORDER that the District Court enter summary judgment in favor of Petro-Hunt and Pillar.

DATED this 31st day of December, 2013.

CROWLEY FLECK PLLP
Attorneys for Appellants Petro-Hunt, L.L.C. and
Pillar Energy, LLC
100 West Broadway, Suite 250
P.O. Box 2798
Bismarck, North Dakota 58502
701.223.6585

By: /s/ Paul J. Forster
JOHN W. MORRISON (ND ID #03502)
PAUL J. FORSTER (ND ID #07398)
jmorrison@crowleyfleck.com
pforster@crowleyfleck.com

CERTIFICATE OF SERVICE

[¶11] I hereby certify that a true and correct copy of the foregoing **BRIEF OF DEFENDANTS-APPELLANTS PETRO-HUNT, L.L.C. AND PILLAR ENERGY, LLC** was on the 31st day of December, 2013, served electronically on the following:

Dennis Edward Johnson
JOHNSON & SUNDEEN
dennis@dakotalawdogs.com

Lawrence Bender
Amy L. De Kok
Jillian R. Rupnow
FREDRICKSON & BYRON, P.A.
lbender@fredlaw.com
adekok@fredlaw.com
jrupnow@fredlaw.com

/s/ Paul J. Forster

PAUL J. FORSTER (ND ID #07398)