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Supreme Court of Texas.
Dominion Oklahoma Texas Exploration and Production, Inc.,
v.
Castle Texas Oil and Gas Limited Partnership, Delta Petroleum Corporation, and
BWAB Limited Liability Company.
No. 05-0739.

November 15, 2006

Appearances:
T. Brooke Farnsworth, for petitioner.
Laura B. Rowe, for respondent.

Before:

Chief Justice Wallace B. Jefferson, Don R. Willett, Harriet O'Neill, David M. Medina, Paul W. Green, Nathan L. Hecht, Dale Wainwright, Phil Johnson, Scott A. Brister

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PROCEEDINGS

COURT MARSHALL: Be seated. The Court is ready to hear argument in 05-0739 Dominion Oklahoma Texas Exploration and Production, Inc. versus Castle Texas Oil and Gas Limited Partnership.

ORAL ARGUMENT OF BROOKE FARNSWORTH ON BEHALF OF THE PETITIONER

JUSTICE: May it please the Court. Mr. Farnsworth will present argument for the petitioner. Petitioner has reserved four minutes for rebuttal.

MR. FARNSWORTH: Good Morning.

JUSTICE: Good Morning.

MR. FARNSWORTH: Brooke Farnsworth for Dominion. Each time in the private sector at least do non-sophisticated business detail to eliminate or at least redefine the voluntary payment rule. This is because at one, counter-intuitive; two, it has lead to inconsistent resulting in courteous escape over time; and three, it's not justified.

JUSTICE: What impacted the new-- does the BMG case have on this.

MR. FARNSWORTH: I don't think that BMG case has any impact to the

fact that this Court correctly pointed out in BMG decision. Section 6 of the new draft restatement, comment (c), clearly says that, in that situation where you have a agreement entered into between this case BMG and the various recipients of the software or the the disk. The-- there is the allocation of risk of whether or not these payments were in fact a discretory penalties or whether they we're that justified. They thought BMG-- and BMG's cost for you-- for late payments. And Court correctly pointed out that on the reinstatement in the definition I would submit the Court needs to adapt, the result to be adapted. Briefly the facts: In July of 1977, let me call it Sand Co., owed a series of oil and gas leases, in what became a very prolific Southwest Speaks fill than Iraqi County does. It's all these leases and retain-- one more thing that retain was an overriding royalty, a sliding scale that depended upon the then existing burdens on the lease on the overwrite text. In March of 1980, Texas sell the Delta releases, resell the main fuel to TXL and sale again. And in that sale document it retained an override that was major between the deference of the then existing March 1980 burdens in 25 percent. Essentially saying that if the existing burden's worth 25 percent will be zero. Next, the rock along whereas we're drill for the production was obtained. In mid 1990's there's a company called "Costilla Energy" acquired an interest in the Southwest Speak and filled in particular required a 100 percent interest in the "Mitchell lease." A lease that we're talking about in this case. A drill, a very prolific gas fuel and as it's common name in industry get it commission. A type of examiner to say, "Okay" how do I divide the proceeds if that retains in the production of this way. In October 1977, a title opinion was issued in which a type of examiner can't reverse the situation. And said, the Petrosil Override can be considered first allow Mr. St. Martin II. Pursuant to that title opinion is again common in the end script, Costilla's set up division orders. And said, each division orders are here is the interest we thank you on. We would like you to confirm or certify that partnership. Embread, this Castles' predecessor signed the division order. Came back in just a year, ended up for making the writ. In July of 1999, Castle acquired an Embread's interest and was part of the transfer-- Costilla's said, he has signed the division order. And that division order was identical and said: we certify the interest 10.6 percent set forth in the title opinion rendered in October of 1997.

JUSTICE: Let, let me just interrupt you for a minute.

MR. FARNSWORTH: Sure.

JUSTICE: In BMG the plaintiff said, that "if you pay a claim in the basis of unknown uncertainty."

MR. FARNSWORTH: Correct.

JUSTICE: Then volunteer can have breakings.

MR. FARNSWORTH: Correct.

JUSTICE: And this title opinion states that it relies on a particular assumption. And apparently, that assumption was wrong. And therefore, doesn't a statement that it relies on the assumption isn't that analogous to in uncertainty, that we're kicking on the application of voluntary payment rule whether it's more fact, it's just that -

MR. FARNSWORTH: I don't -

JUSTICE: - it expressed uncertainty.

MR. FARNSWORTH: - I don't believe the title of opinion cited was uncertainty as to how you overwrite the line up. But I think that title opinion said was un-- uncertainty as to whether the Liles/St. Martin Override insistent. So there is an argument that when Liles/St. Martin saw their working interest along with it when they override. But they

said: Since it had been paid we won't question that. We could not determine from the title opinion, why the examiner lined them up there recently. She didn't explain herself. And I frankly entered in to the conversation that she wasn't able to do so either. All we know is she did ...

JUSTICE: But she said, "we're making assumptions based on underlying document."

MR. FARNSWORTH: Oh, sure. Absolutely. She examined all the documents and essentially determined the interest of everybody based upon the review of doctrine by Judge Green.

JUSTICE: And if he said, we're relying on underlying assumptions. May in depth, look at these underlying assumptions to see if they're accurate. Aren't you sort of analogously paying in the face of that-- they said, that recognized assumption or uncertainty and while bidding that kicking the voluntary payment rule.

MR. FARNSWORTH: Oh, in your guess entry what happens is title examiner is retained attribute his highly intelligent opinion. That opinion is, is issue-- off time there are several requirements. Presumptions in requirements of course are reviewed by the, by the company. Will then says: "Look, well you're make to do the surety or will waive security." But they send out division orders saying to everybody to claim an interest. Again, the title, title opinion says has an address confirm for statistics that you own. To some degree there's a check and balance to what the operator see is in this title opinion. I mean yes, we could say that every time an operator pays an owner in the State of Texas or some in surety. Coz' anytime you're looking into instruction of documents. Someone has to interpret those documents to find out what they say.

JUSTICE: And if you misconstrued, is that a mistake of fact or law?

MR: FARNSWORTH: I submit it's a mistake of fact. I'll get to that a little bit in just a moment, if I may.

JUSTICE: Which title opinion are you talking about? The first or the second?

MR. FARNSWORTH: The October 19, 1997 title opinion was on the "Mitchell lease" done by Ms. Hailey. The second title opinion that talked about Dominion was done by Charles Anderson in, in March of 2002. Only in April of-- in April of 2000, Dominion and a bankruptcy auction essentially buys for a hundred and twenty-five million dollars all of his tedious assets. One of which is the "Mitchell lease." They continue doing what Costilla did. And in early 2002, Mr. St. Martin calls and said: "Look how do I get 4 percent. I think I should get five." Before the documents he look at them, our Charles Anderson and say you've done title work for Dominion Southwest Speaks. So tell us what's right. Charles goes in and looks at it and says, Ms. Hailey lined them up though. She should have counted the Liles/St. Martin Override first, and give him at 5 percent. And the "Petrosil Override" or the Castle Override second which reduce to them from 10.6 to 7.1. Based upon that second title opinion, Dominion founded the territory judgment action about the accounting of this case to have the Court determine who is right. It started paying Liles and St. Martin the amount set forth in the Anderson opinion. And he started attempting to recoup over payment's to Castle. In May of 2000, Castle having sold exemptuous to Delta and BWAB-- those who we could not stop. Dominion essentially refute approximately 97,000 and have still to recoup almost 800,000. In May of 2004, on motions for summary judgment-- the trial court unlock accounting rule that the Anderson opinion was correct.

They override willness in Liles and ordered Castle to make restitution. In July 2005, Thirteenth Circuit affirmed the trial court's determination on the alignment of the override royalties, but reversed saying the voluntary payment rule prohibited Dominion in gaining the reimbursement. Now -

JUSTICE: It seems to me like in BMG, we said "payment has to be made in the place of notice do not certainly but recognized to uncertain." So for the literal wording of BMG to apply seems to me, you would have to known the interest worth properly abandoned paid anyway. But -

MR. FARNSWORTH: That, that she's -

JUSTICE: - the question this case seems to present is-- if there are warning plugs that show, you should have known. That's the payment voluntary payment rule applied. Now I, I agree your position is, in a wit for allowing these assumptions-- and, and that's not necessarily warning plug which we're granting. But I think that's the argument that they're making. And how do you address the sort of should have known piece.

MR. FARNSWORTH: Well, I think if you apply the newly state you essentially get the same place or recognized uncertainty. Once you've recognized uncertainty, clearly it wasn't to here because Castle believed the title opinion it got. It issued division orders-- again a customer in the industry say, "Tell us if we're right." And Castle said: "Yeah, you are." So there is no uncertainty that they, that they take to take their kind a anyone to change until Mr. St. Martin called Dominion and said, "Gee, I have not get enough." Now, why Mr. St. Martin signed his own division orders for a lesser amount-- I have no clue. But when he called and said, "I should get file in my form-- If you look at the situation hard to tell the examiner that would be in my view when I recognized uncertainty would take place." When it was calling our attention. And that one down occurs there may have been some time between which call our attention and totally got the title opinion. Once I get that title opinion, assured is actually concludeness put it. So I say, the voluntary payment rule has lead to inconsistent results. I want to talk about two cases. The Pennell versus United Insurance, the 1951 decision of the Thirteenth Circuit held and had on in this case. This Court rule that in, in-- there was a situation whether or United Insurance had issue to disability policy. Providing for Dublin indemnity in the event the injury in a car purely of a passenger type. Injury took place in a jeep. United, pay double indemnity payments for time. Since said, "Gee, I made a mistake. I want my double payments back." This Court said: No, it was a mistake of law and you can't recover that. However, fast forward 21 years to 1972, the decision has assigned the Twentieth Court of Legal Appeals in Singer versus St. Paul Mercury Insurance. The question was the insurance-- Singer have an insurance policy on Delaware. On the same property was a small outlet. The Outbuilding firm who file the complaint. St. Paul came out. Did the examinations said: "You are false and currently inactive. They issued a draft for the, for the loss, and in set up we made a mistake. You shouldn't have issued this draft. We want our money back." Certiorari of Court of Appeals said, that's a mistake of fact. You should get your money back. This Court cannot order that decision. The second problem that the voluntary payment rules. What is a mistake of fact, what's a mistake of law? The Court Appeal's said: The interp-- interaction and interpretation of the legal documents is a question of law not fact. Attest to Farnsworth and in 2004 law of contracts said: "In interpret-- when a Court interprets a contract, it takes an--

ambiguous contract. It takes the words used by the parties and determines what they need." That's a determination of a fact, not law. The 1937 Restatement of a Restitution has, has a sided favor by the Commission, by commit-- by the First Circuit in Houston 1991 Community Mutual Insurance versus Owen said that the mistake of law, is a mistake as to the legal consequences of an assumes state of facts.

JUSTICE: So when the attorney says: This is the interest for calls productions company from this, this is-- in this horizon. But in fact it was coming from different horizons. Is that a mistake of fact or law, of law -

MR. FARNSWORTH: I will say that it's a mistake of fact.

JUSTICE: - even though I hired the attorney to tell me what the first, what the-- a man I should pay is. The attorney is giving me up, giving me and charging me a legal opinion.

MR. FARNSWORTH: That's correct. At these dealings it, it is an interpretation to documents would try, would try to translate a mistake of the law-- The mistake of fact -

JUSTICE: - restatement, third says because of hypothetical's like mine. There's no way you could be able to separate. Questions of fact, questions of law ...

MR. FARNSWORTH: - that, that's, that's correct it does a -

JUSTICE: Let me ask you on the-- Well, I'm sure you knew it. Are familiar with the, with the Apache case under the District Court of Appeal a couple of months ago?

MR. FARNSWORTH: I'm not. I'm concerned if instead of Castle Oil and Gas Limitedmanship doctrines I suppose on a Limited Partnership. If this had been with a lady sitting on the other table. We can set money and spend it to live on and the same rules going to have to apply to her that applies to him. And we run in the problems we mentioned in BMG and Bolton that with a lady takes the money has spends it now. Sue her if it pays back three quarters of a million dollars. There is some inequity there.

JUSTICE: There is a chain, but you can't hold that on change of circumstances. If you were, if you were to call one of the things a restatement said, is to have a change of circumstances that is a ground for not granting restitution. And a ground that, that the Court have upheld. This Court in any occasion that said, if the party is to change, change their position if you will based upon a mistake. No restitution will take place.

JUSTICE: So you pay everyone of your interest owners the wrong amount. The doctrines have to pay it back, but with the ladies can't keep it.

MR. FARNSWORTH: Well, I'd be high here again you talk about change -

JUSTICE: Is that the rule of law or is that the rule of welfare.

MR. FARNSWORTH: Maybe the rule of equity. But clearly I think under the either the restatement or quite frankly under the voluntary payment rule, they should be required-- both should be required to pay back. Whether the lady would be able to renounce, that'd be another question -

JUSTICE: But she-- so we decide the voluntary payment rule but finding how much asset you got now. Part of it would be to paid back. That's going to be a problem.

MR FARNSWORTH: Well, I don't mean-- no I don't think that's how long voluntary payment rule works. Voluntary payment rule as, as I think it should work without being rid of mistake of fact which mistake of law of distinction. If in fact you've been an erroneous paint of

mail there should be restitution. Now, whether there are circumstances that might impact that-- is something I think that the I haven't quite frankly look at the re-draft of restatement about that. That there are who talks about change circumstances on cases as I change circumstances. If the recipient has changed his position and reliance on the payments occurs that they had no restitution.

JUSTICE: And that is an effect, don't you think just a way of applying standard, restitution or estoppel or waiver or ratification of law, rather than coming up to pay new animo called voluntary payment rule.

MR. FARNSWORTH: Absolutely, your Honor.

JUSTICE: You got existing doctrines to cover the situation you're talking about.

MR. FARNSWORTH: That's correct.

JUSTICE: Any further questions? Thank you Mr. Farnsworth. The Court is ready to hear argument from the respondent.

COURT ATTENDANT: May it please the Court. Ms. Rowe will present argument for the respondent.

ORAL ARGUMENT OF LAURA B. ROWE ON BEHALF OF THE RESPONDENT

MS. ROWE: May it please the Court. I'm Laura Rowe here for respondent, Castle. I think that the most important point I could try to make today is that this case seems a classic-- simple example of a mistake of law. That doesn't justify abandoning on approgating the important policy behind the voluntary payment rule that this Court -

JUSTICE: Well, I, I understand on the briefing everyone seems to have said that we reinforced that decision in BMG, but I agree in BMG in that way. I thought BMG sort of did that fact to more stay tune as soon as that furthermore. And it's now fit's that hearing that within really-- we didn't really, we didn't really could have stand for prove a line, which is more of a behind the way if he's that as well. We didly more towards the restatement decision which was seen if there something in place to pay recognized uncertainty. And can you, can you read and try to fit it into the lower facts situation here. Can you address on that an analysis?

MS. ROWE: Absolutely. And I can say BMG and I think this case as well fit the test and about the draft restatement ended in the classic definition of the voluntary payment rule, as it's been used in Texas which is the distinction between the mistake of law and mistake of fact. And I-- to think BMG's says at one point of his will settle the intensive of mistake of law more excuse or isn't a defense to a voluntary payment. But this case I think like BMG because there is a recognized uncertainty would have fit on the test. And recognized uncertainty here is really a two respects. First, there is-- and everyone has agreed-- there's a recognized uncertainty in oil and gas type. That's what people do in title opinion that's why Dominion in this case wherein the private's interest when in a file be activated of it's own Senior Counsel said: "We will check with the diligence the lease to make sure we got as much enough revenue interest as we taught we we're giving under this title opinion." So Dominion did do some action or did go and look and say under that original title opinion, that Hailey [inaudible] we're going to get at least 71 percent of the net revenue interest here. To check, to check that what I did in check

was for the people that we owe the rest of the two is not correct. We didn't bother to go there. They just look for themselves and said: "What unnecessary I want look it arrest. I want to just make sure I'm going to get that."

JUSTICE: Would they have an obligation to do that?

MS. ROWE: I think, your Honor-- certainly it's the better policy that the obligation be amended by not just be a put check for themselves and leave the -

JUSTICE: Well, at the -

MS. ROWE: - royalty owners than abadoning the way of the lady.

JUSTICE: - at the batch of two diligent issues is usually done by settling records, logbook in everyone it would be preemptively expensive.

MS. ROWE: That I think, that's true your Honor. But I think what this suggest-- has nothing to do with the sampling of record inspect to with the choice in Pennell and said, I just want to check out mine in my own interest. I don't care about what everybody else; I don't care if it's right. I'm not contesting on something I want to choose to do -

JUSTICE: But no, what did anybody do or say that recognized the amount there have been an overpaying was a cause of a recognized uncertainty.

MS. ROWE: Well, first of all I think that there is an inherent ...

JUSTICE: Other than oil and gasses is always uncertain and who knows even though we've been paying people for hundred years this amount, who knows that it's the right amount. I mean in this, in this case focus or anybody said or did a suggest that they run certain.

MS. ROWE: In the first title opinion, the Hailey title opinion there was a dispute about whether or not the "Petrosil Override" should bear the expenses at the Liles/Besama Override. And there is three or four different legal theories about menote. Surely legal theories was the Liles/Besama Override an existing burden of record at the time that a Petrosil Override was created. Such that it should bear on Petrosil's 25 percent mines. In other words, in the simplest theory I think to understand what I thought was whether it didn't when the Court of Appeals was that the Liles/Besama Override was an existing burdens of record because it had not vested at the time that the Petrosil Override was created. Because there we're-- if it's a deep well override or in a "Deep Zones." And the rest was in the production in the "Deep Zones" when a Petrosil Override was created. And in fact this interpretation is exactly what everybody lived with, for the entire that time. TXO agreed-- I mean TXO such play also in another payment also it said "you're right we'll never going to bargain the Petrosil Override with the Liles/Besama Override. So that's what the type of examiner in their couple of the fear to defraud with the way and to become run out their way into their best." But it was a legal term of art existing burden of record. And the legal dispute was whether or not in again the three or four theories about whether or not the Liles/Besama Override was an existing burden of record in 1980 when Petrosil Override was created. And that's-- that was certainly a dispute that is disputed in the Hailey opinion that's why she reached her label conclusion. And in fact know the Petrosil Override shouldn't have the Liles/Besama Override deducted from it's value. And what's really interesting here is that the second title opinion on which Dominion now relies the Anderson opinion. Exclusively recognized is this dispute it says: "You know, we know that the other people see it the other way." There's a issue about this thing. And if you can look at that in the record I think it should 335.330 cents. And I exclusively recognizes that there's been a legal

issue and a legal dispute about whether or not the Petrosil Override should get the cost of the Liles/Besama Override.

JUSTICE: About the argument that Dominion knew the legal obligation to pay the override payments. That is made a mistake of-- I'm not matter from a mistake of fact in computing the amount.

MS. ROWE: That's a different case. That's certainly not what happened here. And in fact, I can direct the Court's attention to in a- - excerpt from the record that I have distributed this morning. And it's a proof of the example and this is from the first title opinion, the Hailey opinion take place on legal conclusion that the Liles/Besama Override didn't have a bearing in Petrosil Override. Ironically, there's a mistake of fact in this title opinion, that nobody has noticed as I was looking at it. I think maybe you can just ask me as to that. And about on the second page -

JUSTICE: We don't lay another lawsuit because of that?

MS. ROWE: Hopefully, we're going to start this all today, your Honor but-- and you look at the second page at the Overriding royalty interest. You see St. Martin and Liles. And as if they don't have 2 percent at 8/8ths? If you look at the farther column, one can check correct from the decimal percentage but the second is a 20 percent. That can be a mistake of fact, that they have a classic accounting error. If it's infinite until to the paydays and it was and may there's no dispute on another thing with between the parties. Liles and Besama worth pay 4 percent, they we're paid 22 percent. That in mistake of fact. That's a classic example of mistake of fact. But what we had here that include in a system it didn't matter. That you like go for well, that you like a whole case. What we had here was a different legal interpretation about whether or not the Liles/Besama Override should bear on "Petrosil Override."

JUSTICE: When you started you talked about the important policies behind the voluntary payment rule. That could public sector voluntary payment rule to decide. He is talking about in private sector in this case. If I owed just a as heck money and I pay I think I owe you a money, and I pay it for two years. And there relies our hope would have been paying it too much. Then we did it to a dispute about whether I can get it back from the part that I will pay. There is the doctrine of waiver which can be proven or not proven, there's a estoppel, a ratification; there's restitution all established doctrines in the law of that can determine whether or not I get some of the money back. Undisputed though, that I were paid. Why can't we rely on existing well defined doctrines to determine who wins that dispute about the excess payment. And let me just clarify, there's no dispute here that hocus paid by Dominion was more than they were required to pay. Is that true? I didn't see anyone contested that proposition.

MS. ROWE: Not in this Court. It is contested below.

JUSTICE: But not -

MS. ROWE: - that's all-- we disagreed and said we are entitled to have the full of Petrosil Override production deduction of gas ...

JUSTICE: Well, this Court is not disputed that Dominion was, Dominion over paid.

MS. ROWE: They just not.

JUSTICE: So then back to my example. Why can't we rely on waiver, estoppel, ratification those existing doctrines rather than rule that says, "I don't care to you, I'm entitled to get it back. They can't get it back if they paid it as well."

MS. ROWE: Well, Justice Wainwright I think that there are several- - certainly those doctrines are available and this case was our was

certain to try without the benefit of your concurrence and in the BMG. And we must try to begin up surety that there's doctrines would be raise. But they're not raised in this case. But I think the policy under opinions on the voluntary payment rule are the most specific and as this Court said in BMG-- This Court is interested in protecting finality of payments in Texas. And the voluntary payment rule thus that it draws a line it says: "We don't want people continue doing back to the Courts, we're going to draw a line here and protect the finality of payments." When people make mistake of -

JUSTICE: Put all, put all payments.

MS. ROWE: No. When people make a mistake of fact. We draw the line of mistake. We understand that's entitle when that in that title opinion it says 20 percent not 2 percent that's better. Gee, you know, you know you did me the payor you told that told me that twice. And that the company shorten didn't expected it your attribute payments for me. But when the plaintiff have a different expectation as in this case that everybody thought that the original title opinion was correct. If it breach it's illegal conclusion and everybody got pay under that whole opinion. It's, it's a different policy. We want to enforce the policies at the parties expectations here. So far in forth if we will all wrong under mistaken conclusion need a lot ...

JUSTICE: Well, let, Let's stop there. So, so I'm receiving the royalty payments. And I got $750,000 for two months and I'm Dale Wainwright, in that for example. You think my expectation would be that I still should be allowed to keep it. As a, as a lay person, a member to public who has not read all this restatement in case all about the voluntary payment rule.

MS. ROWE: As if you're be imposing it, it the whether or like Castle in this case will be enforcing the expectations of parties. When Dominion buy it's interest in this case, he thought he was giving a 71 percent net revenue interest. They thought it had burdens at about 29 percent including the 4 percent Liles/Besama Override if in thought it wasn't the time. And 20-- 12, 12 and a half percent of the royalty holders. And that 12 and a half percent of the overriding royalty for Petrosil. They thought they have 71 percent net revenue interest. That's what they paid for let's have a value of transaction as to deactivated of the Senior Counsel says: "Castle on the other hand body had about it at 12 and a half percent overrides should extent to 96 percent of the 12 and a half percent which is my expected 10 percent." And that's why if this start we could also get complicated. But the parties expectations bore is halfline in the legal opinion-- in the Hailey opinion. So it's not in anything, now Dominion under the Anderson title opinion is got about at 75 percent net revenue interest. All of a sudden, data had better deal that may bar before. Indifferent. That's great. But in Castle gotten the worst deal. This is in the zero that's why I'm getting here. Dominion's can in the put more money on it's pocket coz' it this interpretation. And it's more money then they thought they we're giving with the required their royalty interest. So in that case the equity especially when Dominion chose to say "We just want to check out and make sure we are paying for we're not be worry about our royalty interest." And they're the one's with all the information and all the facts she'd certainly charge the royalty holders. To say the duty or it would be economically efficient to get 20 title opinions for obligation of royalty. Dominion of one has the obligation to pay. It has the facts about knowing what to pay. Certainly in that case it's appropriate to say for change it going forward the law under mistaken conclusion of the law or we don't want

to change it in fact. At designated -

JUSTICE: [inaudible] Ms. Rowe that were in the Fourteenth Court's opinion in Apache a couple months ago.

MS. ROWE: Yes. And in Apache I think a little bit like this case. It's a mistake of law case. Mistake as to the ownership of the compensate. And the Court applying the classic, simple, old style voluntary payment rule as she will. And said: "you can't get, you can't recover for the overpayment for the compensate. Is she paid 'coz there-- you did now comment to commence anyone." And I think that case like this case we're also probably fall on the same under voluntary payment rule as classically defined or under the new professor statement. But I think it's important for the Court to recognized that the proposed draft statement does change laws the way in Texas. It's going to be generally speaking at our affirm nor more claim-- claims of restitution. It eliminate the mistake of law, mistake of facts distinction it, it-- the purpose here draft adapted in draft restatement and -

JUSTICE: Which we don't have to adage.

MS. ROWE: Absolutely not, your Honor.

JUSTICE: Now, if there is a recognized to uncertainty in Dominion is assure find it-- in Dominion paid anyway and you're going to win a waiver or estoppel or something when you go back down edge. 'Coz they-- there's a debt, they we're uncertain about whether to pay it or not. Could it disputed and instead they paid debt.

MS. ROWE: Well, I'm hoping that we don't have to go back down, your Honor. First of all, but uncertainly we'd think we could win under these doctrines but I think the start is don't necessarily adore us. All the concerns in the voluntary payment rule which involve protecting these finality of payments. And allowing a page don't head in rely on it's payments. And I think the whether ladies not a bad example here are showing -

JUSTICE: - or protecting the finality of payments is an important goal, but someone can argue that protecting wrong full payments is a different goal and maybe more important there are in some instances. That the payment was improperly or inaccurately made. Some-- I'm not sure we can just say blinkedly-- finality of payment should justify everything going on with the VPR voluntary payment rule.

MS. ROWE: I agree. I think it's attention in there set a place to set the mind before his judgment set the line between mistake of fact and mistake of law or at least Texas on generally has over the last 30 to 50 years. It's sort of a shabby track-- it's a workforce. It's a rule that is inflexible and that's equitable rule and it has worked pretty well. I submit and even made the drafting restatement-- is a little bit of the shiny new car that can-- they crushed us just to get in, as if it has passed this emission standards and we don't really know how it's going to work. And the way I that context we filed corporate cases that bind voluntary payment rule. And generally do it, pretty done well. It's easy to state a fact or to stake a thought it's all on record. I think mistake of fact is just not the type of what is title opinion. It's just like "oopps." Do you know the price of oil and the Gulf case is 315 over productive at the transportation. Nobody is disputing whether or not what the real price was. Everybody knows that in terms of contract says the meaning of those terms. Here we had a disputes, the meaning of the terms of the contract. And that changes is the the equities a little bit. I think there's one interesting point to be made under the comments to the new draft restatement and specifically, in comment D, Section 6. The draft of the statement says:

That "the party making the payments seem to risk that a relative factors other than supposed the payment was not becoming voluntary." And I think that applies here too, as well. Because Dominion did take home the rest of the facts with the other. The factor of royalty owners would be other than they seem to a Dominion just not to investigate those facts. Now, certainly Dominion have the underlying facts-- they have this title opinion and they have the two agreements. The agreements that creating the Liles/Besama Override and the agreement creating the Petrosil Override. They have those agreements. They chose to look at them according to the affidavit of the Counsel to have limited extent. And when I look at in that agreement limiting the extent, and this also works with Gulf Oil. And Hull would say if you consciously ignorant of the facts, you choose to be contestly ignorant. Do you assume the risk with the facts that you know you're going to have to pay royalties but I'm not going to investigate. If you consciously assume that risk, but consciously your ignorant I'm not to check that for now. I don't want to. I don't feel like it. I think it can again equities would bear to prevent recovery of the overpayment. Going towards differently, it will prevent recovery of the overpayment under that circumstances.

JUSTICE: But this indifference level point negligence.

MS. ROWE: About negligence?

JUSTICE: Yes.

MS. ROWE: Meaning, how it does affects negligence in the finite of facts.

JUSTICE:: Yeah, it's that negligence to both of conscious indifferences?

MS. ROWE: What call on Gulf Oil say and then mistake of facts cases. So I submit the tape of when you made a mistake of fact. Which is in this case here: Dominion did make a mistake of fact and a mistake of law. And mistake of fact case but Hull and Gulf Oil say if you we're just negligent on making your mistake of fact, we still maybe excuse you. And you can get the money back. But if you're consciously ignore instituting it, that's certainly not the case here. For one thing, Hull and Gulf Oil but that's the standard if you win, you to for cover in a mistake of fact case. It's not a standard that applies to mistake of law case. And-- But under that standard conscious ignorance, if it this what mistake of fact here they still vigor from uncover. If I can make one more point here, I think this is the really important context to the oil and gas, oil and gas context in Texas. That Dominion has cited example saying that oil and gas losses and the rest should have always be born by the, by the payee lessor with the royalty holders. And that actually not terminate. The Court looks at the commentator side in every single Texas case on in the oil and gas context deal in voluntary payment. Every payment in restitution says: "A mistake of facts you can recover, mistake of law you can't." And there's one affidavit to contact the case that says, when an input cover from mistake of law or mistake of fact. And it's alter it's, it's, it's the only case after query in oil and gas context that applies that whole. And there's also further statute in Texas that deals with division orders. And division orders aren't really an issue in this case. Nobody sued you to recover under division order. But I would like to point out to the Court that the statute in Texas that has it's, it's alternative division order which she can use only applies to oil and gas. This oil and gas files and it's in the record 5 exhibit that Dominion it sounds submitted. And I've say that cuts against any supposed policy for Texas about recovery of overpayment. And it also say and I think as discussed Court's by

Justice Brister said: "It's the lessee who has the knowledge and the resources to check out what's the appropriate way to pay." It's not the individual volunteers. It's not the widower lady. They got relied and they got protect the finality of opinion. And let them go ahead and use their funds as this Court said in BMG use your funds at federal. And spend them and go ahead and go on. And now we resolved here a-- of a different rule but be defraud. Everybody needs suspense and when or how [inaudible] way live about of what we take.

JUSTICE: Any further question?

JUSTICE: One, one more question. I don't recall seeing any amicus brief in this case. It's the industry just not really excited about how does it turns out either way.

MS. ROWE: I-- we submit that the-- certainly maybe we are certainly interested under circumstances.

JUSTICE: Thank you, Ms. Rowe. [inaudible] for rebuttal.

MS. ROWE: Thank you.

REBUTTAL ARGUMENT OF BROOKE FARNSWORTH ON BEHALF OF PETITIONER

MR FARNSWORTH: First of all just as Justice Wainright to have to announced, well, I'm a member of the Apache case. Apache case is we're in the natural gas gathering system liquid spill out. Liquid were not measured separately or dumping was an natural gasoline which is extracted in the plant. When Apache complaint about not getting paid in recognition you did know how much it owed. It was a check and scan. Again, the payment in view of a recognize uncertainty in which the payor never said, "Gee, I'm making assessment but I'm, I'm paying you preserving rights." Are you assuming a good check. A case correctly decided, Apache should keep the money. I'd like to discuss mistakes of fact and mistakes of law. We talked about the definition. In Columbia National Fire versus Dickson Colloc in 1925 Commission of Appeal's decision affirmed by this Court. And in Furnace versus Furnace at Fourteenth Circuit-- Fourteenth District decision in 1989 at Houston has said: "Mistakes of law or confined to mistakes of general rules of law, and ownership of private property including real estate are always mistakes of fact." I want to talk in final a little bit back. What happened here? Costilla grow the wells into unknown oil and gas reservoir, and commission the title opinion to say "Who owns, have much of this." I, I think though it was like pie. Costilla said: "Who owns the pie, how big slice shall we entitled to." They got eight out of ten. The opinion was wrong. It's said: Castle was entitled to a larger slice than the actual it's entitled to.

JUSTICE: Do you have a one set pies digested is sort to give it back. How do you address the equity issues raised by your adversary there in that would be your clienteles or company's like your client, that could better bear these type of expenses in the midchange of the prospect of the network prospect.

JUSTICE: Oh, I think what you have here your Honor is not a situation where there's a payment decline, not a debt. Castle didn't provide any service system, providing goods he was in there a invoice set. What you really had-- and this happens everyday in the oil and gas. And he was, was an operator on good faith says, "Gee, how much? How do I divide this pie? How much is everyone entitled to this? Castle got a bigger slice for a number of years then they we're no question

whether they are entitled to it." The title opinion said that. Trial Court said that. Court of Appeal said that. They don't even fail here. But no question. They got more a bigger slice that they should have got.

MS. ROWE: But non more than you counted on giving them when you purchase the capital.

JUSTICE: Actually that's not true. What Dominion did when he spend a hundred and twenty-five million dollars to, to buy these assets. Is it when he, I mean, it trying to determine was it entitled base on the documents to get that minimum net revenue of interest that they we're-- it was represented to them they would get. It didn't look at what the override was. And they've never looked at the documents. They just look to see how much they will get it clearly. They made some mistakes on the good side and made mistakes on the bad side. It is just part of the process and it part of the diligence. Not to say, "Gee, is there got the-- they're getting the correct override or allow the St. Martin Override." But does the economics justify the interest that is-- we look at just we see what we're going to get. You-- You're right. They did look at it. They did make a determinant, did they say, "Okay, it looks correct." The interest represented to us and they packagesly looked that to make a bid. Appeared to be consistent they consist to with the entitlement. They did do that. No question. No question that there's some mistake here. They got a bigger pieces of pie which they shouldn't have gotten. They should pay that back to the people.

JUSTICE: Thank you, Mr. Farnsworth. The cause is submitted and has been argued for this morning, Court Marshall will adjourn the court.

COURT MARSHALL: All rise. Oyez. Oyez. Oyez. The Honorable, the Supreme Court of Texas now stands adjourned.

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