



The Business Court of Texas,
Eleventh Division

DK TRADING & SUPPLY, LLC

Plaintiff

v.

WINK TO WEBSTER PIPELINE LLC

Defendant

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Cause No. 25-BC11B-0073

MEMORANDUM OPINION AND ORDER

¶1 Before the court are the Traditional Motion for Summary Judgment filed by Plaintiff DK Trading & Supply, LLC (“Delek”), the response filed by Defendant Wink to Webster Pipeline LLC (“Wink”), and Delek’s reply. The parties presented their arguments at a hearing before the court on October 6, 2026. Having considered these filings, the supporting evidence, the parties’ arguments, and the relevant law, the court grants the motion in part for the reasons set forth below.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 The court summarized the facts giving rise to this suit in its first summary-judgment opinion issued on May 27, 2026. *DK Trading & Supply, LLC v. Wink to Webster Pipeline LLC*, 2026 Tex. Bus. 33, 740 S.W.3d 125 (11th Div.). This case arises from the parties’ 2021 agreements concerning crude-oil storage at, and

pipeline transportation from, a multi-tank terminal facility in Midland County, Texas (“the Terminal”). The dispute centers on these two contracts: (1) the Terminal Services Agreement (“Terminal Agreement”); and (2) the Amended and Restated Transportation Services Agreement (“Transportation Agreement”).

¶3 Under the Terminal Agreement, Wink agreed to provide Delek¹ with specified “Storage Capacity” for Delek’s crude oil, to maintain connection to the pipeline, to accept crude oil meeting either the Pipeline Tariff’s quality specifications (Tariff Grade) or Delek’s unique specifications (Delek Grade), and to stage deliveries to the pipeline. In turn, Delek agreed to reimburse Wink for specified operating and maintenance costs; to make a monthly terminal service payment; to provide minimum crude-oil inventory; and to make nominations as provided under the Transportation Agreement.

¶4 Under the Transportation Agreement, Wink agreed to receive Delek’s nominated volumes of crude oil and deliver equivalent volumes at specified destination points. Delek agreed to ship its volume commitment each true-up period or pay a deficiency payment, to pay Wink’s invoices on the stated timelines, and to tender product that met the Tariff’s quality specifications.

¶5 In its prior opinion, this court construed the parties’ respective rights and duties under both Agreements as a matter of law. By its traditional motion for

¹ Delek W2W, LLC was the original party to the Terminal Agreement; the parties do not dispute that its rights have since been assigned to Plaintiff DK Trading & Supply, LLC.

summary judgment, Delek now asks the court to rule as a matter of law that: (1) Wink breached the Terminal Agreement by failing to provide exclusive use of the two Delek Tanks for crude-oil storage, entitling Delek to over ten million dollars in damages; and (2) Wink breached and defaulted on the Transportation Agreement by overcharging Delek its “Deficiency Payment” in an amount totaling \$451,961. Delek also seeks an attorney’s fee award.

MOTION STANDARD

¶6 “A party that moves for traditional summary judgment must demonstrate that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law.” *Energen Res. Corp. v. Wallace*, 642 S.W.3d 502, 509 (Tex. 2022); *see* TEX. R. CIV. P. 166a. The court takes as true all evidence favorable to the nonmovant, indulging every reasonable inference and resolving any doubts in the nonmovant’s favor. *First Sabrepoint Cap. Mgmt., L.P. v. Farmland Partners Inc.*, 712 S.W.3d 75, 84 (Tex. 2025).

ANALYSIS

A. The court partially grants Delek’s motion as to the Terminal Agreement.

¶7 Delek first seeks a ruling that: (1) Wink breached the Terminal Agreement; and (2) Delek sustained damages equal to the terminal-service payments and operating and maintenance expenses it has paid to Wink. The court grants Delek’s motion in part. Wink failed to raise a fact issue as to breach of its duty to grant Delek exclusive use of its two tanks. But, on this record, genuine issues of material fact

remain as to damages. *See* TEX. R. CIV. P. 166a(c).

1. Wink fails to raise a fact issue concerning breach of the Terminal Agreement.

¶8 No party argues or pleads the Terminal Agreement is ambiguous, so it can be construed as a matter of law. *DK Trading*, 2026 Tex. Bus. 33, ¶ 8; *see Cmty. Health Sys. Pro. Servs. Corp. v. Hansen*, 525 S.W.3d 671, 681 (Tex. 2017) (holding that construction of an unambiguous contract is a question of law appropriate for summary judgment).

¶9 This court previously construed the Terminal Agreement’s mandate that Wink “shall provide services to Delek by providing the Storage Capacity for exclusive use by Delek to ship crude oil.” *See* Mot. Ex. A-2 § 2.1. The court held Wink must “provide crude-oil storage in two tanks to be exclusively used by Delek” (“the Delek Tanks”). *DK Trading*, 2026 Tex. Bus. 33, ¶ 10. The Delek Tanks must be available to Delek “at all times.” *Id.* This exclusivity promise governs “regardless of whether Delek is exercising its right to store Delek-grade oil and even if Wink now questions Delek’s need for its own tanks.” *Id.*

¶10 Delek submits inventory records to show that, in every month from December 2021 through July 2026, the Delek Tanks contained some volume of crude oil. Mot. Exs. D, D-1. According to those records, Delek’s expert witness who analyzed them, and Delek’s employee charged with issuing its nominations, the Delek Tanks contained crude even before Delek made any nominations to the Facility. Mot. Exs.

C ¶ 5 (declaring Delek nominated no crude to the Facility before February 2022); D-1 (reporting fluctuating volumes of crude in Delek Tanks in January 2022); G ¶¶ 14-22, G-1.

¶11 Wink points to no evidence rebutting its use of the Delek Tanks during months that Delek had not yet nominated any crude to the Terminal. To be sure, Wink had the right to substitute the two Delek Tanks, Tanks 125169 and 125170, for two other tanks within the Terminal, subject to certain conditions outlined in the Agreement. *DK Trading*, 2026 Tex. Bus. 33, ¶¶ 9, 11. But Wink does not claim it substituted different tanks for the Delek Tanks under the Terminal Agreement. *See* Mot. Exs. A-2 §§ 1.25, 2.2; B. Wink offers no other contractual justification that would allow third-party crude to be stored in Tanks 125169 and 125170.

¶12 Beginning in March 2022 and thereafter each month, both parties agree Delek nominated Tariff Grade crude for delivery to the Terminal.² Mot. at 8; Ex. C ¶ 5; Resp. at 15. Nonetheless, Delek’s expert concludes that the Delek Tanks were “used to store crude oil of parties other than Delek” during those months through July 24, 2026. Mot. Ex. G ¶ 22. Wink does not object to or present evidence contradicting that opinion, which relies on authenticated inventory logs, public filings, nomination records, Wink communications, and other detailed data concerning the Tanks. Mot. Ex. G. Wink instead responds that the inventory records reflect only the Tanks’

² Delek does not prove Wink placed third-party crude in the Tanks in February 2022, the one month it nominated Delek Grade crude to the Tanks. Resp. at 7; Ex. A-8 at 35-36.

volumes rather than the crude's shipper, source, or grade. Resp. at 15 (citing Ex. A-8 at 69-72; Ex. A-10 at 163-66; Ex. B-1). In other words, Delek does not prove "whose crude it contends was held in the" Tanks. *See* Resp. at 15.

¶13 "The Terminal Agreement grants Delek exclusive use of two tanks." *See DK Trading*, 2026 Tex. Bus. 33, ¶ 13. A breach of the Agreement's exclusivity clause does not hinge on identifying **which** third party's crude was stored in the Delek Tanks. The summary-judgment record contains uncontroverted evidence that Wink stored other parties' crude oil in the Delek Tanks during all relevant months except February 2022. Wink's use of the Tanks for third-party crude was a breach of the Terminal Agreement, so Delek's motion for summary judgment is granted on this ground.

2. Wink raises fact issues concerning damages for breach of the Terminal Agreement.

¶14 Delek also seeks summary judgment as to its damages under a benefit-of-the-bargain theory. "The purpose of benefit of the bargain damages is to place the seller in the same economic position he would have been in had the contract been performed." *MSW Corpus Christi Landfill, Ltd. v. Gulley-Hurst, L.L.C.*, 664 S.W.3d 102, 106 (Tex. 2023) (internal quotations omitted). "The general rule for measuring benefit of the bargain damages is to calculate the difference between what was promised and what was received." *Id.*

¶15 Wink does not controvert Delek's theory or evidence as to the Terminal

Agreement's value "promised." *See id.* Delek proves that the contractual amount Delek agreed to pay, and did pay, over the relevant years now exceeds ten million dollars. Delek's **value received** is the question, and it cannot be answered as a matter of law on this record.

¶16 Of the millions of dollars in value that the Terminal Agreement promised, Delek argues it received zero dollars in value. Mot. at 17. But the exclusivity of Delek's storage was not Wink's only promise made. Under the express terms of the Terminal Agreement, for example, Wink promised to "receive deliveries of crude oil meeting" either Tariff Grade or Delek Grade specifications, store the crude oil, and stage deliveries. Mot. Ex. A-2 § 5.1; *see* Resp. Ex. E ¶ 23 (identifying additional benefits of contract as "working storage, throughput capacity, or flexibility in receiving, staging, and moving" crude). Wink was charged with maintenance and repair of the Delek Tanks, along with certain indemnification and audit duties. Mot. Ex. A-2 §§ 6.1, 14.0, 15.0. Wink undisputedly has been receiving, storing, and staging Delek's crude for delivery, and Delek does not conclusively prove to what extent the Delek Tanks have been used for Delek's own crude as compared to third parties' crude.

¶17 Under the Terminal Agreement, "Delek could choose to store its own Delek-grade crude oil or crude oil satisfying the Pipeline Tariff." *DK Trading*, 2026 Tex. Bus. 33, ¶ 9. In every month but one, Delek opted to store only Tariff Grade crude. Mot. at 8, Exs. C ¶ 5, C-1. Wink submits expert testimony that "there is no

operational purpose or commercial benefit” to storing Tariff Grade crude in a segregated manner. Resp. Ex. D ¶ 14; *see also* Ex. E ¶ 17 (opining that Delek’s monthly payment “reflects the value the parties assigned to Delek’s right to ship a segregated crude grade”). Delek does not object to these experts’ opinions. Taking Wink’s evidence as true, the summary-judgment record fails to conclusively prove the extent to which the contractual value of Delek’s storage was impaired by having to share its Tanks with third parties.

¶18 Wink also presents some evidence that Delek has not been denied the right to store segregated Delek Grade crude in the Tanks, despite never having actually nominated any crude for segregation from the common stream. Resp. Ex. A-7 at 249–50; Ex. A-8 at 35, 74, 104–09, 113–14; Ex. A-9 at 194; Ex. A-11 at 189 (Wink agent testifying “segregated storage . . . [ha]s been available” and Wink has “been ready to operate and . . . perform” based on Delek’s option to ship “Delek-quality grade”); Ex. D ¶¶ 19, 24, 25 (describing process for preparing tanks for segregated crude as “routine” at the Terminal). Viewed most favorably to Wink as the nonmovant, the evidence raises a fact issue as to whether Delek has maintained its **right** to store its own, segregated Delek-grade crude—and as to whether that right has some value. *See id.*; Resp. Ex. A-7 at 162; Ex. E ¶¶ 14–18. Notably, Delek’s monthly terminal service payments were expressly calculated based on the cost of constructing the Delek Tanks. Mot. Ex. A ¶ 11; Ex. A-2 § 4.1. Though a Delek executive states that “[n]o other shipper” on the Pipeline is required to pay the

monthly Terminal payments that Delek pays, Delek has failed to conclusively prove that the existence of the Delek Tanks, taking as true their potential for segregated Delek Grade storage, has been rendered completely worthless.

¶19 In sum, the record reflects a fact issue as to the value of the services Delek received compared to the value it bargained for. Because these disputes would require the court to weigh evidence or resolve credibility, they present genuine issues of material fact that cannot be decided on a traditional summary judgment motion and must be resolved at trial.

B. The court grants summary judgment as to the Transportation Agreement.

¶20 As to the Transportation Agreement, Delek seeks a summary judgment holding that Wink overcharged \$451,961 as a miscalculated “Deficiency Payment.” Mot. at 9–10. The evidence establishes Wink’s breach and default as a matter of law.

1. Wink fails to raise a fact issue as to breach of the Transportation Agreement.

¶21 In its prior opinion, this court concluded under the Transportation Agreement that “[t]here is only one reasonable meaning to Section 7.03 and the calculation it requires.” *DK Trading*, 2026 Tex. Bus. 33, ¶ 21. Section 7.03 requires that Delek’s Deficiency Payment for each true-up period must be calculated by accounting for “every Barrel of Product actually shipped on the Pipeline during the True-Up Period,” regardless of whether Delek paid for those shipments with previously accrued deficiency credits. *Id.* ¶¶ 19–21, 49.

¶22 The calculation is:

$$\text{Deficiency Payment} = (\text{Volume Commitment} - \text{Actual Shipments}) \times \text{Rate Multiplier}$$

Id. ¶ 15. The Agreement mandates that Delek shall have the right to apply deficiency credits to its Deficiency Payments, that Delek shall pay Deficiency Payments according to the above calculation, and that Wink “shall submit an invoice to [Delek] for any Deficiency Payment that [Delek] owes” during the True-Up Period. Mot. Ex. A-3 §§ 7.03, 8.02.

¶23 Delek’s summary-judgment evidence proves that, for the True-Up Period ending July 31, 2025, Delek’s shipments fell short of its volume commitment, resulting in a deficiency. Mot. Exs. C ¶ 11, C-3, C-4.6; *see* Mot. Ex. A-3 §§ 7.01, 7.03. Applying the contractual rate to that deficiency amount yielded a Deficiency Payment of \$14,002,139. Mot. Ex. C-4.6. Because Wink invoiced Delek for \$14,454,100, Delek demonstrated that Wink’s invoice improperly invoiced Delek for \$451,961 in Deficiency Payments that Delek did not owe under the Agreement. Mot. Exs. A ¶¶ 17–20, A-5, A-6, C-4.6; *see* Mot. Ex. A-3 § 8.02. Wink does not object to Delek’s evidence, and it presents no contrary theory concerning breach nor evidence rebutting these facts or the amounts proven.

¶24 Construing Sections 7.03 and 8.02 as a matter of law, Delek has established a breach of the Transportation Agreement and is entitled to summary judgment on that claim.

2. Wink raises no fact issue as to its default under the Transportation Agreement.

¶25 Delek also seeks summary judgment as to the Transportation Agreement’s “Event of Default” clause. “Event of Default” is defined by a list of six alternative events, including “failure of the Defaulting Party to comply with any of its obligations under” the Agreement, contingent on specific notice-and-cure requirements. Mot. Ex. A-3 § 12.01(c). A default allows the other party an election of remedies, including termination. *Id.* §§ 12.02, 12.05.

¶26 This court follows Texas precedent by giving the term “default” its plain, everyday meaning—without adding qualifiers the parties did not include. *See The Mark at Weatherford Owner, LLC v. German*, 2026 Tex. Bus. 22, ¶¶ 28–32, 2026 WL 1266173, at *5–7 (8th Div.). In *The Mark*, the court catalogued Texas courts’ plain-meaning construction of the term:

- *Sangani v. Barber*, No. 05-24-00237-CV, 2026 WL 95430, at *13 (Tex. App.—Dallas Jan. 13, 2026, pet. filed) (“‘[D]efault’ is a noun that means ‘failure to meet an obligation’ or ‘the omission or failure to perform a legal or contractual duty; esp[ecially], the failure to pay a debt when due.’” (quoting *Default*, BLACK’S LAW DICTIONARY (12th ed. 2024)));
- *Limestone Grp., Inc. v. Sai Thong, L.L.C.*, 107 S.W.3d 793, 797 (Tex. App.—Amarillo 2003, no pet.) (defining “default” as “the ‘failure’ to do an act” (quoting *Default*, WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY UNABRIDGED (1976)));

- *Groschke v. Gabriel*, 824 S.W.2d 607, 611 (Tex. App.—Houston [1st Dist.] 1991, writ denied) (defining “default” as “[a]n omission of that which ought to be done. Specifically, the omission or failure to perform a legal or contractual duty[.]” (quoting *Default*, BLACK’S LAW DICTIONARY (5th ed. 1979))).

See 2026 Tex. Bus. 22, §§ 21–32 n.47.

¶27 Here, the Transportation Agreement defines an Event of Default to include “the failure of the Defaulting Party to comply with any of its obligations under” the Agreement when that failure “remains uncured for thirty (30) Business Days after written notice thereof.” Mot. Ex. A-3 § 12.01(c). This comports with the recognized meaning of *default*: “a ‘failure to do something required by duty or law.’” See *The Mark at Weatherford Owner*, 2026 Tex. Bus. 22, § 29. “Nothing in the term itself requires that the failure be material, incurable, or formally declared.” *Id.* Indeed, this particular Agreement contains an express carve-out: A *default* does not include “non-material noncompliance” with one particular clause in the Agreement, Section 18.01, which requires the parties to comply with all applicable law. Mot. Ex. A-3 § 12.01(c). No other “non-material” violations are excepted from the Agreement’s broad definition of the term.

¶28 As explained above, the court holds that Wink breached the Transportation Agreement’s Sections 7.03 and 8.02. Those clauses specified the method for calculating Deficiency Payments and required Wink to invoice the amounts owed for those Payments. Mot. Ex. A-3 §§ 7.03, 8.02. Wink did not comply with those

clauses. Its breach constitutes a “failure of [Wink] to comply with [an] obligation[] under” the Agreement, as defined by its default clause. *See* Mot. Ex. A-3 § 12.01(c).

¶29 The Agreement renders that failure a *default* if it remains uncured for thirty business days after written notice. *Id.* And Delek’s evidence reflects that it provided written notice to Wink on August 15, 2025, identifying the Section 7.03 miscalculation and overcharge. Mot. Exs. A ¶¶ 17-20, A-5, A-6. Wink failed to correct the issue within thirty business days. *See id.*

¶30 Wink does not deny these facts; it instead concedes that it credited the disputed charges to Delek a year later, after this court’s initial summary-judgment ruling. *See* Resp. at 10, 22. On this record, the court concludes the contractual cure period expired without a cure.

¶31 Wink’s failure to comply with the Agreement and its ensuing failure to cure constituted a default under the Agreement’s plain terms. “Had the parties intended to confine the [contractual] provision to particular types of defaults—uncured defaults, material defaults, financial defaults—they would have done so expressly.” *The Mark at Weatherford Owner*, 2026 Tex. Bus. 22, ¶ 30. Nothing in the Transportation Agreement requires a different or more substantial failure to comply than what Delek has proven here.

3. Delek’s requested relief on the Transportation Agreement is not moot.

¶32 Rather than meaningfully rebut its own breach or default, Wink argues these issues are moot because Wink credited the disputed amount to Delek’s account after

the court construed the Transportation Agreement as a matter of law and before the court entered any holding that Wink breached. “[A] case is moot when the court’s action on the merits cannot affect the parties’ rights or interests.” *Heckman v. Williamson Cnty.*, 369 S.W.3d 137, 162 (Tex. 2012).

¶33 Wink’s credit in August 2026 did not moot Delek’s claim. At a minimum, Delek’s meritorious request for a declaration as to breach and, consequently, as to default would trigger the various remedies under the Transportation Agreement’s Section 12, including the nondefaulting party’s rights to withhold Deficiency Payments, suspend performance, or terminate the contract. Mot. Ex. A-3 § 12.02. Because this court’s ruling concerning an Event of Default under the Agreement could “affect the parties’ rights or interests,” the dispute between the parties is not moot. *See Heckman*, 369 S.W.3d at 162.

¶34 Having concluded that Delek proved both breach and default as a matter of law, the court grants Delek’s summary judgment as to the Transportation Agreement.

C. Delek’s request for attorney’s fees is carried to trial.

¶35 Because Delek’s motion is granted in part and denied in part, a fee award is premature at this stage. The court will address fee awards following the bench trial on the remaining merits of this suit, which will commence in five weeks. The parties have agreed by Rule 11 to resolve attorney’s fees by submission after completion of briefing and following trial.

CONCLUSION AND ORDER

For these reasons, it is ORDERED that Delek's Traditional Motion for Summary Judgment is partially granted as follows:

- (1) Delek's Motion is GRANTED as to Delek's claim that Wink breached the Terminal Services Agreement, effective September 30, 2021, between Wink and Delek W2W, LLC, whose rights under the Terminal Services Agreement have been assigned to Delek;
- (2) Delek's Motion is GRANTED as to Delek's claim that Wink breached the Amended and Restated Transportation Services Agreement between Delek and Wink, effective September 30, 2021;
- (3) The court DECLARES that Wink's failure to invoice the correct amount for a "Deficiency Payment" in connection with Invoice No. 2025-07, as required by the Transportation Agreement, constituted an "Event of Default" under Section 12.01 of that Agreement because Wink failed to cure its breach within thirty (30) business days after receiving written notice of the failure; and
- (4) Delek's request for attorney's fees, pre-judgment interest, post-judgment interest, and costs is CARRIED TO TRIAL.

In any remaining respect other than as expressly granted in this Order, Delek's Motion is DENIED.

SO ORDERED.



STACY ROGERS SHARP

Judge of the Texas Business Court,
Fourth Division, *sitting by assignment*
in the Eleventh Division

SIGNED ON: October 28 2026