**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF ARKANSAS**
**WESTERN DIVISION**

**CLAUDE D. WALLACE, as Trustee of the Claude D. Wallace Living Trust dated July 31, 2005 and JOE RATH, on behalf of themselves and all other similarly situated** **PLAINTIFFS**

**VS.** **4:14-CV-00415-BRW**

**SEECO, INC.** **DEFENDANT**

**ORDER**

Pending is Defendant's Motion for Summary Judgment (Doc. No. 34). Plaintiffs have responded and Defendant has replied.[1] Based on the findings of fact and conclusions of law below, Defendant's Motion for Summary Judgment is GRANTED. Plaintiff's Motion to Certify Class (Doc. No. 45) is DENIED as MOOT.

## I. BACKGROUND

Both Plaintiffs have mineral interests in property located in Cleburne County, Arkansas. Plaintiff Claude Wallace has a lease with XTO Energy. The Arkansas Oil and Gas Commission ("AOGC") appointed SEECO as the operator of the well related to Wallace's land.[2] XTO is a working-interest owner on this well. In 2008, the AOGC determined that Plaintiff Joe Rath had unleased mineral interests on a different parcel of land in the county. His mineral interests were integrated and deemed to have been leased in favor of Chesapeake Exploration.[3] SEECO is a working-interest owner on the well related to Rath's land.

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[1]Doc. Nos. 37, 40.

[2]Doc. No. 15-1.

[3]BHP Billiton Petroleum now owns the rights to the lease.

In their First Amended Class Action Complaint, Plaintiffs allege that:

> The lease that Plaintiffs and the putative class member were integrated under states that in the event that the operator sells to an affiliate, "then the proceeds derived from the sale of all gas shall be a price no less than that received from any other purchaser within the governmental township and range."
>
> Upon information and belief, the Defendant does not even conduct an inquiry to determine the price paid by any other purchase in the governmental township and range. As a result, Defendant does not pay royalties according to the terms of the lease.[4]

Based on these allegations, Plaintiffs assert causes of action for declaratory judgment, breach of contract, unjust enrichment, and violations of the Arkansas Deceptive Trade Practices Act.

## II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate only when there is no genuine issue of material fact, so that the dispute may be decided on purely legal grounds.[5] The Supreme Court has established guidelines to assist trial courts in determining whether this standard has been met:

> The inquiry performed is the threshold inquiry of determining whether there is the need for a trial -- whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party.[6]

The Court of Appeals for the Eighth Circuit has cautioned that summary judgment is an extreme remedy that should be granted only when the movant has established a right to the judgment beyond controversy.[7] Nevertheless, summary judgment promotes judicial economy by preventing trial when no genuine issue of fact remains.[8] A court must view the facts in the light

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[4]Doc. No. 2.

[5]*Holloway v. Lockhart*, 813 F.2d 874 (8th Cir. 1987); Fed. R. Civ. P. 56.

[6]*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).

[7]*Inland Oil & Transport Co. v. United States*, 600 F.2d 725, 727 (8th Cir. 1979).

[8]*Id.* at 728.

most favorable to the party opposing the motion.[9] The Eighth Circuit has also set out the burden of the parties in connection with a summary judgment motion:

> [T]he burden on the party moving for summary judgment is only to demonstrate, *i.e.*,"[to point] out to the District Court," that the record does not disclose a genuine dispute on a material fact. It is enough for the movant to bring up the fact that the record does not contain such an issue and to identify that part of the record which bears out his assertion. Once this is done, his burden is discharged, and, if the record in fact bears out the claim that no genuine dispute exists on any material fact, it is then the respondent's burden to set forth affirmative evidence, specific facts, showing that there is a genuine dispute on that issue. If the respondent fails to carry that burden, summary judgment should be granted.[10]

Only disputes over facts that may affect the outcome of the suit under governing law will properly preclude the entry of summary judgment.[11]

## III. DISCUSSION

Plaintiffs' causes of action are based on what is known as "affiliate sales" language that appears in the AOGC form-lease, which is similar to Wallace's lease. His lease reads:

> Lessee shall pay Lessor twenty percent (20%)[12] of the proceeds derived from the sale of all gas at the well (including substances contained in such gas) produced, saved, and sold by Lessee. Proceeds are defined as the actual amount received by the Lessee for the sale of said gas in an arm's length, non-affiliated transaction. In the event that the sale is to an Affiliate ("Affiliate" being defined as having a ten percent (10%) common ownership), then the proceeds derived from the sale of all gas shall be a price no less than that received from any other purchaser within the governmental township and range in which the lease is situated.[13]

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[9] *Id.* at 727-28.

[10] *Counts v. MK-Ferguson Co.*, 862 F.2d 1338, 1339 (8th Cir. 1988) (quoting *City of Mt. Pleasant v. Associated Elec. Coop.*, 838 F.2d 268, 273-74 (8th Cir. 1988) (citations omitted)).

[11] *Anderson*, 477 U.S. at 248.

[12] This amount can vary for different lease agreements.

[13] Doc. No. 35-3.

Plaintiffs allege that "the lease that Plaintiffs and the putative class members were integrated under states that in the event the operator sells to an affiliate, 'then the proceeds derived from the sale of all gas shall be a price no less than that received from any other purchaser within the governmental township and range.'"[14]

Tellingly, Plaintiffs substitutes the word "operator" in place of lessee, because SEECO is an operator (at least for the Wallace well). However, the "affiliate sales" language sets out the lessee's (XTO and BHP, in this case) obligation to sell gas "in an arm's length, non-affiliated transaction."[15] This language is intended to protect the lessor from in-house dealing by the lessee. It has nothing to do with SEECO's role in either of the wells in this case, because SEECO and Plaintiffs did not have a lessee-lessor relationship.[16]

Furthermore, there is no privity of contract between SEECO and Plaintiffs. The "affiliate sales" language appears only in leases between Plaintiffs and parties other than SEECO. Not all leases contain the "affiliated sales" language,[17] and SEECO has a right to enter into leases that do not include this language. Even if SEECO engaged in the activities alleged by Plaintiffs with third-parties, SEECO's actions would be subject to its lease agreements with its lessors. Plaintiffs cannot bind SEECO to "affiliate sales" language in contracts to which SEECO is not a party.

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[14]Doc. No. 2.

[15]*Id.*

[16]Doc. No. 39.

[17]*See* Thomas A. Daily and W. Christopher Barrier, *Still Fugacious After All These Years: A Sequel to the Basic Primer on Arkansas Oil and Gas Law*, 35 U. Ark. Little Rock L. Rev. 357 at 376 (Winter 2013) (noting the differences between SEECO's "commonly used lease form" – which does not include "affiliate sales" language – and the AOGC Integration Lease Form No. 357).

Plaintiffs assert that a Joint Operating Agreement ("JOA") "also sets forth terms and conditions that the operator (SEECO) and other non-operators (working interest partners) pay unleased mineral owners like the Plaintiffs."[18] However, Plaintiffs do not cite the section on which they are relying, and I have been unable to find any language in the JOA which would prevent SEECO from selling gas to affiliates under the terms of it leases unrelated to Plaintiffs.

Because Plaintiffs do not have lessee-lessor relationships with SEECO, SEECO's only obligations to Plaintiffs are under Arkansas's Oil and Gas Production and Conservation statutes. In relation to the Wallace well, SEECO's duty as operator is to distribute a 1/8 interest to all royalty-interest owners.[19] As for the Rath well, SEECO's duty is to remit 1/8 of its sale proceeds to the operator for distribution.

Plaintiffs also argue that language in Arkansas Code Annotated § 15-72-305(a)(2) requires SEECO to comply with the "affiliate sales" language of their leases. The section reads:

> The interests shall be paid or delivered to each owner thereof in conformance with the provisions of the appropriate lease, agreement, or contract creating it, but computed upon the production allocated to each tract as hereinabove provided, rather than upon the actual production therefrom.

Contrary to Plaintiffs' argument, this language does not relate to how the 1/8 interest is calculated. Rather, it sets out that the operator must pay or deliver the interest pursuant to the appropriate lease (*i.e.*, the operator must distribute the 1/8 royalty to the appropriate party under the lease). Plaintiffs' lease terms with third-parties have no bearing on SEECO's obligations in this case.

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[18]Doc. No. 38.

[19]Ark. Code Ann. § 15-72-305.

## CONCLUSION

Based on the findings of fact and conclusions of law set out above, Defendant's Motion for Summary Judgment is GRANTED. Plaintiff's Motion to Certify Class (Doc. No. 45) is DENIED as MOOT.

IT IS SO ORDERED, this 2nd day of February, 2016.

/s/ Billy Roy Wilson
UNITED STATES DISTRICT COURT