

CAUSE NO. C-1-PB-14-001245

IN RE: § IN THE PROBATE COURT
§
§ OF
§
TEL OFFSHORE TRUST § TRAVIS COUNTY, TEXAS

**CORPORATE TRUSTEE OF THE TEL OFFSHORE TRUST’S ORIGINAL ANSWER
TO RNR PRODUCTION LAND AND CATTLE’S ORIGINAL PETITION
AS REALIGNED PLAINTIFF AND COUNTERCLAIM**

The Bank of New York Mellon Trust Company, N.A., (“BNYM”) as Corporate Trustee (“the Corporate Trustee”) of the TEL Offshore Trust (“Trust”) files this its Original Answer to RNR Production Land and Cattle’s (“Plaintiff’s”) Original Petition As Realigned Plaintiff (“Petition”), and would respectfully show the Court the following:

I. GENERAL DENIAL

1. As provided for and allowed under the Texas Rules of Civil Procedure 92, the Corporate Trustee denies generally each and every, all and singular, of the allegations in the Petition filed by the Plaintiff and demands strict proof thereof by a preponderance of the credible evidence, as required by the Constitution and the laws of the State of Texas.

II. DEFENSES

2. The Plaintiff’s claims are barred, in whole or in part, because the Plaintiff lacks standing to bring this suit, or alternatively Plaintiff lacks standing to assert each of the claims asserted.

3. The Plaintiff’s claims are barred, in whole or in part, by the statutes of limitations. The discovery rule does not apply to Plaintiff’s claims.

4. The Plaintiff’s claims are barred, in whole or in part, by the doctrine of laches.

5. The Plaintiff's claims are barred, in whole or in part, by the doctrines of estoppel, including without limitation quasi-estoppel, equitable estoppel, judicial estoppel, and promissory estoppel.

6. The Plaintiff's claims are barred, in whole or in part, by ratification.

7. The Plaintiff's claims are barred, in whole or in part, by waiver.

8. The Plaintiff's claims are barred, in whole or in part, by unclean hands.

9. The Plaintiff's claims are barred, in whole or in part, by the doctrines of payment, offset, credit, and/or recoupment.

10. The Corporate Trustee pleads the defense of actual, apparent, and/or implied consent.

11. The Plaintiff's claims are barred by acquiescence.

12. The allegations in the Petition fail to state a claim upon which relief can be granted.

13. The Corporate Trustee pleads the defense of the vice principal rule.

14. The Plaintiff's claim for an accounting fails because Plaintiff can obtain adequate relief through the use of standard discovery and because Plaintiff's underlying grounds for obtaining an accounting fail.

15. The Corporate Trustee specifically denies responsibility for punitive or exemplary damages. If this Court finds that such damages are recoverable, such exemplary damages are limited by Texas Civil Practice and Remedies Code section 41.008, and in addition, Plaintiff cannot recover any punitive damages that are constitutionally excessive. The Corporate Trustee invokes all limitations, requirements, and protections provided in Texas Civil Practice and Remedies Code chapter 41, including without limitation, the requirement that Plaintiff prove by

clear-and-convincing evidence the right to recover and the elements of exemplary damages. The Corporate Trustee contends that the correct burden of proof under constitutional principles is “beyond a reasonable doubt,” but at a minimum, the standard is clear-and-convincing evidence, as required by chapter 41.

16. Awarding punitive damages would violate the Corporate Trustee’s constitutional rights, including their rights to equal protection and due process under Article I, Sections 3, 13, and 19 of the Texas Constitution and the Fifth and Fourteenth Amendments to the United States Constitution. Awarding punitive damages would also be an unconstitutional taking under Article I, Section 17 of the Texas Constitution. In addition, awarding punitive damages would violate the prohibitions against excessive fines and cruel or unusual punishment under Article I, Section 13 of the Texas Constitution and the Eighth Amendment to the United States Constitution. Among other things, awarding punitive damages would be a constitutional violation, because:

- a. Texas law regarding punitive damages is unconstitutionally vague and does not provide sufficient notice of the conduct that could be punished and the severity of the punishment;
- b. The unconstitutional vagueness of Texas law results in arbitrary and discriminatory awards;
- c. Texas law does not provide adequate substantive and procedural safeguards to prevent arbitrary, excessive, and unconstitutional awards;
- d. Texas law does not provide adequate and meaningful guidance to fact finders when they award punitive damages, leaving such awards to arbitrary determinations by the fact finders;
- e. Texas law does not require that liability for and the amount of punitive damages be proven beyond a reasonable doubt;
- f. Punitive damages are a windfall to plaintiffs, making such damages an unconstitutional taking; and
- g. Punitive damages are not available for lawful conduct inside of Texas, for conduct outside of Texas, for conduct that has already been punished, for the conduct of another party, or for harm to others besides the plaintiff.

17. The Corporate Trustee pleads that all of its actions were specifically authorized by the Trust Agreement made as of January 1, 1983, including conducting royalty sales, obtaining loans to pay the Trust's expenses, paying the Trustees' compensation, and obtaining D&O insurance. The Corporate Trustee pleads the provisions of the Trust Agreement, including, without limitation, the following:

- a. Pursuant to Section 2.02 of the Trust, one of the purposes of the Trust is to "pay or provide for the payment of any liabilities incurred in carrying out the purposes of the Trust, and thereafter to distribute the remaining amounts received by the Trust pro rata to the owners of the Units."
- b. Pursuant to Section 3.03, the unit holders "take and hold the Unit subject to all the terms and provisions of this Trust Agreement."
- c. Pursuant to Section 6.01, the Trustees are "authorized" to ... take such actions as in their judgment are necessary, desirable or advisable to achieve the purpose of the Trust."
- d. Pursuant to Section 6.06, the Trust Agreement provides that the Trustees "shall use all money received by the Trust for the payment of all liabilities of the Trust, including but not limited to all expenses, taxes, and liabilities incurred of all kinds, compensation to the Trustees for their services..."
- e. Pursuant to Section 6.08, in the event of borrowing money to cover Trust's costs, "the Trustees shall suspend further Trust distributions ... until the indebtedness created by such borrowing has been paid in full."
- f. Pursuant to Section 6.11, "[t]he Trustees are authorized to maintain and defend, and to settle, in the Trust's name any claim or controversy by or against the Trust without the joinder or consent of any Certificate Holder or owner of a Unit."
- g. Pursuant to Section 6.13 of the Trust Agreement, "[t]he powers granted the Trustees under this Trust Agreement may be exercised upon such terms as the Trustees deem advisable and may affect the Trust properties for any length of time regardless of the duration of the Trust."
- h. Pursuant to Section 6.14 of the Trust Agreement, "[t]he Trustees shall be under no obligation to ... dispose of any wasting assets." The Trust Agreement specifically relieved the Trustees of any duty to dispose of any Trust assets at any particular time.

- i. Pursuant to Section 7.01 of the Trust Agreement, “[t]he Trustees are empowered to act in their discretion and shall not be personally or individually liable for any act or omission except in the case of gross negligence, bad faith or fraud.”
- j. Pursuant to Section 7.03 of the Trust Agreement, “[t]he Trustees shall be indemnified by, and receive reimbursement from, the Trust Estate against ... any and all liability, expense (including counsel fees and expenses incurred in preparing for and defending claims or suits), ... or loss incurred by them individually or as Trustees in the administration of the Trust [except for] gross negligence, bad faith or fraud....” Moreover, this Section provides the Trustees “shall have a lien upon the Trust Estate to secure them for such indemnification and reimbursement and for compensation to be paid to the Trustees.”
- k. Pursuant to Sections 7.04 and 7.05 of the Trust Agreement, the Corporate Trustee and the Individual Trustees are entitled to compensation for their services, as set forth in the Trust Agreement.
- l. Section 7.06 of the Trust Agreement provides: “To perform any act required or permitted by this Trust Agreement, the Trustees may ... be required to ... consult with counsel, ... accountants, geologists, engineers and other parties deemed by the Trustees to be qualified as experts on the matters submitted to them ... and the opinion ... of any such parties on any matter submitted to them by the Trustees shall be full and complete authorization and protection in respect to any action taken or suffered by them hereunder in good faith and in accordance with the opinion
- m. Pursuant to Section 9.01, the Trust Agreement’s termination provisions were not triggered.

The Corporate Trustee would show this Court that the claims asserted by the Plaintiff are all barred by the language quoted above.

18. The Corporate Trustee relies upon Texas Property Code, Section 112. 054, which sets forth the limited circumstances in which modification or termination of a trust should be sought. The Trustees’ decision to seek judicial termination of the Trust in 2014 was an extraordinary measure.

19. The Corporate Trustee pleads the defense of mitigation of damages.

20. The Corporate Trustee pleads that it is entitled to recover attorney's fees and reimbursement of costs as are equitable and just pursuant to Section 114.064 of the Texas Trust Code.

21. The Corporate Trustee files this Original Answer in good faith and with just cause. The Corporate Trustee respectfully reserves the right to file an Amended Answer in this case in the manner authorized by the Texas Rules of Civil Procedure.

III. THE CORPORATE TRUSTEE'S COUNTERCLAIM

22. The Corporate Trustee, as Counter-Plaintiff, asserts the following counterclaim against RNR Production Land and Cattle (Counter-Defendant):

23. Pursuant to Section 114.064 of the Texas Trust Code, the Corporate Trustee is entitled to recover its attorneys' fees and reimbursement of costs.

24. The Corporate Trustee has retained the law firm of Thompson & Knight, LLP to represent it in this proceeding and has agreed to pay Thompson & Knight reasonable and necessary attorneys' fees, costs, and expenses. An award of reasonable and necessary attorneys' fees and expenses to the Corporate Trustee would be equitable and just pursuant to Section 114.064 of the Texas Trust Code.

25. Additionally, the Corporate Trustee is entitled to recover for the fees for services or expenses incurred out of the Trust Estate pursuant to Section 7.06 of The Trust Agreement.

26. Further, the Trustees are entitled to indemnification and full reimbursement from the Trust Estate against and from any and all liability, expense (including counsel fees and expenses incurred in preparing for and defending claims or suits), claim, damage, or loss incurred by the Trustees individually or as Trustees in the administration of the Trust and the

Trust Estate or any part or parts thereof, or in their performance under the Trust Agreement, pursuant to 7.03 of the Trust Agreement.

27. Moreover, the Corporate Trustee asserts a lien pursuant to Section 7.03 of the Trust Agreement to the monies in the segregated account holding the proceeds of the sale of the Trust's overriding royalty interest that was created pursuant to the Final Judgment and Order of the Court dated January 15, 2016 in Cause No. C-1-PB-16-000096. The Corporate Trustee is entitled to first priority to the monies in the segregated account pursuant to its lien.

IV. PRAYER

WHEREFORE, Defendant and Counter-Plaintiff The Bank of New York Mellon Trust Company, N.A., as Corporate Trustee, prays that the Plaintiff RNR Production Land and Cattle take nothing; that the Corporate Trustee be awarded its reasonable attorneys' fees, costs, and expenses, and pre- and post-judgment interest thereon; that the Corporate Trustee be awarded its fees for services or expenses incurred out of the Trust Estate; that the Corporate Trustee be indemnified and fully reimbursed for all liabilities, expense, claims, damages, or loss incurred by the Corporate Trustee; that the Corporate Trustee have first priority to the monies in the segregated Trust account pursuant to its lien; that the Corporate Trustee be discharged with its costs; and that the Corporate Trustee recover general relief.

Respectfully submitted,

/s/ Craig A. Haynes

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ATTORNEYS FOR THE BANK OF NEW YORK
MELLON TRUST COMPANY, N.A., as
CORPORATE TRUSTEE OF THE TEL
OFFSHORE TRUST

CERTIFICATE OF SERVICE

I hereby certify that, on November 21, 2016, a true and correct copy of the foregoing has been served via Texas e-filing and email on Ad Litem, counsel for Ad Litem, Albert Speisman, counsel for RNR Production Land and Cattle, and counsel for Individual Trustees Gary C. Evans, Jeffrey S. Swanson, and Thomas H. Owen, Jr.. I hereby certify that, on November 21, 2016, all other interested parties in this matter will be served in accordance with the Court's Order Directing Method of Service dated January 21, 2016.

/s/ Rachelle H. Glazer

Rachelle H. Glazer

Verification

STATE OF

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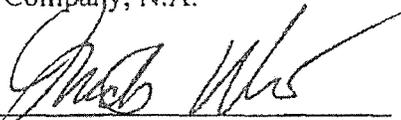
COUNTY OF

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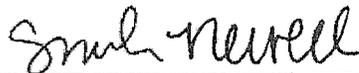
Before me, the undersigned authority, appeared The Bank of New York Mellon Trust Company, N.A., as Corporate Trustee, acting through their authorized agent, Michael Ulrich, and after being first duly sworn according to law upon his oath, deposed and stated that the factual statements contained in paragraph 2 of this instrument are true and correct to The Bank of New York Mellon Trust Company, N.A.'s knowledge.

The Bank of New York Mellon
Trust Company, N.A.



By: Michael Ulrich
Representative of the Bank of New York
Mellon Trust Company, N.A.

SUBSCRIBED AND SWORN to before me on this the 21 day of November, 2016.



Notary Public, State of Texas

My Commission Expires:

02-16-18

