

MAY 11 2021

Time: _____
Harris County, Texas

By _____
Deputy

Cause No. 2018-47418

Downhole Technology LLC	§	In The District Court Of	<i>p. 5</i> <hr style="width: 50px; margin: 0 auto;"/> <i>SB</i> <i>Alex</i>
<i>Plaintiff,</i>	§		
v.	§	Harris County, Texas	
	§		
Rachel VanLue, Independent Executrix of	§		
the Estate of James Duke VanLue, Deceased	§	295 th Judicial District	
<i>Defendant.</i>	§		
	§		
	§		
	§		

Consolidated With

Cause No. 2018-76666

Rachel VanLue, Independent Executrix of	§	In The District Court Of
the Estate of James Duke VanLue, Deceased	§	
<i>Plaintiff,</i>	§	
v.	§	Harris County, Texas
	§	
Schoeller Bleckmann America, Inc.	§	127 th Judicial District
<i>Defendant.</i>	§	

Final Judgment

By Order signed February 3, 2020, the Court granted partial summary judgment for James Duke VanLue ("VanLue") on the claims of Downhole Technology LLC ("Downhole") for breach of Section 9 of VanLue's Employment Agreement.

On February 3, 2020, the Court called this case for trial. VanLue, Downhole, and Schoeller Bleckmann America, Inc. ("SBA") appeared through their counsel of record and announced ready for trial. A bench trial on the remaining issues, except for recoverable attorneys' fees, was conducted from February 3, 2020 to March 4, 2020. Over the course of approximately four weeks, the Court considered live testimony, deposition testimony, and documentary evidence. On March 4, 2020, the Court heard closing arguments of counsel.

After considering the evidence and arguments of counsel, the Court found:

- (1) Downhole and SBA's claims for affirmative relief fail.
- (2) Downhole did not prove that it ever had cause to terminate VanLue.
- (3) The Court rejects the argument that VanLue had the burden to show bad faith by Downhole, but to the extent that he did have such a burden, VanLue met it.
- (4) VanLue prevails on his counterclaims, but his claim for exemplary damages fails.

On October 12, 2020, Rachel VanLue, Independent Executrix of the Estate of James Duke VanLue, Deceased, filed a Suggestion of Death following the death of her husband on June 27, 2020. Rachel VanLue, in her capacity as Independent Executrix of the Estate of James Duke VanLue, Deceased, is the real party in interest and referred to in this Judgment as "Mrs. VanLue."

The Court rendered an interlocutory judgment on November 12, 2020. The interlocutory judgment disposed of all liability issues and reserved the issue of attorneys' fees, which the parties agreed would be decided by the Court by written submission. This Final Judgment includes prior rulings in the November 12, 2020 interlocutory judgment and supersedes the earlier order. The liability issues before the Court have been tried, and the Court will issue Findings of Fact and Conclusions of Law.

After the Court signed the interlocutory judgment, Mrs. VanLue submitted the request for attorneys' fees. Mrs. VanLue submitted evidence in support of the request, and Downhole and SBA responded. Mrs. VanLue is entitled to reasonable and necessary attorneys' fees under Texas Civil Practice and Remedies Code § 37.009 of \$4,031,276.47 against Downhole and SBA, jointly and severally; reasonable and necessary attorneys' fees under Texas Civil Practice and Remedies Code § 38.001 of \$3,953,108.97 against SBA; reasonable and necessary attorneys' fees under Texas Civil Practice and Remedies Code § 134.005(b) of \$1,031,356.41 against Downhole as VanLue is the prevailing party on Downhole's Texas Theft Liability Act claim; and conditional appellate fees under all three statutes.

After considering the pleadings, the written submissions, and the evidence, the Court renders Final Judgment that:

(1) Downhole shall take nothing on its claims for breach of fiduciary duty, breach of contract, violations of the Texas Theft Liability Act, and declaratory relief, and its request for sanctions.

(2) Judgment is granted to Mrs. VanLue on the declaratory judgment claims, and the Court declares:

(a) VanLue's Employment Agreement terminated pursuant to Section 8(d) on April 2, 2018 when Downhole terminated VanLue's employment Without Cause. Downhole had no contractual right to later attempt to retroactively change that termination to for Cause.

(b) Downhole's termination of VanLue was not a Triggering Event under Section 4.1(c)(i) and 4.2 of the LLC Agreement.

(c) VanLue's acts do not support termination for Cause.

(d) Downhole and SBA could not transfer VanLue's Downhole units prior to the exercise of the Put/Call on or after April 1, 2019 because Downhole did not terminate VanLue's Employment Agreement for Cause.

(e) SBA was required to purchase VanLue's Downhole units for \$131,233,117, based upon Section 7.3(b) of the LLC Agreement.

(f) Downhole is required to pay Mrs. VanLue \$9,205,536 for the distribution paid to Downhole unit holders on March 21, 2019, and \$3,292,648 for VanLue's *pro rata* share of the distribution due to Downhole unit holders payable on March 31, 2020.

(g) SBA and Downhole committed prior material breaches of the Employment Agreement and the LLC Agreement, and VanLue had no continuing obligation to perform

under those agreements, including the confidentiality and non-competition provisions of the agreements with SBA and Downhole, after October 19, 2018 when VanLue's Downhole units were purportedly taken by Downhole and SBA.

(3) Mrs. VanLue is granted judgment on claims against Downhole for breach of contract, breach of fiduciary duty, breach of the covenant of good faith and fair dealing, and conversion, and Mrs. VanLue is granted judgment on claims against SBA for breach of contract, breach of the covenant of good faith and fair dealing, and conversion. Mrs. VanLue shall recover the following damages from Downhole and SBA jointly and severally: (a) \$131,233,117.00 for his units in Downhole; (b) \$9,205,536.00 for a distribution due on March 21, 2019; and (c) \$3,292,648.00 for a distribution due not later than March 31, 2020.

(4) Mrs. VanLue shall recover prejudgment interest on the damages awarded as follows: (a) at the rate of 5% per annum from July 30, 2019 through the date preceding the signing of this judgment, compounded annually, for those damages awarded in paragraph 3(a); (b) at the rate of 5% per annum from March 21, 2019 through the date preceding the signing of this judgment, compounded annually, for those damages awarded in paragraph 3(b), and; (c) at the rate of 5% per annum, compounded annually, from March 31, 2020 through the date preceding the signing of this judgment for those damages awarded in paragraph 3(c).

(5) Mrs. VanLue has judgment for reasonable and necessary attorneys' fees of \$4,031,276.47 against Downhole and SBA, jointly and severally.

(6) All court costs are taxed against Downhole and SBA.

(7) Mrs. VanLue shall recover post-judgment interest on all sums awarded at the rate of 5%, compounded annually, from the date of the signing of this judgment until the amounts awarded to Mrs. VanLue are paid or this judgment is otherwise satisfied.

(8) In the event of an appeal by Downhole and/or SBA, and conditioned upon Mrs. VanLue prevailing on that appeal, Mrs. VanLue shall recover reasonable and necessary attorneys' fees against the appealing party (*i.e.*, Downhole and/or SBA) in the amount of: (a) \$250,000 for briefing in the court of appeals; (b) \$50,000 for briefing associated with a motion for rehearing in the court of appeals; (c) \$50,000 for briefing at the petition for review stage in the Texas Supreme Court; (d) \$200,000 for briefing on the merits if the Texas Supreme Court requests merits briefing; and (e) \$50,000 for oral argument in the Texas Supreme Court if the Court grants argument.

(9) The conditional awards of appellate attorneys' fees in paragraph 8 shall bear post-judgment interest at the rate of 5% per annum, compounded annually, starting from the date that each respective appellate court issues its judgment and continuing until the Final Judgment is paid in full.

(10) Mrs. VanLue's request for recovery of pre-judgment interest on attorneys' fees and costs paid prior to the entry of this Final Judgment is denied.

(11) Mrs. VanLue shall take nothing on the claim for exemplary damages.

(12) All relief not expressly granted herein is denied. This judgment finally disposes of all claims and all parties and is appealable. All writs and processes for the enforcement and execution of this Final Judgment may issue as necessary.

Signed this 10th day of May, 2021.



Caroline Baker
District Judge