

CLIENT**St. Lucie County Fire District Firefighters' Pension Trust****CASE*****St. Lucie Cty. Fire Dist. Firefighters' Pension Tr. v. Sw. Energy Co., No. 2016-70651 (Tex. Dist. Ct.)*****BACKGROUND**

Southwestern Energy Company ("Southwestern" or the "Company") is an independent natural gas and oil company that explores for, develops, and produces natural gas and oil primarily in the United States. As of December 31, 2015, the Company had a pipeline of 2,044 miles in Arkansas and 16 miles in Louisiana in its gathering systems.

On or around January 15, 2015, Southwestern conducted an offering of convertible preferred stock, selling 30,000,000 depository shares to the public at a price of \$50.00 per share (the "Offering"), each of which represents a 1/20th interest in a share of Southwestern's 6.25% Series B Mandatory Convertible Preferred Stock (the "Convertible Preferred Stock"). The net proceeds, after expenses, to Southwestern from the Offering were approximately \$1.672 billion. Unbeknownst to investors, the Registration Statement's representations were materially untrue, inaccurate, misleading, and/or incomplete because, at the time of the Offering, the Company failed to disclose that the Company was experiencing severe liquidity and debt issues that threatened its ability to continue its drilling activities.

The truth concerning the nature and extent of the problems facing the Company did not begin to emerge until January 21, 2016, when the Company revealed in a letter to the Texas Workforce Commission that it would lay off 376 employees at its office located in Spring, Texas. The layoffs in Texas were part of the Company's larger workforce reduction plan, revealed in its January 21, 2016 Form 8-K filing, to cut 1,100 positions, including 600 employees throughout its Fayetteville Shale operations in Arkansas. On January 25, 2016, as a result of news articles published detailing the Company's layoffs, Southwestern's stock price dropped 9%.

Then, after the market closed on February 25, 2016, the Company provided an update on its strategic plans for 2016. Most notably, the Company reiterated its "decision to temporarily halt its drilling activities[.]" On this news, Southwestern's stock price dropped over 14%. On February 29, 2016, Raymond James equity analyst Kevin Smith cut Southwestern to "underperform" from "market perform." Citigroup analyst Robert Morris also stated that the Company's initial 2016 capital budget was "well below expectations." The Company previously announced that it had no drilling activity planned in 2016 and will complete the 20-30 wells that have already been drilled. On this news, Southwestern's stock price dropped approximately 8%.

On April 28, 2016, a putative class action was filed against Southwestern in the U.S. District Court for the Eastern District of Arkansas alleging that it was shortchanging natural gas drilling rights holders. Plaintiff Charles Hicks ("Hicks") claimed the drilling company fraudulently charges lessors fees for post-production marketing, or withholds the fees from their royalty payments, and measures the gas extracted at the wrong time during production in order to reduce payments. Hicks seeks to represent more than 1,000 of his fellow drilling rights holders in the Fayetteville Shale formation paid by Southwestern. The complaint stated that "[t]hese methods of accounting for gas sales reduced the amount of royalties and excess royalties and unjustly increased the profits of the Defendants." On this news, Southwestern's stock price dropped again by 4.79%.

Finally, after the market closed on June 9, 2016, the Company announced that it sold 55,000 net acres of land in West Virginia for \$450 million due to its looming debt obligations. Specifically, the Company intends to use the sale to reduce the principal balance of its term loan, which is due in November of 2018. On this news, Southwestern's stock price dropped another 8.45%.

All told, the stock has plummeted by over 39% since the Offering.

PROCEDURAL HISTORY

On October 17, 2016, Scott+Scott Attorneys at Law LLP ("Scott+Scott"), on behalf of St. Lucie County Fire District Firefighters' Pension Trust ("St. Lucie County"), filed a class action complaint against Southwestern, certain of its directors and officers, and the underwriting banks (collectively, "Defendants") in the District Court for Harris County in the State of Texas, captioned *St. Lucie Cty. Fire Dist. Firefighters' Pension Tr. v. Southw. Energy Co.*, No. 2016-70651, alleging violations of §§11, 12(2)(a), and/or 15 of the Securities Act of 1933 in connection with the Offering.

On December 5, 2016, Defendants removed the case to the U.S. District Court for the Southern District of Texas and filed a motion to stay the action on December 19, 2016, which Scott+Scott opposed on January 9, 2017. Thereafter, on January 13, 2017, Scott+Scott filed a motion to remand the case back to Texas state court.

On May 19, 2017, a hearing was held on the motions for remand and stay. The District Court stayed the case until it rendered a decision on the motion to remand. On September 5, 2017, the Court continued the stay of the case and denied the motion to remand without prejudice to reassert the motion pending the decision by the U.S. Supreme Court in *Cyan, Inc. v. Beaver Cty. Emps. Ret. Fund*, in which the Supreme Court deliberated on an issue of law relevant to the remand issue similar to the one at issue here, which could have affected the ability of the Circuit Court to hear this case. The *Cyan* court held that such remand was allowable.

On March 30, 2018, Scott+Scott moved to lift the stay and remand the case, which the Court granted April 10, 2018. Therefore, the action was remanded back to Harris County District Court. On June 13, 2018, Defendants filed a motion to dismiss the operative complaint.

On May 25, 2018, Scott+Scott filed an amended petition. On June 13, 2018, Defendants filed an amended motion to dismiss the amended petition. Scott+Scott filed an opposition to the amended motion to dismiss on July 9, 2018 with a hearing tentatively scheduled for July 19, 2018. However, prior to the hearing, the parties agreed to attempt a resolution of the case through mediation. On July 13, 2018, the parties filed an agreed motion to stay requesting this action be stayed pending the resolution of the mediation, which was granted by the Court on July 17, 2018.

On August 20, 2018, the parties exchanged their opening mediation briefs and their reply briefs on September 7, 2018. The mediation was held on September 17, 2018, in California with former Judge Layn Phillips serving as the mediator. The mediation proved unsuccessful, and the parties returned to the motion to dismiss briefing. Defendants filed a reply brief on November 28, 2018. The hearing previously scheduled for the next day was continued by the Court, and plaintiffs submitted a sur-reply brief on December 6, 2018.

On August 1, 2019, the Court heard oral argument on the motion to dismiss. Defendants and Plaintiff both filed notices of supplemental authority for pertinent cases decided after the motion was fully briefed. Thereafter, on August 14, 2019, the Court denied Defendants' motion in its entirety, noting that St. Lucie County could submit evidence of costs and attorneys' fees to be awarded under Texas law.

Defendants filed a petition for a writ of mandamus to the Texas Court of Appeals for the First District of Texas at Houston on September 25, 2019 and an emergency motion to stay the trial court proceedings on September 26, 2019. On October 22, 2019, the Court of Appeals denied the emergency motion to stay. On February 11, 2020, the Court of Appeals denied Defendants' petition for a writ of mandamus. Defendants indicated that they intended to file a petition of review to the Texas Supreme Court.

On February 17, 2020, Defendants filed another emergency motion to stay the proceedings in the trial court. Briefing on that motion was completed on March 2, 2020.

CURRENT STATUS

Defendants filed a petition for a writ of mandamus before the Texas Supreme Court. After briefing on the petition, on August 28, 2020, the Court requested briefing on the merits. Defendants filed their opening brief on November 12, 2020. Plaintiffs' response is due January 14, 2021, and Defendants' reply is due January 29, 2021. Several amicus briefs have been filed in support of Defendants' position. Scott+Scott is working on securing amicus in support of our position.

Scott+Scott will continue to keep St. Lucie County apprised on the status of the case. Should you have any questions, do not hesitate to contact Don Broggi at dbroggi@scott-scott.com or
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