

No Implied Ratification Where Contract Required Express Written Consent

June 11, 2021

BPX Operating Company v. Strickhausen

Supreme Court of Texas, No. 19-0567 (June 11, 2021)

Justice Blacklock (opinion available [here](#))

Justice Boyd Dissent (available [here](#))

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Ms. Strickhausen's mineral lease with BPX prohibited pooling her tract with others without her "express written consent." Nevertheless, BPX pooled several tracts, including Strickhausen's property, to create a 320-acre unit. Unlike Strickhausen's lease, her neighbors' leases permitted pooling. BPX attempted to obtain Strickhausen's written consent or ratification of the pooling, but Strickhausen consistently refused and repeatedly objected to BPX's activity. As the parties continued to communicate and discuss a settlement or other resolution, BPX began paying Strickhausen pooled royalties rather than on a "tract participation basis." When Strickhausen finally sued BPX for breach of contract, BPX alleged Strickhausen had ratified the pooling by cashing her royalty checks. The trial court granted summary judgment in favor of BPX, but the San Antonio Court of Appeals reversed.

In a 5-4 decision, the SCOTX sided with the appellate court and Strickhausen. The Court acknowledged that acceptance of royalty checks can, in some circumstances, constitute implied ratification. But it noted that Strickhausen—unlike her neighboring lessors and the lessors in prior cases—bargained for a lease that strictly prohibited pooling "under any circumstances" without her "express written consent." "[A]ll her subsequent actions should be examined in light of both parties' knowledge of this element of their agreement. A party armed with a lease prohibiting pooling without **express, written** consent should have less reason to worry about mistakenly giving her **implied, unwritten** consent than does a party not protected by such a clause." The communications between the parties also demonstrated that Strickhausen was not consenting to the pooling and was actively trying to reach a settlement agreement with BPX. Strickhausen's acceptance of royalty checks held less weight than it might in other cases because Strickhausen was entitled to significant royalties with or without pooling. The Court

held she reasonably could have viewed the checks as payment towards what she believed she was owed without pooling.

The majority brushed off the dissent's conclusion that "actions may speak louder than words," holding that, on questions of contractual intent, "words matter a great deal—especially words in a written agreement that disavows implied unwritten agreements."

The dissent disagreed. It would have held that Strickhausen's actions in accepting royalty payments that she should have known were calculated based on production from the pooled unit spoke louder than her words, despite the language of the contract and her prior protests.

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