IN THE SUPREME COURT OF TEXAS

NO. 06-0178

FOREST OIL CORPORATION AND DANIEL B. WORDEN, PETITIONERS,

v.

JAMES ARGYLE MCALLEN, EL RUCIO LAND AND CATTLE COMPANY, INC., SAN JUANITO LAND PARTNERSHIP, AND MCALLEN TRUST PARTNERSHIP, RESPONDENTS

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE THIRTEENTH DISTRICT OF TEXAS

Argued October 16, 2007

CHIEF JUSTICE JEFFERSON, joined by JUSTICE MEDINA, dissenting.

According to the Court, the considerations most relevant to our analysis in *Schlumberger Technology Corp. v. Swanson*, 959 S.W.2d 171 (Tex. 1997), were:

> (1) the terms of the contract were negotiated, rather than boilerplate, and during negotiations the parties specifically discussed the issue which has become the topic of the subsequent dispute; (2) the complaining party was represented by counsel; (3) the parties dealt with each other in an arm's-length transaction; (4) the parties were knowledgeable in business matters; and (5) the release language was clear.

__ S.W.3d __, __. My disagreement with the Court centers on the first point. Under the Court's analysis, a party may intentionally misrepresent facts essential to the bargain to induce the other to

sign, as long as the agreement says reliance is waived. This is not sound policy, and *Schlumberger* does not support this result. I would hold that McAllen's fraudulent inducement claim survives the disclaimer of reliance at issue here. Because the Court does not, I respectfully dissent.

I
Schlumberger

In *Schlumberger*, we noted that we had previously held "as a matter of policy, that a merger clause can be avoided based on fraud in the inducement and that the parol evidence rule does not bar proof of such fraud," and that "[i]n doing so, we brought the law on the subject 'into harmony with the great weight of authority, with the rule of the Restatement of the Law of Contracts, and with the views of eminent textwriters.'" *Schlumberger*, 959 S.W.2d at 179 (quoting *Dallas Farm Mach. Co. v. Reaves*, 307 S.W.2d 233, 239 (Tex. 1957)). This remains the general rule in Texas. *See Prudential Ins. Co. of Am. v. Jefferson Assocs.,* 896 S.W.2d 156, 162 (Tex. 1995); *see also Weitzel v. Barnes*, 691 S.W.2d 598, 600 (Tex. 1985) (admitting parol evidence to establish misrepresentation in DTPA claim); Restatement (Second) of Contracts, § 214 cmt. c ("What appears to be a complete and binding integrated agreement may be a forgery, a joke, a sham, or an agreement without consideration, or it may be voidable for *fraud*, duress, mistake, or the like, or it may be illegal. Such invalidating causes need not and commonly do not appear on the face of the writing. *They are not affected even by a 'merger' clause*.") (emphasis added). We then noted that "[j]uxtaposed to this authority, we have a competing concern—the ability of parties to fully and finally resolve disputes between them." *Schlumberger*, 959 S.W.2d at 179. The Court reads *Schlumberger* as settling these

competing concerns by precluding a fraudulent inducement claim where there is a disclaimer of reliance and the factors listed above are present.

But *Schlumberger* is not so broad. There, we held that, where the four other factors listed by the Court are present, "a release that clearly expresses the parties' intent to waive fraudulent inducement claims, or one that disclaims reliance on representations about specific matters in dispute, can preclude a claim of fraudulent inducement." *Id.* at 181. The release in *Schlumberger* did not contain an express waiver of fraudulent inducement claims, but did disclaim reliance on representations about specific matters in dispute. *Id.* at 180. The release itself noted that "'there [wa]s considerable doubt, disagreement, dispute and controversy with reference to the validity of the [claim being settled],'" and the "sole purpose of the release was to end [that] dispute." *Id.* The *Schlumberger* Court therefore concluded "that the parties contemplated, by the inclusion of [the disclaimer of reliance], that the Swansons would not rely on any representations of Schlumberger about the commercial feasibility and value of this project, which, after all, was the very dispute that the release was supposed to resolve." *Id.*

That the *Schlumberger* Court limited its holding to a release "that clearly expresses the parties' intent to waive fraudulent inducement claims, or one that disclaims reliance on representations about specific matters in dispute" is clear from the rest of the opinion. *Id.* at 181. Indeed, we "emphasize[d]" in *Schlumberger* "that a disclaimer of reliance or merger clause will not always bar a fraudulent inducement claim." *Id.* We cited *Prudential Insurance Co. of America v. Jefferson Associates*, in which we said "[a] buyer is not bound by an agreement to purchase something 'as is' that he is induced to make because of a fraudulent representation or concealment

of information by the seller." *Prudential*, 896 S.W.2d 156, 162 (Tex. 1995). This would be a strange authority to cite if *Schlumberger* were as sweeping as the Court suggests: it is difficult to imagine a party making fraudulent representations on a subject that has not been discussed. And while the Court states that "this statement merely acknowledges that facts may exist where the disclaimer lacks 'the requisite clear and unequivocal expression of intent necessary to disclaim reliance' on the specific representations at issue," it does so without addressing *Prudential*, instead quoting an earlier passage from *Schlumberger*. __ S.W.3d at __ (quoting *Schlumberger*, 959 S.W.2d at 179).

In sum, in *Schlumberger* we balanced parties' need to settle disputes against our strong aversion to fraud. The result was a narrow exception to the rule that integration clauses do not bar fraudulent inducement claims. By expanding *Schlumberger*, the Court's holding will force courts to honor contracts indisputably induced by fraud on the basis of blanket reliance waivers, like the one at issue here. I would not.

II
McAllen's Fraudulent Inducement Claim

As discussed above, under *Schlumberger*, to bar a fraudulent inducement claim, a disclaimer of reliance must either expressly waive the claim or disclaim reliance on representations about the specific disputed matter, *Schlumberger*, 959 S.W.2d at 181; otherwise, the general rule that integration clauses do not bar fraudulent inducement claims applies. The disclaimer in this case does neither. The relevant portion of the disclaimer reads:

> Each of the Plaintiffs and Intervenors expressly warrants and represents and does hereby state and represent that no promise or agreement which is not

> herein expressed has been made to him, her, or it in executing the releases contained in this Agreement, and that none of them is relying upon any statement or any representation of any agent of the parties being released hereby.

This disclaimer makes no explicit reference to fraudulent inducement. The question, then, is whether it disclaims reliance on representations about a specific disputed matter in the agreement. While the disclaimers in this case and *Schlumberger* may appear to be "virtually identical," __ S.W.3d at __, the factual differences between this case and *Schlumberger* are critical. In *Schlumberger*, there was essentially one dispute—specifically described in the agreement—being settled, and therefore, "[b]ecause courts are to assume that the parties intended every contractual provision to have some meaning," the Court was able to "presume" that the disclaimer of reliance applied specifically to representations about that sole dispute. *Schlumberger*, 959 S.W.2d at 180. In the instant case, in contrast, the settlement agreement covered a number of topics, chiefly royalty underpayment and mineral underdevelopment. Thus, unlike *Schlumberger*, we cannot presume that the disclaimer of reliance referred specifically to environmental issues, and the general rule that fraudulent inducement claims are not barred by integration clauses should apply.

III
Forest Oil's Remaining Issues

Forest Oil argues that McAllen could not have justifiably relied on Forest Oil's representation that there were no existing issues with the surface because that representation was contradicted by the agreement's express terms. Because the surface agreement contains no contrary statement regarding surface conditions, it is not necessary to examine this claim in detail.

Forest Oil also argues that McAllen could not justifiably rely on the representation of his litigation adversary during settlement negotiations. Forest Oil cites *McCamish, Martin, Brown & Loeffler v. F.E. Appling Interests*, for the proposition that "a third party's reliance on an attorney's representation is not justified when the representation takes place in an adversarial context." *McCamish*, 991 S.W.2d 787, 794 (Tex. 1999). This statement, however, refers not to whether attorneys' statements can provide the grounds for a fraudulent inducement claim, but to individual attorneys' liability for negligent misrepresentation under the Restatement (Second) of Torts section 552. *Id.* at 795 (concluding "that there is no reason to exempt lawyers from the operation of section 552"). Regardless, there is evidence that McAllen relied not only on the statements of "an unidentified lawyer for one of the four defendants," __ S.W.3d at __, but on representations made by the parties themselves:

> Q. (By Mr. Mancias) Yes, sir. Were you told in no uncertain terms *by the oil companies*, including Forest Oil Company, that there were no contaminants or pollutants on the surface of your property?
> A. (By Mr. McAllen) *Yes*. And all the Forest attorneys were there. I believe Forest Doran himself was there.
> Q. Who is Forest Doran?
> A. I believe he's the majority stockholder of Forest Oil Company.
> Q. Can you tell the Judge whether or not Mr. Doran was present when those representations you just testified about were made to you?
> A. That, I can't recall.
> Q. All right, sir. But the attorneys were present?
> A. The attorneys - - his attorneys were present.
> ***
> A. But during the process, *the owners for Forest and Conoco and everybody else who was involved in the lawsuit assured me that there was no issues* [sic] *having to do with the surface*, and if I wanted to get this settlement agreement behind us, I had to do that. But they were very convincing.

(Emphasis added.) McAllen's reliance on these statements was not, therefore, unjustifiable as a matter of law.

IV
Conclusion

Today the Court replaces *Schlumberger*'s requirement that a release must "clearly express[] the parties' intent to waive fraudulent inducement claims, or . . . disclaim[] reliance on representations about specific matters in dispute" in order to preclude a fraudulent inducement claim, 959 S.W.2d at 181, with the requirement that the parties merely "specifically discussed the issue which has become the topic of the subsequent dispute" during negotiations, __ S.W.3d __. Courts, including this one, have long battled the specter of fraud in contracts; I fear that the Court's opinion may one day be a weapon in the hands of those who profit from it. I respectfully dissent.

_____
Wallace B. Jefferson
Chief Justice

Opinion delivered: August 29, 2008