

CAUSE NO. M-22-0027-CV-B

LEE FRANKLIN LIVELY, ARTHUR
 WAYNE SWAIM, ROBERT MURRAY
 SWAIM, BOBBIE SWAIM, RODNEY
 AND BOBBIE SWAIM FAMILY
 LIMITED PARTNERSHIP and SHORTY
 INVESTMENTS, LTD.,

Plaintiffs,

vs.

SAN MIGUEL ELECTRIC
 COOPERATIVE, INC.

Defendant.

§
 §
 §
 §
 §
 §
 §
 §
 §
 §
 §
 §
 §
 §
 §
 §
 §
 §

IN THE DISTRICT COURT

156TH JUDICIAL DISTRICT

McMULLEN COUNTY, TEXAS

**AMENDED ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT AND
 DEFENDANT’S MOTION FOR PERMISSIVE APPEAL**

The Parties filed Cross-Motions for Summary Judgment in 2023. On August 10, 2023, by interlocutory order (“the MSJ Order”), the Court GRANTED Plaintiffs’ Traditional Motion for Summary Judgment (filed May 15, 2023) and DENIED Defendant’s Traditional Motion for Summary Judgment (filed January 19, 2023). By order dated March 21, 2024, the Court, on its own motion, set the above-referenced motions for reconsideration by submission on April 19, 2024.

Defendant San Miguel Electric Cooperative, Inc. (“Defendant” or “San Miguel”) filed its Motion for Permissive Appeal on November 20, 2023. The Court denied the Motion for Permissive Appeal on January 3, 2024. The Court, on its own motion, now reconsiders Defendant’s Motion for Permissive Appeal.

On April 19, 2024, the Court set Defendant’s Special Exceptions to Plaintiffs’ Original Petition (filed June 2, 2023) and Plaintiffs’ Motion to Strike Defendant’s Supplemental Response

to Plaintiffs' Traditional Motion for Summary Judgment for hearing and heard the arguments of counsel.

After reconsidering the above-referenced Cross-Motions for Summary Judgment and Motion for Permissive Appeal, considering the above-referenced Special Exceptions and Motion to Strike, any responses or replies thereto, the arguments of counsel, the Court's file and all other matters properly before the Court, the Court now enters this Amended Order on Plaintiffs' Traditional Motion for Summary Judgment, and San Miguel Electric Cooperative, Inc.'s Traditional Motion for Summary Judgment and Motion for Permissive Appeal.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiffs' Traditional Motion for Summary Judgment is hereby GRANTED. The Court DECLARES that the Partition Deed did not reserve any rights to lignite. Further, Plaintiffs' Motion to Strike Defendant's Supplemental Response to Plaintiffs' Traditional Motion for Summary Judgment is hereby GRANTED and the Court STRIKES Defendant's Supplemental Response from the summary judgment record. It is further ORDERED that San Miguel Electric Cooperative, Inc.'s Traditional Motion for Summary Judgment is hereby DENIED and its Special Exceptions are OVERRULED. It is further ORDERED that all prior rulings on the Parties' Objections to Summary Judgment Evidence are incorporated herein.

The Court FINDS that whether the Partition Deed reserved any rights to lignite is a controlling question of law in this case as to which there are substantial grounds for differences of opinion. The Court further FINDS that an immediate appeal from this Amended Order as to the above-stated question will materially advance the ultimate termination of this litigation because it would dispositively resolve legal issues concerning the scope and effect of the Partition Deed's reservation and whether it included any rights to lignite, which underlies the Parties' dispute.

The Court hereby GRANTS Defendant permission under Texas Civil Practice & Remedies Code § 51.014(d) and under Rule 168 of the Texas Rules of Civil Procedure to pursue a permissive interlocutory appeal of this Amended Order with respect to the issues stated above as a controlling question of law. Pursuant to Texas Civil Practice & Remedies Code § 51.014(e)(2), all trial court proceedings, including deadlines, hearings, and submissions are hereby stayed.

SIGNED and ENTERED this 16TH day of MAY, 2024.

Janna Whatley
HONORABLE JANNA K. WHATLEY

CC: District Clerk
Jaime S. Rangel / Ryan M. Lammert / Dana B. Deaton / Clint L. Prather
M. Aldo Dyer
R. Shane Sillivent
David A. Vanderkider / Brandy Manning / James M. "Marty" Truss