[Cite as *Eagle Creek Farm Properties, Inc. v. EAP Ohio, L.L.C.*, 2026-Ohio-4555.]

IN THE OHIO COURT OF APPEALS
FIFTH APPELLATE DISTRICT
GUERNSEY COUNTY, OHIO

EAGLE CREEK FARM PROPERTIES, INC., Plaintiff - Appellant -vs- EAP OHIO, LLC., Defendant - Appellee	Case No. 26CA000015 Opinion And Judgment Entry Appeal from the Guernsey County Court of Common Pleas, Case No. 24-CV-262 Judgment: Affirmed Date of Judgment Entry: November 16, 2026

BEFORE: Andrew J. King; Robert G. Montgomery; David M. Gormley, Judges

APPEARANCES: RICK L. ASHTON, KATHERINE CONNOR FERGUSON and JEFFREY R. CORCORAN, for Plaintiff-Appellant; TIMOTHY B. MCGRANOR and AARON E. GONZALEZ, for Defendant-Appellee.

Montgomery, J.

{¶1} Plaintiff-appellant Eagle Creek Farm Properties, Inc. (hereinafter "Eagle Creek") appeals the summary judgment entered by the Guernsey County Common Pleas Court dismissing its complaint for declaratory judgment, fraud, breach of contract, trespass, unjust enrichment, and promissory estoppel against Defendant-appellee EAP Ohio, LLC (hereinafter "EAP").

STATEMENT OF THE FACTS AND CASE

{¶2} This case involves a parcel of land of 97.280 acres in Guernsey County, Ohio, owned by Eagle Creek. EAP was the lessee of an oil and gas lease on the property. From December of 2022 through August of 2023, the property was owned by K&S Shugert Family Limited Partnership (hereinafter "Shugert"). EAP negotiated a Surface Use Agreement (hereinafter "SUA") with Shugert to allow EAP to construct a well pad on the Shugert property. The negotiations continued through August of 2023.

{¶3} Initially, the negotiations included EAP purchasing water for its operations on the property from Egypt Valley Energy, LLC, an affiliate of Shugert. Ultimately, the parties did not reach an agreement regarding the purchase of water.

{¶4} After numerous drafts of an SUA and an Addendum to the SUA were exchanged, an agreement was executed between Shugert and EAP on August 4, 2023. By the initial draft of the SUA, EAP would compensate Shugert $10,000 per acre of the well site boundary. After negotiations failed for the purchase of water, the price increased from a total of $170,000 to $225,000.

{¶5} The SUA provides in pertinent part:

> **WHEREAS**, THE PARTIES DESIRE TO ENTER INTO THIS Agreement to govern Operator's use of the Lands in connection with its oil and gas operations and the payment of reasonable compensation to Owner in connection therewith.
>
> **NOW THEREFORE**, for and in consideration of Ten & 00/100 Dollars ($10.00) and other good and valuable consideration paid by Operator to Owner, the receipt and sufficiency of which are hereby acknowledged, Owner

does hereby grant to Operator exclusive easements and rights of way for ingress and egress across the surface of the Lands, for construction and operation of roads, a pad site, processing pipelines and tubing within the pad site, and other surface facilities, for storage and staging activities and for the general use of surface of the Lands and subsurface of the Lands for all the necessary oil, gas and mineral operations in connection with the drilling, completion, operation of any well or wells operated by Operator, whether located on the Lands or otherwise.

The Parties further agree:

1. **Right of Use**. This grant of easement on the Lands, including all rights associated therewith, shall be a covenant running with the Lands. Operator agrees to use only so much of the Lands as is reasonably necessary to conduct its operations under this Agreement and will take all steps reasonably possible to minimize surface disturbance to the lands.

2. **Location Approval and Compensation.** Owner and Operator agree to the approximate location of the well-pad, access roads and other facilities as identified on plat attached hereto as Exhibit "A" and made part hereof. The parties agree the cash consideration paid hereunder shall be full and adequate payment for damages caused by Operator's operations on the lands. Operator will issue payment for amounts due under this Agreement within sixty (60) days after (1) commencement of construction operations, as defined by entry onto the lands with equipment capable of constructing a well pad and access road, and (2) after receipt of an executed W-9 form. Activities necessary for or

leading up to the application and approval of an Erosion and Sediment Control Plan to include, but in no way limited to: tree cutting, survey work, or geotechnical investigation, shall not be misconstrued as construction activities, or the start thereof. Operator shall compensate Owner as follows:

a. Operator will pay Owner a one-time surface damage payment in the amount of Five Thousand Dollars ($5,000) for each acre disturbed as a result of Operator's construction, operation, production, repair, replacement or maintenance of any well pads, access road, production pipelines, waterlines, tanks, fences, or power lines placed on the Lands.

{¶6} The Addendum, executed on the same day, provides in pertinent part: The Parties agree that if any of the provisions within this Addendum conflict with or are inconsistent with the printed provisions or terms of the Surface Use Agreement, then the provisions of this Addendum shall control. Any breach of the covenants contained in the Agreement by Operator shall be considered a material breach and shall be subject to the Events of Default and described herein.

WITNESSETH, that for and in consideration of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and of the mutual covenants and agreements hereinafter set forth, Grantor and Operator agree as follows:

1. **Description of Grantor's Property and Grant** - The Surface Use Agreement and Addendum and the permanent rights granted herein are applicable to Grantor's Property, which contains one (1) parcel consisting of

approximately **97.280** acres of land located in Center Township, Guernsey County, Ohio, having a tax parcel number of **08-0000314.000** (**"Grantor's Property", "Owner's Property"** or **"Property"**, inclusive of the grant herein). The conveyance granted by Grantor to Operator herein shall consist of a Well Pad Site ("**Well Pad Site**") and a Well Pad Road ("**Well Pad Road**") which, together, shall not exceed **17 acres** in the aggregate. The Well Pad Road shall be constructed by the Operator with a width that shall not exceed thirty (30) feet, along the proposed route as described and illustrated in Exhibit "A", which is made a part hereof. The thirty (30) feet described herein is the stoned and traveled portion of the Well Pad Road and does not include the Well Pad Road apron, which will exceed thirty (30) feet. Other than the Description contained in this Section 1, Grantee shall have no right to utilize any additional temporary workspace or other lands owned by Grantor, unless under separate written agreement with Grantor. The name of the well will be the **"SHUGERT GY CEN WELL PAD"**.

* * *

3. **No Storage Rights Clause** - Other than for the use in the construction of the Well Pad Site and Well Pad Road and the exploration of Oil and Gas by the Operator on the Property and lands pooled therewith; the Operator agrees that the grant shall not be used for the purpose of storing or storage of any products, vehicles, equipment, flammable materials or any other items utilized by Operator. Additionally, there shall be no "Temporary Work Space" reserved

under this Agreement, unless the same is done under separate written agreement between the Parties.

* * *

5. **No Disposal Clause** - The right to dispose of any fluids or waste products, including, but not limited to, waste water and/or brine upon the Grantor's Property is specifically excluded and prohibited.

6. **Use Of Water Clause** - Operator shall not use any surface or underground water on the Grantor's Property, except by separate written agreement between the Parties.

* * *

12. **Prohibited Activities** - Operator is prohibited from conducting aerial spraying upon any portion of Grantor's Property. Operator is prohibited from the burning of brush or other waste materials upon any portion of the Grantor's Property. Operator is prohibited from placing living quarters of any type on the Grantor's Property. Operator is prohibited from performing any activity which is not expressly permitted pursuant to the terms and conditions of this Agreement.

* * *

14. **Ingress and Egress** - Notwithstanding anything to the contrary contained in the Agreement (but subject to Operator's subsurface easement granted therein), Operator agrees that ingress and egress on Grantor's Property shall be limited to within and along said Well Pad Site and Well Pad Road and exclusively for the construction and operation of the Well Pad Site and Well

Pad Road to be constructed on Grantor's Property. Operator is strictly forbidden and shall not be entitled to build any additional roads or use any existing driveway(s) on the Grantor's Property for any reason whatsoever. Operator shall not be entitled to use any of Grantor's existing roads, driveways, or curb cuts to enter the Property. Any other access shall be permitted only by separate written agreement between Grantor and Operator.

15. **Well Pad Road** - The Operator shall construct the Well Pad Road in the location approved by Grantor and identified on the attached Exhibit "A". The Operator shall construct such Well Pad Road of such materials and in sufficient quantities to safely accommodate all trucks and materials that will be brought on to the Grantor's Property.

16. **Well Pad Site** - The Operator shall construct the Well Pad Site with such materials and in sufficient quantities to safely accommodate any and all equipment that will reside on the Well Pad Site and shall install a chain link fence that will surround all sides of the Well Pad Site.

{¶7} Concurrently with the execution of the SUA and Addendum, Shugert assigned all of its compensation from the SUA to Eagle Creek. Eagle Creek did not own the property at the time and did not negotiate the terms of the agreement with EAP.

{¶8} After the SUA was signed, a survey of the property was completed and the finalized Well Site Plan was made, including the actual boundary of the limits for the complete Well Site Boundary. The finalized Well Site Boundary includes a hardline of the northwest side of the Well Site Boundary against the property line with the neighboring

Bamfield property. The drawing attached to the SUA of the approximate Well Site Boundary as Exhibit A showed a gap between the boundary and the neighboring property line.

{¶9} In May of 2024, EAP ran a temporary waterline using the neighboring property route and began hydraulic fracking operations on the Shugert property wells. At no time did the temporary water line extend beyond the Well Site Boundary in the final drawing.

{¶10} Eagle Creek filed the instant action, seeking declaratory judgment and alleging breach of contract, fraud, trespass, unjust enrichment, and promissory estoppel. Both parties moved for summary judgment. The trial court granted EAP's motion for summary judgment and dismissed Eagle Creek's complaint.

{¶11} It is from the March 18, 2026, judgment of the trial court Eagle Creek prosecutes its appeal, assigning as error:

{¶12} "I. THE TRIAL COURT ERRED IN GRANTING APPELLEE EAP OHIO, LLC SUMMARY JUDGMENT ON APPELLANT EAGLE CREEK FARM PROPERTIES, INC.'S CONTRACT CLAIM AND DENYING EAGLE CREEK SUMMARY JUDGMENT ON THE CLAIM."

{¶13} "II. THE TRIAL COURT ERRED IN GRANTING EAP SUMMARY JUDGMENT ON EAGLE CREEK'S FRAUD CLAIM."

{¶14} "III. THE TRIAL COURT ERRED IN GRANTING EAP SUMMARY JUDGMENT ON EAGLE CREEK'S TRESPASS AND UNJUST ENRICHMENT CLAIMS AND IN DENYING EAGLE CREEK'S MOTION FOR SUMMARY JUDGMENT ON THE TRESPASS CLAIM."

STANDARD OF REVIEW

{¶15} Summary judgment proceedings present the appellate court with the unique opportunity of reviewing the evidence in the same manner as the trial court. *Smiddy v. The Wedding Party, Inc.*, 30 Ohio St.3d 35, 36 (1987). As such, we must refer to Civ.R. 56(C) which provides in pertinent part:

> Summary Judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor.

{¶16} Pursuant to the above rule, a trial court may not enter summary judgment if it appears a material fact is genuinely disputed. The party moving for summary judgment bears the initial burden of informing the trial court of the basis for its motion and identifying those portions of the record demonstrating the absence of a genuine issue of material fact. The moving party may not make a conclusory assertion the non-moving party has no evidence to prove its case. The moving party must specifically point to some evidence which demonstrates the non-moving party cannot support its claim. If the moving party satisfies

this requirement, the burden shifts to the non-moving party to set forth specific facts demonstrating there is a genuine issue of material fact for trial. *Vahila v. Hall*, 1997-Ohio-259, *citing Dresher v. Burt*, 1996-Ohio-107.

I.

{¶17} In the first assignment of error, Eagle Creek argues the trial court erred in dismissing its breach of contract claim on the basis that the SUA permitted the laying of temporary waterlines inside the Well Site Boundary, and nothing in the Addendum prohibited the laying of waterlines.

Harmonization of SUA and Addendum

{¶18} Contracts must be read as a whole, and individual provisions must not be read in isolation. *Heritage Mut. Ins. Co. v. Ricart Ford, Inc.,* 105 Ohio App.3d 261, 265 (10th Dist. 1995). In contract construction, the court should give effect to every provision within the contract, if possible. *Bank of N.Y. Mellon v. Rankin*, 2013-Ohio-2774, ¶ 31 (10th Dist.). Courts must adhere to the maxim that when possible, the court's construction of a contract should attempt to harmonize all the provisions of the document rather than to produce conflict between them. *Summitcrest, Inc. v. Eric Petroleum Corp.*, 2016-Ohio-888, ¶ 35 (7th Dist.).

{¶19} In the instant case, the Addendum provides that in the event of a conflict between the SUA and the Addendum, the Addendum controls. The SUA provides a general grant of rights to EAP to conduct drilling operations on the property and specifically provides compensation for damage caused to the property for the laying of waterlines. Thus, we find the trial court did not err in finding the SUA allowed the laying of the temporary waterlines on the property within the Well Site Boundary. Eagle Creek argues the SUA was a "form contract," and was not specifically bargained for by the parties. However, the SUA was

signed by the parties and is therefore as much a part of the contract as the Addendum, whether or not it was a "form" lease.

{¶20} Eagle Creek also argues it presented evidence to the trial court by way of the deposition testimony of Charles Kidder that the parties did not intend to allow temporary waterlines on the property without entering a separate contract. When the language of a contract is clear and unambiguous, and not subject to multiple interpretations, the trial court will not consider extrinsic evidence, i.e., evidence outside the four corners of the document, to re-interpret the contract's terms. *Id.* at ¶ 31. The SUA allowed the laying of waterlines as a part of its terms. We find the trial court did not err in failing to consider extrinsic evidence that the parties contemplated a separate agreement regarding the right to lay waterlines.

{¶21} Eagle Creek argues that the Addendum is in conflict with the SUA as to the laying of waterlines, and the trial court erred in failing to find that the Addendum controlled. As found by the trial court, nothing in the Addendum prohibits the laying of waterlines inside the 17-acre Well Site Boundary. The Addendum provides specific prohibition of a number of activities on the property but does not prohibit waterlines. The grant of rights in the Addendum states:

> The conveyance granted by Grantor to Operator herein shall consist of a Well Pad Site ("Well Pad Site") and a Well Pad Road ("Well Pad Road") which, together, shall not exceed 17 acres in the aggregate. The Well Pad Road shall be constructed by the Operator with a width that shall not exceed thirty (30) feet, along the proposed route as described and illustrated in Exhibit "A", which is made a part hereof. The thirty (30) feet described herein is the stoned and traveled portion of the Well Pad Road and does not include the Well Pad Road

> apron, which will exceed thirty (30) feet. Other than the Description contained in this Section 1, Grantee shall have no right to utilize any additional temporary workspace or other lands owned by Grantor, unless under separate written agreement with Grantor.

{¶22} While this grant limits the right of EAP to utilize property other than the 17 acres of the Well Pad Site and Well Pad Road, collectively known to the parties as the Well Site Boundary, nothing in this clause restricts the right of EAP, as granted by the SUA, to construct waterlines inside the 17-acre Well Site Boundary.

{¶23} We find the trial court did not err in harmonizing the SUA and its addendum and concluding EAP could construct temporary waterlines inside the 17-acre Well Site Boundary pursuant to the contract.

Exhibit A

{¶24} Eagle Creek also argues the trial court erred in finding Exhibit A, which was incorporated into the agreement, was not breached by EAP "moving" the Well Site Boundary to abut the neighboring property, while Exhibit A, which was incorporated into the SUA, showed a "gap" between the two properties.

{¶25} The trial court relied on *Pirl v. Rice Drilling D, LLC,* 2025 U.S. App. LEXIS 11681 (6th Cir. May 12, 2025). In that case, the court held that a map similar to the one in the instant case, which was labeled in the agreement as "for informational purposes only," did not bind the parties. The trial court in the instant case found that the label of Exhibit A as "approximate," much like the label of "for informational purposes only," did not bind EAP to construct the Well Site Boundary in accordance with the map set forth on Exhibit A.

{¶26} Although the language is different in the instant case than in *Pirl*, we find the use of the word "approximate" did not bind EAP to construct the Well Site Boundary in accordance with the map on the exhibit. Eagle Creek argues that the word "approximate" allowed EAP to adjust the boundaries following the survey, but not to move the boundaries, citing to the testimony of Seth Wehr at the preliminary injunction hearing. However, nothing in the plain language of the contract supports this interpretation of the word "approximate" as referring solely to a small, post-survey adjustment. We find the trial court did not err in concluding that the use of the word "approximate" with respect to Exhibit A did not bind EAP to the boundary set forth in that Exhibit, which did not show the boundary touching the neighboring property.

{¶27} Eagle Creek also argues EAP breached a covenant of good faith by moving the boundary, thereby gaining additional rights to lay waterlines which was not granted by the SUA and Addendum, but which instead the parties intended to address by separate agreement. Because we found earlier in this Opinion that the trial court did not err in concluding that EAP had the right to lay waterlines within the Well Site Boundary pursuant to the SUA, we find the trial court did not err in granting summary judgment on Eagle Creek's theory that EAP breached the covenant of good faith.

Ingress-Egress Clause

{¶28} Eagle Creek argues the trial court erred in failing to address its argument that EAP violated the Ingress-Egress Clause in the Addendum by failing to enter the property to lay the waterlines through the Well Pad Road or the Well Pad Site, instead entering through the neighboring property. We find the trial court overruled this claim sub silentio by failing to address it in its judgment.

{¶29} Further, we find Eagle Creek has not demonstrated a material disputed fact exists as to whether EAP violated this clause. Eagle Creek argues that EAP did not enter the property through either the Well Pad Road or the Well Pad Site, as required by the Ingress-Egress clause found in the Addendum, but rather entered the Well Site Boundary from the neighboring property. It is apparent from a plain reading of the SUA and the Addendum that the Well Site Boundary is a combination of the Well Pad Site and the Well Pad Road, not to exceed 17 acres of land, and the evidence is undisputed that the waterlines are entirely within the Well Site Boundary.

Commencement of Operations Clause

{¶30} Eagle Creek also argues the trial court erred in failing to address its argument that EAP violated the commencement of operations clause in paragraph nine of the Addendum by constructing the waterlines outside of the six-month limitation on construction activity on the property. At the preliminary injunction hearing, Seth Wehr testified that the laying of a waterline is not a construction activity. Tr. 172. He testified that paragraph nine of the Addendum specifically refers to the construction of the Well Pad Site and Well Pad Road prior to the well's certification. *Id.* Eagle Creek points to no evidence in the record to contradict this evidence that laying waterlines is not a construction activity.

{¶31} The first assignment of error is overruled.

II.

{¶32} In his second assignment of error, Eagle Creek argues that the trial court erred in dismissing its claim for fraud. The trial court found: (1) Eagle Creek failed to plead what injury Shugert had suffered at the time it assigned its fraud claim to Eagle Creek, (2) the waterline was not laid until five years after Shugert assigned its rights to Eagle Creek and a

claim that did not exist could not be assigned, and (3) no disputed facts existed as to Eagle Creek's fraud claim.

{¶33} The following elements are required to establish fraud: (1) a representation, or silence where there is a duty to disclose, (2) which is material to the transaction, (3) made falsely, with knowledge of its falsity, or with such utter disregard as to its truth that knowledge may be inferred, (4) with the intent to mislead another into relying on it, (5) justifiable reliance on the representation, and (6) resulting injury proximately caused by the reliance." *Advanced Prod. Ctr., Inc. v. Emco Maier Corp.,* 2003-Ohio-6206, ¶ 14 (5th Dist.).

{¶34} Eagle Creek argues EAP committed fraud by demonstrating a "gap" between the Shugert property and the neighboring property on Exhibit A, while intending to hardline the border of the Well Site Boundary to the neighboring property. Even assuming arguendo that Eagle Creek had standing to raise the fraud claim assigned to it by Shugert, we find the trial court did not err in finding reasonable minds could only conclude that Eagle Creek did not present evidence of a false misrepresentation which Shugert justifiably relied upon in entering the contract. Exhibit A specifically states it is the approximate location of the Well Site Boundary, not a final line. In his deposition testimony, Shugert testified he did not ask anyone from EAP whether there was intended to be a gap between the properties or not. Shugert Depo. p. 55. He testified that his belief that there was a gap was based on his interpretation of the map. *Id.* When asked what statement by EAP he was basing his fraud claim on, Shugert responded, "I'm not basing it on a statement that I know." *Id.* at p. 82. He stated he was basing his fraud claim on the fact that he never agreed to a map that touched the neighboring property and on the fact that EAP ran the water line without his permission. *Id.*

{¶35} A party's subjective misunderstanding as to the terms of the agreement is insufficient to establish fraud; rather, a specific false representation must have been made. *Peirsol v. Haumschild*, 2026-Ohio-3692, ¶ 25 (5th Dist.). Eagle Creek did not present evidence of a specific false representation on which Shugert justifiably relied in entering the SUA. Rather, Shugert had a subjective misunderstanding that the gap pictured on Exhibit A to the contract, which was specifically labeled as an approximation, would remain in place on the final map, unless he agreed otherwise, and also had a subjective misunderstanding that waterlines would not be laid without his permission. Shugert pointed to no false statement by EAP upon which he relied in reaching his understanding of the agreement. We find the trial court did not err in dismissing Eagle Creek's fraud claim.

{¶36} The second assignment of error is overruled.

III.

{¶37} Eagle Creek argues that the trial court erred in dismissing its claims for unjust enrichment and trespass.

Unjust Enrichment

{¶38} When competent parties contract, and no fraud or illegality is involved, unjust enrichment cannot be claimed. *Zara Constr., Inc. v. Belcastro*, 2022-Ohio-788, ¶ 62 (5th Dist.), *citing Ullmann v. May*, 147 Ohio St. 468 (1947). "The law does not recognize the coexistence of a quasi contract and an express contract covering the same subject." *Williams v. Goodyear Aircraft Corp.*, 84 Ohio App. 113, 117 (9th Dist. 1948).

{¶39} In the instant case, we have found that the trial court did not err in finding the SUA and Addendum allowed the laying of temporary waterlines on the property, and we have found that the trial court did not err in dismissing Eagle Creek's fraud claim.

Accordingly, we find Eagle Creek's claim for unjust enrichment would not lie in the instant case, and the trial court did not err in dismissing this claim.

Trespass

{¶40} Eagle Creek concedes at page 25, footnote 9, of its brief that if the trial court did not err in finding the SUA allowed the laying of the disputed waterlines, it cannot recover on its claim for trespass. Accordingly, we find the trial court did not err in granting summary judgment on Eagle Creek's trespass claim.

{¶41} The third assignment of error is overruled.

CONCLUSION

{¶42} The judgment of the Guernsey County Common Pleas Court is affirmed.

{¶43} Costs are assessed to Appellant.

By: Montgomery, J.

King, P.J. and

Gormley, J. concur.