

CAUSE NO. DC-16-01372

ROBERT A. IMEL,

*Plaintiff,*

vs.

LEGACYTEXAS BANK AND ENERGY  
RESERVES GROUP, LLC,

*Defendants.*

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IN THE DISTRICT COURT

134TH JUDICIAL DISTRICT

OF DALLAS COUNTY, TEXAS

AMENDED FINAL JUDGMENT

1. On May 30, 2017, the Court signed and entered an order styled “Order of Nonsuit without Prejudice” thereby granting Jason R. Searcy’s, Trustee of the AIX Energy, Inc. and Antero Energy Partners, LLC Liquidating Trust, Notice of Nonsuit without Prejudice and dismissing all of the Trustee’s claims against Robert A. Imel. This order is hereby incorporated herein by reference.

2. On July 14, 2017, the Court signed and entered an order styled “Amended Order” thereby granting in part and denying in part LegacyTexas’ No-Evidence Motion for Partial Summary Judgment as to Defendant’s Fourth Counterclaim. This order is hereby incorporated herein by reference.

3. On October 13, 2017, the Court signed and entered an order styled “Order” thereby granting Robert A. Imel’s Motion for Summary Judgment Regarding LegacyTexas Bank’s Counterclaims. This order is hereby incorporated herein by reference. The Court therefore ORDERS that Legacy take nothing by its suit.

4. On September 10, 2018, this case was called for trial. Plaintiff, Robert A. Imel (“Imel” or “Plaintiff”), appeared in person and through his attorneys and announced ready for trial. Defendant LegacyTexas Bank (“Legacy”) appeared through its representative and through its

attorneys and announced ready for trial. Defendant Energy Reserves Group, LLC (“ERG”) appeared through its representative and through its attorneys and announced ready for trial.

5. All matters in controversy, legal and factual, were submitted to the Court for its determination. The Court heard the evidence and arguments of counsel.

6. The Court hereby RENDERS judgment for Imel.

7. Specifically, the Court finds that:

a. Plaintiff proved his claim for fraud and accordingly it is ORDERED, ADJUDGED, and DECREED that Plaintiff recover \$3,000,000 in actual damages from Defendant Legacy. The Court further finds that Plaintiff also proved his claims for fraud by nondisclosure, breach of fiduciary duty, fraudulent inducement, and negligent misrepresentation, and each of those claims is an alternative basis for the foregoing judgment amount.

b. Plaintiff proved his claim for breach of contract and accordingly it is ORDERED, ADJUDGED, and DECREED that Plaintiff recover \$600,000 in actual damages from Defendant Legacy.

c. Plaintiff proved his claim for declaratory judgment against Defendants Legacy and Energy Reserves Group, LLC (“ERG”) and accordingly it is ORDERED, ADJUDGED, and DECREED that:

- i. Legacy was barred from assigning the Antero Credit Agreement<sup>1</sup> and the Antero Guaranty<sup>2</sup> to ERG;
  - ii. ERG did not acquire the status of a “Lender” under the Antero Credit Agreement;
  - iii. Legacy did not effectively assign or transfer the Antero Credit Agreement and the Antero Guaranty to ERG;
  - iv. Legacy’s purported assignment of the Antero Credit Agreement and Antero Guaranty to ERG did not qualify as a loan participation under Section 11.8(b) of the Antero Credit Agreement;
  - v. Legacy’s purported assignment of the Antero Credit Agreement and Antero Guaranty to ERG was void.
8. The Court further ORDERS that Imel recover:
- a. Attorney’s fees from Legacy in the amount of \$636,507.30, under Civil Practice and Remedies Code Chapters 37 & 38 for his declaratory judgment and breach of contract claims. If Legacy appeals this judgment, then Imel shall further recover his appellate attorneys’ fees from Legacy, as follows:
    - i. If Legacy were to unsuccessfully appeal this case to the Court of Appeals, then Imel shall recover from Legacy \$59,360 for his

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<sup>1</sup> The term “Antero Credit Agreement” means the Credit Agreement between Antero Energy Partners, LLC, as Borrower and Viewpoint Bank, N.A., as Lender dated as of December 23, 2013 and all documents, exhibits, and appendices related thereto.

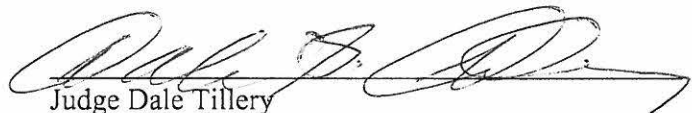
<sup>2</sup> The term “Antero Guaranty” means the Continuing Guaranty dated as of December 23, 2013, by Robert A. Imel in favor of Viewpoint Bank, N.A.

reasonable and necessary attorney's fees incurred in connection to the appeal;

- ii. If Imel prevails on an appeal to the Texas Supreme Court (regardless of which party filed the petition for review) then Plaintiff shall recover from Legacy \$14,112 for his reasonable and necessary attorney's fees incurred filing or responding to a petition for review, \$14,112 in reasonable and necessary attorney's fees incurred preparing and filing briefing on the merits, and \$14,560 in reasonable and necessary attorney's fees if the case was selected for oral argument;
- b. Attorney's fees from ERG in the amount of \$159,126.82, under Civil Practice and Remedies Code Chapter 37 for his declaratory judgment claim. If ERG appeals this judgment, then Imel shall further recover his appellate attorneys' fees from ERG as follows:
- i. If ERG were to unsuccessfully appeal this case to the Court of Appeals, then Imel shall recover from ERG \$14,840 for his reasonable and necessary attorney's fees incurred in connection to the appeal;
  - ii. If Imel prevails on an appeal to the Texas Supreme Court (regardless of which party filed the petition for review) then Imel shall recover from ERG \$3,528 for his reasonable and necessary attorney's fees incurred filing or responding to a petition for review, \$3,528 in reasonable and necessary attorney's fees incurred preparing and filing briefing on the merits, and \$3,640 in reasonable and necessary attorney's fees if the case was selected for oral argument;

- c. Court-costs;
  - d. Pre-judgment interest on the damages awarded herein at the rate of 5.25% for the time period beginning on October 14, 2016, the first day Imel asserted affirmative claim in the above-captioned case, and ending on the day preceding the date that this judgment is signed; and
  - e. Post-judgment interest on the total sum of the damages, exemplary damages, attorney's fees, and costs awarded herein compounded annually at the annual rate of 5.25%.
- 9. All relief not expressly granted herein is denied.
  - 10. This judgment finally disposes of all claims and all parties and is appealable.
  - 11. The Court orders execution to issue for this judgment.

SIGNED on January 22<sup>nd</sup>, 2019.

  
Judge Dale Tillery