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## Texas Oil Co.'s Win In Diesel-Fuel Shipment Row Overturned

By **Michelle Casady**

Law360, Houston (February 8, 2016, 5:33 PM EST) -- A quick win for Velvin Oil Company in a suit alleging AJP Oil didn't pay for a diesel fuel shipment was reversed by a Texas appeals court Monday, as it found that AJP had filed paperwork denying the facts alleged by Velvin, which should have barred summary judgment and allowed the dispute to go to trial.

A trial court had awarded Henderson, Texas-based Velvin \$32,676 in damages, as well as attorneys' fees in the amount of \$10,892, in the dispute over an unpaid bill for the delivery of diesel fuel. AJP argued on appeal that the trial court wrongly granted summary judgment despite AJP's amended answer and denial of Velvin's claims.

On appeal, Velvin told the court that the affidavit attached to the amended answer was not sufficient to defeat summary judgment because it did not contain facts. The Sixth Court of Appeals disagreed, citing the Texas Rules of Civil Procedure.

"Unlike Rule 166a, there is no requirement that an affidavit in support of a verified denial under Rule 185 set forth facts as would be admissible in evidence," the court wrote. "Rather, under Rule 185, a party opposing a sworn account is required only to 'file a written denial, under oath.'"

Attorneys for both sides told Law360 they weren't surprised by the court's ruling.

"We lost fair and square," said Ronnie Horsely, who represents Velvin. "The court ruled on the evidence, based on the documents in the file."

Jaclyn Patton, who represents AJP, agreed.

"I'm not really surprised," she said. "This is something that never should have happened in the first place."

Velvin Oil and AJP entered into a credit agreement in June 2012, and Velvin thereafter began making fuel deliveries to AJP, according to the opinion. Andrew J. Patton served as guarantor in the deal, promising AJP's payment and performance.

A dispute arose in December 2013 when Velvin allegedly delivered a shipment of tainted diesel fuel to AJP, but deliveries continued until April 2014 as the parties attempted to amicably work through the issue, according to the opinion.

Later that year, Velvin filed suit against AJP, alleging it had not paid its bill for the fuel deliveries and owed \$32,676. AJP and Patton filed an unverified answer, generally denying the allegations and specifically stating the account had been paid in full.

Velvin moved for summary judgment at that point, and AJP and Patton filed a verified amended answer on April 6, 2015, as well as a response to the motion for summary judgment, arguing there was a genuine issue of fact regarding the payment in question. AJP and Patton also attached a check dated April 29, 2014, for \$54,480 that was deposited by Velvin on May 27, 2014 as evidence that the account was current, according to the opinion.

Despite those filings, the trial court granted Velvin summary judgment on June 4, 2015.

"However, when the defendant timely files a verified denial of the correctness of the account, the evidentiary effect of the sworn account is destroyed, and the plaintiff must put on further proof of his claim," the court wrote, explaining that Velvin's sworn account doesn't qualify as summary judgment evidence. "If a verified denial has been filed and the plaintiff fails to offer summary judgment evidence to establish the account, summary judgment is improper."

AJP is represented by William R. Pemberton of William R. Pemberton PC and solo Jaclyn D. Patton.

Velvin is represented by Ronnie Horsley of Ronnie Horsley PC.

The case is AJP Oil Company LLC, doing business as Grapeland Fuel & BBQ and Andrew J. Patton v. Velvin Oil Company Inc., case number 06-15-00061-CV, in the Court of Appeals for the Sixth Appellate District of Texas.

--Editing by Philip Shea.

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