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FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

2007 FEB 12 AM 11:53

LORETTA G. WHYTE
CLERK

PATRICK JOSEPH TURNER, ET AL.

*

CIVIL ACTION

VERSUS

*

NO. 05-4206
CONSOLIDATED CASE

MURPHY OIL USA, INC.

*

SECTION "L" (2)

THIS DOCUMENT RELATES TO ALL CASES

ORDER AND REASONS

Pending before the Court is the PSC's Motion to Enforce the Dispute Resolution Agreement (Rec. Doc. 729). For the following reasons, the motion is DENIED,

The PSC filed this motion following the parties' execution on September 25, 2006 of a Memorandum of Understanding which stated the parties' intention to resolve the litigation through settlement. The parties recited the Memorandum of Understanding into the record in proceedings before the Court. The PSC contends that it entered into a dispute resolution agreement with the Defendant at the meeting and this dispute resolution agreement requires any and all disputes regarding settlement to be submitted to the Court on a binding and non-appealable basis. The parties executed the Settlement Agreement on October 10, 2006, and it was granted final approval by this Court on January 30, 2007.

The PSC now attempts to enforce this dispute resolution agreement and claims that Defense counsel agreed that the dispute resolution agreement would apply to all settlement documents, including any opinion of this Court approving the Settlement Agreement and

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awarding attorneys' fees and costs. The PSC contends that these statements qualify as a waiver of appeal and must be enforced under Louisiana law as an open-court recitation of a settlement agreement. Murphy denies that it entered into such an agreement and strongly imposes enforcement.

As proof that the Defendant agreed to waive the right to appeal, the PSC relies upon the following statements made by the PSC, the Court and the Defendant at the meeting on September 25, 2006:

[PSC member]: [O]bjections as to the settlement agreement or as to issues arising under the settlement agreement will be submitted to the district court, Your Honor, in the appropriate fashion with the understanding that your decision will be final and binding as to those issues.

The Court: I hope there are no disagreements, that the parties have been very fair in dealing with each other; but if there are any disagreements, I don't want it to get bogged down. I will give an opportunity to hear from each side. You'll tell me whether there's a legal issue, whether it's a factual issue, whether you want to make oral argument, whether you want to present a brief; but it will be on a fast track. When you present it to me, hopefully the same day I'll resolve it so that we can move on; but we do need some dispute resolution mechanism so that we don't get bogged down into what do we do now; so I accept that suggestion which is offered, I understand by both sides.

[Defense counsel]: And just so the record is clear, Your Honor, that dispute resolution mechanism would apply to the Memorandum of Understanding, too, in the event that there is any dispute over a term in there before we can confect a settlement agreement.

[PSC member]: Yes, any settlement documents are covered by the dispute resolution. Your Honor, with this, we do believe on the plaintiffs' behalf, that the jury can be excused for the trial that was scheduled to start on Monday.

The Court: The defendants agree with that also?

[Defense counsel]: Agreed.

(Transcript 9/25/06, Ex. 1 to PSC Mot.).

A waiver intentionally relinquishing a known right must be clear and unequivocal. The Court does not find any clear and unequivocal relinquishment of the right to appeal from the statements of either the PSC or the Defendant. First, the context of the Defense counsel's statement "[a]greed" reveals that the statement was made in response to the Court's question regarding whether the jury trial should be cancelled. Indeed, when the Court asked the question, it was referring only to the cancellation of trial, and not to the dispute resolution procedure.

Second, the dispute resolution mechanism, on which the Court elaborated in the excerpt above, referred to the procedure to be followed in the event of a dispute occurring while the parties were negotiating and confecting the settlement terms and conditions, and not to any issue arising after the Settlement Agreement was executed. The Court believed that such a mechanism would be helpful to encourage speedy resolution of the negotiation process and effectuate settlement within a short period of time. The Defendant counsel's statement that the mechanism would also apply to the Memorandum of Understanding before settlement was confected does not clearly and unequivocally constitute a statement that the dispute resolution mechanism would apply to all settlement related issues after the agreement was executed. Nor do the PSC's statements unambiguously state such a proposition. Thus, neither party clearly, unambiguously and unequivocally stated that the dispute resolution mechanism would prevent either party's right to appeal settlement documents, including any opinion of this Court approving the Settlement Agreement and setting attorneys' fees and costs. "The law favors an appeal and unless it is expressly waived, wherever the parties have a right to waive an appeal, the appeal must be

sustained." *South Lake Realty Corp. v. Board of Levee Comm'rs of Orleans Levee Dist*, 99 So.2d 2, 4 (La. 1958).

Accordingly, the PSC's motion is hereby DENIED.

New Orleans, Louisiana, this 12th day of February, 2007.


UNITED STATES DISTRICT JUDGE