

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

Ray L. Olin and Carole J. Olin, husband and wife as joint tenants; Paul Johnson and Candace Johnson, husband and wife; Neal R. Slavick; Dennis Olin and Carol Olin, husband and wife as joint tenants; David F. Heid; Tami A. Heid; Brent Heid; Michele Burger; James Bahm; Gary A. Haugen and Melinda K. Haugen, husband and wife as joint tenants; Timothy Lee Johnson and Thomas Wesley Johnson Partnership; Lee L. Ingalls; Matthew E. Ingalls; Thomas J. Ingalls; Robert J. Slavick; Jacquelyn M. Slavick; and Clark A. Norton and Debra D. Norton, husband and wife,

Plaintiffs,

v.

Dakota Access, LLC,

Defendant.

Civil No. _____

COMPLAINT

[¶1] Plaintiffs, Ray L. Olin and Carole J. Olin, husband and wife as joint tenants; Paul Johnson and Candace Johnson, husband and wife; Neal R. Slavick; Dennis Olin and Carol Olin, husband and wife as joint tenants; David F. Heid; Tami A. Heid; Brent Heid; Michele Burger; James Bahm; Gary A. Haugen and Melinda K. Haugen, husband and wife as joint tenants; Timothy Lee Johnson and Thomas Wesley Johnson Partnership; Lee L. Ingalls; Matthew E. Ingalls; Thomas J. Ingalls; Robert J. Slavick; Jacquelyn M. Slavick; and Clark A. Norton and Debra D. Norton, husband and wife, (hereinafter collectively referred to as “the Morton County Landowners”), for their cause of action against the Defendant, allege as follows:

PARTIES

[¶2] Plaintiffs Ray L. Olin and Carole J. Olin are residents of the State of North Dakota, residing in Morton County, North Dakota.

[¶3] Plaintiffs Paul Johnson and Candace Johnson are residents of the State of North Dakota, residing in Morton County, North Dakota.

[¶4] Plaintiff Neal R. Slavick is a resident of the State of North Dakota, residing in Morton County, North Dakota.

[¶5] Plaintiffs Dennis Olin and Carol Olin are residents of the State of North Dakota, residing in Morton County, North Dakota.

[¶6] Plaintiffs David F. Heid and Tami A. Heid are residents of the State of North Dakota, residing in Morton County, North Dakota.

[¶7] Plaintiff Brent Heid is a resident of the State of North Dakota, residing in Grand Forks, North Dakota.

[¶8] Plaintiff Michel Burger is a resident of the State of North Dakota, residing in Thompson, North Dakota.

[¶9] Plaintiff James Bahm is a resident of the State of North Dakota, residing in Morton County, North Dakota.

[¶10] Plaintiffs Gary A. Haugen and Melinda K. Haugen are residents of the State of North Dakota, residing in Morton County, North Dakota.

[¶11] Plaintiff Timothy Lee Johnson and Thomas Wesley Johnson Partnership is a North Dakota general partnership, with its principal place of business in Morton County, North Dakota.

[¶12] Plaintiff Lee L. Ingalls is a resident of the State of North Dakota, residing in Morton County, North Dakota.

[¶13] Plaintiff Matthew E. Ingalls is a resident of the State of North Dakota, residing in Cass County, North Dakota.

[¶14] Plaintiff Thomas J. Ingalls is a resident of Washington, D.C.

[¶15] Plaintiffs Robert J. Slavick and Jacquelyn M. Slavick are residents of the State of North Dakota, residing in Morton County, North Dakota.

[¶16] Plaintiffs Clark A. Norton and Debra D. Norton, husband and wife, are residents of the State of North Dakota, residing in Morton County, North Dakota.

[¶17] Defendant, Dakota Access, LLC, including its agents, employees, representatives, or any person or entity acting on its behalf (“Dakota Access”), is a public utility under N.D.C.C. Ch. 49-22, is a limited liability company organized under the laws of the State of Delaware, and has its principal place of business in Texas.

JURISDICTION

[¶18] This Court has subject matter jurisdiction of this action under 28 U.S.C. § 1332(a)(1), in that this is a civil action where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs, and is between citizens of different States.

[¶19] Venue is proper in this judicial district under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this judicial district.

FACTS

[¶20] The Dakota Access Pipeline is a pipeline that runs approximately 1,172 miles and is designed to transport domestically produced light sweet crude from the Bakken and Three Forks production areas in North Dakota to terminal facilities in Patoka, Illinois.

[¶21] Seventy-one (71) miles of the Dakota Access Pipeline travels through Morton County, North Dakota.

[¶22] Dakota Access needed to obtain easements from the Morton County Landowners so its pipeline could lawfully travel through Morton County.

[¶23] Dakota Access approached the Morton County Landowners¹ around August 2014 regarding the easements that are at issue in this matter.

[¶24] Dakota Access valued the easements that it needed in Morton County based on a per rod value price.

[¶25] A rod is equal to 16.5 feet.

[¶26] Dakota Access offered each of the Morton County Landowners the same agreement—a price of \$180 per rod, with a 20% signing bonus.

[¶27] With the addition of the 20% signing bonus, the offer equated to \$216 per rod.

[¶28] Dakota Access represented to the Morton County Landowners that they had 30 days to sign the easement or they would lose the 20% bonus that would be given to them.

[¶29] Dakota Access informed the Morton County Landowners that \$216 per rod was the best price that would ever be offered and the price would never be more for other landowners in Morton County.

¹ Robert E. Slavick, Jacquelyn M. Slavick, Brent Heid, and Michel Burger were not fee owners of their respective land, which is the subject of this action, at time the easements were granted.

¶30] Dakota Access informed the Morton County Landowners that other Morton County Landowners would receive the exact same deal of \$216 per rod and also informed the Morton County Landowners that their neighbors would lose the 20% signing bonus if the neighbors did not sign the easement agreement.

¶31] Dakota Access informed some of the Morton County Landowners that if they did not sign the easement, their land would be condemned by eminent domain, they would not receive a better deal by eminent domain, and they would either receive less money or “basically nothing” at all through the eminent domain process.

¶32] Dakota Access told a few Morton County Landowners if they did not grant the easements and accept the \$216 per rod, the pipeline would just be moved to different land.

¶33] Dakota Access told other Morton County Landowners in late-2014 that they should sign the easement agreement right away because the price of oil was going down and if they signed right away they would at least get the easement money even though the pipeline might not be constructed.

¶34] Each of the Morton County Landowners signed their easement agreements based on Dakota Access’s misrepresentations, deception, or other unfair tactics.

¶35] Each of the Morton County Landowners, with the exception of Lee Ingalls, Thomas Ingalls, and Matthew Ingalls, received the price of \$216 per rod.

¶36] Lee Ingalls, Thomas Ingalls, and Matthew Ingalls received a price of \$400 per rod.

¶37] Earlier this year, the Morton County Landowners learned that their neighbors received far more money per rod from Dakota Access than the Morton County Landowners received.

[¶38] Many landowners in Morton County received a price of \$660 per rod from Dakota Access.

[¶39] Some landowners received as high as \$2,000 per rod from Dakota Access.

[¶40] Because other landowners received a better price than the Morton County Landowners, Dakota Access's representations to the Morton County Landowners were false representations and deceptive.

[¶41] Dakota Access's statements were false, misleading, and unfair statements designed to induce the Morton County Landowners to sign the easement agreements at a lower price than other Morton County Landowners.

COUNT I
UNFAIR TACTICS IN ACQUIRING LAND EASEMENTS—N.D.C.C. § 49-22-16.1

[¶42] The Morton County Landowners reallege and reassert all previous paragraphs of the Complaint.

[¶43] Since the 1970s North Dakota has had a special statute to protect landowners that have been treated unfairly by a person or persons acting on behalf of a public utility in acquiring easements from landowners.

[¶44] N.D.C.C. § 49-22-16.1 provides:

If at least five landowners aggrieved by the conduct of a person or persons, acting on behalf of . . . [a public] utility, acquiring easements for a site or route of a facility allege use of harassment, threat, intimidation, misrepresentation, deception, fraud, or other unfair tactics by the person or persons acquiring or attempting to acquire the easement, an action may be brought in the appropriate district court.

Upon a determination by the court that the person or persons employed by the utility used harassment, threat, intimidation, misrepresentation, deception, fraud, or other unfair tactics in acquiring or attempting to acquire an easement from at least five separate landowners, the court shall, by order, declare the easements void and may order any compensation paid therefor returned to the offending utility, or allow the landowner to retain such compensation, or award to the landowner up to three times the amount of the compensation involved as

damages, punitive or compensatory. The court shall award costs and reasonable attorney's fees to the plaintiffs when the court rules in favor of the plaintiffs.

[¶45] Dakota Access falsely told the Morton County Landowners \$216 per rod was the best price they would ever receive for the easements burdening their land, that other landowners in Morton County would never receive a better price per rod, that other Morton County Landowners would receive a lower price per rod by not promptly signing the easement agreement, and that the Morton County Landowners would lose their signing bonus if they did not promptly sign an easement with Dakota Access.

[¶46] Dakota Access falsely and deceptively told a number of the Morton County Landowners that if they did not sign the easement agreements at \$216 per rod, their land would be taken by eminent domain and the Morton County Landowners would receive either less money or “basically nothing” at all by eminent domain.

[¶47] Dakota Access falsely told other landowners that if they did not sign, the pipeline would be moved to different land.

[¶48] Other landowners in Morton County received substantially higher prices per rod than the Morton County Landowners received.

[¶49] Persons acting on Dakota Access's behalf harassed, threatened, and intimidated the Morton County Landowners, made misrepresentations, and used deception, fraud, or other unfair tactics in acquiring easements from the Morton County Landowners.

[¶50] The Morton County Landowners are entitled to additional compensation as a result of Dakota Access's tactics in acquiring the easements.

[¶51] The Morton County Landowners are entitled to an award of up to three times the amount of the compensation involved as damages, punitive or compensatory.

[¶52] The Morton County Landowners are entitled to an award of costs and reasonable attorney's fees.

COUNT II
FRAUD AND/OR MISREPRESENTATION

[¶53] The Morton County Landowners reallege and reassert all previous paragraphs of the Complaint.

[¶54] Dakota Access committed fraud by misrepresenting to the Morton County Landowners that \$216 per rod was the best price they would ever receive for the easements burdening their land, that other landowners in Morton County would never receive a better price per rod, that other Morton County Landowners would receive a lower price per rod by not promptly signing the easement agreement, and that the Morton County Landowners would lose their signing bonus if they did not promptly sign an easement with Dakota Access.

[¶55] Dakota Access misrepresented to a number of the Morton County Landowners that if they did not sign the easement agreements at \$216 per rod, their land would be taken by eminent domain and the Morton County Landowners would receive either less money or "basically nothing" at all by eminent domain.

[¶56] Dakota Access misrepresented to other landowners that if they did not sign, the pipeline would be moved to different land.

[¶57] The Morton County Landowners relied upon the misleading statements and misrepresentations made by Dakota Access.

[¶58] Due to the misleading statements and misrepresentations made by Dakota Access, the Morton County Landowners were fraudulently induced into entering easements with Dakota Access.

[¶59] The Morton County Landowners suffered and continue to suffer damages as a result of the misleading statements and misrepresentations made by Dakota Access.

[¶60] The Morton County Landowners are entitled to additional compensation as a result of Dakota Access's fraud in acquiring the easements.

WHEREFORE, the Morton County Landowners pray for judgment as follows:

[¶61] That the Morton County Landowners be awarded damages in an amount in excess of \$4,000,000;

[¶62] That the Morton County Landowners be permitted to amend the Complaint to seek punitive damages under N.D.C.C. § 32-03.2-11;

[¶63] That the Morton County Landowners be permitted to amend the Complaint to add additional parties;

[¶64] That the Morton County Landowners be awarded their costs, disbursements, and attorney's fees; and

[¶65] For such other relief the Court determines just and appropriate.

Dated this 6th day of January, 2017.

/s/ Peter W. Zuger

Ronald H. McLean (#03260)

Peter W. Zuger (#06282)

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