FALL 2015 NEWSLETTER

The StrongFirm® P.C. Attorneys StrongPoints

Table of Contents

Continued Resiliency and Innovation in the Oil Field	1
The Personal Guaranty of a Commercial Lease: A Tenant's Perspective	2
Due Diligence in Commercial Real Estate	2
Fact or Fiction, or: Talk is Cheap So Get It in Writing	3
The "Basis" for Good Planning: Using "Stepped-Up" Basis to Reduce Tax	3
Boeing Co. v. Paxton: Private Rights Despite Open Government	4
Strong in Action	5a
Strong in the Community	5b

Continued Resiliency and Innovation in the Oil Field

By: Bret Strong

If you live in or around Houston, Texas, you cannot help but hear concerns about the effects of lower oil prices over the past several months on local jobs and the economy. Having worked in the industry since 1985, booms and busts are part of the industry. The combination of more integrated global markets along with political instability and conflict in many regions throughout the world that are rich in production and reserves, have not helped with predictability of oil and gas pricing. However, I believe good ol' American ingenuity continues to provide a silver lining for the oil and gas sector.

To start, U.S. energy companies are at least partially responsible for the current situation. Through incredible innovation in technologies, including increased rig automation, hydraulic fracturing, more accurate directional drilling, better seismic imaging, and sophisticated waste-water treatment, the industry continues to more effectively find and produce oil and gas. These innovations have made our country the number one producer of natural gas in the world and the second largest producer of oil behind Saudi Arabia, according to the U.S. Energy Information Administration. It is this growth in production and a decision by the Organization of the Petroleum Exporting Countries (OPEC) to not reduce production in November 2014 (most believe in reaction to the increase in U.S. production) that dropped oil prices from more than $100 per barrel last summer to current prices hovering around $50 per barrel.

However, in recent months, we have seen how the lower prices help drive down the cost of drilling and producing oil and gas, even in expensive shale and tight gas situations. Service companies continue to provide innovative approaches and lower costs to their operating customers. Operators are now focusing on projects that are economically viable in both the short- and long-term under more conservative pricing scenarios. While the current commodity price environment does not appear to be ideal for the industry, we believe the industry is set up quite nicely for a time when even a moderate ($20 per barrel) increase in oil prices will bode well for the energy sector. We continue to work with clients in and effected by the industry to help maximize value in today's world. Give us a call if we can be of any assistance with your legal needs.

Bret Strong

__Bret Strong__ is the founder and Managing Shareholder of The Strong Firm P.C. His areas of practice include oil, gas, and energy; commercial real estate; mergers, acquisitions, and sales; and business law and contracts. He earned a Juris Doctorate, cum laude, from South Texas College of Law, and a B.S. in Business Finance from the University of Colorado at Boulder. He is admitted to practice law in Texas, Colorado and before The United States Supreme Court. Bret is a founding board member of The Woodlands Bar Association, former Chairman of The Woodland Area Chamber of Commerce and currently serves on the Board of Leadership Montgomery County.

bstrong@thestrongfirm.com

The Strong Firm P.C.
Two Hughes Landing
1790 Hughes Landing Boulevard
Suite 200
The Woodlands, TX 77380
Phone (281) 367-1222
Fax (281) 210-1361
bstrong@thestrongfirm.com

Visit us at: **www.thestrongfirm.com**

The Personal Guaranty of a Commercial Lease:
A Tenant's Perspective

Eric R. Thiergood, Sr.

By: Eric R. Thiergood, Sr.

For many of our clients entering into a commercial lease as a tenant, the landlord will often require that one or more of the principals or owners sign a personal guaranty. In most cases, unless the potential tenant is a large national company with an established track record, landlords will refuse to lease the space without a personal guaranty.

What is a personal guaranty? Simply put, a personal guaranty on a commercial lease, as its name implies, is a legal document wherein guarantor(s) will be liable for the payment (and often performance) under the lease should the tenant fail to pay or perform. The guaranty is typically a separate contract from the lease, although the guaranty can actually be a part of the lease itself. A personal guaranty is typically drafted very broadly in the landlord's favor and usually makes the guarantor personally liable for anything the tenant is liable for under the lease. Most personal guaranties state the landlord can proceed immediately against the guarantor in the event of a default under the lease and need not pursue the tenant at all. This is important for a landlord particularly when the tenant is an entity. Without a personal guaranty, the landlord would usually only be able to pursue a claim against the entity in the event of a default, not the owner(s). A personal guaranty allows the landlord to pursue both the entity and the guarantor (typically the owner of the company).

Should I sign a personal guaranty? A lease negotiated on behalf of a tenant that does not require a personal guaranty would be ideal but not likely in today's market. In most cases from a tenant's perspective, a personal guaranty is a necessary evil when it comes to commercial leases. Though the personal guaranty requirement may not be negotiable from a landlord's perspective, some aspects of the guaranty may be negotiable, particularly if the tenant has a solid rental and business history, and if the tenant's attorney is experienced in representing and negotiating commercial leases.

In certain circumstances we at The Strong Firm P.C. have been able to negotiate limits to the time, scope, and even amount of the personal guaranty in favor of our clients. As with all legal documents, it is critical to have any personal guaranty, as well as the commercial lease that it is supporting, reviewed by a qualified attorney to make sure you are protected to the maximum extent possible.

***Eric R. Thiergood, Sr.**, Income Shareholder, joined The Strong Firm P.C. in 2005. Eric graduated from South Texas College of Law and is licensed to practice in Texas and in the United States Federal District and Bankruptcy Court for the Southern District of Texas. He lived a large portion of his life in Asturias, Oropesa Del Mar and Madrid, Spain and is fluent in Spanish.*
ethiergood@thestrongfirm.com

Due Diligence in Commercial Real Estate

Wendy Lambie

By: Wendy Lambie

Due diligence is the process and efforts a purchaser uses to inspect real property in order to be informed as to the details of the asset being purchased. Purchasers who fail to undertake a thorough investigation risk purchasing property that does will not serve their best interests or needs. For example, the property may have an environmental defect, a zoning issue or other encumbrance. This risk can be reduced or eliminated by utilizing various types and degrees of due diligence investigations. Some fundamentals that should be investigated in every case are:

SURVEY AND TITLE REVIEW

One of the most important tools available to a purchaser is a current title report issued by the title company. This report will confirm the current property owner and will also confirm the proper legal description. The purchaser's attorney will also review the exceptions to and exclusions from the title, which are rights previously retained by third parties. Some exceptions and exclusions include: (1) covenants and restrictions affecting use of the property; (2) easements giving third parties access or use of the property; (3) development agreements; and (4) special assessment districts. All this data can let the purchaser know if the property is suitable for the intended use.

PHYSICAL INSPECTION

This aspect of due diligence consists of retaining an architect or building inspector to assess the structural and mechanical integrity of the property, the need for major repairs, replacements or deferred maintenance items, as well as to advise the purchaser regarding the general suitability of the property for the purchaser's intended use.

ENVIRONMENTAL RISK ASSESSMENT

It is advisable to undertake a minimal level of environmental testing (commonly referred to as a "Phase I"). Phase I environmental assessments are conducted by licensed environmental professionals who will determine whether there are "recognized environmental conditions." If the Phase I results warrant further investigation, a Phase II with more invasive testing will be recommended.

continued on page 4

Fact or Fiction, or:
Talk Is Cheap So Get It in Writing

Adam Looney

By: Adam Looney

A legal fiction, as defined by Google, is "an assertion accepted as true, though probably fictitious, to achieve a particular goal in a legal matter." Legal fictions are often confusing to those without legal training. After all, the very definition suggests that lawyers are going to take something they all agree is false and pretend it is true. No wonder no one likes lawyers.

A common example of a legal fiction is a corporation, which is regarded in most jurisdictions, including Texas, as a "person" with many of the same legal rights and responsibilities as an actual human being. We all know corporations aren't literally people, but we treat them that way because it is easier than creating a whole new set of rules to deal with corporations when the ones we have for people work just fine.

Other legal fictions deal with written contracts, and they can be a costly trap for the unwary. For instance, the law typically presumes if you signed a contract, you read it and understood it. In reality, most people probably don't read the contracts they sign. Even Judge Richard Posner of the United States Court of Appeals for the Seventh Circuit admitted "For my home equity loan, I got 100s of pages of documentation; I didn't read, I just signed." If one of America's leading jurists admits to skipping the legalese, what hope do the rest of us have?

Unfortunately, no one has come up with a good answer for that question. However, there is still a lesson to be learned here. You might not have the time to read the boilerplate in your cell phone contract (and even if you did it probably wouldn't matter), but when it comes to important business and personal contracts, where you have a meaningful chance to negotiate with the other side, you should read every page of the contract and, if you don't understand it, hire a lawyer to explain it to you. Because once you sign on the dotted line, while your understanding of the contract may be fictional, the legal consequences definitely won't be.

Adam Looney*, Associate Attorney, joined The Strong Firm P.C. as in 2012. He graduated Summa Cum Laude from Pepperdine University School of Law in 2009 and was elected into the Order of the Coif. Adam started his career as a Litigation Associate at the law firm of Baker Botts L.L.P.*

alooney@thestrongfirm.com

The "Basis" for Good Planning:
Using "Stepped-Up" Basis to Reduce Taxes

Royce Lanning

By: Royce Lanning

In recent years it has become increasingly important to consider the income tax implications of gift giving and not just the estate tax implications. For the majority of people, estate taxes are a non-issue due to the increase in the exclusion amount for U.S. citizens, but income tax continues to impact everyone. Therefore, an estate plan that is designed to optimize the income tax benefits to your heirs may have significantly more value than a plan focused solely on estate taxes.

The White House has identified the step-up in basis on capital assets as the "single largest capital gains tax loophole." What is this loophole you ask? It is usually easiest to show with an example. Imagine you have purchased stock in Google for $10,000 and over the years it has appreciated to $100,000. If you sell that stock during your life, the IRS will calculate the income taxes owed by subtracting your $10,000 basis from the stock's current fair market value of $100,000, which equals $90,000 of taxable income that can be taxed at a rate as high as 23.8 percent (or $21,420 in taxes owed).

Using this example, the capital gains taxes are more than twice as much as you originally paid for the Google stock. Likewise, if you give that stock to your descendant while you are alive, the recipient of that gift gets your original $10,000 basis and will have to perform the same capital gains calculation when they go to sell the asset.

By contrast, if a person dies owning that same stock there is a step-up in basis to the fair market value of the asset on the date of the owner's death. So if the stock was worth $100,000, the new basis on the asset is $100,000 and the taxable income is $0. With proper planning, this step-up in basis can occur again when the surviving spouse in a marriage passes, providing your descendants with a second step-up in basis.

However, many older estate plans were designed to minimize estate taxes at the expense of maximizing the step-up in basis. If you are holding on to older estate planning documents, it is time to get in front of your estate planning attorney and make sure that your tax planning is still current in light of the changes in the tax law.

Royce Lanning*, Associate Attorney, joined The Strong Firm, P.C. in 2013. He received his Juris Doctorate from the University of Hawaii, William S. Richardson School of Law and obtained immediate trial experience as a Deputy Prosecuting Attorney with the Department of the Prosecuting Attorney, Maui. He is licensed to practice law in the State of Texas, the State of Hawaii and all Federal District Courts in Texas.*

rlanning@thestrongfirm.com

Boeing Co. v. Paxton

Private Rights Despite Open Government

Brian Albert

By: Brian Albert

Adopted in 1973 and codified at Chapter 552 of the Texas Government Code, the Texas Public Information Act (the "Act") provides public access to certain information possessed by governmental entities to allow the general public to remain informed of those entities' activities. The Act requires the disclosure of all "public information," which is defined as "information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business… by a governmental body." This means almost all information held by governmental entities is subject to the Act with limited exceptions. One of those exceptions, provided in Section 552.105 of the Act, allows for the exclusion from disclosure of information that, "if released, would give advantage to a competitor or bidder."

Historically, the right to use this limited exception has only been made available to the governmental entity actually possessing the information. This application of the law has left many of the actual private parties whose information was subject to disclosure relying on the governmental entity to employ the exception. Because of this, those private parties that submit bids to governmental entities are placed at a potentially severe competitive disadvantage due to the fact that others who may have submitted bids, or who had hopes of bidding in the future, could possibly obtain confidential, proprietary information (e.g. pricing and specifications). This would allow them to undercut the bidding position of the winning bidder on future jobs. Additionally, governmental entities are burdened with the concern of potentially harming the same private parties with which it conducts business by disclosing their confidential information to potential competitors. Recently, though, the Texas Supreme Court issued an opinion that may soften the effects of the Act, particularly as it relates to the competitive bidding exception.

In *Boeing Co. v. Paxton, No. 12-1007, 2015 Tex. LEXIS 583* (Tex. June 19, 2015), the Court found the statutory language providing the exception is not, on its face, limited solely to the government. In a shift from historical interpretation, the Court concluded that in addition to governmental entities, private parties also have standing to directly employ the exception. The Court's analysis found when another party's privacy or property interests are at issue, that party has a right to protect its own interests by raising the exception itself, notwithstanding the governmental entity's failure to do so. This turnaround in thinking could spur dramatic effects within the open government environment, both for the governmental entities subject to the Act and for the private parties conducting business with them.

For governmental entities, the concern of protecting private party information is now lessened since those parties have an outlet to protect the information themselves. The governmental entities can now anticipate that if a private party deems its information to be exempt from disclosure, the private party will likely act on its own behalf without the need for the governmental entity to intervene. Private parties may now have greater confidence in their ability to provide more detailed information in their bidding and proposals with governmental entities, since they can now protect their own interests if their confidential information becomes subject to a public information request. Both parties, however, should be mindful that while this opinion may provide a new tool for protecting confidential information, the legal scrutiny, both of the courts and of the Attorney General, will be high in determining whether or not the information argued to be exempt actually fits within the exception itself. Namely, that the requested information, if disclosed, would give a competitive advantage, not just a likelihood of it. Still, this case provides a significant step in limiting the broad scope of the Act and the burdens on both the government and private parties.

***Brian Albert**, Associate Attorney, joined The Strong Firm P.C. in 2012. His areas of practice include oil and gas, commercial real estate, business law and contracts, and trademark law. He received his Juris Doctorate from the University of Houston Law Center and a B.S. in Business Administration with a specialty in Finance from American University in Washington, D.C. He has previously worked for Baker Hughes, Inc.'s and Hewlett-Packard's in-house legal departments.*
balbert@thestrongfirm.com

Due Diligence in Commercial Real Estate

continued from page 2

CONTRACTS SURVIVING THE PURCHASE

Certain service contracts, leases or other agreements may survive the purchase of the property. The purchaser and their attorney should carefully review these documents to ensure there is agreement with the seller as to how these agreements will be handled at closing. The purchaser may want the seller to terminate some agreements and assume the obligations and rights under other agreements.

Due diligence can be as simple or complex as the situation requires. To ensure proper due diligence, you should consult with professionals who understand these issues. Ultimately, being as informed as possible will allow for the best decisions regarding the purchase of a commercial property.

***Wendy Lambie**, Associate Attorney, joined The Strong Firm, P.C. in 2013. Wendy received her Juris Doctorate from South Texas College of Law and is licensed to practice law in the State of Texas and in the United States Federal District Court for the Southern District of Texas. During her career, she has gained valuable experience with Houston area firms, focusing her practice on estate planning and probate. In addition, she has in-depth experience in oil and gas matters, with special emphasis on title issues.*
wlambie@thestrongfirm.com

The Strong Attorneys in Action

June, 2015

The Strong Firm represented lender in $60 million note purchase credit facility.

The Strong Firm mediated a settlement on behalf of a commercial developer client regarding breach of a purchase contract.

The Strong Firm advised a physician client regarding purchase and closing on commercial tract for client's additional office location.

The Strong Firm drafted and negotiated three commercial leases on behalf of a long term landlord client.

The Strong Firm assisted new clients with purchase and closing on a $1.9 million farm and ranch purchase.

The Strong Firm represented international client in lending deal restructuring $75 million in credit facilities.

May, 2015

The Strong Firm restructured $13 million in debt and equity corporate holdings.

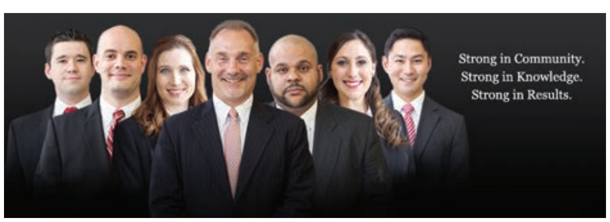
The Strong Firm assisted newly formed oil and gas company client in acquisition of working interests in Mississippi fields.

The Strong Firm assisted client with successful closing on $1.5 million commercial parcel.

The Strong Firm brokered a settlement of client's oil field litigation claim following two failed meditations between plaintiff and the defense counsel that was assigned to the client by their insurer.

We provide legal services in all of the following areas:

- Business Law and Contracts
- Financing, Trademarks, and General Corporate
- Corporations, Partnerships, and LLCs
- Real Estate
- Commercial Litigation
- Wills, Probate, Trusts, and Estates
- Mergers, Sales, and Acquisitions of Businesses
- Oil, Gas, and Energy
- International Business Investment



From left: **Adam Looney**, Associate Attorney; **Royce Lanning**, Associate Attorney; **Wendy Lambie**, Associate Attorney; **Bret L. Strong**, Attorney, Founder, and Managing Shareholder; **Eric R. Thiergood, Sr.**, Income Shareholder; **Kyla Wilder**, Associate Attorney; **Brian Albert**, Associate Attorney.

The Strong Attorneys in the Community

Bret Strong was a celebrity announcer at T**he Woodlands' Fourth of July Parade**. He is pictured with his wife, Angela, and their daughter Ella and son Luke.

Right. Brian Albert, far right, is an ambassador for the **Young Professionals Network** of The Woodlands Area Chamber of Commerce.

Right. Wendy Lambie served as the guest speaker at the May lunch meeting of the **Katy Bar Association** presenting her topic "The Legal Limbo After Death."

Left. The Strong Firm was a sponsor of the **Chairman's Ball for The Woodlands Area Chamber of Commerce**.