

DISTRICT COURT, WELD COUNTY,  
STATE OF COLORADO  
901 9<sup>th</sup> Avenue,  
P.O. Box 2038  
Greeley, Colorado 80632-2038

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CASE NUMBER: 2017CV30629

Plaintiff: Wolf Resources, LLC, a Colorado limited liability company

vs.

Defendant(s): Wolfhawk Energy Holdings, LLC d/b/a Ferrari Ener [REDACTED] a Colorado limited liability company, and [REDACTED]

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▲ COURT USE ONLY ▲

Case No.:

Division:

**COMPLAINT**

Plaintiff, Wolf Resources, LLC, by and through its counsel, Elkus & Sisson, P.C., and for its Com plaint a ainst the Defendants, Wolfhawk Energy Holdings, LLC d/b/a Ferrari Energy and [REDACTED], states as follows:

**THE PARTIES, JURISDICTION & VENUE:**

1. This litigation arises from Defendants' breach and intentional interference with a written agreement to sell 100% of the mineral interest owned by [REDACTED] to Wolf Resources, LLC. The property, which is located in Weld County, is further described in the Mineral and Royalty Deed (hereinafter referred to as the "Property"). See Mineral and Royalty Deed attached hereto and incorporated by references as **Exhibit 1**.

2. Plaintiff, Wolf Resources, LLC, is a Colorado limited liability company organized and in good standing under the laws of the State of Colorado whose principal offices within the State are located at 621 17<sup>th</sup> Street, Suite 701, Denver, Colorado 80293 (hereinafter referred to as "Wolf").

3. Defendant, Wolfhawk Energy Holdings, LLC d/b/a Ferrari Energy, is a Delaware limited liability company in good standing under the laws of the State of Colorado whose principal offices within the State are located at 1800 Glenarm Pl., Suite 701, Denver, Colorado 80202 (hereinafter referred to as “Ferrari”).

4. Upon information and belief, Defendant, [REDACTED], is a duly created revocable trust pursuant to the laws of the State of Washington whose address is P.O. Box 65 uinc WA 98848 hereinafter referred to as “Trust”). Upon information and belief, Trustees [REDACTED] (hereinafter the “Trustees”) manage the affairs of the Trust.

5. Upon information and belief, the Trust owned certain oil, gas, and other mineral interests situate in Weld County, Colorado in the Mineral and Royalty Deed as further described in **Exhibit 1.**

6. Upon information and belief, the Trustees had the legal authority to enter into agreements for the sale of Trust Property and convey the Property owned by the Trust.

7. The Trustees, on behalf of Defendant Trust, have intentionally conducted business within the State of Colorado relating to the sale of real property situate in Weld County.

8. Jurisdiction is proper in the District Court pursuant to C.R.S. § 13-1-124 because the parties transacted business within the State of Colorado relating to the use or possession of real property situate in Colorado.

9. Venue is proper pursuant to C.R.C.P. 98(a) because the property which is the subject of this action is located in Weld County, Colorado.

### **GENERAL ALLEGATIONS**

10. In October 2016, Wolf sent the Trust a flyer introducing itself and inquiring with the Trust as to whether they had any interest in selling the Property.

11. Several months passed, until on or about June 7, 2016, when Wolf contacted Trustee [REDACTED] who confirmed that the Trust received Wolf’s flyer and she was going to share it with her children as the Trust may have an interest in selling its Property.

12. Later that same day, Wolf received a phone call from [REDACTED] (daughter of Trustee [REDACTED]) who informed Wolf that the Trust was interested in selling the Property. [REDACTED] requested that Wolf provide the Trust an offer for the sale of the Property.

13. On June 7, 2017, Wolf conveyed its first offer for the purchase of the Property to the Trust.

14. On June 13, 2017, [REDACTED] called Wolf to inquire about whether Wolf’s price per net mineral acre (hereinafter “NMA”) would be the same if the Trust sold half of the Property versus the whole Property. Wolf confirmed that its price per NMA would be the same regardless of whether the Trust sold the whole Property or half of the Property.

15. On June 21, 2017, [REDACTED] called Wolf to inform Wolf they the Trust had received offers from competitor entities Ferrari and Atomic Capital Minerals, LLC, a Texas based limited liability company (hereinafter “Atomic”). [REDACTED] informed Wolf that the Trust wished to sell by the end of the month and that one of the offers was substantially higher than the others. [REDACTED] stated that the Trust decided to solicit offers from all three entities (Wolf, Ferrari and Atomic) and that the highest offer would win the Property.

16. On June 28, 2017, [REDACTED] emailed Wolf inquiring as to whether Wolf would have an offer for the Trust. Wolf contacted [REDACTED] via phone later that day and informed her that she would have Wolf’s offer by the end of the day. [REDACTED] stated that the Trust had already received the other two competitor entities offers and that “highest offer” would win the Property.

17. On June 28, 2017, Wolf emailed to [REDACTED] its “best offer” to purchase the entire Property for \$7,877.00 per NMA.

18. On June 29, 2017, Wolf received a phone from [REDACTED] who informed Wolf that Wolf was the high bidder and that Wolf had beat the closest offer by a few hundred dollars. [REDACTED] requested that Wolf make a few changes to its offer. Namely, [REDACTED] wanted Wolf to change the offer to reflect the names of the Trustees as they would be signing the offer and a change of the effective date until July 5, 2017, in case they were unable to get it executed before the long July 4<sup>th</sup> weekend.

19. On June 29, 2017, Wolf made the requested changes and emailed to [REDACTED] the amended Offer Letter, Wiring Instructions, and the Mineral and Royalty Deed.

20. On June 29, 2017, [REDACTED] informed Wolf that the Trustees would be signing the documents the next day at 10:30 a.m. and the Mineral and Royalty Deed would be notarized by his assistant at the Basin Loan Center.

21. On June 30, 2017, [REDACTED] emailed Wolf a PDF of the fully executed Agreement (hereinafter “Agreement”) and Mineral and Royalty Deed at 12:16 p.m.

22. On June 30, 2017, the Trust accepted Wolf’s written offer when Trustees [REDACTED] as Trustees of the Trust, affixed their respective signatures agreeing and accepting Wolf’s offer, and thereafter returning the fully executed Agreement to Wolf together with the executed Mineral and Royalty Deed. *See* Agreement between the Trust and Wolf attached hereto as **Exhibit 2**.

23. Upon information and belief, at all relevant times, Trustees [REDACTED] were acting within the scope of their authority as Trustees of the Trust.

24. By signing the June 29, 2017, Wolf offer, the Trust, by and through its Trustees, acknowledged and warranted the legal authority to sell the Property pursuant to the terms of the Agreement.

25. The fully executed June 30, 2017, Agreement is a binding contract for the sale of the Property.

26. Per the terms of the Agreement, Wolf was required to tender to the Trust earnest money in the amount of \$10,000.00 within seven business days of receipt of the signed Agreement.

27. Due to the July 4<sup>th</sup> legal holiday, the seventh business day from June 30, 2017, was July 12, 2017. In an abundance of caution, however, Wolf wired the Trust \$10,000.00 in earnest money on the sixth business day which was July 11, 2017.

28. Per the Agreement, the Trust expressly agreed not to sell, convey, or encumber in any way whatsoever title to the Property prior to closing. The Closing date of the transaction was set to occur on or before 45 business days from Wolf's receipt of the signed Agreement and executed Mineral and Royalty Deed. Wolf was obligated to tender to the Trust payment in full for the balance of purchase price at closing.

29. On or about July 10, 2017, at 12:30 p.m., Adam Ferrari of Ferrari emailed Wolf concerning the Trust and stated:

[I] think we both had this under contract at the same time. I was made aware of it this morning. We already closed it. [REDACTED] emailed [REDACTED] this am about sending earnest money. Doing so will just be a waste of postage so I wouldn't if I were you. Our deed is already recorded and they were paid. At some point we should talk and clear the air. When we knowingly bid against each other neither of us walk away a winner. All jabs aside, we are both damn good at what we do and this will continue to happen if we don't change anything on our respective sides.

Adam Ferrari's email to Wolf is attached hereto as **Exhibit 3**.

30. On or about July 5, 2017, Ferrari recorded a Mineral and Royalty Deed that was executed by the Trust on or about July 1, 2017, one day after the Trust accepted Wolf's offer and contracted to sell the Property to Wolf. See Ferrari's recorded Mineral and Royalty Deed attached hereto as **Exhibit 4**.

31. On July 10, 2017, Wolf informed the Trust that Wolf recorded an "Affidavit Giving Notice of Agreement" which was recorded at reception number 4316839 in Weld County, Colorado. Further, Wolf informed the Trust that Wolf was notified by Ferrari that Ferrari paid the Trust for the Property that the Trust had already agreed to convey to Wolf. In addition, Wolf informed the Trust that the Ferrari transaction "clouded" title and was a breach of the binding Agreement between Wolf and the Trust. Wolf requested that the Trust have Ferrari quitclaim the Property back to the Trust.

32. Upon information and belief, to date Ferrari has not quitclaimed the Property back to the Trust.

33. On or about July 11, 2017, the Trust returned via check the \$10,000.00 in earnest money that was tendered to the Trust by Wolf.

34. The Trust has failed to perform under the Contract in good faith or in fair dealing insofar as they have breached the express terms of the Agreement. The Trust expressly agreed not to sell, convey, or encumber in any way whatsoever title to the Property prior to closing, and in fact did so sometime after the Trust entered into the binding Agreement with Wolf.

35. Wolf has at all relevant times performed under the Agreement, and remains ready to continue to perform under the Agreement.

36. Wolf relied upon the Trust's and the Trustees' promises, representations, and warranties that the Trust would convey the Property to Wolf. The Trust's malfeasance has worked to Wolf's detriment insofar as Wolf, among other things, allocated significant resources to due diligence and obtaining marketable and/or transferable title to the Property.

37. At the time of the closing, which was scheduled to occur not later than 45 business days from June 30<sup>th</sup> (calculated to be September 1, 2017), the Trust was required pursuant to the terms and conditions of the Agreement to cause the Property to be conveyed to Wolf.

38. The Trust has failed to convey the Property to Wolf and failed to work with Wolf in good faith or in fair dealing to complete due diligence, and the Trust has in fact conveyed the Property to Ferrari.

39. Failure to convey the Property to Wolf and is a material default of the Agreement.

40. The Trust's sale, encumbrance, and conveyance of the Property to Ferrari prior to closing is a material default of the Agreement.

41. The Trust's material breaches of Contract, coupled with the Trust's outright refusal to cure the breaches by requiring Ferrari to quit claim the Property back to the Trust, left Wolf no other adequate remedy at law then to initiate this action, including but not limited to, Wolf's request for specific performance of the Agreement.

42. Upon information and belief, on or about June 28, 2017, the Trust informed Ferrari that Wolf was the high bidder and/or that Ferrari was not the high bidder. At a minimum, Ferrari had actual knowledge that it was not the high bidder and, therefore, that the Trust would be conveying the Property to one of the other bidders.

43. Upon information and belief, Ferrari knew or should have known that the Trust accepted Wolf's offer as the high bidder and executed an Agreement and Mineral and Royalty Deed with Wolf.

44. Nevertheless, despite knowledge of the Agreement between Wolf and the Trust, Ferrari's words and/or conduct intentionally caused the Trust not to perform or to breach its Agreement with Wolf.

45. Ferrari's actions intentionally interfered with the Agreement and Wolf's prospective business relations and/or opportunities.

46. Adam Ferrari is a former member of Wolf.

47. Adam Ferrari is a disgruntled former member of Wolf. In fact, on or about July 10<sup>th</sup>, 2017, Mr. Ferrari texted Wolf, "[N]o responses huh-if you think I'm signing anything back to – you are in for a rude awakening son...you aren't even man enough to talk...you are so weak."

48. Wolf relied upon that Agreement with the Trust to Wolf's detriment when Wolf allocated significant resources to obtaining transferable and/or marketable title to the Property, which the Trust has failed to convey.

49. Ferrari intentionally interfered with the Agreement and conspired with the Trust, causing the Trust to not perform or to breach its Agreement with Wolf.

50. Under these and other circumstances, it would be unjust to permit Defendants to refuse to convey the Property to Wolf, and Defendants should be estopped from denying their obligation to convey the Property to Wolf.

**FIRST CLAIM FOR RELIEF**  
(Breach of Contract v. Trust)

51. Wolf incorporates all other paragraphs of this complaint as if fully set forth herein.

52. Wolf and the Trust entered into an Agreement to sell the Trust's Property, specifically the aforementioned mineral interests as set forth more fully in **Exhibit 1**, which are situated in Weld County, Colorado, to Wolf.

53. Plaintiff has performed all duties, promises, and obligations required of Plaintiff, including but not limited to timely payment of the earnest money, and all conditions precedent that Plaintiff agreed to perform in the Agreement described herein.

54. Under the terms of the Agreement described herein, the Trust was obligated to transfer and convey to Plaintiff the Property.

55. Under the terms of the Agreement described herein, the Trust was obligated and expressly agreed not to sell, convey, or encumber in any way whatsoever title to the Property prior to closing with Wolf. The Trust breached these obligations by conveying the Property to Ferrari.

56. The Trust has failed and refused, and continues to fail and refuse, to transfer and convey the Property to Wolf.

57. The Trust has failed to perform under the Agreement in good faith or in fair dealing constituting a breach of the Agreement.

58. The Trust has repudiated its obligations under the Agreement which constitutes a material breach thereof.

59. The Trust's failure and refusal to convey the Property, and the Trust's sale, encumbrance and conveyance of the Property to Ferrari prior to the closing with Wolf, constitutes a material breach of the Contract.

60. As a direct proximate result and consequence of the Trust's material breaches of Contract, Wolf has and will continue to sustain substantial monetary damages, including consequential damages, which were within the contemplation of the parties, in an amount to be proven at trial.

**SECOND CLAIM FOR RELIEF**  
(Specific Performance v. Defendants)

61. Wolf incorporates all other paragraphs of this complaint as if fully set forth herein.
62. At the time Wolf and the Trust entered into the Agreement, the contract price was adequate, just, and reasonable as to Trust.
63. Within the time prescribed by the Agreement, Wolf timely paid the earnest money and has offered to pay the amount due and continues to be ready, willing, and able to pay the Trust for the balance of the contract price.
64. Within the time prescribed by the Contract, Wolf has performed under the terms and conditions of the Agreement.
65. The Agreement is clearly established and not ambiguous with respect to the rights, duties, and obligations of the parties and the Trust's duty to convey the Property to Wolf.
66. The terms and conditions of the Agreement are reasonable with respect to the subject matter of the Agreement, and under the circumstances relating to transferability and/or marketability of title.
67. Wolf has demanded that the Trust convey the Property to Wolf.
68. In fact, after the material breaches were initially discovered by Wolf, Wolf offered the Trust an opportunity to cure the material breaches by having Ferrari quitclaim the Property back to the Trust.
69. Defendants have refused and continue to refuse to convey the Property to Wolf.
70. Wolf has no adequate remedy at law to enforce the provisions of the Contract.
71. Wolf is entitled to specific performance by Court decree, among other things, ordering Defendants to convey the Property to Wolf.
72. Wolf is entitled to compensation incidental to a decree of specific performance by virtue of the delay in conveying the Property.
73. As a direct proximate result and consequence of Defendants' refusal to convey the Property, Wolf has and will continue to sustain substantial monetary damages, including consequential damages, which were within the contemplation of the parties, which constitute circumstances making it just and equitable to order specific performance of the Agreement.

**THIRD CLAIM FOR RELIEF**  
(Promissory Estoppel v. Trust)

74. Wolf incorporates all other paragraphs of this complaint as if fully set forth herein.

75. The Trust promised to participate in due diligence in good faith and convey the Property to Wolf.

76. The Trust should have expected that its promises would induce action or forbearance by Wolf.

77. Wolf reasonably relied on the Trust's promises to Wolf's detriment when Wolf expended resources on due diligence to obtain transferable and/or marketable title to the Property.

78. The Trust's promise to convey the Property must be enforced to prevent injustice to Wolf.

#### **FOURTH CLAIM FOR RELIEF**

(Constructive Trust and/or Equitable Lien v. Defendants)

79. Wolf incorporates all other paragraphs of this complaint as if fully set forth herein.

80. The Trust transferred the Property to Ferrari in violation of the Agreement.

81. Ferrari obtained the Property from the Trust by intentionally interfering with the Agreement and conspiring with the Trust.

82. Under the circumstances, equity, and good conscience, the Property does not belong to Defendants.

83. Permitting Defendants to hold title to the Property would permit Defendants to profit from a wrong. In equity and good conscience, Defendants should not be permitted to retain such Property, and hold such Property as a constructive trustee for Wolf.

84. In order to achieve equity and avoid the wrongs committed by Defendants, and those to whom Defendants may have transferred the Property, Wolf is entitled to the imposition of a constructive trust and/or equitable lien on the Property wrongfully taken by Defendants, including any distributions, profits, revenues or other assets into which such Property may be traced.

85. A constructive trust should be imposed under the circumstances set forth herein to prevent unjust enrichment of the Defendants.

#### **FIFTH CLAIM FOR RELIEF**

(Intentional Interference with Contract v. Ferrari)

90. Wolf incorporates all other paragraphs of this complaint as if fully set forth herein.

91. Wolf had a binding and enforceable Agreement with the Trust.

92. The Agreement sets forth specific contractual provisions, including but not limited to the duties and responsibilities of the parties to each other.

93. At all relevant times, Ferrari knew or reasonably should have known that Wolf had an Agreement with the Trust, as fully described above and as set forth in **Exhibit 2**.

94. Ferrari's words or conduct intentionally caused the Trust not to perform the Agreement with Wolf.

95. Ferrari's words or conduct intentionally caused the Trust not to perform the Agreement with Wolf, in order to do business with the Trust and interfere with Wolf's prospective business relations/opportunities.

96. Ferrari's interference with the Agreement between Wolf and the Trust and Wolf's prospective business relationships was improper.

97. As a direct proximate result and consequence of Ferrari's intentional interference with Wolf's existing Agreement and business relationships, and prospective business relationships, Wolf has and will continue to sustain substantial monetary damages, including consequential damages, costs, and attorney fees, in an amount to be proven at trial.

**SIXTH CLAIM FOR RELIEF**  
(Civil Conspiracy v. Defendants)

98. Wolf incorporates all other paragraphs of this complaint as if fully set forth herein.

99. Defendants agreed, by words or conduct, to intentionally interfere with the Agreement by and between Wolf and the Trust, deliberately participated and conspired to convey the Property to Ferrari for likely a high price per NMA after the Agreement was formed and in an effort to deprive Wolf of the Property and otherwise interfere and/or usurp prospective business relations and opportunities away from Wolf for Defendants' own financial gain.

100. Defendants engaged in intentional acts in an effort to interfere and divert the Property away from Wolf for Defendants' own financial gain.

101. Wolf has suffered damages as a result of all Defendants' intentional actions in an amount to be proven at trial.

102. All conditions precedent to Plaintiff's right to recover have been satisfied.

WHEREFORE, Plaintiff respectfully requests this Court enter judgment in Plaintiff's favor and against Defendants in an amount to be determined at trial sufficient to compensate Plaintiff for its economic and equitable losses, consequential and special damages, specific performance, and all other damages allowed by law or equity, together with pre-judgment and post-judgment interest, costs of this action, reasonable attorney fees, and for such other relief as this Court deems just and proper.

Dated: August 14, 2017

Respectfully Submitted,

**ELKUS & SISSON, P.C.**

By: /s/ Donald C. Sisson

Donald C. Sisson

Lucas Lorenz

*Attorneys for Wolf Resources, LLC*

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