IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

WILLIAM W. BROOKS, III, and SHARON K. BROOKS, Plaintiffs	:	NO. 07 – 00,141
	:	CIVIL ACTION - LAW
vs.	:	
TEXASGULF MINERALS AND METALS, INC., ELF FOREST PRODUCTS, INC., ELF AQUITAINE, INC., TOTAL PETRO-CHEMICALS USA, INC., and their successors in title and assigns and all persons claiming by, through or under them, and any unknown person having or claiming an apparent interest in the hereinafter described tract of land, Defendants	:	Motion for Summary Judgment

OPINION AND ORDER

Before the Court is Defendant Total Petrochemical's Motion for Summary Judgment, filed November 8, 2007. Argument on the motion was heard January 15, 2008.

Plaintiffs are the owners of a tract of land in Cascade Township, having acquired such by deed dated July 1, 1987, subject to a reservation of gas and oil rights by the grantor, Defendant Texasgulf's predecessor in title. Plaintiffs have filed the instant action to quiet title, seeking to have the Court declare that the gas and oil rights have been abandoned and that Plaintiffs own the land, including all gas and oil rights, in fee simple. In the instant Motion for Summary Judgment, Defendants contend Plaintiffs cannot prevail without a written instrument evidencing abandonment, that there is no such written instrument, and thus they are entitled to judgment as a matter of law. Plaintiffs contend there is no such requirement for a written instrument to show abandonment of mineral rights and summary judgment is therefore improper. The Court believes summary judgment is not appropriate in this instance.

In support of their claim that a written instrument is necessary to show abandonment, Defendants cite Commonwealth v. Fisher, 1 Lyc. 159 (1949). That case is not helpful to their position, however, as the issue presented therein was whether the defendant could strip mine a

certain property or was instead restricted to deep mining the property; there was no dispute over the mineral rights, but, rather, the dispute was over the property right in the surface and whether the surface owner had waived his right of surface support. The Court did not address the issue of what is required to show an abandonment of mineral rights, and certainly did not hold that a written instrument is necessary to show such abandonment.

The issue of abandonment of mineral rights *was* addressed in MacCurdy v. Lindey, 37 A.2d 514, 516 (Pa. 1944), where, quoting United Nat. Gas Co. v. James Bros. L. Co., 191 A. 12, 14 (Pa. 1937) the Court stated: "Mere nonuser does not constitute abandonment; there must be an intention to abandon, together with 'external' acts by which such intention is carried into effect, ordinarily this raises a question of fact to be determined by a jury: Llewellyn v. Phila. & Reading Coal & Iron Co., 308 Pa. 497, 501-2." While Defendants argue in their brief that Plaintiffs have set forth no facts to show intention to abandon, thereby contending they are entitled to summary judgment, Defendants did not base their motion on this ground, but only on the ground that no written instrument evidencing abandonment had been produced. Therefore, Plaintiffs' failure to respond to the motion with such facts cannot be considered fatal to their defense of the motion.

ORDER

AND NOW, this 25th day of January 2008, for the foregoing reasons, Defendant's Motion for Summary Judgment is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: E. Eugene Yaw, Esq.
Joseph F. Orso, III, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson