

IN THE COURT OF COMMON PLEAS OF  
LYCOMING COUNTY, PA

GARY E. TROWBRIDGE and GAIL E. TROWBRIDGE	:	
	:	
Plaintiffs	:	NO: 09-00114
	:	
vs.	:	
	:	
	:	
RALPH C. HOPKINS and BRENDA L. HOPKINS, husband and wife, AND ACTION EAST RESOURCES, INC.	:	CIVIL ACTION
	:	
Defendants	:	

**OPINION**

On January 16, 2009 Plaintiffs filed a two count Complaint against the Defendants raising claims for declaratory judgment and quiet title. Plaintiffs allege that they are the record title holders to property located in Cogan House Township, Lycoming County, more specifically identified as Lycoming County Tax Parcel No. 08+246.0-0117.Y+00+ (hereinafter “the real estate”). Plaintiffs assert that the Defendants, Ralph C. Hopkins and Brenda L. Hopkins (hereinafter the “Hopkins Defendants”), as Lessors, executed an Oil and Gas Lease with Defendant, East Resources, as Lessee, on August 26, 2006 covering the real estate owned by the Plaintiffs. A Memorandum of Lease is recorded in Lycoming County Record Book 5872 at Page 256.

On July 9, 2009, the Defendants filed their Answer to Plaintiffs’ Complaint with New Matter and Counterclaim. In their Answer, the Defendants admit that a Memorandum of Lease was signed by the Defendants which covers the real estate

allegedly owned by the Plaintiffs. Defendants' Counterclaim alleges, however, that they are entitled to the benefits and privileges arising under the Memorandum of Lease by virtue of a Deed which granted them the rights at issue. Specifically, the Hopkins Defendants claim rights to all gas, oil and mineral rights from the Estate of Gladys V. Hopkins, mother of Ralph C. Hopkins, from alleged reservation language contained in a Deed of Sale conveying property from Clifford L. Hopkins and Gladys V. Hopkins to Warren W. Chamberlain and Charles R. Chamberlin on May 1, 1978. The Deed of Sale is recorded in Lycoming County Deed Book 857 at Page 144. The Defendants similarly seek a declaratory judgment on the issue of the validity of the Lease and Deed language.

On January 29, 2010 the Plaintiffs filed a Motion for Summary Judgment. On March 4, 2010 the Defendants filed a Cross-Motion for Summary Judgment. All parties agree that there are no material issues of disputed fact, and that the action involves the interpretation of reservation language contained within the Hopkins/Chamberlain deed. The reservation language at issue is as follows:

Excepting and Reserving, Also, However, all gas, oil and mineral rights as set forth in the chain of title.

The Hopkins Defendants assert that this language reserved in Clifford and Gladys Hopkins the gas and oil and mineral rights that were later conveyed upon them by way of inheritance.

The Defendants rely upon Sheaffer v. Caruso, 676 A.2d 204 (Pa. 1996).<sup>1</sup> In Sheaffer, *supra*, the decedent, Ethel Mae Stewart, sold property to Gary Young and Sarah Caruso by general warranty deed. At the time of the conveyance Ms. Stewart

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<sup>1</sup> Sheaffer v. Caruso, 676 A.2d 204 (Pa. 1996) was cited as Kelsey v. Caruso in the Defendants' legal submissions.

owned the entire surface rights and two-thirds of the oil and gas. After Ms. Stewart died, a dispute arose as to who had interest in the oil and gas as between Ms. Stewart's heirs and the buyers, and the heirs initiated an action to quiet title to the oil and gas located upon and under the land conveyed by Ms. Stewart to the buyers. The deed in question which conveyed the acreage from the Stewarts to the buyers contained the following language:

EXCEPTING AND RESERVING from First Tract and Second Tract all the coal and mining rights and the oil and gas as fully as the same have been excepted and reserved or conveyed by former owners.

The heirs contended that the language reserved the oil and gas rights in the grantor, and the buyers contended that the language did not. In interpreting this language, the Pennsylvania Supreme Court held:

By using the term 'excepting,' the grantor excluded from the conveyance interests in the land or minerals which she did not own, thus protecting herself from liability under the warranty of the deed. By using the term 'reserving,' she created in herself an estate in the oil and gas. Had the grantor intended only to exclude oil and gas interests which had been conveyed previously to persons other than the grantor, the usual way to do that would be to use only the term "excepting." By using both terms, she protected herself from liability under the general warranty deed and created in herself an estate in the oil and gas." Id. at 206.

The Hopkins Defendants similarly assert that the reservation language contained within the Hopkins/Chamberlain deed reserved all gas, oil and mineral rights to the grantors, Clifford L. Hopkins and Gladys V. Hopkins, which were later conveyed to them through the Estate of Gladys V. Hopkins.

The Plaintiffs, however, contend that Clifford and Gladys Hopkins failed to reserve the rights because the clause at issue seeks to reserve the gas, oil and mineral rights "as set forth in the chain of title." It is undisputed that no reservation or

exception of gas, oil, or other mineral rights exists in the chain of title preceding the deed. Ironically, the Plaintiffs also rely upon Sheaffer v. Caruso, *supra*.

In reaching its holding in Sheaffer, the Supreme Court noted that when interpreting deed language, the entire transaction must be examined. In reaching its holding, the Supreme Court made reference to the “relevant facts” regarding the chain of title, which included the fact that in 1891 John Stewart died owning approximately 151 acres. This land was devised to his sons who partitioned the land in 1918 by exchanging deeds in which each received approximately 75 acres which was subsequently referred to as Tract 1 and Tract 2. “[I]n both deeds, the oil and gas were excepted and reserved...” Id. at 205. Over the next 47 years, the oil and gas interests in Tract 1 and Tract 2 passed through a number of hands. In 1965 John Lloyd Stewart became the owner of all 151.51 acres and 2/3 of the oil and gas interest in Tract 1 and Tract 2. Upon John Lloyd Stewart’s death, his wife, Ethel Mae Stewart, became the sole owner. By deeds dated July 1, 1970, October 24, 1973, December 17, 1973 and December 25, 1973, Ethel Mae conveyed portions of the 151.51 acres. The Supreme Court noted that “[e]ach of these deeds reserved the oil and gas ‘as fully as the same have been excepted and reserved or conveyed by former owners.’” Id. at 205. In reviewing the chain of title in Sheaffer, it is clear that the oil and gas rights had been excepted/reserved in prior grants.

In examining the entire transaction in the present action, it is clear that no reservation or exception of gas, oil or mineral rights exists as the chain of title is silent on this issue. The exception/reservation clause is limited to those rights “as set forth in the chain of title.” The language at issue in the present action is analogous to

deed language examined by the Warren County Court of Common Pleas in Songer v. Erickson, 25 D & C 3d 499 (1981).

In Songer, *supra*, property was conveyed by general warranty deed which included the following language:

Excepting from this conveyance and the premises above described any oil or gas, or interest therein, if any, which may now be owned by parties other than the parties to this conveyance.

In analyzing the language, the Common Pleas judge held:

In the instant case we cannot fairly conclude the grantors were retaining any exception of the oil or gas nor by reservation creating a new right or thing out of property granted which was not in existence at the time of the grant. The fair import of the language is that the grantors were cautious not to purport to convey any of the oil or gas that might have been theretofore excepted from the premises thereby jeopardizing their general warranty liability. Clearly the grantors did not make an exception or reservation from that conveyance. The reference is to other parties that may be the owners of the oil and gas. Id. at 501.

Had the Grantors, Clifford and Gladys Hopkins, in the present action, intended to reserve in themselves the gas, oil and mineral rights, the exception/reservation language should not have contained chain of title limitations, but should simply have stated, "Excepting and Reserving, also, however, all gas, oil and mineral rights." The fair import and plain meaning of the language at issue is that gas, oil and mineral rights, to the extent already conveyed, were not included in the transaction. As further rationale for this Court's decision, the exception/reservation language at issue fails to include words of inheritance, and without such, any purported reservation, if properly drafted, would have been personal to the Grantors and would have ceased upon the Grantors' death. LADNER ON CONVEYANCING IN PENNSYLVANIA § 9.04(j)(rev. 4<sup>th</sup> ed. 1988) *citing*

Mandle v. Gharing, 256 Pa. 121 (1917) and Hobaugh v. Philadelphia Co., 67 Pa.Super. 407 (1917).

Moreover, Pennsylvania courts have clearly held that public policy favors the free alienability of land. Accordingly, phrases or clauses “must be interpreted strictly against any such limitation unless the grantor’s intention to so limit the fee is clearly expressed or necessarily implied.” Peters v. East Penn Township School District, 126 A.2d 802 (Pa.Super. 1956), *citing* Sappers v. Mathers, 133 A. 565 (Pa. 1926) and Abel v. Girard Trust Company, 73 A.2d 682 (Pa. 1950).

### **ORDER**

AND NOW, this 26<sup>th</sup> day of May, 2010, the Plaintiffs’ Motion for Summary Judgment is hereby GRANTED and this Court finds that the Defendants, Ralph C. Hopkins and Brenda L. Hopkins have no legal entitlement to any rights in Plaintiffs’ real estate. This Court further finds that the Oil and Gas Lease entered into by the Defendants is null and void and of no legal effect. The Register and Recorder of Deeds is DIRECTED to mark the Oil and Gas Lease Memorandum dated August 26, 2006 and recorded in Record Book 5872 at Page 256, STRICKEN from the indices of the Recorder of Deeds Office. The Defendants’ Motion for Summary Judgment is DENIED.

BY THE COURT,

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Richard A. Gray, J.

cc: Norman Lubin, Esquire  
J. David Smith, Esquire  
Register and Recorder's Office  
Gary Weber, Esquire