

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CORNWALL MOUNTAIN INVESTMENTS, L.P.,	:	NO. 11 – 00,718
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
THOMAS E. PROCTOR HEIRS TRUST,	:	
INTERNATIONAL DEVELOPMENT CORP.,	:	
PENNLCO, LTD., LANCASTER EXPLORATION AND:	:	
DEVELOPMENT CO., LLC, eCORP RESOURCE	:	
PARTNERS I, LP, SOUTHWESTERN ENERGY	:	
PRODUCTION CO., VIRGINIA ENERGY	:	
CONSULTANTS, LLC, ATLANTIC HYDROCARBON,	:	
LLC, CHIEF EXPLORATION & DEVELOPMENT, LLC, :	:	
and QUEST EASTERN RESOURCES, LLC,	:	
Defendants	:	Preliminary Objections

OPINION AND ORDER

Before the Court are preliminary objections filed by Defendant Thomas E. Proctor Heirs Trust on February 3, 2012. Argument was heard March 19, 2012.

Plaintiff brought this action to quiet title to property located in Lewis and Cogan House Townships, asserting that it acquired title to the disputed property by way of certain tax sales and/or adverse possession. In the instant preliminary objections, Defendant Thomas E. Proctor Heirs Trust contends Plaintiff has failed to set forth a cause of action for adverse possession. Specifically, Defendant contends the Amended Complaint contains no factual allegations demonstrating that it or the Cornwall Mountain Club actively removed oil, gas and minerals from the premises during the 80-year period they allegedly possessed them.

Admittedly, to establish actual possession (an element of adverse possession) over a mineral, a party must actively remove the mineral from the land. Huss v. Jacobs, 59 A. 991 (Pa. 1904). Plaintiff contends, in paragraph 43 of the Amended Complaint, that “Plaintiff and/or the Cornwall Mountain Club have maintained actual production and extraction of the Minerals, since the date of the tax sales, a period of nearly 80 years.” Defendant argues this is a conclusory allegation which fails to establish actual possession.

At argument, Plaintiff's counsel indicated that paragraph 43 refers to the fact that Plaintiff and/or the Cornwall Mountain Club have operated a quarry on the site. While the court believes the factual basis for the "production and extraction" allegation may be developed sufficiently in discovery, Defendant is technically correct in its position that the Amended Complaint lacks the requisite information. Accordingly, the Court will require Plaintiff to amend its Amended Complaint to add such.

ORDER

AND NOW, this 30th day of March 2012, for the foregoing reasons, Defendant Thomas E. Proctor Heirs Trust's preliminary objections are hereby sustained. Plaintiff shall have twenty (20) days in which to file a Second Amended Complaint which provides a factual basis for the allegation in paragraph 43 of the Amended Complaint.

BY THE COURT,

Dudley N. Anderson, Judge

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