

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SOUTHWESTERN ENERGY PRODUCTION COMPANY, : NO. 11 - 02,308
Plaintiff :
: CIVIL ACTION - LAW

vs. :

FOREST RESOURCES, LLC, KOCJANCIC FAMILY :
LIMITED PARTNERSHIP, HAROLD H. WOLFINGER, :
JR., ULTRA RESOURCES, INC., JACKSON CORNERS :
SPORTSMEN INC., NORTHERN FORESTS II, INC., :
WEVCO PRODUCTION INC. and ANADARKO :
PETROLEUM CORPORATION, LP a/k/a ANADARKO :
PETROLEUM CORPORATION, :
Defendants as to all counts :

INTERNATIONAL DEVELOPMENT CORPORATION :
and TRUSTEES OF THE THOMAS E. PROCTOR :
HEIRS TRUST DATED OCTOBER 28, 1980, :
Defendants as to Declaratory Judgment only :

TRUSTEES OF THE THOMAS E. PROCTOR HEIRS TRUST, :
Cross-claim Plaintiff :

vs. :

FOREST RESOURCES, LLC, KOCJANCIC FAMILY :
LIMITED PARTNERSHIP, HAROLD H. WOLFINGER, :
JR., ULTRA RESOURCES, INC., JACKSON CORNERS :
SPORTSMEN INC., NORTHERN FORESTS II, INC., and :
INTERNATIONAL DEVELOPMENT CORPORATION, :
Cross-claim Defendants :

TRUSTEES OF THE THOMAS E. PROCTOR HEIRS TRUST, :
Counterclaim Plaintiff :

vs. :

SOUTHWESTERN ENERGY PRODUCTION COMPANY and :
LANCASTER EXPLORATION & DEVELOPMENT CO., LLC, :
Counterclaim Defendants :

vs. :

TRUSTEES OF THE MARGARET O. F. PROCTOR TRUST, :
Additional Defendant : Preliminary Objections

OPINION AND ORDER

Before the court are preliminary objections to Southwestern's Complaint, filed by Ultra Resources on January 27, 2012, preliminary objections to the Trust's¹ Amended Cross-claim, filed by Ultra Resources on May 4, 2012, and preliminary objections to the Trust's Second Amended Counterclaim, filed by Southwestern on April 26, 2012. Argument was heard May 18, 2012.

Southwestern claims ownership of the gas, oil and mineral rights under two warrants in Cogan House Township through a purchase and assignment of such and has brought the instant action to quiet title against those parties who claim an adverse interest through a 1988 Action to Quiet Title, and an action for declaratory judgment against those same parties as well as two other parties, in Southwestern's chain of title, who claim an interest through deeds and/or reservation of rights in spite of the 1988 action. In its preliminary objections, Ultra contends that (1) the Complaint does not sufficiently describe the land involved as it does not give a legal description of the particular warrants at issue², and (2) the Complaint fails to allege sufficient facts to establish prima facie title in Southwestern.

With respect to the objection that the complaint fails to set forth a legal description of the particular warrants and the contention that a description of four combined warrants is not sufficient, the court notes the Complaint does set forth the acreage, municipality and county and warrant numbers, as well as providing the boundaries of the larger section to which the land once belonged. The court

¹ Although there are two trust defendants, since at argument only the Thomas E. Proctor Heirs Trust was involved, for convenience the court will refer to such trust as simply "the Trust".

² The metes and bounds description contained in the deeds attached provides a metes and bounds description of *four combined* warrants.

believes such description sufficient to identify to defendants the land to which title is claimed, based on the holding in Miller v. Leopold, 353 A.2d 65, 69 (Pa. Commw. 1976), which upheld the validity of a tax sale in spite of the lack of a metes and bounds description, stating “[w]hat is necessary is not a description by metes and bounds, but an identification of the land sufficient to enable the tax collector and the public to determine what property is being assessed or sold.” If “Baker Estates 57 Acres Mansion Farm” (the description in Miller) is sufficient to pass title in a tax sale, the information provided in the instant Complaint is certainly sufficient to pursue an action to quiet title or for declaratory judgment respecting that title.

With respect to Ultra’s second objection, that the Complaint fails to allege sufficient facts to establish prima facie title in Southwestern, Ultra specifically contends that certain lease documents attached to the Complaint have either expired or are about to expire. Southwestern asserts there are or will be extensions of such leases. To address this objection, since the pleadings in this case already lead one through a tortured paper maze, rather than require an amendment of the Complaint, the court will allow Southwestern to simply add any extensions as they come into effect by filing a “Praecipe to attach enclosed Exhibit ‘X’ to Complaint filed December 9, 2011.”

In its cross-claim, the Trust asserts that since the 1988 Quiet Title Action failed to include the Trust even though it clearly had an interest in the property at the time and that interest could have been discovered through a title search, the default judgment obtained by Northern Forests and any subsequent transfers of that interest are invalid as against the Trust. The Trust also asserts that its lease with Lancaster Oil & Gas (against which it has filed an Additional Defendant

Complaint) is void as a result of its violation of the Guaranteed Minimum Royalty Act. In its preliminary objections to this cross-claim, Ultra Resources challenges the Trust's standing in light of the lease with Lancaster and objects to the failure of the cross-claim to attach various documents.

As to the issue of standing, even though the Trust has leased its interest, such does not defeat its standing to bring an action to quiet title, and at argument, counsel for Ultra conceded the point

As to the asserted failure to attach certain documents, out of the many documents allegedly missing, it appears only one is actually missing: the assignment of the Margaret O. F. Proctor Trust's interest to the Thomas E. Proctor Heirs Trust. There is attached, however, a Confirmatory Deed from the trustees of the MOFP Trust to the trustees of the TEPH Trust, acknowledging such assignment and the court finds this sufficient, at least at the pleading stage.

In its counterclaim, the Trust again disputes the validity of its lease with Lancaster and thus contends Southwestern has no standing since Southwestern has succeeded to Lancaster's interest. The Trust seeks a declaratory judgment that the lease with Lancaster is invalid, and also the imposition of a constructive trust on any royalties or other monies received by Southwestern as a result of its contract with Lancaster. In its preliminary objections, Southwestern contends that the Trust has failed to allege sufficient facts to show the lease with Lancaster is invalid, and failed to allege any facts which would support a finding of unjust enrichment, a necessary component of a constructive trust.

In the counterclaim, the Trust contends its lease with Lancaster is invalid because although it provides for a 1/8 royalty, it also assigns back to Lancaster 50% of that royalty. The Trust argues that this assignment results in the Trust

retaining only a 1/16 royalty, in violation of the Guaranteed Minimum Royalty Act (which requires a minimum 1/8 royalty). The court agrees with Southwestern's argument in response, however: the royalty to be paid remains 1/8; the assignment back to Lancaster simply divides that royalty payment.³ Thus, no violation of the Guaranteed Minimum Royalty Act has been pled and the request for declaratory judgment in that regard will be dismissed.

Finally, with respect to Southwestern's objection to the request for a constructive trust, without addressing Southwestern's argument in this regard, since the request for a constructive trust is based on the Trust's request for a declaration that the lease with Lancaster is invalid and Southwestern thus has no interest, and since the court has dismissed the request for declaratory judgment, the request for a constructive trust must also fall.

ORDER

AND NOW, this 24th day of May 2012, for the foregoing reasons, the preliminary objections filed by Ultra Resources to Southwestern's Complaint are hereby OVERRULED, with the proviso that Southwestern must add any lease extensions as they come into effect by filing a "Praecipe to attach enclosed Exhibit 'X' to Complaint filed December 9, 2011."

The preliminary objections filed by Ultra Resources to the Trust's Amended Cross-claim are hereby OVERRULED.

³ It was explained at argument by a representative of Lancaster that Lancaster sought that 50% in exchange for its services in connecting the Trust with a production company, as Lancaster itself was not in the business of production.

The preliminary objections filed by Southwestern to the Trust's Second Amended Counterclaim are hereby SUSTAINED and the Second Amended Counterclaim is hereby DISMISSED.⁴

⁴ The court notes that Lancaster filed an Answer and New Matter to both the Joinder Complaint filed against it by the Trust *and* the Second Amended Counterclaim filed by the Trust against Southwestern. Although Lancaster is named as a counterclaim defendant in the caption of the counterclaim, it is not a named party in the counterclaim itself.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Jeffrey Malak, Esq., Chariton, Schwager & Malak
138 South Main Street, Wilkes-Barre, PA 18703
Daniel Glassmire, Esq., Glassmire & Shaffer Law Offices, P.C.
5 East Third Street, Coudersport, PA 16915
Daniel Sponseller, Esq., Law Office of Daniel J. Sponseller
409 Broad Street, Suite 200, Sewickley, PA 15143
J. Michael Wiley, Esq.
Charles Greevy, III, Esq.
John Snyder, Esq., McQuaide Blasko, Inc.
811 University Drive, State College, PA 16801
Frederick Alcaro, Esq., Pepper Hamilton LLP
100 Market St., Suite 200, Harrisburg, PA 17108
Ryan James, Esq., Meyer, Unkovic & Scott, LLP
535 Smithfield St., Suite 1300, Pittsburgh, PA 15222-2315
Marc Drier, Esq.
Trustees of Margaret O.F. Proctor Trust:
Nathan C. Wilcox, Assistant Vice President, U.S. Trust
100 Federal Street, Boston, MA 02110
John J. Slocum, Jr., Slocum, Gordon & Co., LLP
39 Mill Street, Newport, RI 02840
Gary Weber, Esq.
Hon. Dudley Anderson