

OPINION AND ORDER

Before the court is a Joint Motion for Partial Judgment on the Pleadings against Defendants Forest Resources, LLC, Kocjancic Family Limited Partnership, Harold H. Wolfinger, Jr. and Northern Forests II, Inc.,¹ filed by Southwestern and IDC on June 19, 2012. Argument was heard August 14, 2012.

In its Complaint, 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 the instant motion, both Southwestern and IDC seek a declaration that "the default judgment entered in favor of Northern Forests, II, Inc., on February 10, 1989, in the quiet title action filed by Northern Forests, II, Inc. in this Court to No. 1988 – 02356 (the "1988 Quiet Title Action") is null and void and is invalid as against Southwestern's and IDC's predecessor in interest, Clarence W. Moore ("Moore") and Southwestern's other predecessor in interest, the beneficiaries of Thomas Proctor Sr.". The motion sets forth several reasons why this court should find that the 1989 court did not have jurisdiction and thus declare the judgment a nullity, but as the court agrees with Defendants that Southwestern and IDC may not obtain such relief by way of the instant action, those reasons will not be addressed at this time.

¹ Although there are numerous defendants other than these four, for convenience, in the instant opinion the court will refer to these four defendants simply as "Defendants".

“Rule 237.3 governs relief from a judgment by default or of non pros.” Pa.R.C.P. 237.3 (Explanatory Comment – 1994). Therefore, in order to seek relief from a default judgment, one must follow the procedure outlined in Rule 237.3, which clearly calls for a “petition for relief” and although it is not expressly stated, it is implied by the provision requiring the attachment of the proposed complaint or answer that the petition is to be filed to the same docket as the judgment from which one seeks relief. Pa.R.C.P.237.3(a). Southwestern and IDC have provided no authority, and the court has been unable to locate any, which supports the notion that any judgment may be declared “null and void” as against a certain party through the vehicle of a separate action for declaratory judgment. Indeed, their insistence that the court should “use the procedural tools at its disposal to deal substantively with the crux of the matter” in the interest of “judicial economy”, is belied by the case they themselves cite for the proposition that “the particular label assigned to the method of declaring the invalidity of a judgment obtained without jurisdiction is far less important than clarifying that the judgment is void for lack of necessary jurisdiction”: Deer Park Lumber, Inc. v. C.B. Major, 559 A.2d 941 (Pa. Super. 1981). There, the Court noted in a footnote that certain circumstances might require the filing of a petition to strike a judgment rather than open it, but that in the case before it the petition to open which had been filed was proper. The Court did *not* say that a separate declaratory judgment action could be substituted instead. *Id.* at 943, n. 1.

Accordingly, since the relief sought by Southwestern and IDC may not be afforded in this particular action, they are not entitled to partial judgment on the pleadings.

ORDER

AND NOW, this 21st day of August 2012, for the foregoing reasons, the Motion for Partial Judgment on the Pleadings is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

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