FIN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

WILLIAM A. CAPOUILLEZ t/d/b/a	:	
GEOLOGICAL ASSESSMENT & LEASING,	:	DOCKET NO. 12-00,005
Plaintiff,	:	CIVIL ACTION – LAW
	:	
vs.	:	JURY TRIAL DEMANDED
	:	
LAUREL HILL GAME AND FORESTRY CLUB;	:	
WILLIAMSON TRAIL RESOURCES, LP; and	:	MOTIONS FOR
RANGE RESOURCES – APPALACHIA, LLC,	:	SUMMARY JUDGMENT
Defendants.	:	

O P I N I O N AND O R D E R

Pending before the Court are three (3) cross motions for summary judgment. Defendants Laurel Hill Game and Forestry Club (Defendant Laurel Hill) and Williamson Trail Resources, LP (Defendant Williamson Trail) filed their motion for summary judgment on February 11, 2013. Defendants Range Resources – Appalachia, LLC (Defendant Range Resources) filed its motion for summary judgment on February 11, 2013. Plaintiff filed his initial motion for summary judgment on February 11, 2013; after leave of Court, Plaintiff filed a second motion for summary judgment on February 22, 2013. After careful review of the record, the Court finds that summary judgment should be granted in favor of Defendants and against Plaintiff as to Plaintiff's claims and that judgment should be granted in favor of Plaintiff and against Defendant Williamson Trail as to Defendant's counterclaim.

I. Procedural History

Plaintiff's Amended Complaint raises five causes of action against Defendants; these actions include: I) Breach of Contract – Defendant Range Resources, III) Breach of Contract – Defendants Laurel Hill and Williamson Trail, V) Unjust Enrichment – all Defendants,

VII) Injunctive Relief – all Defendants, and VIII) Declaratory Relief – all Defendants.[1] Defendants Laurel Hill filed a counterclaim against Plaintiff under one count: Unjust Enrichment based upon the Unauthorized Practice of Law by Plaintiff. Defendant Range Resources did not file any counter or cross claims. On February 13, 2013, the pleadings closed. *See* Def. L.H. & W.T. Reply to New Matter.

II. Findings of Fact

The following facts are not in dispute. The Court finds these facts to be dispositive of the case at hand.

Plaintiff and Defendant Laurel Hill's Landowner Representation Contract

1. On February 28, 2006, Plaintiff and Defendant Laurel Hill entered into a Landowner Representation Contract. Def. R.R.'s Mot. Summ. J., Ex. J (2006 contract). That contract provided that Plaintiff would represent Defendant Laurel Hill in the process of acquiring leases for the oil, gas, and mineral rights underlying Defendant's five thousand one hundred and ninety-eight (5,198) acres of land located in Jackson and Cogan House Townships, Lycoming County, Pennsylvania. *Id.*
2. As to payment, the contract provided:

> 3. Upon Contractee (Defendant Laurel Hill) fully executing any and all leases for which the Contractor (Plaintiff) was directly or indirectly involved in the development and/or negotiation thereof, Contractee agrees to duly compensate Contractor the sum of 25% of all bonus payments greater than 75.00 dollars per acre and all land rentals greater than five ($5.00) dollars per acre, and the sum of 50% of all oil and/or gas royalty payments greater than 1/8 (12.5%) percent of the market value for each thousand cubic feet (mcf) of natural gas, and/or field price

[1] In the Court's Opinion and Order of July 15, 2012, the Court dismissed Plaintiff's counts alleging Tortious Interference with Contractual Relationships (Counts II and IV), Conspiracy (Count VI), Accounting (Count IX), and Punitive Damages (Count X).

per barrel (42 U.S. gallons) of oil the same as may be agreed upon by Contractee through any applicable formal lease agreement.

Id.

3. Plaintiff is not a licensed attorney within the Commonwealth of Pennsylvania or any other jurisdiction. Reply, ¶ 121.

2006 Lease between Defendant Laurel Hill and Defendant Range Resources

4. On June 22, 2006, Defendant Laurel Hill[2] entered into an Oil, Gas and Coalbed Methane Gas Lease with Great Lakes Energy Partners, LLC.[3] Def. R.R.'s Mot. Summ. J., Ex. D (2006 lease).
5. Plaintiff served as Defendant Laurel Hill's consultant "in the negotiation, execution, and performance" of the 2006 lease. *See id. See also* Def. R.R.'s Mot. Summ. J., Ex. J (2006 contract).
6. The lease provided that, as payment for Plaintiff's services in acquiring the lease between Defendants, Plaintiff was to receive part of Defendant Laurel Hill's "bonus rental payment, delay rental payments and/or royalty payments." *See id.*
7. The lease also provided that Plaintiff retained the right to approve *revisions* of the 2006 lease; in particular, the lease provides:

> 29.4 Consultant (Plaintiff) reserves the right to approve in writing any proposed *revisions* to this Agreement (2006 lease) which directly or indirectly affects Consultants delay rental and/or royalty payments and/or obligations of Lessor or Lessee to the Consultant as contained herein.

See Def. R.R.'s Mot. Summ. J., Ex. D (emphasis added).

[2] On September 12, 2009, Defendant Laurel Hill conveyed its interest in the lease to Defendant Williamson Trail. Am. Compl., ¶ 8.

[3] On or about August 29, 2007, Great Lakes Energy Partners, LLC, changed its name to Range Resources – Appalachia, LLC; Range Resources is the successor business entity to Great Lakes. *See* Am. Compl., ¶ 28.

8. Plaintiff received his appropriate share of Defendant Laurel Hill's bonus rental payment and delay rental payments paid under the 2006 lease. Am. Compl., ¶ 15; Pl.'s Dep. 262.
9. To date, neither Plaintiff nor Defendant Laurel Hill has received royalty payments because "no hydrocarbons had been produced from the lands covered by the 2006 lease." Def. R.R.'s Mot. Summ. J., Ex. M (Aff., Carl Steinle, Feb. 11, 2013).
10. The initial lease term was for five years and was scheduled to terminate on June 22, 2011, unless certain conditions were met by Defendant Range Resources; in particular, the lease provided:

> 8.1 Unless sooner terminated as otherwise herein provided, Lessee (Defendant Range Resources) shall commence a well on the Leased Premises or on a spacing unit containing a portion of the Leased Premises, within five (5) years from the date first written above and shall drill said well with due diligence. In the event the aforesaid well is not commenced within such five (5) year period, this Agreement shall be automatically terminated in its entirety….

Def. R.R.'s Mot. Summ. J., Ex. D.

11. On or around June 20, 2011, Defendant Range Resources began drilling a well on the property. Def. L.H. & W.T. Answer, ¶ 32.
12. Defendant Range Resources continued this drilling throughout August 26, 2011. Am. Compl., ¶ 34.

2011 Lease between Defendant Williamson Trail and Defendant Range Resources

13. Defendants Williamson Trail and Range Resources entered into a second Oil and Gas Lease on September 27, 2011. *See* Def. R.R.'s Mot. Summ. J., Ex. E.
14. Plaintiff was not involved in the negotiation or execution of the second lease. *See id*.

Defendant Range Resource's Surrender of the 2006 Lease

15. Pertaining to surrender, the 2006 lease provides:

> 19.1 Lessee (Defendant Range Resources) may at any time, or from time to time, surrender this Lease or any portion thereof if Lessee is not then in default of any obligations under this Lease; provided, however, that such surrender must be evidenced by written notices delivered to Lessor and Consultant (Plaintiff) at least thirty (30) days prior to the effective date thereof and that lessee has performed all commitments with which Lessee is charged to the effective date of the surrender, all revenues paid prior to the effective date of the surrender shall be deemed liquidated damages due Lessor (Defendant Laurel Hill/Williamson Trail) and Consultant and shall be in no way be prorated or subject to claim by Lessee for return to Lessee.

See Def. R.R.'s Mot. Summ. J., Ex. D.

16. On October 3, 2011. Defendant Range Resources sent notice to Defendant Williamson Trail and Plaintiff that it was surrendering the 2006 lease. Def. R.R.'s Mot. Summ. J., Ex. H.

17. Defendant Range Resources was not in default of any of the 2006 lease provisions at the time that it notified Defendant Williamson Trail and Plaintiff that it was surrendering the 2006 lease. *See* Am. Compl., ¶ 15; Pl.'s Dep. 262.

18. Defendant Range Resource's surrender was effective as of November 8, 2011. *See* Lycoming County Deed Book No. 7447, pg. 57; Def. R.R.'s Mot. Summ. J., Ex. I.

III. Discussion

The Court may grant summary judgment at the close of the relevant proceedings if there is no genuine issue of material fact or if a party has failed to produce evidence of facts essential to its cause of action or defense. Pa. R.C.P. 1035.2; *Keystone Freight Corp. v. Stricker*, 31 A.3d

967, 971 (Pa. Super. Ct. 2011). A party opposing the motion for summary judgment must identify either factual issues to be addressed during trial or evidence in the record establishing facts essential to its cause of action or defense; the opposing party cannot rely on solely the allegations or denials in its pleadings. Pa. R.C.P. 1035.3(a); *Keystone*, 31 A.3d at 971. "Failure of a non-moving party to adduce sufficient evidence on an issue essential to its case and on which it bears the burden of proof… establishes the entitlement of the moving party to judgment as a matter of law." *Keystone*, 31 A.3d at 971 (citing *Young v. Dep't of Transp.*, 744 A.2d 1276, 1277 (Pa. 2000)). With these standards in mind, the Court will first address Plaintiff's breach of contract claims found in Counts I (Defendant Range Resources) and III (Defendants Laurel Hill and Williamson Trail) of Plaintiff's Amended Complaint.

a. <u>Breach of Contract</u>

Leases are contractual in nature and should be interpreted under contract law principles. *Heasley v. KSM Energy, Inc.*, 52 A.3d 341, 344 (Pa. Super. Ct. 2012). In order to prevail on a breach of contract claim, Plaintiff must establish: 1) the existence of a contract, 2) Defendants' breach of that contract, and 3) damages resulting from that breach. *Discover Bank v. Stucka*, 33 A.3d 82, 87 (Pa. Super. Ct. 2011). When interpreting a lease, the courts should construe the lease "in accordance with the terms of the lease agreement as manifestly expressed[;] [t]he accepted and plain meaning of the language used, rather than the silent intentions of the contracting parties, determines the construction to be given to the agreement." *Heasley*, 52 A.3d at 344 (citations omitted).

Instantly, Plaintiff alleges that Defendant Range Resources breached the 2006 lease by *unlawfully* surrendering the lease, by negotiating with Defendant Williamson Trail for a new lease without Plaintiff's approval or involvement, and by failing to commence drilling on

Defendant Williamson Trail's land before June 20, 2011.[4] Am. Compl., ¶ 64. Plaintiff also alleges that Defendants Laurel Hill and Williamson Trail breached the 2006 lease by negotiating and executing a subsequent lease with Defendant Range Resources (the 2011 lease). Am. Compl., ¶ 80.[5]

As an intended third-party beneficiary to the lease, Plaintiff may assert a claim under the lease. *See Scarpetti v. Weborg*, 609 A.2d 147, 149-150 (Pa. 1992) (outlining differences between intended and incidental beneficiaries). However, after review of the pleadings, the Court finds that the undisputed facts of record do not support any of Plaintiff's arguments. The Court finds that Plaintiff failed to adduce sufficient evidence on his breach of contract claims as to sustain his burden of proof or create an issue of fact. Therefore, pursuant to Pa. R.C.P. 1035.2, Defendants are entitled to judgment as a matter of law on Counts I and III.

i. 2006 Lease Surrender

Initially, Plaintiff argues that Defendant Range Resources breached the 2006 lease by unlawfully surrendering the lease. However, the undisputed facts of record prove otherwise. The Court finds that Defendant Range Resources lawfully surrendered the 2006 lease. The 2006 lease provides that Defendant Range Resources may surrender the lease, at any time, as long as it is not in default of any of the lease terms and it gives both Defendant Laurel Hill and Plaintiff thirty (30) days advanced notice. The Court finds that there is no dispute of record regarding Defendant Range Resource's non-default status and notice regarding the surrender of the lease. Based upon the plain language of the lease, Defendant Range Resources lawfully surrendered the

[4] The Court notes that Plaintiff attempts to raise other causes of action in breach of contract against Defendant Range Resources pertaining to six other landowners; these landowners include: 1) George J. and Marilyn L. Bidlespacher; 2) Jack and Joe Strause; 3) David and Marilyn Feeling; 4) Francis Barnard; 5) Rizenthaler Living Trust; and 6) Greg and Karen Brown. Am. Compl., ¶ 66 (a)-(f). These potential actions were withdrawn by Plaintiff during his deposition. *See* Pl.'s Dep., 250-56.

[5] The Court notes that Plaintiff *does not* allege that Defendants Laurel Hill and Williamson Trail breached the 2006 Landowner Representation Contract.

2006 lease as of November 8, 2011. Therefore, the Court finds that no breach occurred and Plaintiff failed to adduce sufficient evidence to sustain his burden of proof on this claim.

ii. 2006 Lease Termination

Plaintiff attempts to prove that Defendant Range Resources breached its contractual duty to Plaintiff by failing to drill the first well on the land before June 20, 2011. Plaintiff alleges that this delay by Defendants constitutes a breach of the 2006 lease because neither he nor Defendant Williamson Trail knew if the lease had expired. Essentially, Plaintiff argues that Defendant Range Resources had a duty to begin drilling more than two days before the termination date of the 2006 lease. The undisputed facts of record provide otherwise. The lease provided that Defendants should "commence a well" on the land "within five (5) years from the date first written above and shall drill said well with due diligence." Def. R.R.'s Mot. Summ. J., Ex. D. In this instance, the undisputed evidence of record provides that Defendant Range Resources commenced drilling the well on or about June 20, 2011, and continued drilling throughout August 26, 2011. Am. Compl., ¶ 34. Therefore, the Court finds that no breach occurred and Plaintiff failed to adduce sufficient evidence to sustain his burden of proof on this claim.

iii. 2011 Lease Execution

Next, Plaintiff alleges that Defendants breached the 2006 lease by entering into 2011 lease without Plaintiff's approval.[6] Plaintiff bases this argument on his reserved right in the 2006 lease to "approve in writing any proposed revisions to this Agreement…." Def. R.R.'s Mot. Summ. J., Ex. D. Plaintiff believes that this contractual term provides for his approval of any other contracts made between Defendants regarding Defendant Williamson Trail's premises. The Court does not agree with Plaintiff's interpretation of the lease.

[6] The Court again notes that Plaintiff does not allege Defendant Laurel Hill breached the 2006 Landowner Representation Contract. *See* Am. Compl., ¶ 80(a)-(h).

It is clear to both this Court and Defendants that the plain language of the lease provides that Plaintiff had the right to approve any revisions to the 2006 lease, not any subsequent lease made between the parties. As provided for in *Heasley*, the Court must construe the lease as expressed by the plain meaning of the words used, not the silent intentions of the parties. 52 A.3d at 344. Thus, the analysis is centered upon the plain meaning of "revision." Black's Law Dictionary defines a revision as "[a] reexamination or careful review for correction or improvement." BLACK'S LAW DICTIONARY 623 (3d pocket ed. 2006). In addition, Webster's New Collegiate Dictionary defines a revision as "an act of revising (as a manuscript)" and revising as "to look over again in order to correct or improve." WEBSTER'S NEW COLLEGIATE DICTIONARY 992 (1977). The Court finds that based upon the plain meaning of the word revision, Plaintiff contracted under the 2006 lease for his ability to approve changes or corrections to the 2006 lease; however, Plaintiff did not reserve the right to approve all other leases made between the parties pertaining Defendant Williamson Trail's land.[7] Based upon the plain meaning of the word revision, the Court finds that Plaintiff's argument fails as a matter of law. Therefore, Court again finds that no breach occurred and Plaintiff failed to adduce sufficient evidence to sustain his burden of proof on this claim.

Finding that Defendants are entitled to judgment as a matter of law as to Plaintiff's breach of contract claims (Counts I and III), the Court turns to Plaintiff's unjust enrichment claim against all Defendants (Count V).

b. <u>Unjust Enrichment</u>

In order to recover under the quasi-contractual claim of unjust enrichment, Plaintiff must establish: 1) the existence of a benefit conferred on Defendants by Plaintiff; 2) Defendants'

[7] Also, the Court notes the differences between the 2006 and 2011 leases as outlined by Defendant Range Resources in its brief in support of its summary judgment motion; these differences include provisions for the modern day horizontal drilling practices included within the 2011 lease. *See* Def. R.R.'s Summ. J. Bf., 10-11.

appreciation of the benefit; and 3) that Defendants' acceptance and retention of this benefit, without payment to Plaintiff, creates an inequity. *J.F. Walker Co., Inc. v. Excalibur Oil Group, Inc.*, 792 A.2d 1269, 1273 (Pa. Super. Ct. 2002). Unjust enrichment is a remedy that the Court fashions in the interest of justice if the parties' relationship is not found within an express contract. *Schott v. Westinghouse Electric Corp*., 259 A.2d 443, 449 (Pa. 1969). However, when the parties' relationship is based upon a written agreement, the quasi-contractual remedy of unjust enrichment is not available to them. *Wilson Area Sch. Dist. v. Skepton*, 895 A.2d 1250, 1254 (Pa. 2006) (upholding *Third Nat'l Bank & Trust Co. v. Leigh Valley Coal Co.*, 44 A.2d 571, 574 (Pa. 1945)). *See also Schott*, 259 A.2d at 449; *Wingert v. T.W. Phillips Gas & Oil Co*., 157 A.2d 92, 94 (Pa. 1959). When the parties' relationship is memorialized in a written agreement, the Court should not fashion a quasi-contractual remedy for the parties regardless of "however harsh the provisions of such contracts may seem in the light of subsequent happenings." *Third Nat'l Bank*, 44 A.2d 571, 574. *See Schott*, 259 A.2d at 449-48; *Wingert*, 157 A.2d at 94.

In this instance, Plaintiff alleges that the benefit it conferred on Defendants was: 1) bringing Defendants together to create the 2006 lease, and 2) helping Defendants negotiate the terms of the 2006 lease. Am. Compl., ¶ 88-90. Plaintiff argues that Defendants' retention of this relationship, albeit outside of the initial lease and within a subsequent lease, without payment of royalties to Plaintiff, creates an inequity. *See id.* The Court does not agree and finds that Plaintiff has failed to produce sufficient evidence to support this claim pursuant to Pa. R.C.P. 1035.2(2).

As previously stated, Plaintiff may bring a claim of action under the 2006 lease as an intended third-party beneficiary. *See Scarpetti*, 609 A.2d at 149-150. Plaintiff properly lodged

his complaints as two (2) actions in breach of contract against Defendants. As previously provided, the Court finds that Plaintiff's breach of contract actions fail as a matter of law. Now, Plaintiff attempts to assert a claim in quasi-contract against Defendants because Defendants negotiated between themselves to create the 2011 lease that does not include a royalty payment to Plaintiff. Plaintiff points to emails between Defendants about what would happen to Plaintiff's royalty payment if Defendant Range Resources surrendered its 2006 lease to prove that Defendants' execution of the 2011 lease was *unjust* and to a royalty check paid by Defendant Range Resources to Defendant Williamson Trail to prove that Defendants have been *enriched*.[8] However, the *undisputed* fact still remains that Plaintiff's relationships with the parties are based upon the 2006 contract and the 2006 lease, and Plaintiff's remedy is limited to asserting his rights under those documents. *See Horsham v. Weiner*, 255 A.2d 126, 130-31 (Pa. 1969). Therefore, the Court finds that Plaintiff failed to adduce sufficient evidence on his unjust enrichment claim as to sustain his burden of proof and that Defendants are entitled to judgment as a matter of law as to Count V (Unjust Enrichment).

c. Injunctive and Declaratory Relief

As a result of the foregoing analysis, the Court also finds that Plaintiff's claims for injunctive and declaratory relief fail because these claims are based upon Plaintiff's deficient claims for breach of contract and unjust enrichment.

d. Defendants Laurel Hill and Williamson Trail's Counterclaim

The only matter remaining before this Court is Defendant Williamson Trail's counterclaim of unjust enrichment based upon Plaintiff's unauthorized practice of law. The

[8] The emails are attached as P-25 and P-26 to Pl.'s Bf. in Opp. to Defs.' Mot. Summ. J., filed March 11, 2013. The check that Plaintiff referred to during oral argument does not appear to be part of the record before the Court.

Court finds that Plaintiff engaged in the unauthorized practice of law; however, the Court also finds that this counterclaim is barred by the doctrine of unclean hands.

i. Unauthorized Practice of Law

Our Supreme Court has long-held that the activities constituting the unauthorized practice of law cannot be readily defined. *Harkness v. Unemployment Comp. Bd. of Review*, 920 A.2d 162, 166 (Pa. 2007); *Dauphin County Bar Ass'n v. Mazzacaro*, 351 A.2d 229 (Pa. 1976); *Shortz v. Farrell*, 193 A. 20, 21 (Pa. 1937). Throughout the years, the courts have conducted a case-by-case analysis to determine whether actions undertaken by a non-lawyer constitute law practice. *Id*.; *Westmoreland County v. RTA Group, Inc*., 767 A.2d 1144, 1150 (Pa. Cmwlth. Ct. 2001), *appeal denied*, 788 A.2d 382 (Pa. 2001). When performing this analysis, the courts are guided by three areas that generally dominate legal activities: 1) instructing and advising clients regarding their rights and obligations; 2) preparing documents for clients that require legal knowledge beyond the skill of an ordinary layman; and 3) appearing in public tribunals on behalf of a client. *Id*. Throughout the years, it has been stressed that "[i]t is the *character of the act* and not the place where it is performed which is the decisive factor." *Id*. (emphasis added).

In addition to looking at the particular acts performed by a non-lawyer, the courts must consider the public interest. *Harkness*, 767 A.2d at 162. A factor that the courts consider when considering the public interest is fact that non-attorneys are not bound by a reviewable code of professional ethics or responsibility. *Dauphin*, 351 A.2d at 232-234. In *Dauphin County*, our Supreme Court noted:

> [w]hen a person holds himself out to the public as competent to exercise legal judgment, he implicitly represents that he has the technological competence to analyze legal problems and the requisite character qualifications to act in a representative capacity. When such representations are made by persons not adequately trained or regulated, the

> dangers to the public are manifest: [a] layman who seeks legal services often is not in a position to judge whether he will receive proper professional attention. The entrustment of a legal matter may well involve the confidences, the reputation, *the property*, the freedom, or even the life of the client. Proper protection of members of the public demands that no person be permitted to act in the confidential and demanding capacity of a lawyer unless he is subject to the regulations of the legal profession.

Dauphin County, 351 A.2d at 232 (emphasis added). When discussing the unauthorized practice of law, our Supreme Court noted:

> the object of the legislation forbidding practice to laymen is not to secure to lawyers a monopoly, however deserved, but, by preventing the intrusion of inexpert and unlearned persons in the practice of law, to assure to the public adequate protection in the pursuit of justice, than which society knows no loftier aim.

Harkness, 767 A.2d at 166-67 (citing *Shortz*, 193 A. at 24).

Instantly, Defendants argue that Plaintiff engaged in the unauthorized practice of law. In support of this argument, Defendants point to the 2006 contract and the actions taken by Plaintiff pursuant to that agreement in acquiring the 2006 lease. The Court agrees and finds Plaintiff's deposition to be dispositive of this issue. The Court finds that Plaintiff took actions consistent with these two areas of legal practice: 1) instructing and advising clients regarding their rights and obligations; 2) preparing documents for clients that require legal knowledge beyond the skill of an ordinary layman.

During his deposition, Plaintiff answered questions regarding the formation of his business, Geological Assessment and Leasing; the Court notes the following testimony:

> Q. And in 1996 when you formed the company, were you doing more of the assessment work or of the leasing work?
>
> A. I don't know the – Equal. I mean prior to doing any leasing, you have to understand whether there's a value there. You know if somebody approached me and said right now, hey, I want to lease my oil and gas rights in Philadelphia, I would say, you probably don't

have very good oil and gas rights in Philadelphia based on the geology. So, you know, before you go forward and get somebody to feel like they have some value, you need to really tell them whether or not you think they have any value. So, you know, the assessment is always part of the whole problem.

Q. And in connection with that assessment, you relied on your background as a professional geologist, correct?

A. I relied on many things.

Q. That's one of the things that allowed you and –

A. My interpretation of what I was reading or hearing, you know, I used my background to provide those interpretations. But, you know, there is a lot of information with regard to geology throughout Pennsylvania that has already been written or known or discovered or developed that you can find out.

Q. Now, back on Exhibit Number 4, the document said, "In 1996, after realizing the need to provide private landowners consulting services…"

A. Uh-huh.

Q. What – How did you come to realize that there was such a need in the public domain for consulting services in 1996?

A. Right. There were a lot of people that were approaching me. It initially started with the Farm Bureau. They – they really didn't have anybody to talk to with regard to what it meant to lease their property, how it would, you know, affect their livelihood, those kind of things. Basically, back in that time frame, *the bulk of the attorneys that were out there operating from an oil and gas leasing legalized review were working for clients that were industry clients*. And there were – the bulk of the geologists were working for the industry. So there was few and far between consultants that really just *represented the private landowner*. That was not repeat business to them. You know, the repeat, ongoing business was the larger organizations, and that's where people migrated to.

* * * * * * * * * * * *

Q. Another reason why you formed Geological Assessment & Leasing in 1996 is because the attorneys who were doing oil and gas wok were also gravitating towards the industry side of the equation, correct?

A. That was my understanding from people that told me, you know, they were having trouble finding anybody to provide them any consultation.

Q. On leasing oil and gas rights?

A. On – on leasing oil, gas or mineral rights.

Q. And since – Strike that. Given your understanding that attorneys in the oil and gas field were gravitating towards industry as well as the geologists, you wanted to fill that vacuum, to use your words, right?

A. I saw my business model opportunity.

Q. And that opportunity was to represent landowners in connection with oil and gas leases?

A. Yes.

Q. Now, back to Exhibit Number 5. Why did you prepare this document?

A. My business model was unlike anybody else's business model. Everybody else that I had run into, or that people had solicited and talked to, did not provide a performance-based business model where they would do everything for free, and only reap any benefit of their effort if they were successful. And it was hard for people to grasp that. I mean when they were dealing with the industry folks by and far, there was a trust factor there. *And when they would approach an attorney if there was one available,* or a geologist if there was one available, *right away that person would want consideration for their services, i.e., paid,* whereas my business model was different than that….

Pl.'s Dep., 59-63 (emphasis added). Based on Plaintiff's own deposition testimony, he established his business model on the premise that due to the influx of leasing in the Marcellus shale region, attorneys were selective in choosing their clients and a majority of individual landowners were unable to get appropriate legal representation.

In addition, the Court believes that Defendant's deposition testimony also reveals that he was engaged in the unauthorized practice of law when he acquired rights in Defendants' 2006 lease. In particular, the Court notes the following testimony:

Q. And based on the concerns and issues of Laurel Hill, you would then suggest particular lease provisions?

A. I would provide them with lease provisions that had been utilized in other leasing aspects, and say, based on the topic of discussion for example, a planting revegetation mix, here is some planting and revegetation mixes that have been used on other properties and have been used in other leases. Take a look at that and see if that's something that you would want to have placed in the lease.

* * * * * * * * * * * *

Q. In the third line, it talked about, quote, "any future drafting, development, and final execution of any and all leases." What was meant by "drafting"?

A. One of the things that would happen, and even happened in this situation, landowners would get four or five different lease offers. And within those lease offers would be embedded different provisions. And they made read through their, their attorney may read through there and say, you know, this, I like, this, I don't like. This addresses my – And so they would circle certain things. And I would capture those provision if they were provisions that I hadn't already seen somewhere else, because they had already told me that was something they would like to see addressed, and they would like to see it in their lease. So if it was one that I didn't have, then I would have duplicated it as something that they were desirous to have in their particular lease.

* * * * * * * * * * * *

Q. Between April 19, 2006, and May 11, 2006, which services did you provide to Laurel Hill under the landowner representation agreement? Could you describe those for the record?

A. I was going through the bid process, solicitation and negotiation of bids.

* * * * * * * * * * * *

Q. … did the bid package that was sent out contain a draft lease?

A. It would have contained what I call a super lease. It would have been a culmination of lease provisions from other leases that attorneys had looked at, and that companies in one manner or another had already agreed to. It was – to me, it was no relevance to offer a lease provision in a negotiation that was so abhorrent that a company would never agree to it. So –

A. So the bid package –

Q. Let me finish. You asked me a question; let me have the opportunity to finish answering your question. So the lease form, itself, in the bid package would include all of those provisions culminated into one large lease that each landowner would say, you know what, if they agree to those things, all of those things, that would be excellent and we would appreciate having that kind of a lease, compared to the leases we had already been offered. So that is what would go with the bid package.

Q. So you would agree with me that the bid package that you prepared contained a draft lease? Yes or no.

A. Explain your definition of "draft."

Q. Did the bid package contain a lease or not, Mr. Capouillez?

A. It would have contained a lease form.

Q. And the lease form contained various provisions that other attorneys have approved from time to time, based on your testimony, correct?

A. Or other gas companies had offered up as lease provisions.

* * * * * * * * * * * *

Q. Now, based on your e-mail of May 30, 2006, Mr. Capouillez, you were going to make a recommendation that Great Lakes was the more desirable bid. Correct?

A. That's what it says here, yes.

* * * * * * * * * * * *

Q. What advice did you give to Laurel Hill with respect to the June 22, 2006 (lease), as to particular terms? Particular provisions? And if you want, we could go through the actual lease.

A. Yeah, what – And you have it here, and I can't find it offhand. I would have provided them a chart of the bid. And I would have shown them a comparative analysis of how many years the term was, what the royalty was, what the payback. You know, some of them had stepped royalty – not stepped. Some of them had stepped rental. Some of them had different shut ins? Some of them had free gas. One would over 250 a year, one would offer 300. You know, had all of those different variables that they bid in a comparison chart. I would weight them like you would do in a normal course of analysis based on what was important to them. So if you told me that the most important thing to

you was getting the money up front, not the royalty, because you weren't sure you'd get the royalty, but you wanted money up front, you might prioritize that. I might give that a one. You might say royalty is your second prior. I might give that, you know, a two. You might say shut-in value or free gas. And we would do a numerical calculation analysis, and we would talk about that. And I would say based on what you, the client, see as your priorities, and based upon what these companies bid, here is the recommendation I would give to you that would best meet your concerns as you've told me.

Q. You also made a recommendation because the Great Lakes lease was more favorable, the lease language, itself, was more favorable than the Anadarko lease, correct?

A. Based on what they had asked for, the clients, yes.

* * * * * * * * * * * *

Q. And with respect to the term, how did you – how did you determine that the Great Lakes language regarding the term of the lease was more favorable than the Anadarko lease term?

A. Based on what – based on what they wanted. If you had a three-year term, then you knew that the company had to drill within three years respectively, verses one that was a ten-year term. And so if you wanted to have contingencies and opportunities maybe to lease your property later, you would elect to have a shorter term. So as volatile as the oil and gas market was at that time, I would tell people, make sure you have contingencies. Make sure that you're meeting your goals and intent. But that you can also play the market in the future. Don't lease for a hundred years if you can lease your property for ten for more money and more royalty. That's just a consult – consulting recommendations. So yes, I would make recommendations based on those kinds of things.

* * * * * * * * * * * *

Q. In the landowner representation agreement that you had Laurel Hill execute, it indicated that you provide representation during lease negotiations, which included drafting. What drafting services did you provide to Laurel Hill with respect to this document that's before you?

A. When you're looking at unitization clauses, when you're looking at spacing, when you're talking about things that are geologically related, what's the drainage pattern of a horizontal well verses a shallow well, or the shale component? What would be a normal drilling schedule? What would be a normal production value that you could assert from a shallow well that you could get free gas? When you talk about all those things and how they're relative to a bid, those are the discussions I would have had with companies. As it relates to their actual bid on those particular items, those numbers what we're – is what we're talking about. The lease form itself, was drafted, approved, and submitted by Range Resources.

Q. So it's your testimony you had no input in the draft that's before you?

A. That's not my testimony.

Pl.'s Dep., 94-96, 135-36, 139-40, 163-65, 165-66, 181-82. Throughout Plaintiff's deposition, he attempts to characterize his representation of Defendant Laurel Hill as merely consulting. Also, Plaintiff argues that Defendant Range Resources drafted the 2006 lease. However, when viewing Plaintiff's own deposition as a whole, it is clear to this Court that Plaintiff actively negotiated and partook in the drafting of the 2006 lease.

In addition, during Plaintiff's deposition, he references his attorney (or Geological Assessment & Leasing's attorney), Mr. Greevy, to imply that Plaintiff was not engaged in the unauthorized practice of law. However, when questioned regarding Mr. Greevy's involvement with the 2006 lease, the following discussion took place:

Q. Mr. Capouillez, do you have any evidence that Mr. Greevy made recommendations or revisions to the proposed lease prior to execution by Gray's Run or Laurel Hill?

A. Restate your question.

(Reporter reads back last question)

THE WITNESS: Not that I can put my finger on right now.

Pl.'s Dep., 176. Additionally, Defendant testified that he did not recollect telling an individual from Defendant Laurel Hill to have an attorney review the 2006 lease agreement. *Id*., 234-35.

In opposition to Defendants' argument, Plaintiff cites case law and statutes from Louisiana, Oklahoma, and Texas to support his conclusion that landmen's duties do not constitute the practice of law. The Court finds it difficult to apply those principles in this matter because: 1) these holdings and statutes are not applicable Commonwealth precedent, and 2) Plaintiff is self-employed, not a landman employed by Defendant Range Resources. The Court will address its reasoning in turn.

Plaintiff references Texas legislation that exempts a landman's activities from the practice of law. In particular, Plaintiff notes that the Tex. Code § 83.001(b)(3) exempts "a person performing acts relating to a transaction for the lease, sale or transfer of any mineral or mining interest in real property" from the definition of practice of law. While Plaintiff cites this statute to support his theory that a landman's activity does not constitute the practice of law, the Court believes it tends to show the opposite. The Texas legislature specifically added this exemption to its practice of law statute; this addition leads this Court to conclude that but for this exemption the landman's acts would constitute the practice of law.

Additionally, Plaintiff cites to *Dan S. Collins, CPL & Associates, Inc. v. Godchaux*, 86 So. 3d 831 (La. Ct. App. 2012), for the proposition that a typical landman's duties do not constitute the practice of law. In that case, on appeal was the trial court's granting of landowners' summary judgment motion regarding a landman engaging in the unauthorized practice of law. *Id.* 834. On appeal, the appellate court reversed because it could not find that the record was sufficient to establish as a matter of law the landman engaged in the unauthorized practice of law. *Id*. at 839. In that case, the appellate court cited to over thirty years of case precedent addressing the issue of the unauthorized practice of law by a landman. *Id.* at 835. The court cited Louisiana case precedent that defined a landman as "[a]n employee of an oil company

whose primary duties are the management of the company's relations with its landowners. Such duties include the securing of oil and gas leases, lease amendments, pooling and unitization agreement and instruments necessary for curing title defects." *Id*. at 836 (citations omitted). This Court finds it important that the landman in *Collins* was a professional landman for thirty (30) years and was a Certified Professional Landman as determined by the American Association of Professional Landmen. *Id*. at 832.

In the instant matter, Plaintiff admitted that he had "never acted for any company as a consultant." Pl.'s Dep., 263, 13-14, and 266, 10-13. Thus, the Court cannot and will not compare Plaintiff to a professional landman. Therefore, the Court finds that Plaintiff's arguments fail.

Based upon the foregoing, the Court finds that there is no genuine issue of material fact as to whether Plaintiff engaged in the unauthorized practice of law and that Defendants Laurel Hill and Williamson Trail are entitled to summary judgment on their counterclaim. In addition, the Court notes that its finding that Plaintiff engaged in the unauthorized practice of law would be a second reason for granting Defendants' summary judgment motions as to the counts raised by Plaintiff in his Amended Complaint. The Court does not enter this decision lightly. However, based upon the case law and the particular actions taken by Plaintiff regarding the 2006 contract and lease, the Court is constrained to conclude that Plaintiff engaged in the unauthorized practice of law when he negotiated and acquired the 2006 lease on behalf of Defendant Laurel Hill. The Court notes that its ruling is limited to the particular factual scenario in this case. This ruling should not be interpreted as applying to all landmen working for the oil and gas industry, in particular landmen employed by oil and gas companies.

ii. Unclean Hands Doctrine

Despite the Court's finding that Plaintiff was engaged in unauthorized practice of law, the Court finds that Defendant Williamson Trail's counterclaim is barred by the unclean hands doctrine. In *In Re: Bosley*, 26 A.3d 1104 (Pa. Super. Ct. 2011), our Superior Court addressed the unclean hands doctrine, providing:

> [t]he doctrine is derived from the unwillingness of a court to give relief to a suitor who has so conducted himself as to shock the moral sensibilities of the judge, and it has nothing to do with the rights or liabilities of the parties. The doctrine applies where the wrongdoing directly affects the relationship subsisting between the parties and is directly connected with the matter in controversy. The application of the doctrine to deny relief is within the discretion of the chancellor, and in exercising his discretion the chancellor is free not to apply the doctrine if a consideration of the entire record convinces him that an inequitable result will be reached by applying it. The court may raise the doctrine of unclean hands *sua sponte*.

Id. (citations omitted). The Court believes the unclean hands doctrine is applicable in this matter and will raise it *sua sponte*.

In this instance, Plaintiff filed suit against Defendants for negotiating the 2011 lease that did not require royalty payments to be made to Plaintiff. This Court has found that Defendants effectively and legally negotiated, drafted, and executed the 2011 lease. However, now, Defendants Laurel Hill and Williamson Trail are asking this Court to disgorge Plaintiff of the profits he acquired through the course of assisting Defendants in acquiring the first lease. The Court will not do so.

Defendants Williamson Trail and Laurel Hill "hired" Plaintiff to "represent" them in leasing their land. Plaintiff introduced Defendants Laurel Hill and Range Resources to each other and assisted them in effectively negotiating the 2006 lease. Although the Court found that Plaintiff's actions constituted the unauthorized practice of law, the Court does not believe equity

will prevail by disgorging Plaintiff of the monies he received under the 2006 lease. Although the Court does not condone Plaintiff's action, Plaintiff facilitated the formation of the relationship between Defendants. Additionally, Plaintiff performed a number of services for Defendants Williamson Trail and Laurel Hill under the 2006 contract and lease. The Court does not believe equity would prevail by disgorging Plaintiff of these funds and placing them back into the hands of Defendants Williamson Trail and Laurel Hill. Therefore, equity mandates that Defendants Williamson Trail and Laurel Hill be precluded from recovering under their counterclaim based upon the doctrine of unclean hands.

The Court enters the following Order.

O R D E R

AND NOW, this 5th day of April, 2012, for the reasons stated above, it is hereby ORDERED and DIRECTED that Defendants Laurel Hill, Williamson Trail, and Range Resources' motions for summary judgment are GRANTED in part and DENIED in part. All claims against Defendants found within Plaintiff's Amended Complaint are DISMISSED. Additionally, Defendants Laurel Hill and Williamson Trail's counterclaim is DISMISSED. Plaintiff's motions for summary judgment are DENIED.

BY THE COURT,

_____ _____

Date Richard A. Gray, J.

cc: Dennis M. Moskal, Esq. – Counsel for Plaintiff
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