

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DEUTSCHE BANK NATIONAL TRUST CO.,	:	
Plaintiff,	:	DOCKET NO. 09-01,763
	:	
vs.	:	CIVIL ACTION
	:	
JO-ANNA STEELY,	:	PETITION TO
Defendant.	:	STRIKE JUDGMENT

OPINION AND ORDER

Currently pending before this Court is a Petition to Strike filed on July 31, 2012, by Inflection Energy LLC and Rice Drilling B LLC, in the above-captioned mortgage foreclosure proceeding. The issue that the Court is presented with is whether, under the rules of civil procedure, a lessee of an oil and natural gas lease is to be deemed a real property owner for the purposes of a mortgage foreclosure proceeding when the oil and gas lease is still in its primary term and when no production of the underlying property has occurred, despite the lessee's exploration of the property. The Court finds that under these circumstances these lessees are not considered to be real property owners, and, therefore, need not be added as defendants to the mortgage foreclosure complaint.

I. Factual and Procedural Background

This case pertains to the interpretation of a mortgage, a gas lease and the rights conveyed to the parties involved in each transaction.

a. Mortgage

Pertaining to the mortgage, on August 23, 2005, Ms. Steely executed a mortgage with Ameriquest Mortgage Company. *See* Compl. ¶ 3; Pl. Reply ¶ 3. *See also* Lycoming County Record Book No. 5418, pg. 48. After multiple assignments, the mortgage was eventually

assigned to Plaintiff on August 20, 2009, at Lycoming County Record Book No. 6731, pg. 101. See Pl. Reply ¶ 3 n.1.

b. Oil and Natural Gas Lease

Pertaining to the oil and gas lease, on July 12, 2008, Ms. Steely entered into an oil and gas lease with Rice Drilling B LLC. See Pet., Ex. A-B (Lycoming County Record Book No. 6466, pg. 25-27). On May 30, 2011, Rice Drilling B LLC partially assigned its rights in its lease with Ms. Steely to Inflection Energy LLC. See Pet., Ex. C (Lycoming County Record Book No. 7373, pgs. 1-15).

c. Mortgage Foreclosure Action

On July 24, 2009, Plaintiff filed a complaint in mortgage foreclosure at the above-captioned docket. On September 1, 2009, default judgment was entered in the amount of \$83,770.26. After litigation to determine which of Ms. Steely's parcels were encumbered by Plaintiff's mortgage, on January 22, 2010, the Court ordered the matter to be placed on the next Sheriff's sale list. On July 21, 2010, Plaintiff filed an affidavit of service pursuant to Pa. R.C.P. 3129.1 to notify all parties of interest of the pending Sheriff's sale of Ms. Steely's property. Rice and Inflection were not notified of this sale. Again on June 11, 2012, Plaintiff filed an affidavit of service pursuant to Pa. R.C.P. 3129.1 to notify all parties of interest of the pending Sheriff's sale of the property. Rice and Inflection were not notified of this sale. On July 6, 2012, a Sheriff's sale of Ms. Steely's property was held.

On July 16, 2102, Rice Drilling B LLC and Inflection Energy LLC (collectively Rice and Inflection) filed a petition to set aside the Sheriff's sale held on July 6, 2012.¹ On July 20, 2012,

¹ Plaintiff argues that Rice and Inflection should have filed a petition to intervene prior to any other filing in this matter. The Court notes that pursuant to *Financial Freedom, SFC v. Cooper*, 21 A.3d 1229 (Pa. Super. Ct. 2011), any petition to intervene filed by Rice or Inflection would have been denied because the case is no longer pending based upon the entry of the 2009 default judgment. *Id.* at 1231.

Ms. Steely filed a petition to set aside the Sheriff's sale as well. The Court granted these motions by order dated January 7, 2013.

On July 31, 2012, Rice and Inflection filed a petition to strike the judgment against Ms. Steely. Oral argument on this motion was continued multiple times by joint requests of the parties. The Court heard oral argument on this petition on March 26, 2013; the Court granted the parties a short supplemental briefing period after their oral argument. This matter is now ripe for review.

II. Discussion

The Court may strike a judgment only if a fatal defect or irregularity appears on the face of the record. *See* Pa. R.C.P. 2959; *Resolution Trust Corp. v. Copley Qu-Wayne Associates*, 683 A.2d 269, 273 (Pa. 1996). Instantly, Rice and Inflection are arguing that pursuant to Pa. R.C.P. 1144 they should have been listed on the mortgage foreclosure complaint as partial real owners of the underlying premises; they argue that this omission is an irregularity on the face of complaint, requiring the judgment to be stricken. In support of this claim, Rice and Inflection cite to *Snyder Brothers, Inc. v. Peoples Natural Gas Co.*, 676 A.2d 1226 (Pa. Super. Ct. 1996), *appeal denied*, 686 A.2d 1312 (Pa. 1996) (citing *Smith v. Glen Alden Coal Co.*, 32 A.2d 227 (Pa. 1943)). After careful review, the Court does not agree with Rice and Inflection's interpretation of the above-mentioned case law. The Court finds that no irregularity appears on the face of the record before it that would justify striking the 2009 judgment.

Rule 1144 of the Rules of Civil Procedure, pertaining to mortgage foreclosure actions, provides:

- (a) The plaintiff shall name as defendants
 - (1) the mortgagor;

- (2) the personal representative, heir or devisee of a deceased mortgagor, if unknown; and
- (3) *the real owner of the property*, or if the real owner is unknown, the grantee in the last recorded deed.

Id. (emphasis added). At issue in this matter is the interpretation of the phrase “real owner” in section (a)(3) of this rule. Rice and Inflection argue that pursuant to this rule they should have been captioned as defendants in Ms. Steely’s mortgage foreclosure action because the 2008 gas lease conveyed to them real ownership rights to Ms. Steely’s property. Specifically, Rice and Inflection argue that the gas lease conveyed to them a fee simple determinable estate in Ms. Steely’s property. The Court does not agree.

In order to resolve the instant matter, the Court must interpret what property right is conveyed to a gas lessee when a lease is in its primary term and the lessee has explored the gas rights underlying the property but has failed to initiate production. Initially, the Court makes two observations. First, the Court notes that the lease was executed on July 12, 2008, with a five-year term. Therefore, the lease is still in its primary term. Additionally, the Court notes that the pleadings do not indicate if any wells have been drilled or are in production on Ms. Steely’s land. Therefore, the Court must interpret the pleadings as if no production has occurred.

In resolving this matter, the Court finds instructive our Superior Court’s opinion in *Hite v. Falcon Partners*, 13 A.3d 942 (Pa. Super. Ct. 2011). In *Hite*, our Superior Court addressed the type of estate held by the lessee of an oil and gas lease at the time when drilling has not been conducted on the underlying premises.² Initially, our Superior Court identified the difficulty in interpreting an oil and gas lease; particularly, that Court provided:

an oil and gas lease reflects a conveyance of property rights within a highly technical and well-developed industry, and thus certain aspects of property law as

² This Court does note that, unlike the instant matter, the *Hite* lease was not in its primary term; instead, lessee was keeping the lease active by paying delayed rental payments to the lessor. *Hite*, 13 A.3d at 944.

refined by and utilized within the industry are necessarily brought into play. The Supreme Court has aptly observed that “the traditional oil and gas ‘lease’ is far from the simplest of property concepts.” *In the context of oil and gas leases, the title conveyed is inchoate and initially for the purpose of exploration and development. If development during the primary term is unsuccessful, no estate vests in the lessee.* If oil or gas is produced, the right to produce becomes vested and the lessee has a property right to extract the oil or gas. In such circumstances, the lessee will be protected in accordance with the terms of the lease and will be required to operate the leasehold for the benefit of both parties.

Id. at 945 (citations omitted) (emphasis added). Turning to the issue at hand, that Court reasoned:

[t]he initial title conveyed by an oil and gas lease is inchoate, and for the purposes of exploration only. **The lessee may perfect its inchoate title to a vested interest by bringing the property into production. At that juncture the lessee gains a fee simple determinable in the oil and gas,** and may continue to reap the benefit of his efforts in accordance with the terms and conditions of the lease. **Defendant has failed to advance any case where the mere payment of a delay rental beyond the term of the lease has been held to create a vested corporeal hereditament.**

Id. at 949 (citations omitted) (emphasis in original). *See also T.W. Phillips Gas and Oil Co. v. Jedlicka*, 42 A.3d 261 (Pa. 2012) and *In Re Powell*, 482 B.R. 873 (Bankr. M.D. Pa. 2012).

Therefore, the *Hite* Court held that the lessee had no vested interest in the property because the lessee failed to commence production on the underlying premises. *Id.*

Similarly, in this matter, Rice and Inflection have not established that they have a *vested* right in Ms. Steely’s property. Instantly, Rice and Inflection have *argued* that they have commenced exploration on her land; however, this Court has received no evidence from Rice and Inflection suggesting that production has occurred. Again, the Court notes that no pleadings

provide that production has occurred on Ms. Steely's land. As production is the linchpin in this analysis, the Court finds this failure to be dispositive of the issue at hand.

Additionally, the Court finds that Rice and Inflection's reliance on *Snyder Brothers*, *supra*, misplaced. In *Snyder Brothers*, a producing well was drilled and completed by the lessee. 676 A.2d at 1229. In that matter, the lessee commenced litigation after a disagreement arose as to whether the landowners could interfere with the company's right to "drill, mine, produce, maintain, operate and/or transport the gas and oil produced from [its] well located on [the landowners'] property." *Id.* Yet, in the instant matter, Rice and Inflection's rights in Ms. Steely's property have yet to vest because no production has occurred on her property. *See also Hite*, 13 A.3d at 949 n.7. Therefore, the Court does not find *Snyder Brothers* to be controlling.

Despite Rice and Inflection's failed claim above, as record interest holders, these entities were entitled to notice of the sale of Ms. Steely's property. *See* Pa. R.C.P. 3129.1(a)(3). Pa. R.C.P. 3132 provides that:

[u]pon petition of any party in interest before delivery of the personal property or of the [S]heriff's deed to real property, the court may, under proper cause shown, set aside the sale and order a resale *or enter any other order which may be just and proper under the circumstances.*

Id. (emphasis added). *See also* Pa. R.C.P. 3181(a)(8). In this instance, Rice and Inflection were not properly provided notice of the Sheriff's sale of the property. On January 7, 2013, this Court set aside the Sheriff's sale of the property based upon Plaintiff's failure to notify these parties of the Sheriff's sale of Ms. Steely's property. To date, nearly a year has passed since the July 6, 2012 Sheriff's sale of Ms. Steely's property. Rice and Inflection have been in communications with Plaintiff regarding the settlement of this matter. In fact, this Court continued oral argument on Rice and Inflection's petition based upon these settlement negotiations. To date, no

settlement has occurred. Based upon this delay and the ruling herein, the Court believes it is appropriate for this matter to proceed to Sheriff's sale.

The Court enters the following Order.

ORDER

AND NOW, this ___ day of April, 2013, following oral argument on the Petition to Strike filed on July 31, 2012, for the reasons stated above, it is hereby ORDERED and DIRECTED that the petition is DENIED. This matter shall be placed on the next Sheriff's sale list. Pursuant to the Court's order of January 22, 2010, the Court notes that Tax Parcel No. 56-291-108C is not encumbered by Plaintiff's mortgage and is not subject to Sheriff's levy or execution.

BY THE COURT,

Richard A. Gray, J.

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