IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ELBOW FISH & GAME CLUB, INC. and ELBOW ENERGY, LLC, Plaintiffs,	:	DOCKET NO. 12-00,825
	:	CIVIL ACTION
vs.	:	
	:	NON-JURY TRIAL
GUILLAUME BUSINESS OPPORTUNITY GROUP, LLC, ANADARKO E&P ONSHORE LLC, f/k/a ANADARKO E&P COMPANY LP and ANADARKO PETROLEUM CORPORATION, Defendants.	:	CROSS MOTIONS FOR SUMMARY JUDGMENT

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

This matter comes before the Court on cross Motions for Summary Judgment filed by Plaintiffs Elbow Fish & Game Club, Inc. (Plaintiff Elbow Fish & Game) and Elbow Energy, LLC (Plaintiff Elbow Energy) and Defendant Guillaume Business Opportunity Group, LLC (Defendant GBOG), on February 8, 2013, and February 20, 2013, respectively. Defendants Anadarko did not file a summary judgment motion; however, Defendants Anadarko submitted a brief in opposition to Defendant GBOG's motion for summary judgment at the time of oral argument. This matter pertains to the ownership of the oil and natural gas rights underlying five (5) tracts of land (the "premises") located in Cogan House Township, Lycoming County, Pennsylvania. After review of the pleadings, along with the parties' motions and briefs, the Court finds that partial summary judgment is warranted to both Plaintiffs and Defendant GBOG. Specifically, the Court finds that Plaintiff Elbow Energy is the sole owner of the oil and natural gas rights, with the exception of the coalbed methane gas rights, underlying the premises; the Court finds that Defendant GBOG is the sole owner of the coalbed methane gas underlying the premises.

I. Brief Procedural History

1. On April 25, 2012, Plaintiffs filed the complaint. In the complaint, Plaintiffs raised the following causes of action: 1) Quiet Title, 2) Quiet Title, 3) Tortious Interference with Contractual Relations (against Defendant GBOG), 4) Unjust Enrichment (against Defendant GBOG), and 5) Breach of Contract (against Defendants Anadarko).
2. On May 11, 2012, Defendant GBOG filed an answer with new matter and counterclaim. Defendant GBOG filed a sole counterclaim in Unjust Enrichment.
3. On June 29, 2012, Defendants Anadarko filed an answer with new matter and cross-claims. Defendants Anadarko filed cross-claims under two counts: 1) Sole Liability or Liability Over for Plaintiffs' Claims, and 2) Tortious Interference with Contractual Relations.
4. On August 2, 2012, the pleadings were closed. *See* Ans. of Def. GBOG to Cross-Claims of Defs. Anadarko.
5. On February 8, 2013, Plaintiffs filed a Motion for Summary Judgment.
6. On February 20, 2013, Defendant GBOG filed a Motion for Summary Judgment.
7. On March 15, 2013, this Court heard oral argument on these cross motions. [1]
8. No additional answers, responses, or motions have been filed since the oral argument date.
9. As of March 25, 2013, this matter is ripe for review. *See* Pa. R.C.P. 1035.3(a).

[1] The Court notes that at the time of oral argument, March 15, 2013, responses to Defendant GBOG's motion for summary judgment were not yet due. *See* Pa. R.C.P. 1035.3(a) (providing for a thirty (30) day response time for summary judgment motions). However, the Court held oral argument on the March 15, 2013 date because the argument was previously scheduled with the parties in accordance with the Court's scheduling order and dispositive motion deadline.

II. Findings of Fact

1. Plaintiff Elbow Fish & Game Club, Inc. (Plaintiff Elbow Fish & Game) is a Pennsylvania corporation with an office and principal place of business located at 2510 8th Street Drive, Watsontown, Pennsylvania 17777. Compl., ¶ 1.

2. Plaintiff Elbow Fish & Game owns the surface rights of and possesses and controls five (5) tracts of land (the "premises") situated in Cogan House Township, Lycoming County, Pennsylvania. Compl., ¶ 3. The premises is part of a larger tax parcel identified as Lycoming County Tax Parcel No. 08-266-101. *Id.*, ¶ 15. In total, the premises consists of approximately 1,078 acres. *Id*., ¶ 3. Plaintiff Elbow Fish & Game acquired the premises from Charles A. Guillaume through a deed dated January 8, 1928, and recorded in Lycoming County Record Book 269, pgs. 270-72 (the "1928 Deed"). *Id.*, ¶ 14-16. A complete legal description of the premises appears in the 1928 Deed. *Id*.

3. This controversy arises out of the exception and reservation of coal and mineral rights found in the 1928 Deed; that exception provides:

> EXCEPTING AND RESERVING unto the said Charles A. Guillaume, his heirs, executors, administrators and assigns, *all the coal and other minerals of whatsoever kind and nature*, lying and being in, under and upon the above described five (5) tracts of land, with the right to mine and remove therefrom the same at such times and in such manner as he or they or any of them may desire, without any liability, whatsoever, for any injury or damage occasioned thereby to the overlying strata, surface or anything therein or there upon, with the right to construct such roads or right of ways necessary for the convenient mining and transporting the same, and with full right and authority to be in and upon the same, at any time, with men, horses, mules, wagons, carts and other machines and appliances necessary for the removing of the minerals so reserved.

1928 Deed, pgs. 271-72 (emphasis added).

4. Defendant Anadarko Petroleum Corporation (Defendant Anadarko) is a Delaware corporation with an office located at 1201 Lake Robbins Drive, The Woodlands, Texas. Compl., ¶ 9.
5. On January 1, 2006, Defendant Anadarko entered into an Oil and Gas Lease (the "2006 Lease") with Plaintiff Elbow Fish & Game. Compl., Ex. A.
6. Defendant Anadarko E&P Onshore LLC, formally known as Anadarko E&P Company LP (Defendant Anadarko E&P) is a Delaware limited liability company with an office located at 1201 Lake Robins Drive, The Woodlands, Texas. Compl., ¶ 11.
7. Defendant Anadarko assigned its rights under the 2006 Lease to Defendant Anadarko E&P. Compl., ¶ 12.
8. Plaintiff Elbow Energy, LLC (Plaintiff Elbow Energy) is a Pennsylvania limited liability company with its office and principal place of business located at 2510 8th Street Drive, Watsontown, Pennsylvania. Compl., ¶ 5.
9. Plaintiff Elbow Fish & Game conveyed all of its right title, and interest in the oil and gas in and under the premises to Plaintiff Elbow Energy, LLC (Plaintiff Elbow Energy), by deed dated November 2, 2008, and recorded in Lycoming County Record Book 6520, pgs. 277-80 (the "2008 Deed"). Compl., ¶ 4.
10. Defendant Guillaume Business Opportunity Group, LLC (Defendant GBOG) is a Pennsylvania limited liability company with its office and principal place of business at 695 Calvert Road, Trout Run, Pennsylvania. Compl., ¶ 8.
11. On January 6, 2012, the reputed heirs of Charles A. Guillaume warranty deeded their "right, title and interest in and to all oil, gas and mineral rights of any kind and nature, lying and being in, under and upon" the premises to Defendant GBOG. *See* Lycoming County Record Book No. 7503, pgs. 238-42.

12. Plaintiffs brought this action to determine the ownership of the oil and natural gas rights underlying the premises.

III. Conclusions of Law

Quiet Title Action

1. Pursuant to Pa. R.C.P. 1061, a party may bring an action to quiet title "to compel an adverse party to file, record, cancel, surrender or satisfy of record, or admit the validity, invalidity or discharge of, any document, obligation or deed affecting any right, lien, title or interest in land[.]" Pa. R.C.P. 1061(b)(3).

Summary Judgment

2. Pursuant to Pa. R.C.P. 1035.2, the Court may grant summary judgment at the close of the relevant proceedings if there is no genuine issue of material fact or if an adverse party has failed to produce evidence of facts essential to the cause of action or defense. *Keystone Freight Corp. v. Stricker*, 31 A.3d 967, 971 (Pa. Super. Ct. 2011).
3. A non-moving party to a summary judgment motion cannot rely on its pleadings and answers alone. Pa. R.C.P. 1035.2; 31 A.3d at 971.
4. When deciding a motion for summary judgment, the Court must view the record in the light most favorable to the non-moving party, with all doubts as to whether a genuine issue of material fact exists being decided in favor of the non-moving party. 31 A.3d at 971.
5. If a non-moving party fails to produce sufficient evidence on an issue on which the party bears the burden of proof, the moving party is entitled to summary judgment as a matter of law. *Keystone*, 31 A.3d at 971 (citing *Young v. Pa. Dep't of Transp.*, 744 A.2d 1276, 1277 (Pa. 2000)).

Deed Interpretation

6. A "reservation in a deed is to be construed most strongly against the grantor." *Bundy v. Myers*, 94 A.2d 724, 725 (Pa. 1953). *See also Sheffield Water Co. v. Elk Tanning Co.*, 74 A. 742 (Pa. 1909).

7. In *Steuart v. McChesney*, 444 A.2d 659 (Pa. 1986), our Supreme Court held:

> [i]t is well established that the intent of the parties to a written contract is to be regarded as being embodied in the writing itself, and when the words are clear and unambiguous the intent is to be discovered only from the express language of the agreement…. When a written contract is clear and unequivocal, its meaning must be determined by its contents alone. It speaks for itself and a meaning cannot be given to it other than that expressed. Where the intention of the parties is clear, there is no need to resort to extrinsic aids or evidence. Hence, where language is clear and unambiguous, the focus of interpretation is upon the terms of the agreement as *manifestly expressed*, rather than as, perhaps, silently intended.

Id. at 661 (citations omitted) (cited by *Willison v. Consolidated Coal Co.*, 637 A.2d 979, 982 (Pa. 1994) (applying *Steuart*'s interpretation standard to an oil and gas lease)). *See also T.W. Phillips Gas & Oil Co. v. Jedlicka*, 42 A.3d 261, 267 (Pa. 2012).

The *Dunham* Rule

8. When there is an exception or reservation of "minerals" in a conveyance of land without any specific language that includes oil or natural gas in the exception or reservation, the rule articulated in *Dunham v. Kirkpatrick*, 101 Pa. 36 (1882), applies.

9. The *Dunham* rule provides that "if, in connection with a conveyance of land, there is a reservation or an exception of 'minerals' without any specific mention of natural gas or oil, a presumption, rebuttable in nature, arises that the word 'minerals' was not intended by the parties to include natural gas or oil." *Highland v. Commonwealth*, 161 A.2d 390,

398 (Pa. 1960). *See Dunham*, 101 Pa. at 44 (applying the *Dunham* presumption to an oil claim), *Silver v. Bush*, 62 A. 832, 833 (Pa. 1906) (holding that the *Dunham* rule applies to natural gas claims), *and Preston v. S. Penn Oil Co.*, 86 A. 203 (Pa. 1913) (holding that the *Dunham* rule applies to petroleum and natural gas claims). *See also Bundy v. Myer*, 94 A.2d 724 (Pa. 1953).

10. In order to rebut the *Dunham* presumption, clear and convincing evidence must be provided to the Court to establish that the parties intended the conveyance included natural gas or oil within the word "minerals." *Highland*, 161 A.2d at 399.
11. In the absence of clear and convincing evidence, "the long recognized rule of property which presumes that natural gas is not a 'mineral'… must control." *Id*. at 400.
12. The *Dunham* Court ruled that the term "all minerals" in a reservation did not, on its face, include the right to petroleum oil. 101 Pa. at 43-44.
13. The *Silver* Court held that a reservation of "the mineral underlying the same" did not include a reservation of natural gas. 62 A. at 833-34.
14. The *Preston* Court held that the reservation of "all mineral and mining rights and the incidents thereto, whatever" did not include claims to petroleum and natural gas. 86 A. at 203-04.
15. The *Bundy* Court provided that the reservation of "the oil, coal, fire clay and minerals of every kind and character" did not include claims to natural gas. 94 A.2d at 584-85, 88.
16. The *Highland* Court concluded that the phrase "[a]ll the coal, fire clay, limestone, iron ore and other minerals" in a reservation was not intended to include natural gas or oil. 161 A.2d at 398-400.
17. The *Dunham* rule is based upon the proposition that if the parties intended to include a reservation of a right within the deed, the contracting parties would have specifically

provided for such a reservation within the deed. *Butler v. Charles Powers Estate*, 29 A.3d 35, 42 (Pa. Super. Ct. 2011), *cert. granted*, 41 A3d. 854 (Pa. 2012).

18. Citing to the rule *expressio unius est exclusio alterius*, the *Bundy* Court reasoned that if the "minerals" reservation was intended to include petroleum and natural gas the contracting parties should have expressly reserved such rights. 94 A.2d at 726.

19. In *Highland*, the Court partially based its finding that clear and convincing evidence was not presented to rebut the *Dunham* presumption by applying the rule of *ejusdem generis*; in interpreting that rule of the law, the Court concluded that the parties intended the term "other minerals" to include only those minerals that were of the same character and/or type specifically enumerated within the reservation, i.e. coal, fire clay, limestone, and iron ore. 161 A.2d at 400. *See also Bundy*, 94 A.2d at 726.

20. Instantly, Defendant GBOG has failed to produce clear and convincing evidence to rebut the *Dunham* presumption that the term "minerals" within the 1928 Deed does not include oil or natural gas. Therefore, Defendant GBOG has failed to meet its burden under *Dunham* and summary judgment is warranted pursuant to the *Dunham* presumption.

21. Based upon the plain language of the deed, it appears that the primary objective of the parties when entering into the 1928 Deed reservation was to preserve Mr. Guillaume's right to mine coal, not exploit the oil and natural gas underlying the premises.

22. Plaintiff Elbow Energy is the lawful and valid owner of the right, title and interest in all of the oil and natural gas in and under the premises, with the exception of the coalbed methane gas. *See* Conclusion 25.

Coalbed Gas

23. Although fugacious in character, gas may be owned prior to its production from a subterranean surface. *United States Steel Corp. v. Hoge*, 468 A.2d 1380, 1383 (Pa. 1983).

24. Gas found within subterranean coal belongs to the owner of the coal in which the gas is found. *Hoge*, 468 A.2d at 1383.

25. Defendant GBOG is the lawful and valid owner of the right, title and interest in all the coal and coalbed methane gas in and under the premises. *See* 1928 Deed.

IV. Discussion

The issues presently before this Court are: 1) is there a material issue of fact as to the parties' intent when entering into the 1928 Deed, and 2) has Defendant GBOG failed to produce sufficient evidence to rebut the *Dunham* rule. The Court finds that there is not an issue of fact as to the contracting parties' 1928 intent and that Defendant has failed to produce evidence to rebut the *Dunham* presumption. Based upon these findings, Plaintiffs and Defendant GBOG are each entitled to partial summary judgment.

Instantly, the parties are requesting this Court to interpret the mineral rights reserved by Mr. Guillaume in the 1928 Deed. Plaintiffs argue that Mr. Guillaume conveyed to Plaintiff Elbow Fish & Game fair and marketable title to not only the surface rights of the premises in 1928 but also title to all of the oil and natural gas underlying the premises. Plaintiffs support their argument by citing to the language found within the 1928 Deed, reserving "all of the coal and other minerals of whatever kind and nature" to Mr. Guillaume, and the long-standing property rule of *Dunham*. Alternatively, Defendant GBOG argues that the 1928 Deed reservation should be construed by this Court to include oil and natural gas rights underlying the premises because the phrase "other minerals" was included within the reservation. In support of

Defendant GBOG's argument, Defendant cites to the *Butler* case currently on appeal at our Pennsylvania Supreme Court. After consideration of all arguments of counsel, the Court concludes that the natural gas and oil rights found underlying the premises lie with Plaintiff Elbow Energy while the coalbed methane gas found underlying the premises lies with Defendant GBOG.

Natural Gas and Oil Rights

Turning to the reservation in the 1928 Deed, it is undisputed that the phrase "natural gas" cannot be found within the reservation. Based upon the failure of the drafters to include this reservation, the rebuttable presumption of *Dunham* applies, and this Court must initially interpret the 1928 Deed's reservation as *not* including natural gas and oil rights. *See generally Silver v. Bush*, 62 A. 832 (Pa. 1906).

Now, under the *Dunham* rule, this Court must decide if clear and convincing evidence exists to overcome *Dunham*'s rebuttable presumption that natural gas and oil rights were not reserved in the 1928 Deed. It is Defendant GBOG's burden to prove that clear and convincing evidence exists. Defendant GBOG argues that clear and convincing evidence exists illustrating the intent of both Mr. Guillaume and Plaintiff Elbow Fish & Game for the reservation to include natural gas and oil. Additionally, Defendant GBOG argues that a genuine issue of fact exists as to the intent of the parties when entering into the 1928 Deed. This Court does not agree.

The Court finds that that Defendant GBOG failed to produce facts essential to rebut the *Dunham* presumption. Additionally, the Court finds that no genuine issue of material fact exists in this matter as to the intent of the parties when entering into the 1928 Deed. Defendant GBOG admits that all parties to the 1928 transaction have passed and that no direct evidence of the parties' intent exists. Def. GBOG's Mot. Summ. J., ¶ 8; Pls. Mot. Summ. J. Ans., ¶ 8; Def. GBOG's Mot. Summ. J. Ans., ¶ 2. Defendant argues that the circumstantial evidence proving

that the reservation intended to include oil and natural gas rights includes the consideration Mr. Guillaume received for the conveyance ($1.00) and the Charter of Plaintiff Elbow Fish & Game. However, based upon the long-standing *Dunham* rule, the Court finds that these issues do not amount to sufficient evidence that Mr. Guillaume intended for his reservation in the 1928 Deed to include natural gas and oil; Defendant GBOG's failure to produce sufficient evidence on an issue to which it bears the burden of proof requires this Court to enter summary judgment, as a matter of law, to Plaintiff Elbow Energy. Therefore, the Court finds that Plaintiff Elbow Energy is entitled to judgment as a matter of law. Additionally, Defendant GBOG's argument as to a material issue of fact fails due to the fact that no direct testimony can be taken to rebut the language of the 1928 Deed.

Defendant GBOG also argues that this Court should defer ruling on this matter until our Supreme Court reaches a decision in *Butler v. Charles Powers Estate*, 29 A.3d 35 (Pa. Super. Ct. 2011), *cert. granted*, 41 A3d. 854 (Pa. 2012). Defendant GBOG argues that the *Butler* decision most-likely will apply to this matter and, therefore, this Court should defer ruling on this matter until our Supreme Court reaches a decision in that case. The Court does not agree.

As one would expect, *Butler* involves a complaint to quiet title to two-hundred and forty-four acres of land located within the Marcellus shale region of the Commonwealth (Susquehanna County). 29 A.3d at 37. In *Butler*, Plaintiffs' deed included an exception and reservation to Defendants of "one half of the minerals and Petroleum Oils" on the acreage. *Id*. Defendants filed for declaratory judgment providing that this reservation of rights included the Marcellus shale gas. *Id*. at 37. Plaintiffs lodged preliminary objections in the form of a demurrer against Defendants' declaratory judgment claim. *Id*. After hearing, the trial court sustained Plaintiffs' preliminary objections and dismissed Defendants' request for declaratory judgment pursuant to *Dunham*. *Id.* at 37, 43. Defendants subsequently appealed.

On appeal to our Superior Court, that Court reversed and remanded the matter for further proceedings. In its opinion, our Superior Court outlined the Supreme Court's holdings in *Dunham*, *Highland*, *Hoge*, and *Silver*, and further opined on how these holdings might be applied to Marcellus shale. The Court noted the parties' arguments for and against using *Dunham* or *Hoge* to analyze with whom the rights to Marcellus shale befall. In addition to explaining the parties' arguments and how they pertain to the relevant case law, the Court highlighted the critical holdings in the *Dunham* and *Hoge* cases. After analyzing the prevailing case law with the pleadings as set forth in *Butler*, the Superior Court held that the trial court improperly granted Plaintiffs' request for demurrer because that Court needed a better understanding as to whether:

> (1) Marcellus shale constitutes a "mineral"; (2) Marcellus shale gas constitutes the type of conventional natural gas contemplated in *Dunham* and *Highland*; and (3) Marcellus shale is similar to coal to the extent that whoever owns the shale, owns the shale gas.

Id. at 43. The Court remanded to the trial court so that "the parties should have the opportunity to obtain appropriate experts on whether Marcellus shale constitutes a type of mineral such that the gas in it falls within the deed's reservation" similar to *Hoge*. A Petition for Allowance of Appeal was subsequently filed with our Supreme Court. *See Butler*, 41 A.3d at 854.[2] The *Butler* case is currently on appeal in our Supreme Court.

Instantly, this Court finds that the case at bar is distinguishable from that of *Butler*. In *Butler*, the underlying order on appeal grants a demurrer during the pleadings phase of a civil

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[2] In granting allocator, the Supreme Court restated the issue as:

> [i]n interpreting a deed reservation for "minerals," whether the Superior Court erred in remanding the case for the introduction of scientific and historic evidence about the Marcellus shale and the natural gas contained therein, despite the fact that the Supreme Court of Pennsylvania has held (1) a rebuttable presumption exists that the parties intend the term "minerals" to include only metallic substances, and (2) only the parties' intent can rebut the presumption to include non-metallic substances.

Butler v. Charles Powers Estate, 41 A.3d 845, 845 (Pa. 2012).

action. In this instance, not only have the pleadings closed, but the parties have undergone significant discovery, including taking the depositions of members of Defendant GBOG, Mr. Guillaume's reputed heirs. Upon the conclusion of discovery, the parties submit that *no direct testimony* exists as to the intent of Mr. Guillaume and Plaintiff Elbow Fish & Game when entering into the 1928 Deed. Def. GBOG's Mot. Summ. J., ¶ 8; Pls. Mot. Summ. J. Ans., ¶ 8. Also, Defendant GBOG has provided that no expert witness will testify to Defendant GBOG's theory as to whether Marcellus shale is similar to coal, as outlined in the *Butler* decision, if the matter proceeds to trial. Def. GBOG's Mot. Summ. J. Ans., ¶ 17; *Butler*, 29 A.3d at 43. Therefore, the Court finds *Butler* distinguishable from the case at bar.

During oral argument, the parties provided their theories as to why our Supreme Court granted allocator in *Butler*. Defendant GBOG argued the Court granted review to reverse the *Dunham* precedent, while Plaintiffs and Defendants Anadarko believed the opposite notion to be true. Each of these theories, however, is pure speculation. Until a decision is released in *Butler*, this Court must proceed with the Supreme Court precedent applicable to this matter: *Dunham*. As previously provided, the only issue for the Court to decide as it pertains to the parties' cross motions for summary judgment is whether Defendant GBOG has produced sufficient pre-trial evidence to support its *Dunham* burden. The Court finds Defendant GBOG has failed to meet its burden and that summary judgment for Plaintiff Elbow Energy is appropriate under *Dunham* and its prodigy.

Coal and Coalbed Gas Rights

Additionally, the Court finds that the gas present within the coal on the premises belongs to Defendant GBOG. *Hoge*, 468 A.2d at 1383. In *Hoge*, our Supreme Court specifically provided that "*such gas as is present in coal must necessarily belong to the owner of the coal*, so long as it remains within his property and subject to his exclusive dominion and control." *Id*.

(emphasis in original). In this matter, Mr. Guillaume specifically reserved his right to the coal underneath the premises in the 1928 Deed. The Court believes that it was Mr. Guillaume's sole intent to reserve his rights to this coal and the coal's residual rights, such as coalbed gas. Therefore, in accordance with the 1928 Deed and our Supreme Court's findings in *Hoge*, the Court finds that as a matter of law those gases present in the coal on the premises belong to Defendant GBOG as the heirs of Charles A. Guillaume.

Plaintiffs argue that the Court should not rule on the ownership of the coal or coalbed gas because the issue is moot and there is not an actual case or controversy regarding the coalbed gas. The Court does not agree. In Plaintiffs' first quiet title count, Plaintiff specifically provided that "[t]he purpose of this action is to quiet title with respect to the gas and oil rights in and under the [premises] and to obtain an adjudication that Plaintiff Elbow Energy owns all of the right, title and interest in the gas and oil in and under the [premises]." Compl., ¶ 7. Therefore, the Court finds that Plaintiffs requested in their quiet title action an adjudication as to the ownership of *all* of the gas rights under the premises; this Court finds that the request included, albeit unintentionally, coalbed gas, as well as any other natural gases found in the premises.

V. Conclusion

In short, this Court holds that the exception and reservation in the 1928 Deed does not include oil and natural gas rights. This Court finds that Defendant GBOG has failed to produce sufficient evidence, nor will it be able to prove by clear and convincing evidence, that the parties to the 1928 Deed intended for natural gas and oil rights to be included in the contested reservation. In so holding, this Court upholds two settled property principles: 1) the rebuttable *Dunham* presumption, and 2) the rule of construction that land conveyances must be strongly construed against the grantor. Many titles to land within the Commonwealth rest upon the

Dunham rule; this Court will abide by this long-standing rule of property until otherwise advised by our appellate courts.[3]

The Court enters the following Order.

O R D E R

AND NOW, this 25th day of March, 2013, following oral argument on the parties' cross motions for summary judgment held on March 15, 2013, it is hereby ORDERED and DIRECTED that Plaintiffs' motion is GRANTED in part and DENIED in part and that Defendant GBOB's motion is GRANTED in part and DENIED in part.

Plaintiff Elbow Energy is the sole owner of the oil and natural gas rights on the premises and as the sole owner has the right to enter into and lease these rights. Defendant GBOG and its successors, heirs, and assigns are barred from asserting any right, title, or interest in the oil and natural gas pertaining to the premises in a matter that is inconsistent with the interest of Plaintiff Elbow Energy.

The November 2, 2008 Deed found at Lycoming County Record Book No. 6520, pgs. 277-80 is declared NULL and VOID as it pertains to coalbed methane gas. Defendant GBOG is the sole owner of the coal and coalbed gas rights on the premises and as the sole owner Defendant GBOG has the right to enter into and lease these rights. Plaintiff Elbow Energy and its successors and assigns are barred from asserting any right, title, or interest in the coal and coalbed gas pertaining to the premises in a matter that is inconsistent with the interest of Defendant GBOG.

The Court will hold a trial in the above-captioned matter on **Tuesday, April 16, 2013, at 9:00 a.m.**, in Courtroom No. 3 of the Lycoming County Courthouse. This trial will address

[3] This Court previously upheld the *Dunham* rule in *Day v. Meyer*, No. 10-02455, 2011 WL 7758320 (Pa. Com. Pl. Dec. 30, 2011) (Gray, J.).

Plaintiffs' tortious interference claim and Defendants Anadarko's cross-claims as well as damages. A separate pre-trial conference order is entered herewith and attached hereto.

BY THE COURT,

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Date Richard A. Gray, J.

RAG/abn

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