

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.	:	
	:	Petition to Intervene
TRUSTEES OF THE MARGARET O. F. PROCTOR TRUST,	:	Motion to Open
Additional Defendant	:	Default Judgment

OPINION AND ORDER

Before the court are two Petitions to Intervene, filed by Southwestern Energy Production Company (“Southwestern”) and Lancaster Exploration & Development Company, LLC (“Lancaster”), on January 17, 2013, and January 11, 2013, respectively, as well as two Motions to Open Default Judgment, filed by those same parties on January 17, 2013, and January 18, 2013. Argument was heard March 26, 2013.

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. Defendant Proctor Heirs Trust (“PHT”), one of the declaratory judgment defendants, filed a Counterclaim (amended twice thereafter) against Southwestern and, by way of a Joinder Complaint, against Lancaster. Lancaster then filed an Additional Defendant Complaint against Margaret O.F. Proctor Trust (“MPT”) which filed a Counterclaim (amended once thereafter) against Lancaster and Southwestern and a Cross-Claim (also amended once thereafter) against PHT and seven other Defendants. It is the Amended Cross-Claim against PHT which is the subject of the instant Motions to Open Default Judgment and in pursuit of which motions, both Lancaster and Southwestern seek to intervene.

Pa.R.C.P. 2327(4) provides that “[a]t any time during the pendency of an action, a person not a party thereto shall be permitted to intervene therein, subject to these rules, if the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action.” Here, MPT seeks in its Cross-Claim against PHT to rescind a confirmatory deed those two parties signed in 2009, which confirmed that MPT had previously granted to PHT its interest in certain oil, gas and mineral rights, which by a lease and letter agreement executed in 2002, renegotiated in 2005, PHT had leased to Lancaster, which subsequently transferred its rights in that lease to Southwestern.

MPT contends the confirmatory deed is voidable as the product of a mutual mistake, arguing specifically that it had not in fact previously transferred its interest in the rights. Apparently accepting that MPT actually had not transferred its rights to PHT, both Lancaster and Southwestern argue that rescission would “excise” MPT’s interest from the total interest transferred under the lease and letter agreements, thus affecting their interest. The court agrees with Lancaster and Southwestern that their interests may be affected by a rescission of the confirmatory deed and thus, that intervention is appropriate.

MPT argues against intervention on several grounds. First, MPT contends that Lancaster was on notice that other parties might have a claim to the rights because of the fact that PHT gave no warranty of title and, in the letter agreement, indicated its understanding that part or all of the title may be claimed by another party. Simply because Lancaster may have been warned of a future claim does not, however, prevent it from arguing against such. MPT also argues that there is no longer an action “pending”, which is a prerequisite to any intervention request, as a default judgment on the Cross-Claim was entered on January 7, 2013. Inasmuch as the rules provide for a further court order “upon the judgment of default” in a case in which equitable relief is sought, Pa.R.C.P. 1037(d),¹ however, and since no such further order has been entered, the action remains pending. Both Lancaster and Southwestern will therefore be permitted to intervene.

As mentioned, on January 7, 2013, MPT moved for a default judgment on its Cross-Claim against PHT for failure to file an Answer thereto. According to the docket,² a default judgment was entered that day. Both Lancaster and Southwestern seek to open that judgment in order to contest MPT’s request for rescission of the Confirmatory Deed executed between PHT and MPT. Both Lancaster and Southwestern indicate an intention to file preliminary objections to the Cross-Claim if the judgment is opened. Therefore, to be entitled to relief, they

¹ It is not clear from the rules *how* the matter is to be brought before the court and, indeed, to this point MPT’s default judgment against PHT has not been brought before this court for further order. It appears from the praecipe for default judgment that MPT is unaware of this requirement, as it stated therein that “[t]he default judgment should declare that the November 24, 2009 Confirmatory Deed between the MPT and the PHT is rescinded on the basis of mutual mistake.” The Prothonotary is not authorized to enter an order for such equitable relief, however. See Gall v. Crawford, 982 A.2d 541 (Pa. Super. 2009).

² No one received a copy of the judgment and the original is not in the court file, although it may be in the record transferred to Superior Court in connection with the appeal taken in a severed matter in this case.

must show that (1) their petitions have been promptly filed, (2) their failure to act before the default judgment was entered can be excused, and (3) they have a meritorious objection. *See Schultz v. Erie Insurance Exchange*, 477 A.2d 471 (Pa. 1984).³

The petitions to open were filed January 17 and 18, ten and eleven days, respectively, following entry of the judgment. The court finds the petitions to be timely.

As far as Lancaster and Southwestern's failure to seek to intervene and respond to the Cross-Claim prior to entry of the default judgment, Lancaster points out that prior to the default, PHT had actively participated in the litigation and Lancaster had no reason to suspect it would allow judgment to be taken by default. Further, the court notes that Lancaster did previously seek to intervene and respond, albeit unofficially, by filing preliminary objections to the original Cross-Claim. Those objections were overruled as Lancaster was not a party to the claim at that time. Since neither Lancaster nor Southwestern was noticed with respect to the intention to take the default, in light of the history of the matter, the court finds their failure to act before they did excusable.⁴

The court also finds that both Lancaster and Southwestern have offered a meritorious objection, that is, one which is sufficient to justify relief if proven. *See SEPTA v. DiAntonio*, 618 A.2d 1182 (Pa. Commw. 1992). Both demur to the Cross-claim for rescission on the grounds that MPT is not entitled to rescission because such will not be granted where it will impair the rights of third parties, citing *Glick v. Campagna*, 613 F.2d 31 (3rd Cir. 1979). Without deciding whether this issue is properly raised as a preliminary objection or whether it must be raised in an Answer and New Matter and then in a dispositive motion, or even, at trial, the court finds such issue to be meritorious and that the default judgment should thus be opened to allow for decision of the merits of that issue.

³ The Note to Pa.R.C.P. 237.3 indicates that a defendant who seeks to file a pleading other than an Answer is not entitled to the benefit of the timeliness presumption of the rule but must comply with the requirements of *Schultz v. Erie Insurance Exchange*, 477 A.2d 471 (Pa. 1984). The court has also interpreted the requirements of *Schultz* in the context of the instant proceedings where the party seeking to open the judgment was not the party which caused the default.

ORDER

AND NOW, this 9th day of April 2013, for the foregoing reasons, Southwestern Energy Production Company and Lancaster Exploration & Development Company, LLC are hereby granted permission to intervene in the Amended Cross-Claim brought by Margaret O.F. Proctor Trust against Proctor Heirs Trust. Further, the default judgment entered on that claim on January 7, 2013, is hereby opened. Southwestern and Lancaster are directed to file a response to the Cross-Claim within twenty (20) days of this date.

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.
Katherine Oliver, Esq., McQuaide Blasko, Inc.
811 University Drive, State College, PA 16801
Justin Weber, Esq., Pepper Hamilton LLP
100 Market St., Suite 200, Harrisburg, PA 17108
Ronald Hicks, Esq., Meyer, Unkovic & Scott, LLP
535 Smithfield St., Suite 1300, Pittsburgh, PA 15222-2315
Marc Drier, Esq.
Paul Stockman, Esq., McGuire Woods, LLP
625 Liberty Avenue, Suite 2300, Pittsburgh, PA 15222
Gary Weber, Esq.
Hon. Dudley Anderson

⁴ Although Southwestern did not offer any explanation for its failure to act sooner, apparently believing it was not required to do so under Rule 237.3, the court will assume it properly relied on Lancaster's handling of the matter, inasmuch as Southwestern claims its rights directly through Lancaster.