

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DANIEL EVANS, SUSAN MULVANEY, THOMAS	:	NO. 12 - 01,097
SCHNEIDER, LARRY TEED and THOMAS THOMAS,	:	
Plaintiffs	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
CGGVERITAS,	:	Motion for
Defendant	:	Judgment on the Pleadings

OPINION AND ORDER

Before the court is Defendant's Motion for Judgment on the Pleadings, filed February 15, 2013. Argument was held April 25, 2013.

Plaintiffs have brought the instant action for trespass and unjust enrichment based on allegations that Defendant conducted seismic studies on their properties. Defendant admits to having conducted the studies, but claims it was doing so pursuant to permits issued by lessees of oil and gas leases on the properties. In the instant motion for judgment on the pleadings, Defendant seeks judgment as a matter of law based on the leases, assignments and permits it says are applicable to the properties in question. Plaintiff argues that there remain issues of fact, however, and that Defendant is not entitled to judgment at this time.

The parties have organized their pleadings to refer to either the Schneider Farm or the Grist Place and Thomas Farm. The court will also organize this opinion in that manner.

With respect to the Schneider Farm, Defendant contends it was issued a permit to conduct seismic testing by Chesapeake Exploration Limited Liability Company and that Chesapeake had been assigned certain rights (including the right to conduct such testing) by Anadarko under the lease between Plaintiffs and Anadarko E&P Company LP. Plaintiffs argue that Defendant is not entitled to judgment on this claim for four reasons, each of which will be addressed in turn.

First, Plaintiffs contend the assignment from Anadarko to Chesapeake does not include the right to conduct seismic testing. Plaintiffs point to the following language in the assignment:

Anadarko E&P Company, LP, ... does hereby ASSIGN, TRANSFER, SELL GRANT and CONVEY unto Chesapeake Appalachia, L.L.C. ... its successors and assigns, subject to the reservations, exceptions, terms, covenants, and conditions below stated, an undivided fifty percent (50%) of Assignor's right, title and interest in and to the leases described on Exhibit "A" attached hereto ("the Leases") INsofar AND ONLY INsofar as said Leases cover and apply to those lands specifically described on Exhibit "A" (the "Lands"). ...

Assignor does hereby except from this Partial Assignment of Oil and Gas Leases and reserve unto itself, its successors and assigns:

1. All rights, estates and lands not specifically assigned to Assignee by this instrument, together with all rights of ingress and egress for the purpose of exploring, developing, and operating said reserved and excepted rights, estates and lands.

Defendant's Answer and New Matter, Exhibit "C". Plaintiff contends this language reserves to Anadarko the right to conduct seismic surveys on the properties the lease rights to which are being transferred to Chesapeake. The court cannot read the assignment in that manner. Anadarko is assigning to Chesapeake 50% of Anadarko's right, title and interest in certain leases, including the one at issue here. Nothing can be read to except from those leases the right to conduct seismic surveys. The right of ingress and egress to which Plaintiff points in support of its contention is clearly that of ingress and egress on the lands *excepted*, not those assigned.

Next, Plaintiff argues that Defendant relies on a permit issued by Chesapeake Exploration Limited Liability Company but that Anadarko assigned its rights under the lease to Chesapeake Appalachia, L.L.C. The court agrees that Defendant has included nothing in the pleadings to show that Chesapeake Exploration Limited Liability Company had any right to issue the permit. On this basis, it appears Defendant is not entitled to judgment on the pleadings, but as the court will allow for further discovery to address this issue, and will revisit the issue in a motion for summary judgment, in order to allow for the appropriate limitation of discovery, the remaining issues will be addressed.

Plaintiff also contends there is nothing in the record to show that the Schneider Farm is included in the seismic survey permit. The court disagrees with Plaintiffs that there is *nothing* in the record, but does agree that it is not sufficient. A map attached to the permit designates

the properties included, and while the parties may be able to identify the Schneider Farm on that map, the court believes it should be supplemented with documentation which clearly identifies the property as being included if Defendant wishes to pursue judgment as a matter of law.

Finally, as to the Schneider Farm, Plaintiff argues that the permit requires Defendant to first obtain the landowner's approval and such was not done. Plaintiffs point to the following language:

2. CCGVeritas agrees to obtain any necessary approval to comply with applicable law from:
 - a. CHESAPEAKE's lessors,

Defendant's Answer and New Matter, Exhibit "D". The court believes that prior approval from the lessors was not "necessary", however, in light of the grant of "the right to conduct seismic surveys over and across the Leased Premises" contained in the lease to Anadarko. Simply put, the necessary approval was already obtained.

With respect to the Grist Place and Thomas Farm, Defendant contends it was issued a permit by Shell EP Americas on May 2, 2012,¹ the lease rights originally granted by Plaintiffs to East Resources, Inc. having been assigned on June 21, 2010, to East Resources Management and then transferred to Shell. Plaintiffs raise several objections to this argument. First, nothing in the record shows that the lease rights granted by Plaintiffs to East Resources, Inc. included the right to conduct seismic testing. While the court agrees with Defendant that such right was likely included, as Defendants have produced only a memoranda of lease and not the lease itself, the record cannot support entry of judgment in its favor at this time. Second, Plaintiffs point out that nothing in the record shows that East Resources Management transferred its rights to Shell. Plaintiffs are correct in this regard. Third, Plaintiffs assert that the permit is issued by SWEPI LP but there is nothing in the record to connect Shell EP Americas with SWEPI LP. Again, Plaintiffs are correct. Finally, Plaintiffs argue that there is nothing in the record to show that the Grist Place and Thomas Farm are included in the "minerals owned and/or leased by you in Clinton, Lycoming, and Tioga County" as referenced in the permit.

¹ Defendant also contends a permit was issued by East Resources Management on November 17, 2010, but that permit would have expired by its terms (18 months) and thus is not relevant to the instant action.

Plaintiffs are again correct as the permit simply references a map which outlines the area but there is no list of leases/properties included. Although Defendant might find Plaintiffs' insistence that it "connect the dots" frustrating, it must do so in order to be entitled to judgment as a matter of law. As it appears that the claim Defendant makes is supportable with the proper documentation, however, the court will limit discovery to those areas objected to by Plaintiffs as described herein, and will entertain a motion for summary judgment on the same basis once that discovery is completed.

Finally, Defendant raises two general claims in its motion: that the claim for unjust enrichment cannot be supported and that the claim for punitive damages is not supported. Whether the evidence will support the claim for punitive damages cannot be determined at this stage. The court agrees with Defendant, however, that the claim for unjust enrichment cannot be sustained. As the court noted in Steamfitters Local Union No. 420 Welfare Fund v. Philip Morris, 171 F.3d 912 (3rd Cir. 1999):

Unjust enrichment is typically invoked in a quasi-contractual setting, when plaintiff seeks to recover from defendant for a benefit conferred under an unconsummated or void contract. *See, e.g., Zvonik v. Zvonik*, 291 Pa. Super. 309, 435 A.2d 1236, 1239-40 (Pa. Super. Ct. 1981); *cf. Meehan v. Cheltenham Township*, 410 Pa. 446, 189 A.2d 593, 595 (Pa. 1963) (noting that unjust enrichment is an equitable remedy, requiring for recovery that there be both "(1) an enrichment, and (2) an injustice resulting if recovery for the enrichment is denied").

In the tort setting, an unjust enrichment claim is essentially another way of stating a traditional tort claim (i.e., if defendant is permitted to keep the benefit of his tortious conduct, he will be unjustly enriched).

Id. at 936. Since the tort claim in *Steamfitters* had been dismissed, the court found it necessary to dismiss the unjust enrichment claim as well. Id. at 937. Thus, in the instant case, if Plaintiffs cannot make out a claim of trespass, they also cannot prove "unjust" enrichment. If the claim of trespass is successful, they have an adequate remedy at law and are not entitled to equitable relief. *See Clark v. Pennsylvania State Police*, 436 A.2d 1383 (Pa. 1981). The unjust enrichment claim will therefore be dismissed.

ORDER

AND NOW, this 30th day of April 2013, for the foregoing reasons, the Motion for Judgment on the Pleadings is hereby granted in part and denied in part. The claim for unjust enrichment is hereby DISMISSED. Further, discovery shall be limited as set forth herein, until further order of court or as otherwise agreed by the parties.

BY THE COURT,

Dudley N. Anderson, Judge

cc: N. Randall Sees, Esq.
Bret J. Southard, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson