

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KENT L. PAULHAMUS,	:	NO. 13 – 01,191
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
CHESAPEAKE APPALACHIA, LLC,	:	
Defendant	:	Motion to Compel Arbitration

**OPINION AND ORDER**

Before the court is Defendant’s Motion to Compel Arbitration, filed July 5, 2013. Argument on the motion was heard August 27, 2013.

In his Complaint, Plaintiff alleges he owns acreage in Linden, Pennsylvania, that he entered an oil and gas lease of that acreage with Defendant in June 2007 which lease was for a period of five years, that Defendant had the opportunity to extend the lease for an additional five years by tendering a certain payment by a certain time, that said payment was not properly tendered, and that the lease thus expired. Plaintiff seeks a declaratory judgment to that effect and an order quieting title. Defendant alleges in its Answer that the payment was properly tendered and thus the lease was extended.

In the instant Motion to Compel Arbitration, Defendant seeks an Order staying this action and requiring the parties to submit the matter to arbitration, based on the following language in the lease:

ARBITRATION. In the event of disagreement between the Lessor and Lessee concerning this lease, performance thereunder, or damages caused by Lessee’s operations, the resolution of all such disputes shall be determined by arbitration in accordance with the rules of the American Arbitration Association. All fees and costs associated with the arbitration shall be borne equally by Lessor and Lessee.

Defendant’s request must clearly be granted. Plaintiff alleges in Paragraph 15 of his Complaint (emphasis added) that “[a]s a result of Defendant’s failure to exercise its option *under the terms of the lease* to extend the primary term of the lease, the lease expired . . .” Defendant answers that allegation (emphasis added) by responding that “Chesapeake properly and timely exercised its option to extend the primary term of the lease by tendering a check . . . *in accordance with*

*Lease Addendum paragraph 1.*” Thus, the parties have a dispute regarding performance under the lease and are therefore subject to the arbitration provision.

Plaintiff’s argument, that because the lease terminated the arbitration clause cannot apply, puts the cart before the horse. It cannot be concluded that the lease terminated without examining the circumstances and comparing them to what was required by the lease. This exercise embroils the parties in a dispute and that lease says that they must submit that dispute to arbitration.

Further, Plaintiff’s reliance on Northampton Area School District v. Skepton, 588 A.2d 1020 (Pa. Commw. 1991) is misplaced. In Northampton, the agreement between the parties stated that all disputes arising out of the agreement “except for claims which have been waived by the making or acceptance of final payment” must be decided by arbitration.<sup>1</sup> Id. at 1022. The parties disagreed on, among other things, whether final payment had been made. Skepton argued that that issue should be decided by the arbitrators, while the School District contended the trial court should preliminarily make that determination. The Commonwealth Court agreed with the School District, stating that “a court must determine whether a particular dispute falls within the terms of the arbitration agreement.” Id. The Court noted that “since a waived claim cannot be arbitrated, permitting the arbitrator to decide whether the Contractor’s claim was waived is the equivalent of permitting the arbitrator to determine whether the parties’ dispute falls inside the terms of the arbitration agreement.” Id. In the instant case, however, *the court* is making such a determination. There is no exception in the instant arbitration provision covering disputes about whether the lease terminated. Therefore, as long as the dispute “concern[s] this lease, performance thereunder, or damages caused by Lessee’s operations”, the parties are required to submit the matter to arbitration. Since it does, they are.

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<sup>1</sup> The agreement also provided that “The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the final Application for Payment.”

**ORDER**

AND NOW, this 4<sup>th</sup> day of September 2013, for the foregoing reasons, the Motion to Compel Arbitration is hereby GRANTED. All proceedings in this court are stayed until further Order of this court.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Christopher Williams, Esq.  
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Hon. Dudley Anderson