IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

TROUT RUN HUNTING & FISHING CLUB, Plaintiff	:	NO. 10 – 02,400
	:	CIVIL ACTION - LAW
vs.	:	
	:	
ANN P. HOCHBERG and CHARLES KENDALL, Trustees of the Thomas E. Proctor Heirs Trust, Defendants	:	Motions for Summary Judgment

OPINION

Before the court are cross-motions for summary judgment, filed November 30, 2012, and December 17, 2012. Argument on the motions was heard January 22, 2013.

The court is by these motions called upon to determine whether, by virtue of certain language in certain deeds, Defendant Trust passed to Plaintiff all of its interest in the subsurface of a certain tract of land in Lewis Township, including the oil and gas. Defendant argues that the oil and gas was not transferred, only the minerals other than oil and gas, relying on the "Dunham Rule". Dunham v. Kirkpatrick, 101 Pa. 36 (1882). After consideration of the deeds and the relevant case law, the court finds the Dunham rule inapplicable, and that Plaintiff owns the entire subsurface estate.

By deed dated October 2, 1894, Thomas E. Proctor, Sr. conveyed the property at issue to Elk Tanning Company but excepted and reserved

> *all the natural gas, coal, coal-oil, petroleum, marble and all minerals of every kind and character*, in, upon or under the said lands hereinbefore mentioned and described and hereby conveyed, and every part thereof or which may at any time hereafter be discovered in, upon or under said lands or any part thereof, with the right to enter upon said lands for the purposes of exploration, and for the taking away the said natural gas, coal, coal-oil, petroleum, marble or other minerals hereby reserved, and to erect such structures, ways, buildings, railroads and shafts thereon, both up and down, to cut and fill the surface, wherever needed for railways, for such purposes, and to dig channels and ditches for waste water thereon, and to do these and such other things thereon, in such manner as may be necessary to successfully mine and take away the said natural gas, coal, coal-oil, petroleum, marble and other minerals or any of them, from the said lands aforesaid; with the right to the said Thomas E. Proctor, his heirs and assigns, to

> use such timber as may be necessary for the purposes of mining or taking away the natural gas, coal, coal-oil, petroleum, marble, and other minerals, as above reserved… .

Defendant's Memorandum of Law, Exhibit A (emphasis added). Elk Tanning Company then transferred its interest in the property (along with its interests in other property) to Central Pennsylvania Lumber in 1903, subject "to all the exceptions, reservations, covenants, stipulations, agreements and conditions contained in the several deeds hereinbefore recited". Id., Exhibit G. Central Pennsylvania Lumber transferred its interest in the property to Laurel Valley Club in 1915.

At the request of Laurel Valley Club, in 1916 the Trustees of Thomas E. Proctor's Estate deeded to the Laurel Valley Club

> all our right, title and interest in and to the mineral rights on and under a certain parcel of land containing seven hundred and twenty-four (724) acres be the same (sic) more or less, being the South Eastern part of a tract of eleven hundred (1100) acres more or less in the warrantee name of James Strawbridge and being numbered 5668, said mineral rights having been reserved by the late Thomas E. Proctor in his deed to the Elk Tanning Company, dated October 2, 1894, said tract numbered 5668 being in the Township of Lewis, County of Lycoming and State of Pennsylvania.

Id., Exhibit O. The Laurel Valley Club then conveyed its interest in the property to C. Howard Coder, who deeded the property to the Brinker Hunting and Fishing Club, which conveyed its interest to Plaintiff in 1982.

The Dunham Rule provides that a reservation or exception of "minerals" without any specific mention of natural gas or oil gives rise to a rebuttable presumption that natural gas and/or oil was not intended by the parties to have been included in that reservation or exception. Dunham v. Kirkpatrick, *supra*. The presumption may be rebutted only by clear and convincing evidence of the parties' intention to include gas and oil. Highland v. Commonwealth, 161 A.2d 390 (Pa. 1960).

In the instant case, Defendants argue that since the 1916 deed conveys "all our right, title and interest in and to the mineral rights" without specifically mentioning gas and oil, gas and oil are not included. This argument ignores other language in the conveyance, however,

specifically: “said mineral rights having been reserved by the late Thomas E. Proctor in his deed to the Elk Tanning Company, dated October 2, 1894”. By including this language, the grantor in effect includes the language of the original reservation, which language *does* specifically refer to gas and oil. Defendants also argue that a subsequent conveyance made by the Trustees specifically referred to gas and oil, showing that when such substances were meant to be included that language was included, and that such shows that by *not* referring to gas and oil in the instant case they were not meant to be included. The deed in the instant case *does* refer to gas and oil, however, by referring to the prior deed in which the mineral rights, specified as including gas and oil, were originally reserved. The subsequent deed is not relevant as there is no need to produce evidence of the parties’ intentions; their words were clear and unambiguous.

Accordingly, Plaintiff is entitled to summary judgment and a separate order to that effect will be entered.

BY THE COURT,

Dudley N. Anderson, Judge

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Hon. Dudley Anderson