IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

NORTHERN FORESTS II, INC., Plaintiff	:	NO. 88 – 02,356
	:	CIVIL ACTION - LAW
vs.	:	
KETA REALTY COMPANY, et al., Defendants	:	

OPINION IN SUPPORT OF ORDERS OF FEBRUARY 8, 2013, AND MAY 20, 2014, IN COMPLIANCE WITH RULE 1925(A) OF THE RULES OF APPELLATE PROCEDURE

Plaintiff Northern Forests II, Inc. and Defendant Ultra Resources, Inc.[1] have appealed this court's Order of February 8, 2013, which struck a 1989 default judgment in favor of Plaintiff, as well as the order of May 20, 2014, which sustained preliminary objections to Plaintiff's Amended Complaint and dismissed that Amended Complaint. In their Statements of Matters Complained of on Appeal, Appellants posit several reasons why the court erred in each of these decisions.

With respect to the order of May 20, 2014, the dismissal of Plaintiff's Amended Complaint was based on its failure to set forth the necessary elements of adverse possession of the oil, gas and mineral rights to which it sought to quiet title. Specifically, Plaintiff sought to base its claim of adverse possession on the 1989 default judgment which was stricken by the Order of February 8, 2013.[2] Appellants now contend the court erred in dismissing the Amended Complaint, and specifically argue that equitable considerations weigh against the court's decision. The court believes its reasons for the dismissal are adequately set forth in the Opinion in support of the Order of May 20, 2014, and will therefore simply rely on that opinion for purposes of the instant appeal.

With respect to the Order of February 8, 2013, which struck the 1989 default judgment,

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1 Although captioned as a Defendant, as Plaintiff explained in Paragraph 11 of its Amended Complaint, Ultra Resources Inc., as well as others, "are believed to not be adverse to the interests of Northern Forests but rather are entities which do have an interest in such [oil, gas and mineral] rights" as a successor or assign of Northern Forests.

2 Plaintiff had also attempted to make a claim based on actual production but, when challenged through

Appellants contend generally that the court erred in striking the judgment and also argue that (1) the court should not have relied on disputed factual assertions in the petitions to strike, (2) the court should have considered certain circumstances surrounding the attempted service prior to obtaining the default judgment, (3) the court should have recognized that, as they assert, the case of Myers v. Mooney Aircraft, Inc. conflicts with the case of Jones v. Seymour, and Jones v. Seymour should thus not have been followed and (4) the position of Judge Spaeth in Tice v. Nationwide Insurance Company should be adopted as the law of this Commonwealth.

As was explained in the Opinion in support of the Order of February 8, 2013, the 1989 default judgment was stricken because a fatal defect in the judgment appeared on the face of the record.[3] Therefore, the argument that disputed factual assertions in the petitions to strike should not have been considered misses the mark. The court did not rely on any factual assertions in the petitions to strike but merely examined the face of the record. For the same reason, the argument that certain circumstances surrounding the obtaining of the default judgment should have been considered is also misplaced.[4] As is required in considering a petition to strike, only the face of the record was examined; no outside circumstances can be considered. *See* Jones v. Seymour, 467 A.2d 878 (Pa. Super. 1983), and City of Philadelphia Water Revenue Bureau v. Towanda Properties, Inc., 976 A.2d 1244 (Pa. Commw. 2009).

With respect to the argument that the Pennsylvania Supreme Court's decision in Myers conflicts with the Superior Court's decision in Jones, and the further argument that Jones should not have been followed, the court does not agree that there is a conflict.[5] Therefore, this court was required to follow Jones.

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preliminary objections, admitted that there had been no actual production.

3 Specifically, the court found improper service of the Complaint (by publication) as Plaintiff had failed to state in its affidavit filed under Pa.R.C.P. 430 the nature and extent of its investigation into the whereabouts of the defendants but, rather, had simply stated that they were "unknown".

4 Appellant Ultra Resources asserts that "a sufficient investigation … would not have uncovered an address for service of the Defendants under the circumstances" and thus failure to include a description of the investigation in the affidavit did not support the striking of the judgment. The court did not make any findings with respect to this assertion.

5 This disagreement is explained in footnote 2 of the Opinion in support of the Order of February 8, 2013, on page 5.

Finally, Appellants argue that the position of Judge Spaeth in Tice v. Nationwide Insurance Company, 425 A.2d 782 (Pa. Super. 1981), should be adopted as the law of this Commonwealth. In Tice, the Court held that a judgment which had been entered by a Prothonotary who lacked the power to enter the judgment was subject to avoidance and must be stricken. In his concurring opinion, Judge Spaeth urged his colleagues to "take the view of the Restatement (Second); we should decide whether the judgment should be stricken only after examining every aspect of the particular context in which the attack on the judgment is made." Id. at 787. Judge Spaeth acknowledged that "[t]his court has so far not retreated from the bright-line rule that laches do not run against a 'void' judgment", but opined that "[i]t nevertheless appears to me that the approach of the Restatement (Second) of Judgments implies some qualification of this broad rule. The length of time a "void" judgment has been on the books may affect both the opportunity to object to it and the likelihood of reliance on it – two of the factors the Restatement suggests be considered in determining enforceability. In [certain cases], I should use the approach of the Restatement to determine whether it would be in the interests of justice to grant a motion to strike …." Id. at 791-92. While Appellants' position may have merit, and may indeed appeal to the current members of the Superior and Supreme Courts, it is not for this court to adopt such a position contrary to the appellate law as it stands today. [6]

Dated:_____ Respectfully submitted,

Dudley N. Anderson, Judge

cc: Daniel Glassmire, Esq., 5 East Third Street, Coudersport, PA 16915
Katherine V. Oliver, Esq., 811 University Drive, State College, PA 16801
Jeffrey J. Malak, Esq., 138 South Main Street, Wilkes-Barre, PA 18703

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6 Indeed, it may be worth noting that more years have passed since Judge Spaeth urged (to no avail) a change in the law, than have passed since the 1989 judgment was entered.

Levi Woodward, Esq.
Dale and Lori Black, 35 Ash Lane, Trout Run, PA 17771
Ethan O'Shea, Esq., 375 Morris Road, Lansdale, PA 19446-0773
Gayla Loch, 501 Christian Street, Philadelphia, PA 19147
Daniel Sponseller, Esq., 409 Broad Street, Ste. 200, Sewickley, PA 15143
J. Michael Wiley, Esq.
Marc Drier, Esq.
David J. Singley, Esq., 301 Grant Street, 28th floor, Pittsburgh, PA 15219
Adam Fischer, Esq., 500 Grant Street, 50th floor, Pittsburgh, PA 15219
Charles Greevy, III, Esq.
Lester L. Greevy, Jr., Esq.
Mandi Scott, Esq., 437 Grant Street, 14th floor, Pittsburgh, PA 15219
Ronald Hicks, Jr., Esq., 535 Smithfield St., Ste. 1300, Pittsburgh, PA 15222
Justin Weber, Esq., 100 Market Street, Suite 200, Harrisburg, PA 17108
Paul K. Stockman, Esq., 625 Liberty Ave., Ste. 2300, Pittsburgh, PA 15222
Forest Resources, LLC, Drawer 32, Coudersport, PA 16915
Kocjancic Family Limited Partnership, 24 Timber Lane, Kane, PA 16735
Harold H. Wolfinger, Jr., 2434 Haskell Road, Cuba, NY 14727
J.C. Wilkinson, III, Esq., 200 Mountain View Lane, Eagles Mere, PA 17731
J. David Smith, Esq.
Glen W. Heffelfiner, 704 East Front Street, Danville, PA 17821
Michael E. Dapaoli, 182 Thomas Road, Royersford, PA 19468
John F. and Joan M. Gerrity, 87 Pine Lane, Trout Run, PA 17771
Steven M. and Renee M. Strouse, 82 Alder Lane, Trout Run, PA 17771 - (DO NOT MAIL – NOT A GOOD ADDRESS)
Vance L. and Jessica E. Barger, 30 Faith Lane, Trout Run, PA 17771
Mark S. and Delores Conrad, 20 Maple Lane, Trout Run, PA 17771
David B. Dusel, 1118 Rt. 184 Highway, Trout Run, PA 17771
Mary Louise Waters, 100 Harbor View Drive, Apt. 403, Port Washington, NY 11050
Enerplus Resources (USA) Corp.
P.O. Box 635, Kingwood, WV 26537-0635
Enerplus Resources, 333 7th Avenue, SW, Suite 3000, Calgary, AB T2P 2Z1
Brooke E. Fuller, 70 Pine Lane, Trout Run, PA 17771
Ricky E. and Nadine C. Young, 21 Pine Lane, Trout Run, PA 17771
Stephen and Kim L. Matto, 216 Prospect Street, Catasaqua, PA 18032
John F. and Sandra J. Knopp, 19 Alder Lane, Trout Run, PA 17771
James D. and Nicole R. Weatherwax
169 Hemlock Hollow Drive, Cogan Station, PA 17728
Dutch Hill Hunting Club, 1023 Elizabeth Street, Williamsport, PA 17701
Atlantic Hydrocarbon, LLC, 106 Island Avenue, Buckhannon, WV 26201 - (DO NOT MAIL – NOT A GOOD ADDRESS)

(continued)

Exco Production Company (PA) LLC
3000 Ericsson Dr., Ste. 200, Warrendale, PA 15086
Exco Resources, Inc., 12377 Merit Dr., Ste. 1700, Dallas, TX 75251
BG Production Co. (PA) LLC, 5444 Westheimer, Ste. 1200, Houston, TX 77056 - (DO NOT MAIL – NOT A GOOD ADDRESS)
Wade E. and Melissa L. June, 1123 State Rt. 184, Trout Run, PA 17771
Michael J. Snyder, 1187 State Route 184, Trout Run, PA 17771
Timothy C. and Therese L. Bowen, 1183 State Route 184, Trout Run, PA 17771
Paul D. Crissman, 1127 State Route 184, Trout Run, PA 17771
Mark A. and Ronda J. McGovern, 1357 State Rt. 184, Trout Run, PA 17771
James A. Robinson, 1295 State Route 184, Trout Run, PA 17771
Cogan House Township, 4609 State Route 184, Trout Run, PA 17771
Johnathan Butterfield, Esq.
Matthew Sepp, Esq., Morgan, Lewis & Bockius, LLP
One Oxford Centre, 32nd floor, Pittsburgh, PA 15219-6401
Ohio Kentucky Oil Corp., 512 Portage Street, NW, North Canton, OH 44720
Gary Weber, Esq.
Hon. Dudley Anderson