

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CORNWALL MOUNTAIN INVESTMENTS, L.P. and	:	NO. 11 – 00,718
RANGE RESOURCES – APPALACHIA, LLC,	:	
Plaintiffs	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
THOMAS E. PROCTOR HEIRS TRUST, INTERNATIONAL	:	
DEVELOPMENT CORP., PENNLYCO, LTD., VIRGINIA	:	
ENERGY CONSULTANTS, LLC, ATLANTIC	:	
HYDROCARBON, LLC, CHIEF EXPLORATION &	:	
DEVELOPMENT, LLC, QUEST EASTERN RESOURCE, LLC,	:	
EXCO HOLDING (PA), INC., and MARGARET O.F.	:	
PROCTOR TRUST,	:	
Defendants	:	
	:	
SOUTHWESTERN ENERGY PRODUCTION COMPANY,	:	
Intervenor	:	

OPINION IN SUPPORT OF ORDER OF SEPTEMBER 3, 2015,
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

Defendants Thomas E. Proctor Heirs Trust (“PHT”) and Margaret O.F. Proctor Trust (“MPT”) have appealed this court’s Order of September 3, 2015, which granted Plaintiffs’ Motion for Judgment on the Pleadings and entered judgment in favor of Plaintiffs and against PHT and MPT on the counter-claims filed by PHT and MPT. That Order also dismissed as moot cross-claims filed by PHT against Defendants Pennlyco, Ltd. and International Development Corporation. By Order dated March 31, 2015, amended April 1, 2015, the court granted Plaintiffs’ motion for judgment on Count I of Plaintiffs’ Second Amended Complaint, and that Order, as well as other interim rulings, is also the subject of the instant appeals.

In its Second Amended Complaint, Plaintiffs sought to quiet title to the oil, gas and mineral estate (hereinafter “mineral estate”) in certain land in Lewis and

Cogan House Townships. Plaintiffs contended the mineral estate was severed from the surface by a reservation of the rights by Thomas E. Proctor in a conveyance to the Elk Tanning Company in 1894. Plaintiffs further contended that the mineral estate was separately assessed for taxes in 1930 and 1931 and that those taxes were not paid and thus the estate was sold at a tax sale in 1932. In Count I, Plaintiffs claimed title to the property by way of Treasurer's deeds issued following that tax sale. In Count II, Plaintiffs claimed title through adverse possession. Count II has been withdrawn and judgment has been entered in Plaintiffs' favor on Count I.

In their Statements of Matters Complained of on Appeal, PHT and MPT raise numerous issues. In light of the procedural complexity of the case, the court will list each issue and will either explain its rationale, or point to the specific place in the record where that rationale can be found, as follows:

1. Refusal to require joinder of the Biddle Heirs and Trout Run Hunting and Fishing Club, both alleged to be indispensable parties. The court found that the Biddle heirs were not indispensable parties, and the rationale for that decision can be found in the Order dated May 5, 2014. Trout Run Hunting and Fishing Club was also found to not be indispensable, and the rationale for that decision can be found in the Order dated May 29, 2015.
2. Failure to make a determination of possession. Appellants contend Plaintiffs failed to plead the necessary elements of a quiet title action under Pa.R.C.P. 1061(b)(1) and (2), where they failed to plead that they were in possession of the mineral rights, and that the court erred in entering judgment in Plaintiffs' favor without first determining which party had

possession of the mineral rights.¹ First, the court notes Plaintiffs *did* plead possession of the mineral rights, in Paragraphs 39, 51, 52, 53 and 55, of the Second Amended Complaint. In their Answers, PHT and MPT denied that Plaintiffs had possession of the mineral rights and therefore, for purposes of addressing the motion for judgment on the pleadings, the court accepted Defendants' factual assertion that Plaintiffs did not have possession of the mineral rights. Defendants did *not* allege in their counter-claims to quiet title that they had possession of the mineral rights and therefore, the court concluded that no one had possession. The case thus fell within the purview of section (b), "where an action of ejectment will not lie, [an action may be brought] to determine any right, lien, title or interest in the land". Pa.R.C.P. 1061(b)(2).

3. Failure to apply IOGA v. Board of Assessment Appeal of Fayette County, 814 A.2d 840 (Pa. 2002). Following Oz Gas Limited v. Warren Area School District, 938 A.2d 274 (Pa. 2007), the court rejected this argument, and the discussion may be found in the Opinion and Order issued August 4, 2014.
4. Rejecting claim that there was no basis for valuation and thus no basis for assessment of taxes. The court relied on Herder Spring Hunting Club v. Keller, 2014 Pa. Super. LEXIS 699 (2014), and the discussion may be found in the Opinion and Order issued August 4, 2014.
5. Rejecting claim that the assessments at issue referred only to "mineral rights" and that under the *Dunham* Rule, oil and gas were thus not included in the assessment and the subsequent Treasurer's deeds. The

¹ Although this issue was raised in New Matter, it was not presented to the court in the motions for judgment on the pleadings. No prior discussion of the issue will therefore be found in the record.

court relied on Bannard v. New York State Natural Gas Corporation, 293 A.2d 41 (Pa. 1972), and the discussion may be found in the Opinion and Order issued August 4, 2014.

6. Granting judgment despite the existence of material issues of fact. The court found that Defendants' attack on the tax sales was barred by the statute of limitations, following Poffenberger v. Goldstein, 776 A.2d 1037 (Pa. Commw. 2001), and several cases decided subsequent thereto, and the discussion may be found in the Opinion and Order issued March 31, 2015.
7. Concluding that the statute of limitations barred Defendants' attack. See Issue 6, above.
8. Denying PHT's Motion for Leave to Amend its Pleadings. The motion was denied by Order dated April 24, 2015, as Plaintiffs' motion for partial judgment *on the pleadings* had already been granted.

Dated: _____

Respectfully submitted,

Dudley N. Anderson, Judge

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