

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KETA GAS & OIL COMPANY,	: NO. 50 – 00,571
Plaintiff	:
	: CIVIL ACTION - LAW
vs.	:
	:
THOMAS E. PROCTOR, JAMES H. PROCTOR,	:
THOMAS E. PROCTOR, JR., ANNE PROCTOR	:
RICE, EMILY PROCTOR MANDELL, LYDIA W.	:
THACHER, AUGUSTA PROCTOR, ELLEN O.	:
PROCTOR, SARAH JOSLIN, ABEL H. PROCTOR and	:
MASSACHUSETTS GENERAL HOSPITAL, heirs,	:
legatees and devisees under the will of Thomas E. Proctor,	:
and all persons claiming under or through any of the above,	:
and BRINKER HUNTING CLUB,	:
Defendants	:
	:
ANADARKO E&P ONSHORE LLC,	: Petition to Strike and/or Open
Intervenor	: March 14,1951 Default Judgment

OPINION AND ORDER

Before the court is the Petition to Strike and/or Open March 14, 1951 Default Judgment filed by Margaret O.F. Proctor Trust, as heirs of Thomas E. Proctor, (hereinafter “Petitioners”) on June 11, 2015. Argument on the petition was heard July 21, 2015.

Plaintiff commenced the instant action on January 15, 1951, by the filing of a Complaint – Action to Quiet Title, seeking to quiet title to certain subsurface rights in portions of the James Strawbridge Warrants 5665 and 5667, which subsurface rights had been reserved by Thomas E. Proctor in a deed to Elk Tanning Company in 1894.¹ The Complaint was accompanied by an Affidavit averring that the whereabouts and identity of some of the defendants was

¹ Plaintiff contended that the subsurface rights were lost by Defendants in a tax sale in 1908 and that such rights passed in that sale to its predecessor in title.

unknown. Based on that affidavit, the court entered an Order and Decree on January 15, 1951, that notice of the institution of the action and filing of the complaint be given to the individual defendants by advertisement in a newspaper of general circulation and in the Lycoming Reporter once a week for four successive weeks.² Such advertisement was accomplished and, none of the defendants having filed an Answer or other response, Plaintiff moved for entry of judgment on March 13, 1951. A default Judgment was entered by the court on March 14, 1951.

In the instant Petition to Strike, Petitioners contend the default judgment must be stricken because a defect on the face of the record renders the entry of judgment void. Petitioners specifically assert that the Complaint fails to state a cause of action upon which relief may be granted, for four reasons. In their Petition to Open, Petitioners contend they did not receive notice of the action, that the petition is timely, that Plaintiff perpetrated a fraud in the filing of the action, and that they have a meritorious defense to such. Each of these contentions will be addressed in turn.

With respect to the Petition to Strike, Petitioners are correct in their assertion that if a Complaint fails to state a cause of action upon which relief may be granted, such is a fatal defect appearing of record and on that basis, any default judgment entered for want of an answer may be stricken. Navarro v. George, 615 A.2d 890 (Pa. Commw. 1992); Calesnick v. Redevelopment Authority of City of Philadelphia, 529 A.2d 528 (Pa. Super. 1987). In this case, however, the court does not agree that the Complaint fails to properly set forth a cause of action to quiet title.

² Personal service was made on Massachusetts General Hospital and Brinker Hunting Club.

Petitioners first contend the Complaint is defective for failing to allege that Plaintiff had possession of the subsurface estate. It occurs to the court that it would be quite onerous to require actual drilling and production³ before any dispute over title to the subsurface rights could be brought before the court but, in any event, the Rules of Civil Procedure governing actions to quiet title require only that the plaintiff “describe the land in the complaint.” Pa.R.C.P 1065. Plaintiff did so and the Complaint is not insufficient in this regard.

Petitioners next allege that the Complaint’s chain of title contains substantial gaps, asserting specifically that the quitclaim deeds executed in the 1940s and 1950s conveyed interests the grantors did not have, based on their further allegation that the tax sale of 1908 was without effect. This allegation is based on facts outside the record, however,⁴ which cannot be considered in a petition to strike. *See Myers v. Mooney Aircraft, Inc.*, 240 A.2d 505 (Pa. 1967). The chain of title alleged in the Complaint is sufficient to support Plaintiff’s request to quiet title.

Relatedly, Petitioners also assert the Complaint fails to set forth necessary facts to support the allegation that the tax sale of 1908 extinguished the reservation of mineral rights. The Complaint asserts that the mineral rights were not at the time of the sale or any time prior thereto separately assessed and thus were extinguished by the tax sale. Petitioners contend that Plaintiff needed to also assert that the reservation of rights had not been reported to the tax assessor. Because the law assumes that the lack of an assessment is based on the lack of

³ In Northern Forests II, Inc. v. Keta Realty Company, et al., Lycoming County No. 88-02,356 (May 20, 2014), this court concluded that only actual drilling and production will suffice to establish actual possession.

⁴ Petitioners allege that they have affirmative proof that the Proctor reservation was reported to the county assessor and thus the assessment was not on the whole and thus the tax sale did not extinguish the mineral reservation.

reporting, however, *see Herder Spring Hunting Club v. Keller*, 93 A.3d 465, (Pa. Super. 2014), such a pleading is not required.

Finally, Petitioners allege defects in the failure to attach or identify where in the public record the tax sale deeds may be found. This allegation is without merit because it is based on facts which are not correct. Plaintiff *did* identify where in the public record the tax sale deed may be found, specifically: “deeds and sales are recorded in Treasurer’s Book #2, page 206, and acknowledged in Sheriff’s Deed Book K., page 264.”⁵

In their Petition to Open, Petitioners contend first that they did not receive valid service or notice of the 1951 action (which would require the court to open the judgment without inquiring into the timeliness of the instant petition, the reasons for the delay or the meritoriousness of their defense⁶). Although this court has already upheld the validity of the service by publication in this case based on the claim in the affidavit filed by counsel that the individual defendants’ whereabouts were unknown,⁷ Petitioners seek to prove that such claim was false and that a fraud was perpetrated upon the Proctor heirs in order to prevent them from learning of and defending the action. Inasmuch as Petitioners appeal to the equitable powers of the court through a petition to open, the court may consider any evidence in support of such allegation and will therefore schedule an evidentiary hearing to address this contention.

⁵ See Exhibit A, attached to the Petition to Strike and/or Open, filed June 11, 2015.

⁶ See *Deer Park Lumber, Inc. v. Major*, 559 A.2d 941 (Pa. Super. 1989), and *Colavecchi v. Knarr*, 457 A.2d 111 (Pa. Super. 1983).

⁷ See Order denying Petition to Strike, entered October 2, 2014.

ORDER

AND NOW, this day of August 2015, for the foregoing reasons, the Petition to Strike is hereby DENIED. To receive evidence in support of Petitioners' contention that Plaintiff's counsel's affidavit made in 1951 (in support of the request to serve notice by publication) was false, a hearing is hereby scheduled for **September 24, 2015, at 1:30 p.m.** in Courtroom number 2. A ruling on the Petition to Open will be made following said hearing.

BY THE COURT,

Dudley N. Anderson, Judge

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