

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SOUTHWESTERN ENERGY PRODUCTION COMPANY,	:	NO. 11 - 02,308
Plaintiff	:	
	:	CIVIL ACTION - LAW
VS.	:	
	:	
FOREST RESOURCES, LLC, KOCJANCIC FAMILY	:	
LIMITED PARTNERSHIP, HAROLD H. WOLFINGER,	:	
JR., ULTRA RESOURCES, INC., JACKSON CORNERS	:	
SPORTSMEN INC., NORTHERN FORESTS II, INC.,	:	
WEVCO PRODUCTION INC. AND ANADARKO	:	
PETROLEUM CORPORATION, LP A/K/A ANADARKO	:	
PETROLEUM CORPORATION,	:	
Defendants as to all counts	:	
	:	
INTERNATIONAL DEVELOPMENT CORPORATION	:	
AND TRUSTEES OF THE THOMAS E. PROCTOR	:	
HEIRS TRUST DATED OCTOBER 28, 1980,	:	
Defendants as to Declaratory Judgment only	:	
	:	
TRUSTEES OF THE THOMAS E. PROCTOR HEIRS TRUST,	:	
Cross-claim Plaintiff	:	
VS.	:	
	:	
FOREST RESOURCES, LLC, KOCJANCIC FAMILY	:	
LIMITED PARTNERSHIP, HAROLD H. WOLFINGER,	:	
JR., ULTRA RESOURCES, INC., JACKSON CORNERS	:	
SPORTSMEN INC., NORTHERN FORESTS II, INC., AND	:	
INTERNATIONAL DEVELOPMENT CORPORATION,	:	
Cross-claim Defendants	:	
	:	
TRUSTEES OF THE THOMAS E. PROCTOR HEIRS TRUST,	:	
Counterclaim Plaintiff	:	
VS.	:	
	:	
SOUTHWESTERN ENERGY PRODUCTION COMPANY AND	:	
LANCASTER EXPLORATION & DEVELOPMENT CO., LLC,	:	
Counterclaim Defendants	:	
VS.	:	
	:	
TRUSTEES OF THE MARGARET O. F. PROCTOR TRUST,	:	Motions for Judgment
Additional Defendant	:	on the Pleadings

OPINION AND ORDER

Before the court are the motions for judgment on the pleadings filed by the Thomas E. Proctor Heirs Trust (“PHT”) and the Margaret O.F. Proctor Trust (“MPT”) on May 8, 2015, and June 2, 2015, respectively. Argument on the motions was heard August 10, 2015.

The instant motions seek to follow up on the Superior Court’s holding, in a recent appeal in this matter, that a lease and letter agreement entered between PHT and Lancaster Exploration and Development Company (“Lancaster”) in 2005 violates the Guaranteed Minimum Royalty Act (“GMRA”) because the agreement requires the assignment back to Lancaster of 50% of the 1/8 royalty to be paid to PHT. The Superior Court further stated that “any lease that fails to comply with the GMRA ‘shall not be valid’”. On the strength of this statement, PHT and MPT seek judgment in their favor on their claims of the lease’s invalidity, as contained in Count 1 (declaratory judgment) of PHT’s Joinder Complaint against Lancaster, Count 1 (declaratory judgment) and Count 2 (constructive trust) of PHT’s Second Amended Counterclaim against Southwestern Energy Production Company (“Southwestern”), Count 1 (declaratory judgment) and Count 2 (constructive trust) of MPT’s Amended Counterclaim to Southwestern’s Complaint, and Count 1 (declaratory judgment) and Count 2 (constructive trust) of MPT’s Amended Counterclaim to Lancaster’s Additional Defendant Complaint. They also seek judgment in their favor on Lancaster’s claim for breach of contract (the lease) as contained in Lancaster’s First Amended Counterclaim against PHT.

In response, Lancaster and Southwestern oppose the entry of judgment on the pleadings as premature, contending there are disputed facts regarding the

issues of bona fide purchaser for value, validity of the lease in light of no assignment actually having been made, severability and the agreement's savings clause, estoppel, laches and the statute of limitations. They also contend there are indispensable parties who have not been joined, preventing the court from ruling at all.¹ Because the court agrees that at least on the issues of estoppel and the statute of limitations,² Lancaster and Southwestern are entitled to further proceedings, judgment at this time in favor of PHT and MPT would be improper.³

With respect to estoppel, “[w]here a party voluntarily agrees to a contract provision, ‘it cannot later contend that the act is illegal and refuse to perform it; indeed it will be estopped from doing so.’” Chambersburg Area School District v. Chambersburg Area Education Association, 811 A.2d 78 (Pa. Commw. 2002), quoting City of Scranton v. Local Union No. 669, 551 A.2d 643, 646(Pa. Commw. 1988). See also, Grottenthaler v. Pennsylvania State Police, 410 A.2d 806 (Pa. 1980)(terms of a collective bargaining agreement upheld even though the terms conflicted with statute as the State Police had bargained away its rights under statute). In the instant case, Lancaster and Southwestern contend that not only did PHT voluntarily agree to the assignment back of 50% of the royalty payment, it was actually their idea in the first place. Sufficient proof of such would likely prevent PHT from now asserting the invalidity of the lease.

¹ Separate motions raising this issue have been filed and those motions have been scheduled separately for argument. The court does not believe it is necessary to make a determination on that issue prior to making the instant ruling, in light of the disposition and the interests which are being said to be indispensable.

² These issues are raised in Lancaster's May 14, 2012, Answer and New Matter to PHT's Joinder Complaint and its November 4, 2014, Answer and New Matter to MPT's Amended Counterclaim, and in Southwestern's November 14, 2014, Answer and New Matter to PHT's Second Amended Complaint and its November 14, 2014, Answer and New Matter to MPT's Amended Counterclaim.

³ The court is NOT ruling on the other issues, but is simply not addressing them.

With respect to the statute of limitations, “[a]s a general rule, it is the duty of the party asserting a cause of action to use all reasonable diligence to properly inform himself of the facts and circumstances upon which the right of recovery is based and to initiate suit within the prescribed period. Therefore, the statute of limitations begins to run as soon as a right to institute and maintain suit arises.” Crouse v. Cyclops Industries, 745 A.2d 606, 611 (Pa. 2000)(citation omitted). Inasmuch as the GMRA was in effect at the time of the 2005 lease and letter agreement, Lancaster may be able to show that PHT was aware or should have been aware of the provision but chose to enter the agreement regardless, and therefore that a claim of invalidity under the statute arose at the time of the agreement in 2005. As the four-year catchall statute of limitations⁴ applies to declaratory judgment actions regarding the parties' rights and duties under a contract, *see* Selective Way Insurance Company v. Hospitality Group Services, Inc., 2015 Pa. Super. LEXIS 398, PHT’s claim may very well be untimely.

ORDER

AND NOW, this day of August 2015, for the foregoing reasons, the Motion for Judgment on the Pleadings filed by PHT on May 8, 2015, is hereby DENIED. The Motion for Judgment on the Pleadings filed by MPT on June 2, 2015, is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

⁴ 42 Pa.C.S. § 5525(a)(8).

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