

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, : Motion for
Additional Defendant : Reconsideration

OPINION AND ORDER

Before the court is the motion for reconsideration filed by the Thomas E. Proctor Heirs Trust (“PHT”) on September 11, 2015. Argument on the motion was heard September 25, 2015.

PHT asks this court to reconsider its decision issued August 14, 2015, which denied PHT’s motion for judgment on the pleadings. PHT seeks reconsideration with respect to only the breach of contract claim expressed in Count 1 of Lancaster’s First Amended Counter-claim to PHT’s Joinder Complaint.¹ Since the opinion issued in support of the Order does not specifically address that aspect of the motion, this opinion and order will be issued, not as a reconsideration, but to supplement the Order of August 14, 2015.

In Count 1 of the First Amended Counter-claim, Lancaster alleges that PHT has breached the subject lease (which PHT seeks to invalidate in its Joinder Complaint) by failing to assign the referenced 50% royalty interest to Lancaster. PHT now contends in its motion that since the Superior Court declared² that under the Guaranteed Minimum Royalty Act the lease in this matter is invalid, the court cannot enforce the lease and Lancaster’s claim for breach of contract fails as a matter of law.

In support, PHT cites In re Guzzardi, 99 A.3d 381 (Pa. 2014), for the proposition that the courts are without the authority to fashion an equitable remedy where there is an unambiguous legislative decree (here, that a lease which violates the Act “shall be invalid”). Guzzardi addressed the Public Official and

¹ The court also denied PHT’s motion for judgment on the pleadings with respect to their claims for declaratory judgment and the imposition of a constructive trust, but that ruling is not the subject of the motion.

² PHT and MPT appealed this court’s earlier decision that the lease did not violate the Guaranteed Minimum Royalty Act, and the Superior Court reversed that decision.

Employee Ethics Act’s declaration that failure to timely file a statement of financial interests with the Pennsylvania State Ethics Commission "shall . . . be a fatal defect to a petition to appear on the ballot."³ *Id.* at 382. While the Court held that “the courts are not free to disregard the explicit legislative direction based on equitable considerations”, it did so because “the judiciary should act with restraint, *in the election arena*, subordinate to express statutory directives.” *Id.* at 386 (emphasis added). The Court noted that “[s]ubject to constitutional limitations, the Pennsylvania General Assembly may require such practices and procedures as it may deem necessary to the orderly, fair, and efficient administration of public elections in Pennsylvania”, and its ruling was issued “[o]ut of respect for the political branch and for the sake of regularity and orderliness in the election process”, and further, was based on its agreement with the Supreme Courts of Connecticut and Michigan that if the courts were to “erode the statutory requirements of election law through the use of equity, [they] would create ambiguity and inconsistency in what needs to be a uniform and stable area of law”. *Id.* at 385-386. The court thus believes Guzzardi does not stand for the blanket prohibition espoused by PHT.

In areas outside of the election arena, courts *have* applied equitable principles in the face of legislative directives. For example, although the Statute

³ “Appellants, qualified electors and registered voters, filed a petition to set the nomination petition aside in the Commonwealth Court. . . . Among other challenges, they invoked the statutory fatal-defect rule which, by its plain terms, required Mr. Guzzardi’s name to be removed from the primary election ballot, in light of his undisputed failure to file a timely statement of financial interests with the Ethics Commission. The Commonwealth Court, however, refused to enforce the governing legislative directive. Rather, the single judge administering the matter conducted a hearing and issued an order denying Appellants’ objections. In an unpublished opinion, she relied on a line of Commonwealth Court decisions which have found the judiciary to be possessed with the power to permit a fatal defect to be “cured” through the application of equitable principles. See, e.g., *In re Nomination Petition of Howells*, 20 A.3d 617, 621-22 (Pa. Cmwlth.), *aff’d per curiam*, 611 Pa. 559, 28 A.3d 915 (2011). In this regard, it was the court’s position that Mr. Guzzardi had offered sufficient, non-negligent explanations to justify treating his late-filed statement nunc pro tunc, or as if it had been submitted to the Ethics Commission on time.” *In re Guzzardi*, 99 A.3d 381, 382-83 (Pa. 2014).

of Frauds⁴ renders oral contacts for the sale of land invalid, the courts will order the equitable remedy of specific performance where there has been partial performance and rescission would be inequitable and unjust. *See Briggs v. Sackett*, 418 A.2d 586 (Pa. Super. 1980).⁵ And, although the Divorce Code declares that in certain circumstances the “supposed or alleged marriage of a person shall be deemed void”,⁶ the courts have, in a variety of circumstances, declared a party estopped from raising the issue of the validity of their spouse’s prior divorce and of their present marriage. *See Lowenschuss v. Lowenschuss*, 579 A.2d 377 (Pa. Super. 1990).⁷ Therefore, the court believes that equitable principles of estoppel may be applied to prevent PHT from seeking to avoid enforcement of the contract by asserting its invalidity under the Guaranteed Minimum Royalty Act and PHT is thus not entitled to judgment as a matter of law on Lancaster’s breach of contract claim.

In light of the issue’s importance in this litigation,⁸ however, and the existence of appellate authority arguably to the contrary,⁹ thus producing grounds for a difference of opinion, the court will certify this order in accordance with 42 Pa.C.S. § 702.

⁴ 33 P.S. Section 1.

⁵ Although contained in an unpublished decision, the doctrine of partial performance was also recognized in *Brown v. City of Philadelphia*, 2008 Pa. Commw. Unpub. LEXIS 378.

⁶ 23 Pa.C.S. Section 3304.

⁷ *Lowenschuss* considered 23 Pa.C.S. § 204, the predecessor of Section 3304, which contained nearly identical language.

⁸ By this statement, the court is referring to both the breach of contract claim by Lancaster, as well as the claims for declaratory judgment and constructive trust by PHT and MPT.

⁹ In *W.S. Weed & Company v. Cuming*, 12 Pa. Super. 412, 418 (1900), the Court relied on prior appellate authority for the proposition that there is “no room for equitable presumptions, or estoppels, in cases of illegal contracts.” The court refused to enforce a particular contract of insurance because the Act of February 4, 1870, P.L. 14, provided in the first section that such contracts “shall be void” and in the second section that “the person issuing such a contract shall be deemed guilty of a misdemeanor”. *Id.* at 416.

ORDER

AND NOW, this day of October 2015, for the foregoing reasons, PHT's Motion for Reconsideration is hereby DENIED. The Order of August 14, 2015, is hereby amended to reflect this court's opinion that this ruling involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal may materially advance the ultimate termination of the matter.

BY THE COURT,

Dudley N. Anderson, Judge

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