IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SOUTHWESTERN ENERGY PRODUCTION COMPANY, Plaintiff	:	NO. 11 - 02,308
	:	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, Additional Defendant	:	Motions to Order Joinder of Necessary Parties

OPINION AND ORDER

Before the court are the motions to order joinder of necessary parties filed by Lancaster Exploration & Development Company, LLC ("Lancaster") and Southwestern Energy Production Company[1] ("Southwestern") on August 3, 2015, and August 4, 2015, respectively. Argument on the motions was heard September 25, 2015.

The instant motions seek to require the Trustees of the Thomas E. Proctor Heirs Trust ("PHT") and the Trustees of the Margaret O.F. Proctor Trust ("MPT") to join certain parties alleged as indispensable, or to suffer dismissal of their claims 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") and is thus invalid.[2] Lancaster and Southwestern contend there are numerous assignees of Lancaster's interest in the lease whose rights will be affected by any invalidation of the lease and who must therefore be joined.

PHT and MPT agree that if indispensable parties are not joined, the court will lack subject matter jurisdiction over this matter, and they admit that Lancaster has partially assigned its interest under the subject lease, but they do not agree that the referenced assignees are indispensable.

A party is considered indispensable if his or her rights are so directly connected with and affected by the litigation that any decree or order would

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[1] The court recognizes that Southwestern Energy Production Company has since changed its name to SWN Production Company, LLC, but will refer to the parties by their names as set forth in the caption.

[2] These claims are 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, 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.

impair those rights. City of Philadelphia v. Commonwealth, 838 A.2d 566 (Pa. 2003). In the instant case, a declaration is sought that a particular lease is invalid. The Pennsylvania Declaratory Judgment Act requires that all persons "who have or claim any interest which would be affected by the declaration … shall be made parties". 42 Pa.C.S. Section 7540(a). *See also* City of Philadelphia, *supra* at 581-82 ("in an action for declaratory judgment, all persons having an interest that would be affected by the declaratory relief sought ordinarily must be made parties to the action"). That Lancaster's assignees have an interest that would be affected by a declaration that their lease is invalid seems clear, and indeed, in Paragraph 46 of PHT's Joinder Complaint, filed February 15, 2012, PHT alleges that "[b]ecause the Leases are invalid, *any entity* which purports to have been assigned Lancaster's position as lessee to the Leases holds *no interest* in the petroleum and natural gas interest of PHT."[3] (Emphasis added.)

Nevertheless, PHT and MPT argue against joinder, citing Bastian v. Sullivan, 117 A.3d 338 (Pa. Super 2015). There, competing sets of heirs claimed ownership of the same mineral rights, and each set had leased its rights to a different entity. In finding the lessees *not* indispensable parties, the Court noted that the rights at issue were those of title (the matter was an action to quiet title) and the lessees had "no direct essential interest with regard to title". In the instant

[3] MPT does argue that Lancaster's assignees are not affected because its pleadings restrict its claim to Warrant 1621 and they hold no interest in that particular warrant, but the court fails to see how a declaration that the lease is invalid as to Warrant 1621 would *not* affect those entities with leasehold interests in other parcels pursuant to the *very same lease*. MPT's citation to Mechanicsburg Area School District v. Kline, 431 A.2d 953 (Pa. 1981), is misplaced. There, the Court held other school districts were not indispensable to the litigation seeking to compel the Secretary of Revenue to take the steps necessary to correct alleged errors in his computation of Mechanicsburg's taxable income for subsidy purposes. The Court stated that the right of the other school districts was "a vested right to receive the benefit of the use of correct process by the state officials identified in the Code. It is not a vested right to receive a fixed or determined sum of money. It is a right not contingent upon the actualization of the rights of each school district." Id. at 957. Here, on the other hand, Lancaster's assignees do have a right under the lease to receive a determined sum of money, which right will be affected by the declaration sought.

case, the validity of the lease itself is under attack, and the entities alleged to be indispensable have a "direct essential interest" in that lease.[4] Therefore, the court finds the assignees of Lancaster are indispensable parties in this matter.[5]

Accordingly, pursuant to Pa.R.C.P. 1032 (b), the court will require PHT and MPT to join those parties who have been assigned an interest in the lease at issue.

ORDER

AND NOW, this day of October 2015, for the foregoing reasons, the motions to order joinder of necessary parties are hereby GRANTED. The claims set forth in footnote 2, above, will be dismissed unless within sixty (60) days of this date, all necessary parties have been properly joined. This order shall be stayed, however, in the event the Superior Court grants a petition for permission to appeal this Order. In that respect, the court notes that it is of the opinion that this ruling involves a controlling question of law as to which there is a substantial

[4] That "direct essential interest" has been increased substantially beyond the mere right to explore, drill and produce granted by the lease by at least three assignees, as Chief Exploration & Development, LLC, Chesapeake Appalachia, LLC and Southwestern have "invested significant resources to drill natural gas wells and [are] currently operating producing wells" on the property covered by the lease. *See* Paragraph 26 of the Affidavit of Lawrence M. Elkus, filed August 3, 2015.

[5] *See also* North Star Coal Company v. Waverly Oil Works Company, 288 A.2d 768, 771 (Pa. 1972)(emphasis added), where such a proposition was apparently considered by the Court to be obvious, for the Court stated without further explanation: "In addition, the Pennzoil intervention makes it clear that Waverly is not the complete successor to the oil and gas lease in dispute, as the complaint alleged, but that Pennzoil itself retains some interest therein. The court decree, however, purported to terminate not only the Waverly interest, but the entire original lease of 1891 from McVey to Steel and Egbert. As it now appears, *this it could not do without Pennzoil in court as an indispensable party* defendant.

ground for difference of opinion and that an immediate appeal may materially advance the ultimate termination of the matter.[6]

BY THE COURT,

Dudley N. Anderson, Judge

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Hon. Dudley Anderson

[6] Considering the number of assignments, service of process on all assignees will require substantial work, and the filing of responses to the pleadings by all those parties will undoubtedly expand this matter greatly with respect to both the file folders required as well as the time required to reach the final disposition.