

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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|--|---|--------------------|
| 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 AUGUST 4, 2014,
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

Defendant Thomas E. Proctor Heirs Trust (“PHT”) has appealed this court’s Order of August 4, 2014, which granted Plaintiffs’ Motion for Partial Judgment on the Pleadings.^{1,2,3} The appeal was filed October 6, 2014. By Order dated September 9, 2014, however, this court had granted reconsideration based on Defendant Margaret O.F. Proctor Trust’s motion to that effect, filed September 2, 2014. Then, by Order dated October 31, 2014, following additional briefing, the grant of the motion for partial judgment on the pleadings was reversed, although further proceedings were limited to a single issue. Plaintiff Range Resources then filed its own motion for reconsideration, on November 26, 2014, which has been scheduled for argument February 6, 2015.⁴

Because of the grant of reconsideration on September 9, 2014, this court believed,

1 Defendant Pennlyco Ltd. filed a cross-appeal, which has been consolidated by the Superior Court, *sua sponte*, with PHT’s appeal.
2 By Order dated September 4, 2014, the court amended the Order of August 4, 2014, to include a determination of finality for purposes of appeal.
3 Although the Order of August 4, 2014, purported to grant summary judgment, as the motion had been for partial judgment on the pleadings, that error was corrected in the Order of October 31, 2014, as explained *infra*.

based on Pennsylvania Rule of Appellate Procedure 1701(b)(3), that the notices of appeal were inoperative and would be quashed by the Superior Court. The court has received notice of an overdue record, however, indicating that such a belief is apparently mistaken.

The court's current decision, that Plaintiffs' motion for partial judgment on the pleadings should be denied, and the issue (of whether the notice requirements of the tax sale law were complied with in the tax sale of 1932) should be submitted to the trier of fact, is explained in the Opinion issued with the Order of October 31, 2014. The court notes, however, that it finds merit in Plaintiff Range Resources' argument (contained in its motion for reconsideration) that the statute of limitations prevents addressing the issue. Argument on *that* issue, as noted above, had been scheduled for February 6, 2015. While this court rejected the argument initially, upon further review and consideration, at this time the court believes Poffenberger v. Goldstein, 776 A.2d 1037 (Pa. Commw. 2001), does indeed apply the statute of limitations to an attack based on failure of notice. A final decision in that regard has yet to be made, of course, but the court will await Superior Court's further instruction in the matter.

Dated: January 12, 2015

Respectfully submitted,

Dudley N. Anderson, Judge

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Hon. Dudley N. Anderson

⁴ In light of the instant appeal, this argument is being cancelled by separate order.