IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

RED RUN MOUNTAIN, INC., Plaintiff,	:	CV- 13-01,259
	:	CIVIL ACTION
vs.	:	
EARTH ENERGY CONSULTANTS, LLC., BRADLEY R. GILL, and SYLVIA B. MASE and SYLVIA B. MASE and MICHAEL HUGHES, As Executors of the Estate of Richard D. Mase, Defendants.	:	JURY TRIAL SUMMARY JUDGMENT

OPINION AND ORDER

Before the Court is Defendants Earth Energy Consultants, LLC. and Bradley R. Gill's motion for summary judgment filed on February 6, 2015. Plaintiff filed a response to the motion on March 5, 2015. Defendants filed a brief in support of their motion for summary judgment on March 10, 2015. Plaintiff filed a reply brief on March 20, 2015. Argument was heard on March 25, 2015. On March 30, 2015, Defendants filed a reply brief. On April 10, 2015, Plaintiff filed their final response brief. Upon review of the motion, briefs, the summary judgment record of evidence, and argument, summary judgment is GRANTED. The Court provides the following in support of its decision.

Factual Background

This matter arises from a series of contracts between Plaintiff, Red Run Mountain, Inc. (Red Run), and Defendants, Earth Energy Consultants, LLC. and/or Bradley R. Gill (Collectively Gill), that relate to oil and gas exploration and overriding royalty payments from production on Red Run's property. Red Run's property consists of 2,873.60 acres in McIntyre Township, Lycoming County. In essence, the contracts provided for a percentage of overriding royalty interest from any oil and/or natural gas produced on Red Run's property by a company

which Gill marketed. Richard D. Mase executed contracts as president of Red Run. Richard D. Mase served as president of Red Run until January 19, 2011. Red Run seeks a declaratory judgment that the contracts are void and unenforceable because there was no authorization to enter any of them. Even if the contracts are enforceable by Gill against Red Run, Red Run seeks a declaration that the Mase Estate[1] is solely liable because Richard Mase was not authorized to enter the contracts. Gill has a cross-claim against the Mase Estate on the grounds that even if Red Run is not liable, the Mase Estate is liable for the contracts executed by Mase.

Red Run incorporated on November 29, 1990 in the State of Delaware. Red Run is a small corporation with three stockholders who also served as sole directors throughout the relevant time period. The initial directors of Red Run were Mase, John L. McDowell, III, and Roy W. Cummings, Sr. In approximately 1983, Mase purchased Red Run's property at an auction and Mase, McDowell, III, and Cummings, Sr. became equal 1/3 owners of the property. Upon his death in 2002, John McDowell's shares passed to his wife, Susan McDowell. For twenty years, Mase served as both a member of the board of directors and as President of Red Run.

The purpose of Red Run was broadly defined in the articles of incorporation as any lawful purpose. Red Run managed its land and operated its property as a recreation area for its shareholders. Article V, Section 4 of Red Run's By-laws provided that the president shall have general and active management of the business of the corporation, shall see that all orders and resolutions of the Board are carried into effect and the power to execute bonds, mortgages and other contracts requiring a seal, under the seal of the corporation.[2] These By-Laws provide broad powers to the president.

[1] Mase died on July 3 2012. The executors of his estate were substituted as parties on September 4, 2012.
[2] Article V, Section 4 provides as follows.

The board of directors typically met once a year in the fall. At those meetings, the board approved the minutes from the prior year's meeting. The meetings were simple, and included discussions of the property. There was only minor business of any substance. Mase took care of Red Run business between meetings. Roy Cummings, Sr. did not pick up mail for Red Run or look at corporate records. He believed the office of record for Red Run was in Blossburg. Mase had authority to sign documents in the name of Red Run and could authorize checks. Patricia Warren had been elected by the board and served as secretary of Red Run for about twenty years. Warren performed accounts payable, accounts receivable and kept the corporate records. Warren had unlimited check-signing authority. Mase presented the information for the corporate book to Warren, approved all invoices, and made the dealings as far as land leases and royalties. In her 20 years as secretary to the board, Warren does not recall any board members, other than Mase, showing up at the corporate office for any business-related reason. There was <u>never</u> any discussion of limitations upon the authority of Mase. Simply stated, Mase ran Red Run with minimal supervision or oversight for many years.

At some point in 2003, Red Run became involved with Gill, as reflected in the corporate records. The records list an expenditure item for natural gas research in the amount of $1,656.77 to Gill, dispersed to Earth Energy in 2003. On July 7, 2003, Gill issued an invoice for the period from September 3, 2002 to July 10, 2003 that included an amount due from Red Run of

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PRESIDENT: The President shall be the chief executive officer of the corporation; he shall preside at all meetings of the stockholders and directors; he shall have general and active management of the business of the corporation, shall see that all orders and resolutions of the Board are carried into effect, subject, however to the right of the directors to delegate any specific powers, except such as may be by statute exclusively conferred on the President, to any other officer or officers of the corporation. He shall execute bonds, mortgages and other contracts requiring a seal, under the seal of the corporation. He shall be EX-OFFICIO a member of all committees, and shall have the general power and duties of supervision and management usually vested in the office of President of the corporation.

$1,656.77. Prior to the 2003 agreement with Gill, Red Run had never previously signed an oil and gas lease or a consulting agreement in anticipation of an oil and gas lease.

On February 21, 2003, Bradly R. Gill wrote a letter to Mr. Mase at Mase's home address to follow up on a discussion they had about being pro-active in obtaining oil and gas production on properties. The correspondence included other properties in which Mase had an interest that were not owned by Red Run. Gill proposed that he would prepare a geological report and base maps to attract companies and then use those in his marketing efforts. Gill wrote: "[m]y real incentive to sell this package wouldn't be this retainer, but rather an overriding royalty interest in the acreage. If the acreage is burdened only by your 12.5% landowner royalty, there would be plenty of room to include a 1/32 (3.125%) O.R.R.I. in the form of a geological fee." Gill further noted that "[t]his is quite common in oil and gas deals of this nature, and it would not affect your net income as it would be in addition to your override, paid out of production and borne by the operator and/or investors." Since the non-royalty interest could still be as high as 84.375%, Gill believed the property would still be "very attractive" even with his ORRI. Gill proposed that the ORRI assignment be made "after the geological work has been completed and before undertaking the marketing efforts. This override would be evidenced by an assignment of record and be recorded in the appropriate jurisdiction." Gill explained his opinion that it was important to present the acreage together as a "geological play" so that companies do not cherry pick acreage. Cherry picking would reduce the income potential for the entire acreage.

On April 24, 2003, Red Run and Gill entered a contract that provided for payment of 3.125% overriding royalty interest payments (ORRI) to Gill from any oil and/or natural gas produced on Red Run's property by a company which Gill marketed. This provision was to compensate Gill for time spent on the marketing phase. The provision was to be assigned by

contract and referenced in the oil and gas leases. The assignment was to be made "after the product generation phase, but before the marketing phase." Mase signed the contract as president of Red Run. The secretary of Red Run, Patricia Warren, also signed the contract. Her signature appeared above the line marked for a witness. The contract divided the relationship into two phases, the “product generation” phase and the “marketing phase.” The agreement lasted 30 months from the time that the promotional materials are completed. Drilling commenced within five year period of the oil and gas lease to trigger an extension of the original term. However, as of the date of the filing of the Complaint, no royalty payments had been made because no oil or gas had been extracted from the acreage. The April 24, 2003 agreement was not specifically disclosed to the other shareholders until September 2010.

On October 10, 2003, Red Run and Gill executed a new agreement to commence the marketing phase because prospective purchasers preferred to prepare their own leases, and the April 24, 2003 agreement called for a new contract and language in the lease agreement before starting the marketing efforts. The new agreement reiterated paragraph 8 and provided for compensation for the marketing phase in the amount of 3.125% of 8/8ths ORRI from any oil and/or natural gas produced from the acreage being marketed. Gill listed the companies it contacted as of October 2003, which included East Resources.

On June 14, 2005, Red Run entered an oil and gas lease with East Resources, Inc. (now Shell). East Resources Inc. was a company marketed by Gill. The lease gave East Resources five years to drill to trigger rights to extend the lease. The oil and gas lease provided a royalty payment to Red Run in the amount of 1/8 or 12.5% of the gross proceeds for oil and gas production on the property. The oil and gas lease also required payment of $10 per acre the first year and $5 per acre thereafter to keep lease in play. This provision was consistent with that

which was recommended by Gill in the October 9, 2003 letter. The lease was executed by Mase for Red Run. The lease did not contain an assignment or provision for payment of ORRI to Gill.

On June 15, 2005, Gill wrote to Mase. Gill stated that he was "glad to hear that East Resources had expressed interest" and reminded Mase about the 1/32 overriding royalty interest encumbering the property. Gill indicated that an assignment should be recorded. On July 13, 2005, Gill contacted East Resources about the ORRI assignment. East Resources refused to amend the lease to include the assignment.

On August 1, 2005, Mase executed an "Assignment and Conveyance of Overriding Royalty Interest" to assign 3.125% of 8/8ths (25% of Red Run's royalty payment) to Gill which was filed October 17, 2005 in the Register and Recording Office of Lycoming County. On October 15, 2008, Susan McDowell's shares of Red Run transferred to Jeff Pifer. Pifer was elected as a director. On October 20, 2008, Red Run's counsel, Thomas Marshall, Esq., and the firm of McNerney, Page, Vanderlin & Hall, sent Gill a letter stating that Gill had not been instrumental in obtaining the lease with East Resources, that the 3.125% ORRI was excessive and unconscionable and proposing a reduction to 1% in lieu of litigation. On December 9, 2008, an attorney for Gill countered with a proposal of 2.5%. Ultimately the parties agreed to 2%.

On March 6, 2009, Mase executed an amended assignment and conveyance of overriding royalty interest that reduced the ORRI from 3.125% to 2%. The amendment was recorded in the Lycoming County Register and Recorder's Office on April 9, 2009. On April 27, 2010, Roy Cummings, Sr. transferred all of his shares of stock equally to his three sons, Roy W. Cummings, Jr., Lee P. Cummings, and Gary R. Cummings. At that time, Lee Cummings was aware that there was an oil and gas lease on the property.

In September 2010, the board of directors met at Mase's house to discuss a buy-out for Mase. Mase was ill with cancer. At that time, Mase discussed how the consulting agreements and assignment of the ORRI of 2% would impact his buy-out price. It was reported that Mase prefaced the discussion with stating he wanted to "come clean" about something. Mase maintained that he had authority to execute the documents and never conceded that he did not have authority. This meeting is the first time that Mase discussed the ORRI with the board members. The board members had been unaware of the recorded assignments.

On January 19, 2011, Roy Cummings, Jr. became president of Red Run. In January 2011, Red Run issued a corporate resolution signed on January 23, 2011 authorizing Mase to begin negotiations with Gill to cap his ORRI to one million dollars. McNerney, Page, Vanderlin & Hall (McNerney Page) represented Red Run in these negotiations. Gill did not agree and this litigation followed.

Throughout the years, Red Run utilized the law firm of McNerney Page to represent its interests. McDowell, Cummings, Sr., and Mase all considered the law firm McNerney Page to be Red Run's legal counsel over the years. As attorney for Red Run, attorneys from McNerney Page answered questions, prepared agreements, attended board meetings, and consulted on an as needed basis. Mase served as the point of contact with McNerney Page. When dealing with closed corporations, the attorney does not undertake to speak to each board member or shareholder about representation sought by the president of the company. In 2009, McNerney Page billed Red Run regarding conversations with EEC attorneys and drafting assignment of royalties and revisions.

Legal Standards

Summary Judgment

Pursuant to Pa. R.C.P. 1035.2, the Court may grant summary judgment at the close of the relevant proceedings if there is no genuine issue of material fact or if an adverse party has failed to produce evidence of facts essential to the cause of action or defense. *Keystone Freight Corp. v. Stricker*, 31 A.3d 967, 971 (Pa. Super. 2011). A non-moving party to a summary judgment motion cannot rely on its pleadings and answers alone. Pa. R.C.P. 1035.2; 31 A.3d at 971. When deciding a motion for summary judgment, the Court must view the record in the light most favorable to the non-moving party, with all doubts as to whether a genuine issue of material fact exists being decided in favor of the non-moving party. 31 A.3d at 971. If a non-moving party fails to produce sufficient evidence on an issue on which the party bears the burden of proof, the moving party is entitled to summary judgment as a matter of law. *Keystone*, 31 A.3d at 971 (citing *Young v. Pa. Dep't of Transp.*, 744 A.2d 1276, 1277 (Pa. 2000).

Statutory Recognition of Properly Executed Documents for Corporation

15 Pa.C.S. § 1506 provides that contracts meeting certain requirements shall be held to have been properly executed for and in behalf of the corporation. It provides, in pertinent part, as follows.

SUBCHAPTER A. GENERAL PROVISIONS

§ 1506. Form of execution of instruments.

General rule. --Any form of execution provided in the articles or bylaws to the contrary notwithstanding, any note, mortgage, evidence of indebtedness, contract or other document, or any assignment or endorsement thereof, executed or entered into between any business corporation and any other person, when signed by one or more officers or agents having actual or apparent authority to sign it, or by the president or vice president and secretary or assistant secretary or treasurer or assistant treasurer of the corporation, shall be held to have been properly executed for and in behalf of the corporation. 15 Pa.C.S. § 1506 (2014)

Agency – Inherent/Implied/Apparent Authority and Authority by Estoppel

"Inherent authority is defined in the Restatement (Second) of Agency as "a term used … to indicate the power of an agent which is derived not from authority, apparent authority or estoppel, but solely from the agency relation and exists for the protection of persons harmed by or dealing with a servant or other agent."" Ortiz v. Duff-Norton Co., 975 F. Supp. 713 (E.D. Pa. Aug. 13, 1997) *quoting*, RESTATEMENT (SECOND) OF AGENCY § 8A (1957). The Restatement (Second) of Agency § 161 provides the following.

> A general agent for a disclosed or partially disclosed principal subjects his principal to liability for acts done on his account which usually accompany or are incidental to transactions which the agent is authorized to conduct if, although they are forbidden by the principal, the other party reasonably believes that the agent is authorized to do them and has no notice that he is not so authorized. RESTATEMENT (SECOND) OF AGENCY § 161 (1957).

Inherent authority is authority derived "by virtue of being given the position by the principal[.]" Ortiz, supra, 975 F.Supp. at 720. "The reasoning behind this type of authority involves the understanding that "commercial convenience requires that the principal should not escape liability where there have been deviations from the usually granted authority by persons who are such essential parts of his business enterprise."" Ortiz, supra, 975 F.Supp. at 720, *quoting*, RESTATEMENT (SECOND) OF AGENCY § 161 cmt. a. As between an equally innocent principal and third party, "liability is best placed on the party with the most control over the agent, i.e. the principal." Ortiz, supra, 975 F.Supp. at 720, *citing, See* Lincoln Bank v. National Life Ins. Co., 476 F. Supp. 1118, 1123 (E.D.Pa. 1979). "Moreover, because the principal enjoys the benefits of employing an agent, it is only fair that the principal bear the burden of supervision. Ortiz, supra, 975 F.Supp. at 720, *citing,* RESTATEMENT (SECOND) OF AGENCY § 161 cmt. a.

While not expressly adopted by the Supreme Court of Pennsylvania, in Ortiz, the District Court examined in detail the case-law in the area and concluded that the concepts of inherent

authority as contained in Sections 8A or 161 of the Restatement (Second) of Agency had very clearly been adopted in Pennsylvania. Ortiz, supra, 975 F.Supp. at 721-722. Specifically, the District Court noted that federal courts have cited "Rednor & Kline[, Inc. v. Department of Highways, 413 Pa. 119, 125, 196 A.2d 355, 358 (1964)] as Pennsylvania's version of inherent authority and the Restatement (Second) of Agency § 8A" Ortiz, supra, 975 F.Supp. at 721, *citing,* Tiernan v. Devoe, 923 F.2d 1024, 1036 n.9 (3d Cir. 1991).

In Rednor, the Pennsylvania Supreme Court stated the following.

> The authority of the President of a small corporation, which in this case is run or managed by four persons, to act for the corporation in the situation here involved, should be and will be sustained on the ground of his implied or, as the Restatement (2d), Agency, § 8A, calls it "inherent," as well as his apparent authority. Rednor, supra, 196 A.2d at 358. (citations omitted)

Rednor, involved an eminent domain proceeding in which the corporation, Rednor & Kline, sought detention damages. The Department of Highways contended that Rednor & Kline was not entitled to detention damages because any delay in payment was a result of an excessive or exorbitant or unconscionable claim of $106,000 that had been submitted by Rednor & Kline. Rednor & Kline sought a new trial on the grounds that the $106,000 claim document was inadmissible because the president of Rednor & Kline was not authorized to execute the document. In concluding that the president of the corporation was authorized to execute the document, the Court noted that: "Rednor & Kline, Inc. was, we repeat, a very small corporation, composed of four persons, all of whom were active in the management of its business."

Implied Authority and Apparent Authority

Intertwined with inherent authority is the concept of implied and apparent authority. "Implied authority exists in situations where the agent's actions are "proper, usual and necessary"

to carry out express agency." Walton v. Johnson, 2013 PA Super 108, 66 A.3d 782, 786 (Pa. Super. 2013). (citation omitted)

"Apparent authority exists where a principal, by words or conduct, leads people with whom the alleged agent deals to believe that the principal has granted the agent authority he or she purports to exercise." Turner Hydraulics, Inc. v. Susquehanna Constr. Corp., 414 Pa. Super. 130, 135-136 (Pa. Super. 1992) (citations omitted) "The third party is entitled to believe the agent has the authority he purports to exercise only where a person of ordinary prudence, diligence and discretion would so believe." Id. "Thus, a third party can rely on the apparent authority of an agent when this is a reasonable interpretation of the manifestations of the principal." Id.

Authority by Estoppel

"Authority by estoppel occurs when a principal, by his culpable negligence, permits an agent to exercise powers not granted to him, even though the principal did not know or have notice of the agent's conduct. In the event that a principal fails to take reasonable steps to safeguard himself and to safeguard third persons dealing with an agent from harm caused by the agent, then the principal may be estopped from denying the authority of the agent. Apex Financial Corp. v. Decker, 245 Pa. Super. 439, 444-445, 369 A.2d 483, 486 (Pa. Super. 1976), *citing,* Reifsnyder v. Dougherty, 301 Pa. 328, 152 A. 98 (1930). The doctrine of agency by estoppel as defined by the RESTATEMENT (SECOND) OF AGENCY, §8B was embraced in Reifsnyder, supra. Turnway Corp. v. Soffer, 461 Pa. 447, 457-458 (Pa. 1975). While an agent cannot simply by his own words vest himself with authority, "a principal who clothes his agent with apparent authority is estopped to deny such authority. Id. By carelessness or negligence, the authority emanates from the action of the principal. See, e.g., Id.

Discussion

Applying these basic legal standards to the present case, the Court concludes as a matter of law that Gill is entitled to summary judgment. The Court will first address Gill's contention that the documents are presumptively valid pursuant to 15 Pa.C.S. § 1506. Second, the Court will discuss Gill's contention that Mase had implied/inherent/apparent authority and authority by estoppel to enter the contracts and Red Run is bound by them.[3]

15 Pa.C.S. § 1506.

Gill's first contention is that he is entitled to summary judgment because Red Run is bound by documents that the President of its corporation executed pursuant to 15 Pa.C.S. § 1506. Gill argues that the plain reading of the statue means that a contract executed by a president of a corporation alone is properly executed regardless of whether the president had authority. The statute provides that such contracts are properly executed "when signed … by the president or vice president **and** secretary or assistant secretary or treasurer or assistant treasurer of the corporation[.]" 15 Pa.C.S. § 1506. The Court's plain reading of that portion of the statute is that it requires two signatures to qualify as presumptively properly executed. It requires the signature of either the president or vice president and the signature of one of the following: secretary or assistant secretary or treasurer or assistant treasurer of the corporation.

Next, Gill contends that the April 24, 2003 Contract is properly executed pursuant to 15 Pa.C.S. § 1506 because it was signed by Richard D. Mase as president of Red Run and witnessed by Patricia Warren, the secretary/treasurer for Red Run. The Court agrees. The Court is not aware of any cases that support the proposition that 15 Pa.C.S. § 1506 requires anything other than the officers' signature. The Court concludes that the secretary/treasurer's signature on the

[3] By opinion and order filed May 30, 2013 on preliminary objections, this Court ruled that Pennsylvania Law applied to Red Run's claims against Gill. Accordingly, this opinion discusses Pennsylvania Law.

document with the president's signature satisfies the plain wording of 15 Pa.C.S. § 1506 even when it appears on a line labeled as "witness." As such, Gill is entitled to summary judgment on his claim that the April 23, 2003 agreement is enforceable against Red Run.

Inherent / Implied / Apparent Authority and Agency by Estoppel.

Even if the April 23, 2003 agreement were not presumptively valid, the Court concludes that all of the contracts at issue are enforceable by Gill as authorized by Red Run. Upon exhaustive review of the entire summary judgment record, the Court concludes there are no material facts in dispute, and Gill is entitled to summary judgment.[4]

The Court concludes that Mase's authority is clearly supported by our Supreme Court's pronouncements in Rednor & Kline, Inc. v. Department of Highways, 413 Pa. 119, 125, 196 A.2d 355, 358 (1964). In Rednor, the president of a small corporation had implied, inherent and apparent authority to execute the document making a claim to the Department of Highways by virtue of his position as president and in light of the small nature of the corporation. The document was signed "Rednor & kline, Inc. [by] Harry Kline, Pres." Rednor, supra, 196 A.2d at 358. While the document in Rednor was perhaps less significant than the agreements in the present case, the Rednor Court focused on the position of the agent and the small nature of the corporation. In concluding that the president of the corporation was authorized to execute the document, the Court noted that: "Rednor & Kline, Inc. was, we repeat, a very small corporation, composed of four persons, all of whom were active in the management of its business."

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[4] "Although the question of whether a principal agent relationship exists is ordinarily one of fact for the jury, where the facts giving rise to the relationship are not in dispute, the question is one which is properly decided by the court." Joyner v. Harleysville Ins. Co., 393 Pa. Super. 386, 393, 574 A.2d 664, 668 (Pa. Super. 1990)(citations omitted) The Court strained to identify issues of material fact in dispute from the summary judgment record but found none.

Gill's summary judgment motion is not based upon actual or expressed authority of Mase. The Court does not discuss whether Mase had actual or expressed authority.

As in Rednor, Red Run is a very small corporation. It had only three stockholders who also served as sole directors; Mase conducted the business of Red Run without much supervision or oversight from the other two.

For twenty years, Mase served as both a board of directors and as President and ran the business. Mase managed Red Run between meetings, which occurred only once a year. When the board meetings occurred, they were simple. Despite this simplicity, records show significant funds transferred in and out of accounts for Red Run and that Red Run managed significant funds with respect to its property. Mase was the only shareholder who wrote checks. The Board never discussed any limitations upon the authority of Mase. Red Run placed Mase, one of three shareholders, in the position of president. The other two shareholders, Susan McDowell (and previously her husband) and Roy W. Cummings, Sr. trusted Mase to run the business of Red Run.

The shareholders, McDowell, followed by her son Jeff Pifer as of 2009, and Cummings, Sr., allowed Mase to run the business unchecked until September 2010. Cummings, Sr. did not know why Red Run incorporated in Delaware. Roy Cummings, Sr. did not review the mail of the corporation or go over corporate records. The Board never voted on something as significant as whether to enter the oil and gas lease with East Resources. It is unclear from the evidence whether the lease was even discussed before or after it was executed by Mase.[5] By placing Mase in the position of president of a small corporation and by not supervising or checking on his activities, Red Run, as principle, manifested conduct to vest Mase with inherent/apparent/implied authority to enter the contracts with Gill.

[5] Red Run points to Susan McDowell's deposition testimony as evidence that the board of directors / shareholders was aware of the lease and approved it. However, McDowell's testimony is that she did not know whether she discussed the lease "before or after the lease was actually signed." McDowell depo., 44:1-4. McDowell testified that one of the ways she knew she was aware of the lease was because there were obvious indications of it on the land itself. McDowell depo., 42:1-4.

Red Run has not pointed to evidence in support of its contention that this lease was outside the ordinary business dealing of Red Run. At most, they assert that the shareholders were unaware and would have had to vote on something that breached the "covenant of the mountain." Specifically, Red Run asserts that McDowell explained that "in order for an agreement of that magnitude to be consummated, the other shareholders would have had to vote on it; and the fact that a diminution in the ownership rights of fellow shareholders without their knowledge or approval violated the "covenants of the mountain." Red Run's Brief, at 10-11. However, Red Run shareholders were unaware of much of Mase's business activities. Mase entered an oil and gas lease with East Resources without a vote from the Board. McDowell, who referenced the so called covenant of the mountain, could not say whether an equivalent transaction, execution of an oil and gas lease on almost 3,000 acres of property, was discussed before or after it was signed. She knew about the oil and gas lease because she saw signs of it on the property. McDowell's opinion, after the fact, that the contracts with Gill would have required a vote, is inconsistent with the practice of Red Run as evidenced in the summary judgment record.

While Red Run broadly claims that the agreement was not in the ordinary course of the business, that opinion is not consistent with the record of the practice of Red Run. McDowell's opinion was based upon her claim that the agreements with Gill constituted a diminution in ownership rights of fellow shareholders. The April 24, 2003 agreement, however, provided that the ORRI was to be paid by the company executing an oil and gas lease on the property, not by Red Run. At the time, no oil and gas lease existed and the decision whether to enter a lease or which company to enter it with had not been made. Red Run could have entered a lease with a company that had not been marketed by Gill. As such, the significance of the Gill Agreements is equivalent or less than the significance of the oil and gas lease. There is no justification to

suggest that the Gill Agreements violated the "covenants of the mountain" when the oil and gas lease did not. McDowell's unsubstantiated opinion, which is not based upon expertise and which is not supported by the practice or Red Run, is insufficient to create an issue of fact.

Red Run contends that Mase was not authorized to enter the Gill agreements because they created a diminution in the value of their land interests. However, that was not a consequence of the proposed agreement with Gill. It was a consequence of the mistake of failing to include the ORRI in the lease with East Resources. It is not clear to the Court how this transaction was any less significant than the oil and gas lease, which was never voted on by the board and which McDowell cannot state whether it was discussed before or after it was signed. It was the error of Mase which reduced the amount of income available from the oil and gas lease, not the agreements with Gill. The Court suggests it is truly the error of Mase, and not his lack of authority, to which Red Run objects.

Red Run contends that Gill had notice and/or turned a blind eye to Mase's lack of authority. However, Red Run does not point to evidence that Gill was aware that Mase lacked authority. Red Run contends that Gill knew that Mase was not authorized to make the agreements with him because Gill did not deal with anyone but Mase and because Gill sent correspondence to Mase's home. The Court concludes that these arguments are woefully insufficient to raise an issue of material fact as to whether Gill knew that the Mase was not authorized to enter the agreements with him.

Although Mase did not discuss the Gill agreements with his fellow shareholders until the time he was negotiating a buyout in September 2010, the shareholders' lack of involvement with overseeing the business of Red Run significantly contributed to their lack of knowledge.[6] As

[6]Red Run attaches much significance to that fact that Mase prefaced the discussion with stating he wanted to "come clean" about something. However, the Court notes that such a statement most likely referenced the mistake he made

early as 2003, corporate documents reflected an expenditure and disbursement to Earth Energy Consultants related to natural gas that apparently went unnoticed by the shareholders. A simple review of Red Run's bills and finances would have revealed such expenditures as well as invoices billed in 2009 from McNerney Page for its work regarding Earth Energy Consultants and Gill. Moreover, any record check would reveal the assignments to Gill which were recorded in the Register and Recorder's Office, Record of Deeds, of Lycoming County on October 17, 2005 and April 9, 2009.

The Court rejects Red Run's theory that Mase intentionally failed to include the Gill assignment in the oil and gas lease so that the other shareholders would not find out about it. Not only does Red Run fail to point to any evidence in support of that theory, the theory does not make any sense. As a result of failing to include the assignment, Red Run - and not East Resources - was responsible for paying Gill. Had East Resources approved the Lease with the assignment, the entire ORRI that Plaintiff objects to paying would have been paid by East Resources. Thus, neither the record or common sense supports the theory that the failure to include the assignment to Gill in the oil and gas lease with East Resources evidences his intent to deceive Red Run.

As to the 2005 assignment, there is even more evidence of inherent/implied/apparent authority to enter the August 1, 2005 assignment to Gill, which reduced the ORRI to 2%. Apparent authority exists where a principal, by words or conduct, leads people with whom the alleged agent deals to believe that the principal has granted the agent authority he or she purports to exercise." Turner Hydraulics, Inc. v. Susquehanna Constr. Corp., 414 Pa. Super. 130, 135-136 (Pa. Super. 1992) (citations omitted) "The third party is entitled to believe the agent has the

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in not including the ORRI assignment in the oil and gas lease. The record shows that Mase maintained that he had authority to execute the documents and never conceded that he did not have authority.

authority he purports to exercise only where a person of ordinary prudence, diligence and discretion would so believe." Id. "Thus, a third party can rely on the apparent authority of an agent when this is a reasonable interpretation of the manifestations of the principal." Id.

In the present case, in addition to being executed by the president of Red Run, the ORRI reduction to 2% was negotiated by Red Run's attorney, McNerney Page. The attorneys notified Gill that they represented Red Run. Red Run put Mase in the position as President and for twenty years without oversight and they consulted McNerney Page for legal counsel on an as needed bases for years with Mase as the primary contact. As such, a person of ordinary prudence could rely on the representations from Red Run's counsel, as confirmed by the president of Red Run; the counsel had authority to negotiate the reduction in ORRI.

In light of the above discussion, the Court will not address Gill's claims that Red Run ratified the agreements.[7]

[7] "[A]fter an act of a corporate official who has or is in a position of apparent authority, has or should have become known, failure to promptly disavow or repudiate such action raises a presumption of actual authority or of affirmance and ratification. Rednor, supra, 196 A.2d at 358, *citing*, Montgomery v. Van Ronk, 328 Pa. 508, 195 A. 910; Sud-Rheinische Gesellschaft, M.B.H. v. Rosedale Foundry & Machine Company, 113 Pa. Superior Ct. 187, 172 A. 405; see also Gagnon v. Speback, 383 Pa. 359, 363, 118 A.2d 744; National Bank of Fayette County v. Valentich, 343 Pa. 132, 136, 22 A.2d 724; Mahony v. Boenning, 335 Pa. 210, 214, 6 A.2d 793; RESTATEMENT (2D), AGENCY, § 94.

ORDER

AND NOW, this **18** day of June, 2015, it is ORDERED and DIRECTED that Defendants' request for summary judgment is GRANTED. Defendants, Earth Energy Consultants, LLC. and Bradley R. Gill, are dismissed as party defendants in this matter. This matter remains on the September 2015 Trial Term with respect to the claims against the Mase Estate. The pre-trial conference and argument remain on the schedule for August 4, 2015.

BY THE COURT,

June 18, 2015
Date

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Richard A. Gray, J.

cc: Robert H. Nemeroff, Esq. for Plaintiff
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Jenkintown, PA 19046
Robert Seiferth, Esq. for Defendants Earth Energy Consultants LLC and Bradley R. Gill.
Clifford Rieders, Esq. & Pamela L. Shipman, Esq. for Defendants Sylvia B. Mase and Michael Hughes, Executors of the Mase Estate