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 for Leave to File Amended Pleadings

OPINION AND ORDER

Before the court are the motions for leave to file amended pleadings filed by the Thomas E. Proctor Heirs Trust ("PHT") and the Margaret O.F. Proctor Trust ("MPT") on September 24, 2015, and September 25, 2015, respectively. Argument on the motions was heard November 17, 2015.

In its motion, PHT seeks to amend the Joinder Complaint it filed against Lancaster Exploration and Development Company ("Lancaster") and the Counter-Claim it filed against Southwestern Energy Production Company[1] ("Southwestern") to add an additional count of "Quiet Title". MPT seeks to amend the Counter-Claims it filed against Lancaster and Southwestern, also to add an additional count of "Quiet Title". These pleadings currently consist of claims seeking declaratory relief and related constructive trust claims, based on PHT's and MPT's contentions that a lease and letter agreement entered between PHT[2] and Lancaster Exploration and Development Company ("Lancaster") in 2005 violates the Guaranteed Minimum Royalty Act ("GMRA") and is thus invalid.[3]

Specifically, PHT has already asked the court to "determine the validity of any writing affecting the rights, status or other legal relations of the parties in this lawsuit, including, but not limited to deeds, leases and assignments", and to "enter an order that PHT Lease, as amended, and TEP Jr. Lease, as amended,

---

[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] Whether MPT assigned its interest in the property under lease to PHT remains a matter of contention, the subject of another claim in this litigation.

[3] 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.

violate the Guaranteed Minimum Royalty Act, and therefore are both considered invalid." MPT has already asked for "an Order declaring (i) that the PHT lease, as amended, violates the GMRA and is therefore invalid; (ii) that Lancaster has no right, title, or interest in any property interest held by the MPT; and (iii) that Southwestern has no right, title, or interest in any property interest held by the MPT."

The Quiet Title claim proposed by PHT is "brought to determine any right, lien, title or interest in the land or determine the validity or discharge of any document, obligation or deed affecting any right, lien, title or interest in the land" and PHT contends that a "cloud on PHT's title to the petroleum and natural gas rights of Warrant 1621 exists because Lancaster [and Southwestern] claim[s] to have rights under a lease that is void as a violation of the Pennsylvania Guaranteed Minimum Royalty Act". PHT seeks "an order that PHT is the rightful owner of the petroleum and natural gas rights of Warrant 1621, that Lancaster [and Southwestern] ha[ve] no right in the petroleum and natural gas of Warrant 1621, and compelling Lancaster [and Southwestern] to record in the Lycoming County Recorder of Deeds Office a surrender of lease."

MPT's proposed Quiet Title claim is also brought "to determine any right, lien, title or interest in the land or to determine the validity or discharge of any document, obligation or deed affecting any right, lien, title or interest in land" and MPT also contends that there is a "cloud on the MPT's title to petroleum and natural gas rights in Warrant 1621, because Lancaster and Southwestern claim to have rights under a lease that is void as a violation of the Pennsylvania Guaranteed Minimum Royalty Act". MPT seeks "an order declaring that MPT is the rightful owner of an undivided 6.25% interest in the petroleum and natural gas

rights of Warrant 1621, [and] compelling Lancaster and Southwestern to record in the Lycoming County Recorder of Deeds Office a surrender of lease".

Both PHT and MPT argue that leave to amend is to be granted liberally, unless such amendment violates the law or unfairly prejudices rights of the opposing party, and that since no discovery deadline has been set and "because the facts and issues giving rise to the … declaratory judgment claim are similar to those giving rise to the … proposed quiet title claim", Lancaster and Southwestern will not be prejudiced.

Lancaster and Southwestern contend, first, that the court is without jurisdiction to consider the motions at all, having ordered MPT and PHT to join necessary parties with respect to their declaratory and constructive trust actions, and those parties not yet having been joined. They also argue that amendment is futile, and thus should not be permitted, since the proposed quiet title action is simply a different form of the same claim and adds nothing. MPT and PHT counter that the quiet title claim will allow them to proceed without having to join any other parties.

With respect to this court's jurisdiction, Lancaster and Southwestern contend that "once a court determines that indispensable parties need to be joined, its authority extends only to ordering the missing parties' joinder or dismissing *the claim*", citing Orman v. Mortgage I.T., 118 A.3d 403 (Pa. Super. 2015). The court has emphasized the words "the claim" because although the court agrees that it has no authority at this point to enter any judgment on *the claim*,[4] the matter before the court does not involve *the claim*. That claim, subject to the

[4] The Court in Orman stated that because there was a missing indispensable party to the action before it, the trial court should have dismissed the action without prejudice, "rather than enter any form of judgment". Orman v. Mortgage I.T., 118 A.3d 403, 407 (Pa. Super. 2015).

pending joinder order, is contained in the declaratory judgment and constructive trust counts. The motions to amend address separate, quiet title, counts. The court will not, therefore, decline to entertain the motions to amend.

As far as the futility of amending to include a count which simply puts the issue in a different form, while the court agrees that the proposed quiet title counts are just declaratory judgment actions in sheep's clothing, in light of the liberal view the court is to apply to such requests, and the lack of prejudice,[5] the amendments will be allowed in spite of any perceived futility.

The issue of indispensable parties remains, however.[6] As was stated in ruling on the prior motion to require joinder of necessary parties, 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 impair those rights. City of Philadelphia v. Commonwealth, 838 A.2d 566 (Pa. 2003). In the proposed actions to quiet title, PHT and MPT seek a determination that the lease is invalid under the GMRA and ask the court to order Lancaster and Southwestern to file a surrender of that lease. Lancaster's assignees clearly have rights (they have a direct interest in the lease) that would be impaired (actually, eliminated) by such a surrender.

The situation is similar to that presented in Hartley v. Langkamp and Elder, 90 A. 402 (Pa. 1914): the plaintiff sought from the defendants the re-conveyance of property which, in the meantime the defendants had conveyed to another, that being Clara Elder, who was not named as a defendant.[7] The trial court granted the plaintiff's request and ordered Langkamp to re-convey the property to the

[5] Neither Lancaster nor Southwestern have argued that they would be prejudiced by the amendments.
[6] The court may raise this issue *sua sponte*. Pa.R.C.P. 1032.

plaintiff, directing the plaintiff to pay Langkamp $7,000. The Pennsylvania Supreme Court reversed the trial court's judgment, holding that Clara Elder was an indispensable party for several reasons, the most applicable here of which was that

> [i]f Langkamp obey the decree entered here, and execute and deliver to the plaintiff a deed for the lot of ground, it does not place the title in the plaintiff, because Langkamp by a prior deed has conveyed the title to another party. Again, the decree is unjust to Langkamp, in that if he convey, Mrs. Elder not being a party to the proceedings, he would be responsible to her for any damages or injury resulting by reason of the re-conveyance to the plaintiff. For this reason, it is said in 16 Cyc. 188, "One must be joined who otherwise, not being bound by the decree, might assert a demand against the principal defendant which would be inequitable after the latter's performance of a decree in favor of the plaintiff."

Id. at 403.[8] The Court also found Mrs. Elder to be indispensable because the decree requiring the plaintiff to pay the $7,000 to Langkamp and not to Mrs. Elder (who, it was found, had paid the purchase money for the property) would be "inequitable and without good conscience". Id. The Court quoted 16 Cyc. 189, stating,

> A party is indispensable when he has such an interest that a final decree cannot be made without affecting it, or leaving the controversy in such a condition that the final determination may be wholly inconsistent with equity and good conscience.

Id. at 403-404. In the instant case, considering the money which has changed hands and the investments made, the court believes that by not joining the

---

[7] The Elder named was Clara's husband, John. Plaintiff had deeded the property to Langkamp and John Elder and they then deeded the property to Clara Elder. John did not retain title after the second conveyance.

assignees of Lancaster, the controversy would indeed be left in such a condition that the final determination may be "wholly inconsistent with equity and good conscience."

The court also wishes to acknowledge the case of Hugoton Energy Corp. v. Plains Resources, Inc., 1992 U.S. Dist. LEXIS 3380 (Kansas 1992), where the court held that absent leaseholders were necessary parties in a dispute over the validity of the leases. While not binding on this court, the decision deserves mention as it applies Federal Rule of Civil Procedure 19, which appears to be a codification of the principle noted above. That rule requires that a party shall be joined, if feasible, when: "(1) in his absence, complete relief cannot be accorded among those already parties; or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action may (i) as a practical matter impair or impede his ability to protect that interest or (ii) *leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.*" Fed.R.Civ.P. 19(a) (emphasis supplied). The Court held that in the case before it, without the leaseholders "any judgment rendered in this action would not be adequate. Such a judgment would be incomplete and unfair as it exposes the already parties to multiple and inconsistent obligations.[9]" The same can be said for the "already parties" here.

As noted above, PHT and MPT argue that after the amendment, they will not need to join additional parties, continuing to assert that Bastian v. Sullivan,

---

[8] This principle was also relied upon in holding necessary as parties the descendants of parties, who might claim title in the future once they become those parties' heirs. *See* Hoffeditz v. Bosserman, 128 A. 509 (Pa. 1925).
[9] See Arizona Lead Mines v. Sullivan Mining Co., 3 F.R.D. 135, 137 (N.D. Idaho 1943) ("all persons materially interested, either legally or beneficially, in the subject-matter of the suit, are to be made parties to it . . . so that there may be a complete decree").

117 A.3d 338 (Pa. Super. 2015), dictates that result.[10] The court does not agree. As discussed in this court's prior analysis of the case, Bastian involved competing sets of heirs who 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 to the mineral rights and the lessees had "no direct essential interest with regard to title". The Court acknowledged that "there is no question that both [the lessees] have a 'right or interest related to the claim'", Id. at 343, but decided that that right or interest was not essential to the merits as the merits focused on *title* to the mineral rights, and the lessees had no claim to that title: "the parties that have positions essential to the case are [the two lessors]." Id. at 344. Here, although it may be named an action to quiet "title", as there is no competing claim to title[11] the action focuses not on title, but on the lessees' *right or interest in the land*, by seeking a determination of the validity of the document creating that right or interest. Lancaster's assignees have a direct essential interest with regard to that issue and are thus indispensable, even under Bastian.

ORDER

AND NOW, this 24th day of November 2015, for the foregoing reasons, the motions for leave to amend pleadings are hereby GRANTED, with the proviso that the assignees of Lancaster, as defined in this court's Order of October 21,

[10] PHT and MPT made this argument when opposing Lancaster's and Southwestern's previous motions to require joinder of necessary parties to their declaratory judgment and constructive trust claims.

[11] The court acknowledges that MPT has cross-claimed against PHT for rescission of a 2009 confirmatory deed, based on MPT's assertion that MPT did *not* previously assign its interest in the mineral rights to PHT, as was assumed by both parties in recording the deed. This claim is not part of the instant action to quiet title, however.

2015, shall be named as parties in any such amendments and served with said pleadings.

As the instant Order disposes of the motions for leave to amend, the stay imposed in the Order of October 21, 2015, is hereby dissolved. Accordingly, the claims set forth in footnote 3, above, will be dismissed unless within sixty (60) days of this date, all necessary parties have been properly joined.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Jeffrey Malak, Esq., Chariton, Schwager & Malak
138 South Main Street, Wilkes-Barre, PA 18703
Daniel Glassmire, Esq., Glassmire & Shaffer Law Offices, P.C.
5 East Third Street, Coudersport, PA 16915
Daniel Sponseller, Esq., Law Office of Daniel J. Sponseller
409 Broad Street, Suite 200, Sewickley, PA 15143
J. Michael Wiley, Esq.
Charles Greevy, III, Esq.
Katie Oliver, Esq., McQuaide Blasko, Inc.
811 University Drive, State College, PA 16801
Marc Drier, Esq.
Tucker Hull, Esq., Pepper Hamilton LLP
100 Market St., Suite 200, Harrisburg, PA 17108
Ronald Hicks, Jr., Meyer, Unkovic & Scott, LLP
535 Smithfield St., Suite 1300, Pittsburgh, PA 15222-2315
Courtney Schorr, Esq., McGuire Woods, LLP
625 Liberty Avenue, Suite 2300, Pittsburgh, PA 15222
Gary Weber, Esq. (Lycoming Reporter)
Hon. Dudley Anderson