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 E&P COMPANY, 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, LANCASTER EXPLORATION & DEVELOPMENT CO., LLC, SEASPIN PTY LTD, Trustee of the Aphrodite Trust, ATLANTIC HYDROCARBON, LLC, BG PRODUCTION COMPANY (PA), LLC, CRAIG IAN BURTON, Trustee of the C.I. Burton Family Trust, CHIEF EXPLORATION & DEVELOPMENT, LLC, CHIEF OIL & GAS, LLC, DENPEER ENERGY, LP, ECORP RESOURCE PARTNERS I, LP,	:	

EXCO HOLDING (PA), INC., EXCO PRODUCTION :
COMPANY (PA), LLC, EXCO RESOURCES (PA), LLC, :
GIANA RESOURCES, LLC, JAMESTOWN RESOURCES, :
LLC, THE KEETON GROUP, LLC, LARCHMONT :
RESOURCES, LLC, MKR HOLDINGS, LLC, QUEST :
EASTERN RESOURCE, LLC (f/k/a Petroedge Resources (WV), :
LLC, ROBERT QUILLEN and VANESSA MORGAN, Trustees :
of the Quillan-Morgan Trust Under Agreement dated October 2, :
2008, RADLER 2000 LIMITED PARTNERSHIP, REACH :
PETROLEUM, LLC, EDWARD ROBBS and BELINDA ROBBS,: :
Trustees of the Robbs Family Trust, GEORGE SCHNERCK, :
Trustee of the Schnerck Revocable Trust, SOURCE OIL & GAS, :
LLC, TEXAS EPARTNERS X, LP, VIRGINIA ENERGY :
CONSULTANTS, LLC and XYR OIL & GAS, LLC, ;
Counterclaim Defendants :

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LANCASTER EXPLORATION & DEVELOPMENT CO., LLC, :
Counterclaim Plaintiff :
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vs. :
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TRUSTEES OF THE THOMAS E. PROCTOR HEIRS TRUST :
and TRUSTEES OF THE MARGARET O.F. PROCTOR TRUST,: :
Counterclaim Defendants :

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TRUSTEES OF THE MARGARET O.F. PROCTOR TRUST, :
Counterclaim Plaintiff :
vs. :
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SOUTHWESTERN ENERGY PRODUCTION COMPANY, :
LANCASTER EXPLORATION & DEVELOPMENT CO., LLC, :
SEASPIN PTY LTD, Trustee of the Aphrodite Trust, :
ATLANTIC HYDROCARBON, LLC, BG PRODUCTION :
COMPANY (PA), LLC, CRAIG IAN BURTON, Trustee of the :
C.I. Burton Family Trust, CHIEF EXPLORATION & DEVEL- :
OPMENT, LLC, CHIEF OIL & GAS, LLC, DENPEER :
ENERGY, LP, ECORP RESOURCE PARTNERS I, LP, :
EXCO HOLDING (PA), INC., EXCO PRODUCTION :
COMPANY (PA), LLC, EXCO RESOURCES (PA), LLC, :
GIANA RESOURCES, LLC, JAMESTOWN RESOURCES, :
LLC, THE KEETON GROUP, LLC, LARCHMONT :
RESOURCES, LLC, MKR HOLDINGS, LLC, QUEST :
EASTERN RESOURCE, LLC (f/k/a Petroedge Resources (WV), :
LLC, ROBERT QUILLEN and VANESSA MORGAN, Trustees :

of the Quillan-Morgan Trust Under Agreement dated October 2, 2008, RADLER 2000 LIMITED PARTNERSHIP, REACH PETROLEUM, LLC, EDWARD ROBBS and BELINDA ROBBS, Trustees of the Robbs Family Trust, GEORGE SCHNERCK, Trustee of the Schnerck Revocable Trust, SOURCE OIL & GAS, LLC, TEXAS EPARTNERS X, LP, VIRGINIA ENERGY CONSULTANTS, LLC and XYR OIL & GAS, LLC, Counterclaim Defendants	:	
TRUSTEES OF THE MARGARET O.F. PROCTOR TRUST, Crossclaim Plaintiff vs. FOREST RESOURCES, LLC, KOCJANCIC FAMILY LIMITED PARTNERSHIP, HAROLD H. WOLFINGER, JR., ULTRA RESOURCES, INC., JACKSON CORNERS SPORTSMEN INC., NORTHERN FORESTS II, INC., INTERNATIONAL DEVELOPMENT CORPORATION, and TRUSTEES OF THE THOMAS E. PROCTOR HEIRS TRUST, Cross-claim Defendants	:	
ANADARKO E&P COMPANY, LP a/k/a ANADARKO PETROLEUM CORPORATION, Crossclaim Plaintiff vs. FOREST RESOURCES, LLC, KOCJANCIC FAMILY LIMITED PARTNERSHIP, HAROLD H. WOLFINGER, JR., ULTRA RESOURCES, INC., JACKSON CORNERS SPORTSMEN INC., NORTHERN FORESTS II, INC., INTERNATIONAL DEVELOPMENT CORPORATION, and TRUSTEES OF THE THOMAS E. PROCTOR HEIRS TRUST, Cross-claim Defendants	:	Preliminary Objections

OPINION AND ORDER

Before the court are the preliminary objections filed by Lancaster Exploration & Development Company, LLC ("Lancaster") and the "Chief

Defendants"[1] ("Chief") on April 4, 2016, and April 1, 2016, respectively. Lancaster objects to claims made in Margaret O.F. Proctor Trust's (MPT) Third Amended Counterclaim, Lancaster and Chief object to claims made in Thomas E. Proctor Heirs Trust's (PHT) Second Amended Joinder Complaint, and Chief objects to claims made in the Amended Joinder Complaint filed by MPT. Argument on the objections was heard July 11, 2016.

The claims objected to are essentially two: the Trusts assert that (1) a lease and letter agreement entered between PHT and Lancaster in 2005 violates the Guaranteed Minimum Royalty Act ("GMRA") and is thus invalid, and (2) certain retained acreage declarations are invalid. Various objections to the first claim are raised by both Lancaster and Chief, but because the court finds the statute of limitations prevents successful joinder, only that issue will be addressed. With respect to the second claim, that certain retained acreage declarations are invalid, it appears that issues of fact prevent dismissal of the claims at this time.

Lease invalidity claims are barred by the statute of limitations

In this court's Order of October 8, 2015, as clarified in the Order of October 21, 2015, PHT and MPT were directed to join the assignees of Lancaster as indispensable parties. This court's power to order such joinder is limited, however, by the principle that a party defendant cannot be joined after the statute of limitations has run. Paden v. Baker Concrete Construction, 648 A.2d 1227 (Pa. Super. 1994), *reversed on other grounds*, 658 A.2d 341 (Pa. 1995). Chief

[1] The "Chief Defendants" comprise Chief Oil & Gas, LLC, Chief Exploration and Development, LLC, Radler 2000 L.P., Tug Hill Marcellus, LLC (as a successor to MKR Holdings, L.L.C.), eCORP Resource Partners I, LP and Texas ePartners X, LP..

thus objects to being joined, arguing that the statute has in fact run, and Lancaster seeks to dismiss the claim on the basis that once the claim is dismissed as against Chief, without an indispensable party the matter must be dismissed pursuant to Pa.R.C.P. 1032(b).

As this court stated in the Opinion denying the motions for judgment on the pleadings filed by PHT and MPT, "[a]s a general rule, it is the duty of the party asserting a cause of action to use all reasonable diligence to properly inform himself of the facts and circumstances upon which the right of recovery is based and to initiate suit within the prescribed period. Therefore, the statute of limitations begins to run as soon as a right to institute and maintain suit arises." Crouse v. Cyclops Industries, 745 A.2d 606, 611 (Pa. 2000)(citation omitted). Inasmuch as the GMRA was in effect at the time of the 2005 lease and letter agreement, a claim of invalidity under the statute arose at the time of the agreement in 2005. As the four-year catchall statute of limitations applies to declaratory judgment actions regarding the parties' rights and duties under a contract, see Selective Way Insurance Company v. Hospitality Group Services, Inc., 119 A.3d 1035 (Pa. Super. 2015), the claim should have been brought in 2009.

PHT and MPT argue that the statute of limitations did not begin to run until there was "an actual controversy indicating imminent and inevitable litigation between the parties", citing Wagner v. Apollo Gas Company, 582 A.2d 364 (Pa. Super. 1990), and assert that such actual controversy arose here when "Lancaster was informed" (presumably by PHT or MPT) "that the leases violated the

minimum royalty act", in May 2011.[2] PHT and MPT would thus have the court find that until an issue is raised by a party, even though it could be raised but is not, the statute is tolled. This is surely not consistent with legislative intent to prevent stale claims,[3] and a closer look at Wagner reveals that it does not stand for such a proposition. There, the parties entered a contract for the sale of natural gas in 1970. No gas was sold under the contract since 1975 and the meter was removed in 1981. A declaratory judgment action was filed in 1987 seeking a declaration respecting the continued validity of the contract, based on negotiations between the parties to resume the sale of gas and the difference of opinion as to whether the old contract remained in effect. The Court rejected the argument that prior alleged breaches in 1975 or 1981 started the statute running, focusing instead on the "present controversy" and finding that the action was not time-barred. While the Court appears to suggest that the parties' dispute started the statute running, the negotiations for a renewed relationship was the Court's actual focus: the Court noted that although there may have been breaches in 1975 or 1981, "there has been no indication that a controversy arose as to the continued validity of the contract" at the time of those alleged breaches, and that "some time before March 5, 1985, the parties began to negotiate the possibility of resuming the sale of gas produced from that lease. Appellee wanted those sales to be governed by the terms of the 1970 contract while appellants wanted that contract released or its terms renegotiated." Id. at 366. Indeed, a finding of "*continued* validity" requires a finding that *at a certain time*, the contract governs. That

[2] See Response of Thomas E. Proctor Heirs Trust to Preliminary Objections of Lancaster Exploration & Development Co., LLC to Second Amended Joinder Complaint, at p. 20.

[3] *See* dissenting opinion of Judge Ford Elliott in Selective Way Insurance Company v. Hospitality Group Services, Inc., 119 A.3d 1035, 1052 (Pa. Super. 2015) ("To hold as Selective advocates that the trigger for the statute is

certain time in Wagner just so happened to be the time the parties began negotiations which revealed their difference of opinion.

In the instant case, however, a finding of the invalidity of the lease (as asserted by PHT and MPT) requires only an interpretation of the statute and the lease; the assertion that the lease is void necessarily implies invalidity *ab initio*, that is, from the lease's formation. The statute thus began to run as of the date of the letter agreement in 2005. It was at that time that PHT and MPT had "a sufficient factual basis to present the averments in [their] complaint[s] for declaratory judgment". *See* Selective Way, *supra*, at 1051. Their claims, raised in 2011 or thereafter, are thus time-barred.[4]

PHT and MPT argue nevertheless that their claims survive as quiet title actions, even if the declaratory judgment actions are time-barred. This argument is without merit. Under Pennsylvania law, where the alleged causes of action are "inextricably intertwined," all claims flowing from a defendant's conduct may be subsumed under a single limitation period. Carpenter v. Dizio, 506 F.Supp. 1117, 1121 (E.D. Pa. 1981), *quoting* Gagliardi v. Lynn, 285 A.2d 109, 112 (Pa. 1971). Further, the period to be applied "is based solely upon the dominant or pervading cause of action in the group of inextricably intertwined claims". Id. In the instant case, the dominant or pervading cause of action is the request to declare the lease and letter agreement invalid as violative of the GMRA, as the asserted cloud on title is the allegedly invalid lease. The four-year statute of

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when the carrier denies coverage to the insured would in effect allow the limitations period to begin when the insurer says it should begin thereby thwarting legislative intent.").

[4] The court notes MPT claims to not be a party to the lease and argues that the statute of limitations should not begin to run against MPT until MPT was joined in the lawsuit since it was at that time that MPT first became aware that the lease contained the allegedly offending provision. MPT received payments under the lease, however, and acted as though they were part of PHT and a party to the lease, until making the rescission claim in this suit.

limitations thus applies to even the quiet title actions, and the Chief Defendants' objection will be sustained and the lease-invalidity claims will be dismissed as to those parties, whether couched as declaratory judgment actions or quiet title actions.

Finally, since indispensable parties are now missing, the court lacks subject matter jurisdiction over the lease-invalidity claims,[5] and those claims will be dismissed in their entirety. See Pa.R.C.P. 1032(b)("Whenever it appears … that there has been a failure to join an indispensable party, the court shall order … that the indispensable party be joined, but if that is not possible, then it shall dismiss the action.").

Issues of fact prevent dismissal of the retained acreage invalidity claims

In counts 3, 4, 5, 6, 7 and 8 of the Second Amended Joinder Complaint PHT challenges the validity of declarations of retained acreage made by Lancaster, Chief and MKR, respectively. Likewise, in counts 3, 4, 5 and 6 of the Amended Joinder Complaint, and in counts 4 and 5 of the Third Amended Counterclaim, MPT challenges the validity of declarations of retained acreage made by Chief, MKR and Lancaster, respectively. Defendants argue in their preliminary objections[6] that these claims fail as a matter of law, based on their assertions that the pooling clause in the lease is to be read in conjunction with the retained acreage clause, that certain wells thus support the retention of the acreage

[5] *See* Vale Chemical Company v. Hartford Accident & Indemnity Company, 516 A.2d 684 (Pa. 1986).
[6] The specific objections are made by Chief, but are adopted by Lancaster.

claimed even though not located on property subject to the lease, and that those wells meet the lease's requirement of being producing, drilled or reworked.[7]

Apart from disputing the application of the pooling clause in interpreting the retained acreage clause, which very well could present only a legal issue,[8] PHT and MPT also raise several issues of fact in these claims, including whether certain property was properly pooled, whether certain assignments expired prior to the drilling of supporting wells, whether the supporting wells were "producing" as required by the lease, and whether the retained acreage is sufficiently related geographically or geologically to other acreage.[9] Dismissal of the claims in light of these issues would be inappropriate. *See* Mellon Bank v. Fabinyi, 650 A.2d 895 (Pa. Super. 1994)(any doubt raised by a demurrer to the complaint should be resolved by the overruling of the demurrer).

ORDER

AND NOW, this day of August 2016, for the foregoing reasons, the preliminary objections filed by Lancaster Exploration & Development Company, LLC and the "Chief Defendants" on April 4, 2016, and April 1, 2016, respectively, are overruled in part and sustained in part. Counts 1 and 2 of Thomas E. Proctor Heirs Trust's Second Amended Joinder Complaint, Counts 1 and 2 of Margaret O.F. Proctor Trust's Amended Joinder Complaint, and Counts 1, 2 and 3 of Margaret O.F. Proctor Trust's Third Amended Counterclaim are

[7] Also put at issue by the preliminary objections are the claims against MKR for an accounting, which necessarily depend on the success of the declaration invalidity claims. Because of that dependence, the accounting claims are not discussed separately.
[8] On the other hand, a factual issue may arise if the court were to conclude that the lease is ambiguous on that point and evidence of the parties' intentions becomes relevant.
[9] By listing these issues, the court is not limiting the issues presented, but merely providing examples.

hereby DISMISSED.

BY THE COURT,

Dudley N. Anderson, Judge

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