

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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| PENNLCO, LTD., | : NO. 12 – 02,326 |
| Plaintiff | : |
| vs. | : |
| | : CIVIL ACTION - LAW |
| INTERNATIONAL DEVELOPMENT | : |
| CORPORATION, | : Petition for Reinstatement |
| Defendant | : of Appellate Rights |

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| PENNLCO, LTD., | : NO. 12 – 02,428 |
| Plaintiff | : |
| vs. | : |
| | : CIVIL ACTION - LAW |
| SOUTHWESTERN ENERGY PRODUCTION | : |
| COMPANY, | : Petition for Reinstatement |
| Defendant | : of Appellate Rights |

OPINION AND ORDER

Before the court is the petition for reinstatement of appellate rights filed by Plaintiff on September 2, 2016. Argument was heard October 14, 2016.

Plaintiff brought the instant actions based on a transfer of certain mineral rights from its former tenant in common (with respect to those rights) to Defendant IDC, and IDC’s lease of those rights to Defendant Southwestern, claiming that transfer of the rights was subject to a right of first refusal and since the transfer took place without notice to Plaintiff and the opportunity for Plaintiff to purchase the rights, such violated the right of first refusal. Plaintiff sought specific performance of the right of first refusal, imposition of a constructive trust on the mineral rights, an accounting of any profits resulting from ownership of the rights since the transfer, damages for breach of the right of first refusal, a declaratory judgment that the lease between IDC and Southwestern is void, and damages for what it deemed to be a cloud on its title.

Upon cross-motions for summary judgment, the court found that Plaintiff's claim was untimely as beyond the statute of limitations and entered judgment in favor of both defendants and against Plaintiff. Plaintiff appealed but inasmuch as both defendants had filed counterclaims and those counterclaims remained pending,¹ that appeal was quashed.

IDC then withdrew its counterclaim and praeciped for judgment in its favor, which was entered July 25, 2014. For reasons unknown to the court, Southwestern did not withdraw its counterclaim at that time.

Upon request of counsel, a conference was scheduled for August 13, 2014. At that conference, counsel discussed the need for a final order from which Plaintiff might take an appeal and agreed that they would prepare such an order for the court's signature. Apparently an extended email conversation among counsel then took place, and both the above-referenced final order and a separate stipulation (about which the court has no knowledge) were discussed. A stipulated final order was presented to the court and signed on November 17, 2014, and Plaintiff then took a second appeal. On October 3, 2014, however, Southwestern had withdrawn its counterclaim, and the Superior Court held that the thirty day deadline for appeal began on that date. The second appeal was also quashed.

In the instant petition, Plaintiff seizes on the opinion of Judge Bowes who, in a dissenting opinion in this matter, states that rather than quashing the appeal, she would remand for an order reinstating Plaintiff's appellate rights. By entering the stipulated final order, says Judge Bowes, the court did not dispel counsel's mistaken notion that such an order was necessary to perfect an appeal, and thus

¹ The counterclaims had not been the subject of the summary judgment motions.

there was a “breakdown in the court’s operations through a default of its officers, or where an administrative body or court acts ‘negligently, improperly or in a misleading way.’” With all due respect to Judge Bowes, this court does not agree that there was such a breakdown, nor does it believe reinstatement is proper.

At the time of the conference on August 13, 2014, Southwestern had yet to withdraw its counterclaim. The court believed the purpose of the conference was for counsel to arrive at a stipulation which focused on that withdrawal; that counsel had some arrangement they wanted to make with each other before the counterclaim would be withdrawn.² Thereafter, the court was not involved in the discussion. The court did not indicate its own belief that a final order was necessary but merely agreed to enter one if all counsel wished for it to do so. The court did not become aware that Southwestern’s counterclaim had been withdrawn on October 3, 2014 until the stipulated order was presented for signature, and even then, the date of the withdrawal was not indicated; the court had no reason to believe it was not being withdrawn at the same time as the stipulated order was being entered.

In any event, the Superior Court has, by not adopting the position espoused by Judge Bowes, already communicated its belief that reinstatement is not called for in this instance. Although the court is sympathetic to Plaintiff’s position, it cannot be said that there has been a breakdown in court’s operations such that reinstatement of Plaintiff’s appellate rights is justified.

² This belief seems to be borne out by reference to some other stipulation in the email chain. See Exhibit B, attached to the petition for reinstatement.

ORDER

AND NOW, this 18th day of October 2016, for the foregoing reasons, Plaintiff's petition for reinstatement of appellate rights is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

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Hon. Dudley Anderson