IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SOUTHWESTERN ENERGY PRODUCTION COMPANY, Plaintiff	:	NO. 12 - 00,563
	:	CIVIL ACTION - LAW
vs.	:	
ANADARKO E&P ONSHORE LLC, FOREST RESOURCES, LLC, KOCJANCIC FAMILY LIMITED PARTNERSHIP, HAROLD H. WOLFINGER, JR., ULTRA RESOURCES, INC., NORTHERN FORESTS, II, INC., HARVEY D. HINMAN, II, MARTHA HINMAN VAUGHN, HENRY LELAND GETZ, VIRGINIA HINMAN CUMMINGS, ELIZABETH C. DAVIDGE, JAMES M. DAVIDGE, LINDA PALMER DAVIDGE, LOUISE: DAVIDGE RAIMONDI, ADRIENNE MORPHY LADD, TIMOTHY ALAN MORPHY, MATTHEW MORPHY, CHRISTOPHER EVANS MORPHY, HARRY W. COLMERY, JR., KATHERINE EVANS COLMERY, SARAH ELIZABETH COLMERY, SCOTT GIFFORD COLMERY, SAMUEL ALAN MORPHY, MARK LOUIS MORPHY, MARY LOUISE WATERS, SUMNER WATERS, JR., JEANNE PECK, ALAN WEBB, LESLIE BARRETT, WILLIAM HEMENWAY, JOHN L. HEMENWAY, Each Individually, Generally and d/b/a DAVIDGE & CO., and all heirs and/or assigns, both known and unknown, of SAMUEL P. DAVIDGE, SALLIE M. DAVIDGE, SHERWOOD B. DAVIDGE, M. ELLA DAVIDGE, ROSALIA DAVIDGE, JOHN B. DAVIDGE, CHARLES S. HORTON, AND STELLA M. HORTON, AND SAMUEL DAVIDGE, SHERWOOD DAVIDGE, JAMES DAVIDGE, JOHN B. DAVIDGE AND CHARLES HORTON, individually, generally and d/b/a DAVIDGE & CO., their successors and/or assigns and/or anyone claiming by, through or under them and/or any of them, Defendants as to all counts	:	
INTERNATIONAL DEVELOPMENT CORPORATION Defendant as to Declaratory Judgment only	:	Motion for Summary Judgment

OPINION AND ORDER

Before the court is Plaintiff's motion for summary judgment against Cynthia Stanton McKenney and Mountain Development Group, Inc. (hereinafter

"McKenney", claiming through Charles Horton), filed July 28, 2014. Argument was heard July 24, 2017.[1]

Plaintiff seeks to quiet title to subsurface rights in property known as Warrant 1620 located in Cogan House and Pine townships. Plaintiff claims an interest in those rights by virtue of a lease from International Development Corporation, which claims an interest in those rights by virtue of a chain of title which extends back to Central Pennsylvania Lumber Company's reservation of those rights when transferring the surface estate in 1923. McKenney claims that the subsurface rights never passed to Central Pennsylvania Lumber Company because her predecessor in title reserved those rights in a deed of the surface to Elk Tanning Company in 1893.[2] Plaintiff acknowledges that reservation of rights but contends, however, that a tax sale in 1906 divested McKenney's predecessor in title of the subsurface rights.

In the instant motion for summary judgment, Plaintiff argues that the court can enter judgment as a matter of law based on the chain of title and the undisputed facts surrounding the 1906 tax sale. McKenney argues that the facts show that the tax sale did not divest her predecessor of the subsurface rights but, at the very least, that a dispute of fact prevents entry of summary judgment.[3]

Where unseated land is sold for taxes, the title of the real owner, whatever it may be, passes to the purchaser. Collins v. Barley, 7 Pa. 67 (1847). Where the subsurface rights have been severed from the surface, but there has been no

[1] Because this matter was consolidated with a related matter in 88 – 02,356 and was held in abeyance pending resolution of that related matter, argument on the motion was delayed pending that resolution.
[2] Elk Tanning Company deeded the property to Central Pennsylvania Lumber Company in 1903.
[3] This argument is based on facts alleged in McKenney's Amended Answer to Plaintiff's motion for summary judgment which McKenney seeks to file of record in her Motion to Amend Answer, filed June 30, 2017. Plaintiff opposes that motion but in light of the court's disposition of the motion for summary judgment, the court will grant the motion to amend.

separate assessment of the subsurface rights, a sale for unpaid taxes on the surface vests title to both surface and subsurface rights in the purchaser, thereby divesting the prior owner of his interest in the subsurface rights. Herder Spring Hunting Club v. Keller, 143 A.3d 358 (Pa. 2016). This "title wash" concept is based on the Court's holding that when subsurface rights are severed, that severance must be reported to the taxing authorities and if it is not, the property is taxed in its entirety. Id.

McKenney contends the severance in this matter *was* reported to the taxing authorities but in support of that contention offers only the following: (1) the severance is shown in a deed dated December 7, 1893, which conveys thirteen parcels to Elk Tanning Company but reserves subsurface rights in all thirteen, including Warrants 1620, 1632 and 1636; and (2) the subsurface rights in Warrants 1632 and 1636 were sold at a tax sale of those subsurface rights and transferred by deed dated June 9, 1902 to G.W. Childs. McKenney argues that since the severance of rights in Warrants 1632 and 1636 were obviously reported, and the severance of rights in Warrant 1620 occurred in the same deed as that in Warrants 1632 and 1636, the severance in Warrant 1620 must have also been reported. This argument is so speculative that the court finds it unnecessary to consider it further.

Moreover, Plaintiff is entitled to a presumption that "all actions, such as recording and assessing severed rights, that were required to be taken were taken." Herder Spring Hunting Club v. Keller, 93 A.3d 465, 473 (Pa. Super. 2014). That is, if the severance had been reported, it would have been recorded and assessed. According to Herder Spring, "failing any *affirmative proof* to the

contrary", the court may conclude the severance was not reported. Id. (emphasis added).

In any event, "if [McKenney's predecessors] disputed the County Commissioners' failure to assess their subsurface estate separately from the surface estate, they should have contested the assessment and tax sale within the initial two-year redemption period". Herder Spring Hunting Club v. Keller, 143 A.3d 358, 374 (Pa. 2016). Since they failed to do so, McKenney may not now challenge the title which passed at that sale.

Therefore, as Plaintiff has shown that any interest of McKenney's predecessor was extinguished in the 1906 tax sale and, further, that the records support their claim, Plaintiff is entitled to judgment as a matter of law.

ORDER

AND NOW, this day of July 2017, for the foregoing reasons, Plaintiff's motion for summary judgment against Cynthia Stanton McKenney and Mountain Development Group, Inc. is hereby GRANTED.

BY THE COURT,

Dudley N. Anderson, Judge

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