

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SOUTHWESTERN ENERGY PRODUCTION COMPANY, : NO. 11 - 02,308  
Plaintiff :  
: 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 : Preliminary Objections

## **OPINION AND ORDER**

Before the court are preliminary objections filed by Lancaster Exploration and Development Company (“Lancaster”) and Southwestern Energy Production Company (“Southwestern”) to Margaret O.F. Proctor Trust’s (“MPT’s”) Amended Counterclaim. Argument was heard December 14, 2012.

In its Complaint, Southwestern claims ownership of the gas, oil and mineral rights under two warrants in Cogan House Township through a purchase and assignment of such and has brought the instant action to quiet title against those parties who claim an adverse interest through a 1988 Action to Quiet Title, and an action for declaratory judgment against those same parties as well as two other parties, in Southwestern’s chain of title, who claim an interest through deeds and/or reservation of rights in spite of the 1988 action. Defendant Proctor Heirs Trust (“PHT”), one of the declaratory judgment defendants, filed a Counterclaim (amended twice thereafter) against Southwestern and, by way of a Joinder Complaint, against Lancaster. Lancaster then filed an Additional Defendant Complaint against MPT which filed a Counterclaim (amended once thereafter) against Lancaster and Southwestern and a Cross-claim PHT and seven other Defendants. The instant preliminary objections are to this Counterclaim.

In its counterclaim against Lancaster and Southwestern, MPT seeks a declaration that the lease and/or letter agreement between Lancaster and PHT is invalid as violative of the Guaranteed Minimum Royalty Act, and the imposition of a constructive trust on royalties due under that lease. In their preliminary objections, both Lancaster and Southwestern seek dismissal of these two claims, arguing that this court’s prior ruling that the lease in question does *not* violate the

Guaranteed Minimum Royalty Act is the “law of the case”, and further that MPT is not a party to the lease and thus cannot seek to declare it invalid, among other things. Lancaster also seeks dismissal of Count 1 of MPT’s Cross-Claim against PHT, an action for rescission of a Confirmatory Deed executed by those two parties in 2009, arguing that rescission can be granted only where it will not impair the rights of third parties and that its rights under the lease with PHT would be impaired by such a rescission.

With respect to MPT’s counterclaim against Lancaster and Southwestern, for the reasons explained in this court’s Opinion and Order of May 24, 2012, which dismissed the Second Amended Counterclaim filed by PHT against Southwestern, as well as the Opinion and Order of December 18, 2012, which found in favor of Lancaster and against PHT on Count 1 of PHT’s Joinder Complaint against Lancaster, both of which claims sought a declaration that the lease and/or letter agreement violated the Guaranteed Minimum Royalty Act, the court will sustain the objections.

With respect to MPT’s Cross-Claim against PHT, as such has not been brought against Lancaster, and indeed could not be brought against Lancaster as it seeks the rescission of a document executed by only PHT and MPT, Lancaster’s objection will be overruled. Lancaster may not raise an objection to a claim against another party. The court understands Lancaster’s argument that its interests are affected by the outcome of the dispute between PHT and MPT, however, and its ruling will therefore be entered without prejudice to Lancaster’s right to seek to intervene in MPT’s cross-claim against PHT.<sup>1</sup>

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<sup>1</sup> PHT filed an Answer to the Cross-claim, with New Matter, to which New Matter MPT filed a reply.

**ORDER**

AND NOW, this 18<sup>th</sup> day of December 2012, for the foregoing reasons, the preliminary objections filed by Southwestern and Lancaster to MPT's Amended Counterclaim are hereby sustained and MPT's Amended Counterclaim against Southwestern and Lancaster is hereby DISMISSED. The objections filed by Lancaster to MPT's Cross-Claim against PHT are overruled, without prejudice to Lancaster's right to seek to intervene in that branch of the litigation.

BY THE COURT,

Dudley N. Anderson, Judge

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