

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SOUTHWESTERN ENERGY PRODUCTION COMPANY, : NO. 11 - 2308
Plaintiff :
vs. : CIVIL
: ACTION - LAW

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 : *Motion for*
HEIRS TRUST DATED OCTOBER 28, 1980, : *Summary*
Defendants as to Declaratory Judgment only : *Judgment*

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 & 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 :

LANCASTER EXPLORATION & DEVELOPMENT CO., LLC, :
Counterclaim Plaintiff :

vs. :

TRUSTEES OF THE THOMAS E. PROCTOR HEIRS TRUST :
and TRUSTEES OF THE MARGARET O.F. PROCTOR TRUST, :
Counterclaim Defendants :

TRUSTEES OF THE MARGARET O.F. PROCTOR 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 & 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 :

OPINION AND ORDER

AND NOW, following argument held June 2, 2020 on Plaintiff Southwestern Energy Production Company's ("SPC") *Motion for Summary Judgment Regarding Location and Ownership of Oil and Gas of Warrant 1621, including Jacob E. Smith Warrant* ("Motion for Summary Judgment"), seeking summary judgment against Defendant International Development Corporation ("IDC"), the Court hereby issues the following ORDER.

Background

On August 10, 1792, the Commonwealth of Pennsylvania issued a warrant to Josiah Hewes and Meyers Fisher for 990.0 acres with an allowance of 6% known as Warrant 1621.^{1,2} Approximately a year after the Commonwealth issued the warrant, Warrant 1621 was surveyed.³ The Warrant 1621 survey map shows Warrant 1621 bordered by Warrant 1620 on the western boundary and Warrant 1622 on the eastern boundary, with no unwarranted acreage between Warrant 1621 and Warrant 1620 to the west or between Warrant 1621 and Warrant 1622 to the east.⁴ Warrant 1620 was surveyed on June 24, 1793 and Warrant 1622 was surveyed on September 4, 1793. These surveys also demonstrate that Warrants 1620 and 1622 are directly adjacent to Warrant 1621, with no gaps between any of the warrants.⁵ Additionally, the metes and bounds descriptions in the Patents for these properties demonstrate that Warrant 1621 is directly adjacent to Warrants 1620 and 1622.⁶ The Commonwealth issued Hewes & Fisher a Patent for Warrant 1621 on May 2, 1798.⁷

In April of 1889, approximately 90 years after the Patent for Warrant 1621 issued, Jacob E. Smith obtained a warrant for a parcel of land containing 214 acres and 13 perches, the Smith Warrant.⁸ The Smith Warrant was surveyed on May 21, 1889, and the County Surveyor reviewed that survey on November 4, 1889.⁹ The County Surveyor did not approve the survey, finding that the land covered by the Smith Warrant “is located on land already appropriated by Hughes [sic] & Fisher Warrant No. 1621.”¹⁰

¹ Motion for Summary Judgment Regarding Location and Ownership of Oil and Gas of Warrant 1621, including Jacob E. Smith Warrant ¶ 8; (Ex. 2 – Patent) (Jan. 27, 2020) (“Motion for Summary Judgment”).

² At this time all warrants in Pennsylvania would include an additional six percent allowance of untaxable property to allow for the construction of public roads as they became necessary. See *In re Opening Private Rd. ex rel. O'Reilly*, 954 A.2d 57, 65 (Pa. Commw. 2008).

³ Motion for Summary Judgment ¶ 9; (Ex. 3 – Hewes & Fisher Warrant 1621 survey map).

⁴ Motion for Summary Judgment ¶ 10; (Ex. 3 – Hewes & Fisher Warrant 1621 survey map).

⁵ Motion for Summary Judgment ¶ 11; (Ex. 4 – Hewes and Fisher Warrant 1620 survey map); (Ex. 5 – Hewes & Fisher Warrant 1622 survey map).

⁶ See Motion for Summary Judgment ¶¶ 12-13; (Exs. 2-7).

⁷ Motion for Summary Judgment ¶ 13 (Ex. 2 – Patent).

⁸ Motion for Summary Judgment ¶ 18; (Ex. 8 – Smith Warrant 1889 survey).

⁹ Motion for Summary Judgment ¶ 20; (Ex. 8 – Smith Warrant 1889 survey).

¹⁰ Motion for Summary Judgment ¶ 21; (Ex. 8 – Smith Warrant 1889 survey).

Despite this, Jacob E. Smith subsequently obtained a Patent from the Commonwealth for the Smith Warrant, which was recorded on May 12, 1892.¹¹

On June 13, 1892, Thomas E. Proctor purchased the entirety of Warrant 1621 at tax sale.¹² Warrant 1621 was identified as having 990 assessed acres, plus a 6% allowance, totaling to about 1,049 acres.¹³ The Treasurers' documents recording the sale did not discuss or carve out 214 acres or otherwise recognize the Smith Warrant.¹⁴

When Thomas E. Proctor purchased Warrant 1621, oil and gas rights had not been severed from the surface. However, on October 2, 1894, Thomas E. Proctor severed the oil and gas from the surface when he transferred by deed the surface of Warrant 1621 to Elk Tanning Company, specifically reserving, among other things, the entirety of oil and gas underlying Warrant 1621.¹⁵ This deed similarly did not discuss or carve out 214 acres or otherwise recognize the Smith Warrant.¹⁶ Tax records from 1890 through 1897 show that taxes were assessed and paid on the entire 990 taxable acres of Warrant 1621.¹⁷

On June 3, 1895, Jacob E. Smith and Carolyn B. Smith transferred the Smith Warrant to Jonas Delaney.¹⁸ On December 1, 1896, Jonas Delaney transferred the Smith Warrant to Elk Tanning Company, which at that point still maintained ownership of the surface rights to Warrant 1621.¹⁹ During this time, Lycoming County assessed taxes against the 214-acre Smith Warrant as unseated land in the name of the original warrantee, Jacob E. Smith, but these taxes went unpaid.²⁰ On June 8, 1896, G.W.

¹¹ Motion for Summary Judgment ¶ 21; (Ex. 9 – April 1892 Deed to Smith).

¹² Motion for Summary Judgment ¶ 24; (Ex. 10 – Lycoming County Treasurers' Sales Deed Book 2, Page 158 (1892) highlighted); (Ex. 11 – Index to Treasurers' Sales, Vol. A to K, p. 307 circled in black).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Motion for Summary Judgment ¶ 25; (Ex. 12 – Proctor to Elk Tanning Company Deed, October 2, 1894, Deed Book 144, Page 398, pp. 415-16).

¹⁶ *Id.*

¹⁷ Motion for Summary Judgment ¶ 27; (Ex. 13 – Lycoming County Tax Assessments for 1892-93; 1894-95, 1896-97).

¹⁸ Motion for Summary Judgment ¶ 36; (Ex. 16 – Smith to Delany Deed; June 3, 1895, Deed Book 147, Page 145). SPC asserts that because the Smith Warrant incorporated land already warranted under Warrant 1621, the Smith Warrant was void *ab initio* and therefore any subsequent transfers lacked legal effect. The Court will discuss this issue in the Analysis section.

¹⁹ Motion for Summary Judgment ¶ 37; (Ex. 17 – Delaney to Elk Tanning Company Deed, December 1, 1896, Deed Book 153, Page 59).

²⁰ Motion for Summary Judgment ¶ 40; see also Brief in Opposition to Motion for Summary Judgment 3 (May 18, 2020) (“Brief in Opposition”).

Childs purportedly purchased “Warrant 1621” at a tax sale. This “Warrant 1621” was identified as having only 214 acres, and therefore appears to have actually been the Smith Warrant.²¹ As there was no indication of redemption of “Warrant 1621”/Smith Warrant in the public record, on June 29, 1898, G.W. Childs transferred the 214 acre “Warrant 1621”/Smith Warrant to Elk Tanning Company.²²

On June 12, 1903, Elk Tanning Company transferred, among other things, its interest in Warrant 1621, described in the deed as comprising 990 acres, to the Central Pennsylvania Lumber Company (“CPLC”).²³ This deed did not refer to a separate 214-acre parcel or identify the Smith Warrant, although Elk Tanning Company had purportedly obtained that parcel from Jonas Delany in 1896, and had then repurchased the same parcel from G.W. Childs in 1898.²⁴ However, while in possession of Warrant 1621, the CPLC prepared a map of the surveyed bounds within Warrant 1621. This survey identified the location of a separate 214 acres and associated those acres with Jacob E. Smith, the original Warrantee.²⁵ The CPLC subsequently transferred its interest in Warrant 1621 and other surrounding properties by deed to H.V. Sawyer on July 10, 1923.²⁶ This deed referenced the CPLC’s interest in Warrant 1621, but did not reference a separate 214-acre parcel or identify the Smith Warrant.²⁷ This July 10, 1923 deed contained a meets and bound description identifying that Warrants 1620 and 1621 share a boundary line, including shared northern and southern corners between those two Warrants.²⁸ After the transfer from G.W. Childs to Elk Tanning Company in

²¹ Motion for Summary Judgment ¶ 41; (Ex. 18 – Treasurers’ Deed Book 2, Page 174 (1896) highlighted); see *also* (Ex. 11 – Page 2 thereof, circled in black).

²² Motion for Summary Judgment ¶ 41; (Ex. 19 – Childs to Elk Tanning Company Deed, June 29, 1898, Deed Book 162, Page 300).

²³ Motion for Summary Judgment ¶ 28; (Ex. 14 – Elk Tanning Company to Central Pennsylvania Lumber Company Deed, June 12, 1903, Deed Book 183, Page 328, see paragraph ‘Fifth’).

²⁴ Motion for Summary Judgment ¶ 29. SPC asserts that such repurchases were a then common method by which landowners would protect their interests.

²⁵ International Development Corporation’s Response to Plaintiff’s Motion for Summary Judgment Regarding Location and Ownership of Oil and Gas of Warrant 1621, Including Jacob E. Smith Warrant 4; (Ex. A – CPLC Map) (Feb. 24, 2020) (“IDC’s Response”).

²⁶ Motion for Summary Judgment ¶ 30 (Ex. 15 – Central Pennsylvania Lumber Company to Sawyer Deed, July 10, 1923, Deed Book 249, Page 446).

²⁷ Motion for Summary Judgment ¶ 31. This is in contrast to the CPLC map. See IDC’s Response (Ex. A – CPLC Map).

²⁸ Motion for Summary Judgment ¶¶ 32-34.

1898, there are no further references to a 214 acre “Warrant 1621” in any subsequent document related to chain of title, nor are there any references to the Smith Warrant.²⁹

At issue are two competing claims to the ownership of the oil and gas underlying Warrant 1621. The Thomas E. Proctor Heirs Trust and Margaret O.F. Proctor Trust (collectively, “Proctor Trusts”) claim ownership tracing back to Thomas E. Proctor’s purchase of Warrant 1621 at the June 13, 1892 tax sale and the subsequent reservation of oil and gas rights in the October 2, 1894 deed transferring surface rights to Elk Tanning Company. IDC claims ownership to the 214 acres covered by the Smith Warrant, inclusive of both the surface and oil and gas rights, with its chain of title tracing back to the June 8, 1896 tax sale of the Smith Warrant to G.W. Childs. IDC asserts that it holds oil and gas rights in 214 acres of Warrant 1621, while the Proctor Trusts have oil and gas rights in the remaining 776 acres of Warrant 1621. SPC currently has oil and gas leases with both the Proctor Trusts and IDC. SPC has initiated this quiet title action to determine, among other things, the location and ownership of oil and gas rights underlying Warrant 1621.³⁰

Standard of Review

A court may enter summary judgment after the close of the relevant pleadings if the court determines that there is no dispute as to material fact or if the record contains insufficient evidence of facts to make out a prima facie cause of action or defense.³¹ Upon a motion for summary judgment, the court must examine the record in the light most favorable to the nonmoving party and resolve all doubts against the moving party as to the existence of a triable issue.³² “The plaintiff bringing a quiet title action has the burden of proof and must recover on the strength of its own title.”³³ However, the nonmoving party may not rest upon the mere allegations or denials of the pleadings, but must file a response to the motion for summary judgment within thirty days identifying:

²⁹ Motion for Summary Judgment ¶ 43; see also ¶¶ 28-35; (Exs. 14-16) for a summary of Elk Tanning Company’s subsequent transfer of Warrant 1621 and the transfers by Elk Tanning Company’s successors. In each deed recording transfer, Warrant 1621 was identified as having 990 taxable acres.

³⁰ Motion for Summary Judgment ¶ 4.

³¹ *Petrina v. Allied Glove Corp.*, 46 A.3d 795, 798 (Pa. Super. 2012).

³² *Petrongola v. Comcast-Spectacor, L.P.*, 789 A.2d 204, 209 (Pa. Super. 2001).

³³ *Woodhouse Hunting Club, Inc. v. Hoyt*, 183 A.3d 453, 457 (Pa. Super. 2018) (citing *Herder Spring Hunting Club v. Keller*, 143 A.3d 358, 372 (Pa. 2016)).

“(1) one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion or; (2) evidence in the record establishing the facts essential to the cause of action or defense which the motion cites as not having been produced.”³⁴

Analysis

Upon review of the record and following argument, the Court first concludes that there is no material dispute that the Smith Warrant, recorded in 1892, was comprised in its entirety of land that had already been patented under Warrant 1621 in 1798.³⁵ There is similarly no material dispute that the Proctor Trusts’ interest in Warrant 1621 traces back to that original 1798 Hewes & Fisher Patent.³⁶ The Court must thereby address the validity of the Smith Warrant, through which IDC traces its chain of title.

SPC asserts that because the 214 acres comprising the Smith Warrant had already been patented approximately one hundred years prior as part of Warrant 1621, the Commonwealth could not then validly grant this land to Jacob E. Smith, and thus the Patent for the purported Smith Warrant was void and did not grant any ownership interest.³⁷ IDC counters that the failure of the Proctor Trusts or any other interested party to challenge the validity of the 214-acre Smith Warrant for over one hundred years is itself sufficient evidence that the Proctor Trusts did not believe that the Smith Warrant

³⁴ Pa.R.C.P. 1035.3(a)(1)-(2).

³⁵ See e.g., IDC’s Response ¶ 56 (“IDC admits that Warrant 1621 is located between Warrant 1620 and Warrant 1622 and that their boundaries are adjacent to each other”); ¶¶ 32-35 (conceding that CPLC understood the 214 acres and 13 perches to be located within Warrant 1621) (Feb. 24, 2020) (“IDC’s Response”).

³⁶ IDC provides that the 1892 conveyance of Warrant 1621 to Thomas E. Proctor “speaks for itself.” See IDC’s Response ¶ 24. The Court is satisfied that Exhibit 10 attached to SPC’s Motion for Summary Judgment plainly shows that Thomas E. Proctor obtained a 990-acre Warrant 1621 in 1892 at tax sale, with Hewes & Fisher identified as the Warrantees.

³⁷ Motion for Summary Judgment ¶¶ 67-68 (citing *Morton v. Nebraska*, 88 U.S. 660, 674–75 (“It has been repeatedly decided by this court that patents for lands which have been previously granted, reserved from sale, or appropriated, are void.”); *Best v. Polk*, 85 U.S. 112, 117 (1873) (“It has been repeatedly held by this court that a patent is void which attempts to convey lands that have been ‘previously granted, reserved from sale, or appropriated.’”) (citation omitted); *Stoddard v. Chambers*, 43 U.S. 284 (1844) (“A patent is utterly void and inoperative, which is issued for land that had been previously patented to another individual. The fee having been vested in the patentee by the first patent, the record could convey no right.”); *Parshall v. Jones*, 55 Pa. 153, 159 (1867) (“In a word, the Jones survey as clearly covers the land in dispute as that which Ludlow made for Parshall in 1844, and the paper title of the defendants being the older, it was right to let it prevail.”); *Ecenbarger v. Lesane*, 438 A.2d 969, 973 (Pa. Super. 1981) (noting that one cannot convey an interest in property one does not own).

and Patent was adverse to their interest. IDC asserts this creates a sufficient inference in favor of the validity of the Smith Warrant to preclude entry of summary judgment.³⁸ Further, IDC proposes that the 1896 tax sale to of the 214-acre “Warrant 1621”/Smith Warrant to Elk Tanning Company, which was never challenged or redeemed in its era, effectively “washed” all prior title.³⁹ Alternately, IDC argues that because the Proctor Trusts failed to exercise their rights for over one hundred years, the doctrine of laches should bar their lessee, SPC, from now bringing a quiet title action.⁴⁰

The Court is satisfied that, as established by the case law, the Commonwealth could not validly transfer an interest in a parcel of land that had already been vested in a prior patentee.⁴¹ Additionally, the Commonwealth’s assessment of taxes upon both the 900-acre Warrant 1621 and upon the 214-acre Smith Warrant encompassed within Warrant 1621, constituted an invalid double assessment. The Commonwealth therefore had no authority to sell “Warrant 1621”/Smith Warrant at the 1896 Tax Sale and lacked the ability to give valid deed.⁴² The Proctor Trusts’ failure to challenge the validity of the Smith Warrant some one-hundred years ago does not in itself presumptively validate the transfer. The question remains whether the Proctor Trusts’ failure to challenge or redeem the sale of the 214-acre “Warrant 1621”/Smith Warrant to Elk Tanning Company at the 1896 tax sale effectively “washed” all prior title.

At the time “Warrant 1621”/Smith Warrant was sold at tax sale, the Act of March 13, 1815, § 4, P.L. 177, provided a two (2) year redemption period in which the owners of unseated land sold at tax sale could redeem the sale and pay the taxes owed. However, the Pennsylvania Superior Court established in *Cornwall Mountain Investments, L.P. v. Thomas E. Proctor Heirs Trust*, that while the statutory redemption period will bar untimely challenges to “procedural irregularities” in a tax sale, including irregularities in the notice, assessment, and tax sale process, the statute of limitations is

³⁸ Brief in Opposition at 10 (citing *Schacter v. Albert*, 239 A.2d 841, 843 (Pa. Super. 1968)).

³⁹ IDC’s Response ¶ 3.

⁴⁰ *Id.* (citing *Zimnisky v. Zimnisky*, 231 A.2d 904, 907 (Pa. Super. 1967)) (“[T]he defense of laches is applicable in actions to quiet title[.]”).

⁴¹ This is excepting the Commonwealth’s power of eminent domain, which is not at issue in this case.

⁴² See *Bozitsko v. Hoffman*, 497, 218 A.2d 835, 837 (Pa. Super. 1966) (providing that the legal owner’s full payment of taxes on a larger tract of land embracing a wrongfully assessed smaller tract discharged from that body of land any further taxes for that year, and thereby holding that the Tax Claim Bureau lacked the power to grant valid deed to the smaller tract at tax sale due to the assessment error).

not applicable to challenges that the sale itself was void.⁴³ The Court concurs with SPC's assertion that, as the Smith Warrant was an effective nullity, no taxes could be assessed against it, and the sale of the Smith Warrant at the 1896 tax sale was therefore void. The case law supports the proposition that void tax sales are not subject to the statutory redemption period.⁴⁴ Therefore, as the Court finds that the sale itself

⁴³ *Cornwall Mountain Invs., L.P. v. Thomas E. Proctor Heirs Tr.*, 158 A.3d 148, 159-60 (Pa. Super. 2017). In other words, the redemption period applies only to tax sales that are voidable, not those that are void. Examples of cases where a tax sale was found to be void include *Weaver v. Meadville Lumber Mfg. Co.*, 61 Pa. Super. 167 (1915) (tax sale void where seated property was incorrectly identified as unseated); *City of Philadelphia v. Miller*, 49 Pa. 440 (1865) (tax sale void where land was assessed to "John Turnbull" instead of warrantor "James Tremble"); *Albert v. Lehigh Coal & Nav. Co.*, 246 A.2d 840 (Pa. 1968) (1870 and 1878 tax sales of unseated land held to be void as the taxes had been paid and credited to the wrong tract of land); *Reck v. Clapp*, 98 Pa. 581 (1881) (tax sale void as deed conveying land was forged); *Brown v. Day*, 78 Pa. 129 (1875) (tax sale void where treasurer mistakenly credited tax payment to wrong property).

⁴⁴ IDC argues within its Brief in Opposition that pursuant to *Cornwall Mountain*, the necessary prerequisites for a valid tax sale have been met. *Cornwall* provided the following summary identifying what elements are necessary for a tax sale to be valid:

In *Trexler v. Africa*, 33 Pa. Super. 395, 410 (1907), this Court relied upon the Supreme Court's decision in *McReynolds et al. v. Longenberger*, 57 Pa. 13, 27 (1868), in identifying the requisites to a valid tax sale. Our High Court concluded therein that "the authority of the treasurer to sell unseated lands for taxes depends upon facts; viz., that the land was unseated at the time of the assessment; that a tax appears to have been, and was in fact assessed upon it by the proper assessing officers, and that the tax had been due for one whole year, and remains unpaid." If these facts were not established, this Court held in *Trexler* that the tax sale was void and the five-year time limitation of the Act of 1804 on an action to recover land sold at tax sale did not apply. We reasoned that, "the five years' limitation will not breathe life into a void tax title." *Id.* at 410.

Cornwall Mountain, 158 A.3d at 160.

This paragraph taken in isolation appears to support IDC's position that the 1896 tax sale was valid, as there is no dispute that "Warrant 1621"/Smith Warrant was on unseated land, that a tax was assessed by a proper assessing officer, and that the assessed taxes were at least a year overdue. However, the Court finds that the *Cornwall Mountain* opinion read as a whole supports SPC's position that an invalid assessment may render a sale voidable if the assessment is attributed to the wrong individual or the wrong tract of land.

Specifically, *Cornwall Mountain* cites, *Albert v. Lehigh Coal & Nav. Co.*, 431 Pa. 600, 246 A.2d 840 (1968), in which the Pennsylvania Supreme Court affirmed that a tax sale was void when the property owner had in fact paid the taxes for which basis the tax sale was held, but said taxes had been erroneously credited to the incorrect property. Further, this property had been subject to an erroneous double assessment under two separate owners, one of which had paid the full assessment. The Court noted: "If there are two claimants of the same land, and it is assessed in the same year in the name of each, and one of them pays the tax, it cannot be afterwards sold, so as to convey any title, for the nonpayment of the tax assessed against it in the name of the other claimant. Having once responded to the public demand upon it, it cannot be made to do so again for the same demand." *Id.* at 614.

Following the holding *Lehigh Coal*, the Court determines that the 1896 sale to Elk Tanning Co. was void on two bases. First, as the Smith Warrant itself was void *ab initio*, the tax assessments attributed to Jacob E. Smith were in error. Second, because taxes were paid in full on Warrant

was void, the two (2) year redemption period was not applicable and SPC's quiet title action is not barred by the statute of limitations.

The Court next addresses the IDC's argument that the doctrine of laches should bar SPC's quiet title action.

Laches is an equitable doctrine which bars relief when the complaining party is guilty of want of due diligence in failing to promptly institute the action to the prejudice of another. In order to prevail on an assertion of laches, respondents must establish: a) a delay arising from petitioner's failure to exercise due diligence; and, b) prejudice to the respondents resulting from the delay. The question of laches is factual and is determined by examining the circumstances of each case. Prejudice in the context of a claim of laches means that the party must change his position to his detriment in order to invoke laches.⁴⁵

As laches is an affirmative defense, the burden is on IDC to establish unreasonable delay and resulting prejudice.⁴⁶ The type of evidence that supports a defense of laches includes loss of evidence, unavailability of witnesses due to the passage of time, or detrimental reliance of the movant.⁴⁷ "Laches will not be imputed by the mere passage of time, but must be determined after all of the circumstances of the case are developed."⁴⁸ IDC's primary argument in favor of the application of laches is the lack of available first-hand witnesses who could testify as to the creation of the Smith Warrant and its subsequent sale.⁴⁹ However, given the extensive paper trail that remains regarding the patent and transfer of Warrant 1621 and the Smith Warrant, the Court finds that IDC has failed to establish that it has been prejudiced by the admittedly substantial passage of time between the creation of the Smith Warrant and SPC's initiation of this action. IDC otherwise merely avers generally that laches should apply because the Proctor Trusts have "sat on their rights for a hundred years[.]"⁵⁰ The Court

1621 between 1890 and 1897, the 1896 tax sale was based on an erroneous double assessment. As established in *Cornwall Mountain*, a void tax sale is subject to challenge at any time.

⁴⁵ *In re Estate of Aiello*, 993 A.2d 283, 287 (Pa. Super. 2010) (citations omitted).

⁴⁶ *Com. ex rel. Pennsylvania Attorney Gen. Corbett v. Griffin*, 946 A.2d 668, 676 (Pa. 2008).

⁴⁷ *Scott v. BAC Home Loan Servicing, L.P.*, No. CV 13-5540, 2016 WL 320219, at *6 (E.D. Pa. Jan. 27, 2016) (citations omitted).

⁴⁸ *Lindenfelser v. Lindenfelser*, 119 A.2d 87, 88 (Pa. 1956) (quoting *Schireson v. Shafter*, 47 A.2d 665, 668, 165 (Pa. 1946)).

⁴⁹ See Brief in Opposition at 18 ("It is exceedingly likely that everyone with working knowledge of the 214 Acres in the late 1800's and first decade of the 20th century is deceased.").

⁵⁰ Brief in Opposition at 10.

finds that IDC has failed to plead sufficient facts establishing prejudice due to a lack of available evidence or detrimental reliance.

IDC additionally contends that summary judgment should be precluded as there remain outstanding issues of material fact. Specifically, IDC notes that the *Response of the Trustees of the Thomas E. Proctor Heirs Trust and the Margaret O.F. Proctor Trust to Plaintiff's Motion for Summary Judgment Regarding Location and Ownership of Oil and Gas of Warrant 1621, Including Jacob E. Smith Warrant* ("Response of Proctor Trusts"), indicates that Thomas E. Proctor first obtained Warrant 1621 by deed recorded on June 6, 1891 from Ezra B. Young and Mary Young.⁵¹ The *SWN Production Company, LLC's Brief in Support of its Motion for Summary Judgment* ("Brief in Support") similarly provides that Thomas E. Proctor first purchased Warrant 1621 in 1891 from the Youngs before repurchasing that same property one year later at the 1892 tax sale, purportedly to protect his ownership interests.⁵² However, SPC's Motion for Summary Judgment fails to mention Thomas E. Proctor's initial 1891 purchase, only referencing the 1892 tax sale purchase. IDC argues that this raises a question of material fact as to when the Proctor Trusts obtained Warrant 1621.

The Court first notes that briefs are not part of the official record, and the Court may not consider new factual averments not contained in the pleadings.⁵³ Therefore, the Court's ruling on SPC's Motion for Summary Judgment is predicated on the Motion for Summary Judgment's assertion that Thomas E. Proctor obtained Warrant 1621 at tax sale on June 13, 1892. Jacob E. Smith had already recorded his Patent for the Smith Warrant on May 12, 1892, approximately one month prior. IDC asserts that these dates are relevant because they demonstrate three key facts. 1. The Smith Warrant was a recorded property interest predating the Proctor Trusts', and by extension SPC's, chain of title, and therefore Thomas E. Proctor was on constructive notice of the 214-acre property interest within the boundaries of Warrant 1621 at the time of purchase; 2. Thomas E. Proctor was not a *bona fide* purchaser and therefore bought Warrant 1621

⁵¹ Response of the Trustees of the Thomas E. Proctor Heirs Trust and the Margaret O.F. Proctor Trust to Plaintiff's Motion for Summary Judgment Regarding Location and Ownership of Oil and Gas of Warrant 1621, Including Jacob E. Smith Warrant ¶ 3 (March 2, 2020) ("Response of Proctor Trusts")

⁵² SWN Production Company, LLC's Brief in Support of its Motion for Summary Judgment 7 (May 1, 2020) ("Brief in Support").

⁵³ *Scopel v. Donegal Mut. Ins. Co.*, 698 A.2d 602, 608 (Pa. Super. 1997) (citing *Erie Indemnity Co. v. Coal Operators Casualty Co.*, 272 A.2d 465, 466–67 (Pa. 1971)).

subject to the Smith Warrant and Patent, and; 3. The Proctors failed to challenge the validity of the Smith Warrant despite being on constructive notice of its existence at the time of its purchase.⁵⁴

The Court first notes that the *bona fide* purchaser concept is an equitable theory that provides a “perfect defense” to innocent purchasers of legal title to real estate for value who lacked notice of a prior equitable claim.⁵⁵ IDC’s attempt to apply this defensive theory offensively is unavailing, as Thomas E. Proctor’s constructive or even actual notice of the Smith Warrant at the time of purchasing Warrant 1621 is irrelevant if the Court determines that the Smith Warrant was void *ab initio*. IDC could present the *bona fide* purchaser theory in defense of its claim to the 214-acre Smith Warrant, were IDC to establish that it was a *bona fide* purchaser or obtained its chain of title through a *bona fide* purchaser.⁵⁶ However, Jacob E. Smith was not an innocent purchaser who lacked notice of a prior equitable claim. The Court finds the “Smith Warrant 1889 Survey,” attached as Exhibit 8 to SPC’s Motion for Summary Judgment, establishes that Jacob E. Smith had actual notice that the surveyed 214-acres that would eventually comprise the Smith Warrant had already been patented under Warrant 1621.⁵⁷ Additionally, the October 2, 1894 duly recorded deed, in which the Proctors transferred the 990-acre Warrant 1621 to Elk Tanning Company while reserving oil and gas rights, predates the conveyance of the Smith Warrant on June 3, 1895 from the Smiths to Jonas Delany. Therefore, IDC cannot successfully defend against the Motion for Summary Judgment on the basis that it, or any of its predecessors in title to the Smith Warrant, qualified as *bona fide* purchasers. Finally, the Court reiterates that evidence of the Proctor Trusts’ failure to timely litigate this matter, even when having constructive notice of the Smith Warrant, is not alone sufficient to preclude entry of summary judgment.

Finally, IDC asserts that the expert report prepared by SPC’s own expert, Daniel S. Silber of Elexo Land Services Inc. (“Elexo Report”), recognizes the validity of the

⁵⁴ Brief in Opposition at 8-9.

⁵⁵ *MacKubbin v. Rosedale Memorial Park, Inc.*, 257 A.2d 587, 589 (Pa. 1969).

⁵⁶ See e.g., *Allabach v. Wood*, 4 A. 369 (Pa. 1886) (“Although plaintiff below did have constructive notice of the trust, because the declaration was recorded before he purchased, yet, having purchased from one without notice, he is protected.”).

⁵⁷ See *Fisher v. Kaufman*, 33 A. 137, 141 (Pa. 1895) ([A patent is] full and express notice to every person whatever that the land has been granted away and is not vacant.”).

1892 Patent of 214-acres to Jacob E. Smith. The Elexo Report concludes that IDC owns a 22% interest (equivalent to 214 acres) in the oil, gas, and minerals of Warrant 1621, with the Proctor Trusts owning the remaining 78% (equivalent to 776 acres) of oil, gas, and mineral rights.⁵⁸ SPC asserts that because this Elexo expert report was not signed by its preparer, Mr. Silber, it is not part of the record and therefore cannot support a summary judgment motion.⁵⁹ Complicating this issue is the separate, signed “Expert Opinion” of SPC’s second expert, Keith Zambala of Burleson’s Oil and Gas Title Practice Group (“Burleson Report”). The Burleson Report states that Mr. Zambala had reviewed the Elexo report and concurred with its conclusions.⁶⁰ The Court is doubtful that Mr. Zambala’s signature on this separate Burleson Report would render the unsigned Elexo Report admissible. The issue is moot, however, as the Court determines that the Elexo Report does not raise substantial doubt as to the factual background pled within SPC’s Motion for Summary Judgment. The Elexo Report itself indicates that Elexo’s chain of title search extended back only to the late 1800s, which would not account for the original Patent of Warrant 1621 to Hewes & Fisher in 1798.⁶¹

Conclusion

Pursuant to the foregoing, the Court determines that there is no dispute as to the following material facts. The Commonwealth issued Josiah Hewes and Meyers Fisher a Patent to the 990-acre Warrant 1621 in 1798. In 1892, the Commonwealth issued Thomas E. Smith a Patent to the 214-acre Smith Warrant. However, the Smith Warrant was comprised of land already patented under Warrant 1621. As the Commonwealth could not validly transfer land already issued to another Patentee, the Smith Warrant was void *ab initio*, and its subsequent transfer granted no ownership rights. As taxes were assessed and fully paid on the 990-acre Warrant 1621 from 1890-1897, the tax assessments upon the Smith Warrant constituted a double-assessment and the 1896 tax sale based upon that erroneous double assessment was also void. Void tax sales are not subject to the statutory exemption period and may be challenged at any time.

⁵⁸ IDC’s Response ¶ 47 (Ex. C – Elexo Land Services, Inc. Expert Report).

⁵⁹ Pursuant to Pa.R.C.P. 1035.1(3), the record supportive of a motion for summary judgment includes “reports signed by an expert witness that would, if filed, comply with Rule 4003.5(a)(1), whether or not the reports have been produced in response to interrogatories.”

⁶⁰ IDC’s Response ¶ 47 (Ex. C – Expert Opinion and Report Burleson, LLP).

⁶¹ IDC’s Response ¶ 47 (Ex. C – Elexo Land Services, Inc. Expert Report at 1).

SPC's quiet title action is therefore not barred by the statute of limitations. Further, the Court determines the equities do not support denying SPC's quiet title action under the doctrine of laches.

Therefore, SPC's *Motion for Summary Judgment Regarding Location and Ownership of Oil and Gas of Warrant 1621, including Jacob E. Smith Warrant* is hereby GRANTED.

IT IS SO ORDERED this 30th day of June 2020.

BY THE COURT,

Eric R. Linhardt, Judge

ERL/cp

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