IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

LAUREL HILL GAME AND FORESTRY CLUB, : No. 90-01896
Plaintiff :
vs. : CIVIL ACTION – LAW
:
W.F. BRION et al., : QUIET TITLE
Defendants :
vs. :
:
RANGE RESOURCES-APPALACHIA, LLC, :
et al., :
Intervenors :

OPINION AND ORDER

AND NOW, following argument on 1) International Development Corporation's[1] Motion for Partial Summary Judgment only against Range Resources – Appalachia, LLC,[2] Laurel Hill Game & Forestry Club[3] and Williamson Trail Resources, LP;[4] 2) Intervenor Range Resources-Appalachia, LLC's Motion for Partial Summary Judgment against International Development Corporation and SWN Production Company, LLC[5] Regarding the 1919 Deed; and 3) Intervenor Range Resources-Appalachia, LLC's Motion for Partial Summary Judgment Regarding Property Boundaries against International Development Corporation and SWN Production Company, LLC, the Court hereby issues the following OPINION and ORDER.

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[1] "IDC."
[2] "Range."
[3] "Laurel Hill."
[4] "Williamson."
[5] "SWN."

BACKGROUND

In 1990, Laurel Hill filed a Complaint in Quiet Title regarding the subsurface rights under the property at issue (the "Property"). In 1992, Laurel Hill obtained a default judgment, but in 2018 IDC petitioned this Court to set aside that judgment premised on an allegation of defective service of original process in 1990. On May 30, 2018, this Court granted IDC's petition and struck the 1992 judgment, finding that Laurel Hill failed to join an indispensable party in 1990 and therefore the Court did not have subject matter jurisdiction to enter the 1992 judgment. Since the Court struck the judgment, the parties have engaged in updated pleadings, discovery and motions practice.

The parties primarily dispute which among them is the actual owner of the Property's subsurface rights. The answer to that question depends on the construction of the chain of title to the Property and its subsurface rights, which is complicated by the fact that the first relevant transaction in that chain occurred in 1893. Range, Laurel Hill and Williamson essentially contend that Laurel Hill purchased the Property *in fee simple* in 1919 and sold that interest to Williamson in 2009, after which Williamson leased the subsurface rights to Range. Conversely, IDC and SWN contend that Laurel Hill purchased *only the surface rights* of the Property in 1919, and IDC's predecessors in interest obtained the *subsurface rights* to the property "[t]hrough a series of conveyances and transfers…."

It is also necessary to note at the outset the position of the Thomas E. Proctor Heirs Trust,[6] which is not aligned with either Range, Laurel Hill and Williamson or

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[6] "Proctor Trust".

IDC and SWN. The Proctor Trust maintains that *it* is the actual owner of the subsurface rights to the Property. Noting that IDC and Range seek partial summary judgment against each other (and the similarly-aligned entities), "the Proctor Trust asks the Court to appropriately limit its holding" on each of the present motions to an adjudication of the respective rights of the filing and responding parties rather than an adjudication of the case in its entirety. As the filing parties have clearly limited the scope of the relief they seek in accordance with the manner suggested by the Proctor Trust, the Court will take care to limit its holding commensurately.

IDC's Motion for Summary Judgment and Range's Motion for Summary Judgment regarding the 1919 Deed address the same issue: the interpretation of the deeds in the chain of title and, particularly, the "1919 Deed." The Court will address these Motions together before addressing Range's Motion for Summary Judgment regarding Property Boundaries.

MOTIONS FOR SUMMARY JUDGMENT CONCERNING THE 1919 DEED

A. <u>Pre-1919 Title and Dispositive Issue</u>

The parties generally agree about the chain of title beginning in 1893 up to 1918, and aver as follows:

- The property is comprised of land that was formerly two separate tracts, "Tract 1" and "Tract 2."
- In 1893, Thomas Proctor conveyed his interest in Tract 1 to Elk Tanning Company by deed (the "Proctor Deed").
- In 1894, Samuel P. Davidge conveyed his interest in Tract 2 to Elk Tanning Company (the "Davidge Deed").
- Both of these deeds reserved all subsurface rights for the conveyor.[7]

[7] Collectively, these are the "1890s Reservations."

- At some point, these properties were subject to a "title wash," which extinguished the 1890s Reservations.[8]
- In the early 1900s, the Central Pennsylvania Lumber Company ("CPLC") acquired title to the Property.
- In 1919, CPLC conveyed some interest in the Property to Laurel Hill.

As noted above, the parties disagree about the extent of this interest. The disagreement stems from the reproduction in the 1919 Deed of language from the Proctor Deed and Davidge Deed. The 1919 Deed contains the following passage concerning the Proctor Deed:

> "EXCEPTING AND RESERVING, NEVERTHELESS, unto Thomas E. Proctor, his heirs and assigns, all the natural gas, coal, coal oil, petroleum, marble and all minerals of every kind and character in, upon or under the said lands hereinbefore mentioned and described as pieces Nos. 2 and 3, and every part thereof or which may at any time hereafter be discovered in, upon or under said lands, or any part thereof, with the right to enter upon said lands for purposes of exploration, and for the taking away of the said natural gas, coal, coal oil, petroleum, marble or other mineral hereby reserved, and to erect such structures, ways, buildings, railroads and shafts thereon, both up and down, to cut and fill the surface, wherever needed for railways for such purposes, and to dig channels and ditches for water thereon and to do these and such other things thereon, in such manner as may be necessary to successfully mine and take away the said natural gas, coal, coal oil, petroleum, marble and other minerals or any of them, from the said lands aforesaid. With the right to the said Thomas E. Proctor, his heirs and assigns, to use such timber as may be necessary for the purpose of mining or taking away the natural gas, coal, coal oil, petroleum, marble and other minerals, as above reserved, the said Thomas E. Proctor, his heirs or assigns, to pay for the timber used as aforesaid, to the said party of the second part hereto, its successors or assigns, the value of such timber, so taken for the purposes aforesaid, as standing timber, at the time the same is taken and used as aforesaid. The above-mentioned minerals and mineral rights to be excepted and reserved as fully as said mineral and mineral rights were excepted and reserved in deed from Thomas E. Proctor and wife above recited." (The "Proctor Clause.")

[8] The concept and effect of a "title wash" are discussed *infra*.

The 1919 Deed also contains the following passage concerning the Davidge Deed:

> "EXCEPTING AND RESERVING, HOWEVER, from this sale on the lands last above described for the benefit of the said Samuel P. Davidge, et al., their heirs and assigns, forever, all minerals, oils and gases in, upon or under said lands, with the perpetual right of ingress, egress and regress over, upon and across said lands, for the purpose of mining, boring for and removing said minerals, oil and gases, as fully as said minerals and mineral rights were reserved in said deed from Samuel P. Davidge, et al., to the Elk Tanning Company dated December 7th, 1893. ALSO EXCEPTING AND RESERVING unto the Grantor, its successors and assigns, all necessary rights of way for wagon roads, sled roads, log slides and tramroads through, over and across the lands above described, for the purpose of getting to and from other lands now owned by the Central Pennsylvania Lumber Company, or hereafter required by said Lumber Company. The Grantor will warrant specially the property hereby conveyed." (The "Davidge Clause.")

IDC and SWN contend that the Proctor and Davidge Clauses are functional provisions that expressly except and reserve the subsurface mineral rights for the grantor CPLC, and thus remove the Property's subsurface rights from the title conveyed to Laurel Hill in the 1919 Deed. Range, Laurel Hill and Williamson contend that the Proctor and Davidge Clauses were not active provisions of the 1919 Deed but were rather descriptive recitals. The parties agree that this is a pure question of law, but disagree about the answer to that question.

B. <u>Argument of IDC and SWN</u>

At its most basic, IDC's argument[9] is that the plain language of the Proctor and Davidge Clauses reflects that CPLC "excepted and reserved the subsurface rights 'as fully as' the subsurface rights were excepted and reserved by Proctor and Davidge" in the Proctor Deed and Davidge Deed.

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[9] For ease of understanding, the Court will refer to the position of IDC and SWN as "IDC's argument."

IDC first cites *Sheaffer v. Caruso* for the proposition that the use of the term "reserving" creates an interest in the grantor.[10] In *Sheaffer*, the plaintiffs filed an action to quiet title to subsurface rights of two tracts of land conveyed to the defendants 20 years prior.[11] The deed contained the following language:

> "EXCEPTING AND RESERVING from First Tract and Second Tract all the coal and mining rights and the oil and gas as fully as the same have been excepted and reserved or conveyed by former owners."[12]

The trial court ruled for the plaintiffs for two reasons: first, "the oil and gas estates had been severed from the surface estate more than 76 years ago and had followed different chains of ownership," and thus "the reservation clause was sufficient to reserve interest in the oil and gas to the grantor (i.e., the oil and gas had been excepted, reserved and conveyed by former owners, and by the terms of the present deed it was excepted and reserved now)…."[13] Second, "since the deed sets forth a description of the land conveyed which incorporates a description in a previous deed, and the previous deed reserves interest in the oil and gas, the oil and gas are reserved in the grantor."[14] The Superior Court reversed the trial court's determination, concluding that because "the reservation clause does not clearly express an intention to limit the fee [it] must… be construed against the grantor" and that the "reservation clause was included in the deed in order to limit the grantor's liability on the warranty of the deed, not to reserve an interest in the oil and gas to the grantor."[15]

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[10] *Sheaffer v. Caruso*, 676 A.2d 204 (Pa. 1996).
[11] *Id.* at 204.
[12] *Id.* at 205.
[13] *Id.*
[14] *Id.*
[15] *Id.*

The Supreme Court of Pennsylvania reversed the Superior Court.[16] The Court first explained that the 1918 deed first splitting the oil and gas rights from the surface rights specified "[t]he method of extraction, drilling," and this method "was incorporated by reference in the present deed," which meant that the exception and reservation clause was not "nonspecific" and did not contain an ambiguity that should be construed against the grantor.[17] Next, the Court explained that the terms "excepting" and "reserving" are not redundant but serve different functions:

> "By using the term 'excepting,' the grantor excluded from the conveyance interests in the land or minerals which she did not own, thus protecting herself from liability under the warranty of the deed. By using the term 'reserving,' she created in herself an estate in the oil and gas. Had the grantor intended only to exclude oil and gas interest which had been conveyed previously to persons other than the grantor, the usual way to do that would be to use only the term 'excepting.' By using both terms, she protected herself from liability under the general warranty deed and created in herself an estate in the oil and gas."

IDC argues that the language in the Proctor and Davidge Clauses is materially identical to that in the deed in *Sheaffer*, and this Court should therefore give it similar effect.

IDC further argues that this Court has "already interpreted and adjudicated... [a] similar CPLC Exception and Reservation" and that the decision was affirmed by the Superior Court in an unpublished memorandum opinion. In *Black Wolf Rod & Gun Club*, Lycoming County Docket CV-15-00411, the Honorable Richard A. Gray was called upon to interpret the following clause in a 1925 deed that shared the following similarities with the 1919 Deed here:

- It concerned land that Samuel P. Davidge conveyed by deed in 1893;

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[16] *Id.* at 206.
[17] *Id.*

- The 1893 deed "excepted and reserved the subsurface rights";
- The surface rights and subsurface rights were reunified due to a "title wash"; and
- The 1925 deed purported to except and reserve the subsurface rights "as fully as" they were excepted and reserved by the 1893 deed.

The specific language in the 1925 deed in *Black Wolf* was:

> "EXCEPTING AND RESERVING, however, from this conveyance on all the lands above described, all minerals, oils, and gases in, upon or under said lands, with the perpetual right of ingress, egress and regress over, upon and across said lands, for the purpose of mining, boring for and removing said minerals, oils, or gases as fully as said minerals, oils and gases and rights were excepted and reserved in deed from Samuel P. Davidge et al. to the Elk Tanning Company dated December 7th, 1893 above recited.

Judge Gray concluded that the 1925 deed reserved the subsurface rights, explaining as follows:

> "Upon review of the chain of title and circumstances, the Court concludes... that the reference to the 1893 deed supports Defendants' claim that the subsurface rights were reserved. This is because the 1893 deed effectuated the reservation of subsurface rights. Both parties agree that the subsurface rights were reserved until 1906 and 1908, when they were divested by the tax sales. The Court concludes that the language in the 1925 deed 'EXCEPTING AND RESERVING, however, from this conveyance... [the subsurface rights]... as fully as said minerals, oils and gases and rights were excepted and reserved in deed from Samuel P. Davidge et al. to the Elk Tanning Company dated December 7th, 1893 above recited[,]' like the 1893 deed it referenced, reserved the subsurface estate.
>
> ...
>
> Black Wolf further contends that, even if the divestiture of the subsurface rights [in 1906 and 1908] had no impact on the construction of the 1925 deed, textual differences must be construed to mean that the 1925 deed did not reserve the subsurface rights.... [However,] [t]he Court interprets the 1925 deed as referencing the 1893 deed in the manner and extent to which the grantor contains the reservation. It essentially incorporates the manner set forth in the 1893 [deed] without reciting it again in full in the 1925 deed. Therefore, the textual

> differences appear to be intended as a reference without having to restate the body of the referenced material."

Because Judge Gray found that Black Wolf could not prevail as a matter of law, the Court granted IDC's preliminary objection in the nature of a demurrer and dismissed Black Wolf's complaint with prejudice.

As noted by IDC, the Superior Court affirmed this decision in an unpublished Opinion, ultimately holding that "[a]lthough Black Wolf has advanced many theories as to what the grantor ***may*** have intended by the 1925 deed language, the trial court properly ascertained the ***meaning*** of the words used in the deed. Consequently, it is certain that upon the facts averred, the law would not permit Black Wolf to recover."[18]

Ultimately, IDC avers that the operative language and relevant circumstances here are identical to those in Black Wolf, and thus the Court should conclude that the 1919 Deed excepted and reserved the subsurface rights for the grantor CPLC, who subsequently conveyed those rights separately from the Property's surface rights.

C. Argument of Range, Laurel Hill and Williamson

In support of its argument that the Proctor and Davidge Clauses are mere recitals rather than operative exceptions and reservations, Range[19] first elaborates on the "title wash" that reunified the Property's surface and subsurface rights in 1904 and 1906. Range explains that "Elk Tanning Co. conveyed the Property at issue to Central Penn by deed on May 25, 1903," but Central Penn "failed to pay taxes assessed on the Property... which led to the Property... being sold at tax sales of

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[18] *Black Wolf Rod & Gun Club, Inc. v. International Development Corporation*, 2016 WL 6212981 (Pa. Super. 2016) (unpublished opinion) (emphasis in original).
[19] For ease of understanding, the Court will refer to the position of Range, Laurel Hill and Williamson as "Range's argument."

'unseated' land held in Lycoming County, Pennsylvania…." Range states that "[b]ecause the [subsurface rights] were not separately assessed, the tax sales of 'unseated' land included both the surface and the [subsurface rights], and once completed, full fee simple [title] to the surface and [subsurface] of the Property were vested in the purchaser" in a "process referred to as a 'title wash.'"

Range cites *Herder Spring Hunting Club v. Keller* to explain title washes.[20] In *Herder*, the Supreme Court of Pennsylvania explained that under the tax acts applicable from 1804 through 1947, "a tax sale extinguish[ed] all previous titles" and exclude[d] "all other claimants to the land of a prior date."[21] The ultimate result of these Acts was that "[w]hen there is no separate assessment of [subsurface rights], a purchase [at a tax sale] of the whole by the owner of the surface divests the title of the owner of the minerals."[22] Range walks through the transactions between the Proctor and Davidge Deeds and the 1919 Deed that resulted in the title wash of the property and the subsequent reunification of the surface and subsurface rights.[23]

With regard to the language of the 1919 Deed, Range first notes that the Deed contains an "unlimited granting clause," which states: "The said Grantor doth hereby grant and convey to the said Grantees, ALL those certain pieces, parcels or lots of land situate in… Lycoming County, Pennsylvania…." Because "[t]here is no reservation, limitation, or qualification contained in the granting clause of the 1919

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[20] *Herder Spring Hunting Club v. Keller*, 143 A.3d 358 (Pa. 2016).
[21] *Id.* at 367.
[22] *Id.*
[23] The Court does not believe IDC is disputing that a title wash occurred or that a tax sale reuinified the surface and subsurface rights of the Property prior to the 1919 Deed; rather, IDC merely disputes that the reunification of those property interests alters the meaning of the plain language in the 1919 Deed.

Deed," Range argues, the Deed "conveyed all of Central Penn's fee simple interest in the Property" to Laurel Hill.[24] Range avers that "[t]he Proctor and Davidge [Clauses] fail to express a present intent to reserve any portion of land" and "are ineffective to limit the scope of the grant of ALL of Central Penn's interest in the Property…."

Range cites *Wilkes-Barre Tp. Sch. Dist. v. Corgan*,[25] as well as *Black Wolf*, for the proposition that "language in a deed will not be construed as a reservation *unless* it clearly and unambiguously limits the granting clause."[26] Range further avers that "[t]he Proctor and Davidge [Clauses] are plainly recitals, because they are mere reproductions of the reservations contained in the prior Proctor and Davide Deeds and do not purport to reserve anything unto the 'grantor' or 'Central Penn,'" and thus they "are merely part of the property description and no more."[27] Finally, Range highlights "[t]he greatest estate rule," which "favors the grantee 'so that the largest estate, both in terms of duration and area, will be conveyed when the language is in doubt.'" Range ultimately argues that the language here is clearly not a reservation, but if the Court is in doubt, it must construe the Proctor and Davidge Clauses according to the greatest estate rule.

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[24] Range cites 21 P.S. § 2, which states that "in any deed… unless expressly limited to a lesser estate, the words 'grant and convey,' or either one of said words, shall be effective to pass to the grantee… a fee simple title to the premises conveyed, if the grantor or grantors possessed such a title, although there be no words of inheritance or of perpetuity in the deed." Range further cites 21 P.S. § 3, which states that "[a]ll deeds… unless an exception or reservation be made therein, shall be construed to include all the estate… of the grantor…."

[25] *Wilkes-Barre Tp. Sch. Dist. v. Corgan*, 170 A.2d 97 (Pa. 1961).

[26] Emphasis in original.

[27] Range cites *Yuscavage v. Hamlin*, 137 A.2d 242 (Pa. 1958) in support. In the portion of *Yuscavage* quoted by Range, the Supreme Court of Pennsylvania stated that "the nature and quantity of the interest conveyed must be ascertained from the instrument itself and cannot be orally shown in the absence of fraud, accident or mistake and we seek to ascertain not what the parties may have intended by the language but what is the meaning of the words…."

D. **Discussion**

There is no material difference between the language the Davidge Clause, the clause in *Sheaffer*, and the clause in *Black Wolf*, as illustrated by a direct comparison:[28]

Davidge Clause

> EXCEPTING AND RESERVING, HOWEVER, from this sale… all minerals, oils and gases in, upon or under said lands… as fully as said minerals and mineral rights were reserved in [the Davidge Deed]….

Sheaffer Clause

> EXCEPTING AND RESERVING from First Tract and Second Tract all the coal and mining rights and the oil and gas as fully as the same have been excepted and reserved or conveyed by former owners.

Black Wolf Clause

> EXCEPTING AND RESERVING, however, from this conveyance… all minerals, oils, and gases in, upon or under said lands… as fully as said minerals, oils and gases and rights were excepted and reserved in [the 1893 deed]….

The Proctor Clause is not written in the same manner. Rather, the Proctor Clause clearly reproduces *verbatim* the prior clause from the Proctor Deed – this is shown by the fact that the Proctor Clause begins with language excepting and reserving the subsurface rights "*unto Thomas E. Proctor, his heirs and assigns*" rather than excepting and reserving those rights "from this sale," "unto the Grantor," "from First Tract and Second Tract," or "from this conveyance" as in the other clauses quoted above. However, the Proctor Clause *concludes* as follows:

> "The above-mentioned minerals and mineral rights to be excepted and reserved as fully as said mineral and mineral rights were excepted and reserved in deed from Thomas E. Proctor and wife above recited."

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[28] The Proctor Clause is discussed *infra.*

This operative provision clearly demonstrates that 1) the preceding portion of the Proctor Clause was a recital of the language in the Proctor Deed; and 2) the 1919 Deed purported to "except[] and reserve[] as fully as... in [the Proctor Deed]" the "mineral rights" mentioned in the recitation. These mineral rights clearly refer to "all the natural gas, coal, coal oil, petroleum, marble and other minerals, as above reserved...." Ultimately, contrary to Range's contention, both the Proctor Clause and the Davidge Clause do not merely copy language from prior deeds, but contain clear references to the Proctor and Davidge Deeds that make clear those Deeds are not just being reproduced but are being, to some extent, incorporated.

In a published, precedential opinion that binds this Court, the Superior Court deemed the above-quoted language in *Sheaffer* sufficient to reserve mineral rights to the grantor. Because the language here is functionally equivalent to that in *Sheaffer*, Range can prevail only if they can identify a factual distinction sufficient to warrant a different result here. They do not explicitly do so. To the extent they claim the "title wash" alters the analysis, the Court is unconvinced. Although *Sheaffer* did not mention a title wash, in that case, as here, the subsurface rights "had [previously] been severed from the surface estate... and had followed different chains of ownership" before being reunited. In both cases, the language of the deed 1) reserved from the conveyance the subsurface rights; and 2) specified the scope of that reservation by referring back to a previous reservation along the prior chain of title. That *Sheaffer* is controlling and there is no material difference between the deed in that case and the 1919 Deed here provides a complete basis on which the Court finds in favor of IDC.

Black Wolf provides an independent sufficient basis to reach the same conclusion. Although the trial court and Superior Court decision in that case are not binding on this Court, they may be cited for persuasive value to the extent that their reasoning is logical and applicable here. The situation in *Black Wolf* is almost exactly analogous to that here, and the reasoning of both the trial court and the Superior Court in that case comports with *Sheaffer* as well as the plain language of the deed at issue. For that reason, *Black Wolf* further supports this determination.

Range makes textual and statutory arguments in support of its position, but even in the absence of controlling precedent these would be unavailing. Range notes that the 1919 Deed's granting clause is unlimited, conveying "ALL those certain pieces, parcels or lots of land..." Range does not, however, identify any statute or case law stating that an exception and reservation is deficient when it is not included in the same paragraph or clause as the grant.

Range's reference to 21 P.S. §§ 2 and 3 does not change this analysis. 21 P.S. § 2 provides that "**unless expressly limited to a lesser estate,** the words 'grant and convey'... shall be effective to pass to the grantee... a fee simple title to the premises conveyed... although there be no words of inheritance or of perpetuity in the deed."[29] Here, IDC contends that the plain language of the 1919 Deed is, in fact, expressly limited to a lesser estate; thus, § 2 does not shed any light on whether the inclusion of the words "grant and convey" in the 1919 Deed necessarily conveyed a fee simple title to Laurel Hill. To the extent Range contends that they do, the

[29] Emphasis added.

Superior Court previously considered and rejected an identical argument in *Pennsylvania Bank & Trust Co., Youngsville Branch v. Dickey*:

> "[T]he determinative fact is whether the agreement did work a severance of the mineral estate from the surface estate. [21 P.S. § 2] as amended provides that unless an instrument in writing expressly limits itself to the granting of a lesser estate, the words 'grant and convey', or either one of said words, passes to the grantee a fee simple title to the premises conveyed. The words of the agreement in the instant case do contain the word 'grant' in the conveying clause. However, it must be noted the words 'grant' and 'convey' are to be given such effect only when the writing fails to expressly limit the conveyance to a lesser estate. It is also apparent from the last clause of this section that the legislative purpose of the section was to enable conveyances to be made in fee without the necessity of using the words 'heirs and assigns' since the clause stated: 'although there be no words of inheritance or perpetuity in the deed'. Thus, it is clear that the purpose of the act was to validate written instruments purporting to convey realty in fee which use the words 'grant' or 'convey' but fail to use words of inheritance or perpetuity since before the passage of the Act the failure to employ words of inheritance or perpetuity reduced the conveyance to one of a life estate only. It is not the purpose of the Act to translate every type of transfer which has the words 'grant' and 'convey' into a transfer of a fee interest. Thus, the mere fact that the word 'grant' appears in our agreement does not necessarily create a fee simple estate in the grantee."[30]

Similarly, 21 P.S. § 3 applies "unless an exception or reservation be made" in the deed. Thus, this section sheds no light on the scope of the interest conveyed by the 1919 Deed, as it comes into play only *after* the Court decides the threshold question of whether an exception or reservation exists. Range's undeveloped contention that the Proctor Clause and Davidge Clause are unclear or ambiguous is belied by their plain language as well as *Sheaffer* and *Black Wolf*.

In addition to Range's Motion and Brief, an additional argument merits discussion. In opposition to IDC's Motion for Summary Judgment, Laurel Hill avers

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[30] *Pennsylvania Bank & Trust Co., Youngsville Branch v. Dickey*, 335 A.2d 483, 486 (Pa. Super. 1975).

that "[t]he Superior Court recently found that similar language in a post-tax sale deed referencing the previously excepted and reserved rights of Proctor did not resurrect Proctor's rights or preserve the rights that had been extinguished by the [title wash resulting from the] tax sale" of the property. *Keta Gas & Oil Co. v. Proctor*, however, is inapposite to the instant case.[31]

In *Keta*, the Proctor Trust contended that Thomas Proctor owned the relevant property in fee simple prior to 1894, when he conveyed the surface rights only to Elk Tanning Company.[32] Elk Tanning Company then conveyed the surface rights to CPLC. A tax sale and title wash then occurred. The Proctor Trust argued that, despite the tax sale and title wash, Thomas Proctor never lost title to the subsurface rights to the property, and maintained them to pass down to the Proctor Trust. This Court disagreed, finding that the tax sale and title wash divested Thomas Proctor of his interest in the subsurface rights, and granted summary judgment against the Proctor Trust. The Superior Court affirmed this holding.

The holding in *Keta* is not detrimental, and may actually be *beneficial*, to IDC's position here. The holding in *Keta* was that language in a post-tax sale deed could not resurrect the rights of a party that owned the subsurface rights *prior* to the tax sale but *lost those rights* in the tax sale and title wash. That same principle, applied to this case, would establish that the language of the 1919 Deed did not return subsurface rights to *Proctor* or *Davidge*, and thus they remained CPLC's to retain or convey as it saw fit. Laurel Hill's averment that "repeating the extinguished rights that

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[31] *Keta Gas & Oil Co. v. Proctor*, Pa. Super. 12/06/2019 (unpublished opinion); *Keta Gas & Oil Co. v. Proctor*, Lycoming County docket CV-50-00571.
[32] *See* this Court's October 22, 2018 Memorandum Opinion.

had been reserved to Proctor and Davidge does not… resurrect or create those rights *in favor of CPLC*"[33] misinterprets the holding of *Keta*. Here, there was no need to "resurrect or create" subsurface rights in favor of CPLC, as it is undisputed that the tax sale and title wash reunited the Property's surface rights and subsurface rights, and thus CPLC possessed them both.

E. <u>Conclusion</u>

As explained above, the Court holds that the 1919 Deed conveyed only the Property's surface rights to Laurel Hill, and excepted and reserved the subsurface mineral rights to the extent CPNC possessed them at the time of the conveyance. For this reason, the Court GRANTS IDC's and SWN's motions for summary judgment with respect to Range, Laurel Hill, and Williamson, and DENIES Range's, Laurel Hill's, and Williamson's motions for summary judgment with respect to IDC and SWN. The Court notes that the Proctor Trust asserts that *it* is the actual owner of the Property's subsurface rights, and this Opinion and Order does not address the question of whether and to what extent the Proctor Trust or IDC and SWN possess those rights.

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[33] Emphasis added.

INTERVENOR RANGE RESOURCES-APPALACHIA, LLC'S MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING PROPERTY BOUNDARIES AGAINST INTERNATIONAL DEVELOPMENT CORPORATION AND SWN PRODUCTION COMPANY, LLC

On November 1, 2021, Range filed a Motion for Summary Judgment concerning the boundary of the Property. Range noted that IDC contends it has drilled five wells on the Property, but Range asserts that this belief is based on an erroneous understanding of the Property's boundary and that Range has drilled, at most, two wells on the Property. Essentially, Range believes that IDC is asserting that the eastern border of the Property is the "Warrant 1615 Eastern Boundary," but in reality there are two separate lots – "Lot 3" and "Lot 4" – between the eastern edge of the Property and the Warrant 1615 Eastern Boundary.

In response, IDC first objects that Range failed to "request relief in the form of establishing or setting boundaries" in their Amended Complaint, and thus the Court should not entertain the motion for that reason. On the merits, IDC responds that "the question of where a boundary line or a corner is actually located is a question of fact."[34] IDC notes that their boundary is based on a map prepared by a surveyor whose conclusions are at odds with Range's, and argues that this survey and Range's dispute of the survey establish a material issue of fact that must be resolved by the factfinder.

The Court concludes that a material issue of fact exists as to the boundary of the Property. At the very least, Range contends that the eastern boundary of the Property is demarcated by an "ash tree," and IDC's surveyor has placed the boundary east of the particular ash tree Range contends marks the boundary line.

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[34] IDC cites *Murrer v. American Oil Co.*, 359 A.2d 817 (Pa. Super. 1976) for this proposition.

The Court will not rule on this issue without giving IDC the chance to seek to call its surveyor to explain why he believes the tree identified by Range does not actually denote the boundary of the Property.

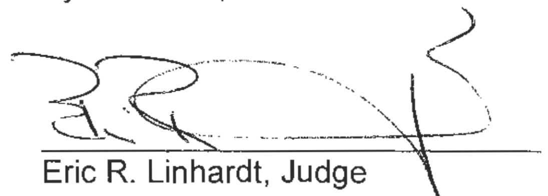
ORDER

For the foregoing reasons, the Court hereby ORDERS as follows:

- International Development Corporation's Motion for Partial Summary Judgment only against Range Resources-Appalachia, LLC, Laurel Hill Game & Forestry Club and Williamson Trail Resources, LP is GRANTED.
- Intervenor Range Resources-Appalachia, LLC's Motion for Partial Summary Jufgment against International Development Corporation and SWN Production Company, LLC Regarding the 1919 Deed is DENIED.
- Intervenor Range Resources-Appalachia, LLC's Motion for Partial Summary Judgment Regarding Property Boundaries against International Development Corporation and SWN Production Company, LLC is DENIED.

IT IS SO ORDERED this 24th day of June 2022.

By the Court,



Eric R. Linhardt, Judge

ERL/jcr
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