IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

LAUREL HILL GAME AND FORRESTRY CLUB, Plaintiff,	:	NO. CV 90-01,896
vs.	:	
W.F. BRION, et al., Defendants,	:	CIVIL ACTION-LAW
vs.	:	
RANGE RESOURCES-APPALACHIA, LLC, et al., Intervenors.	:	QUIET TITLE

OPINION AND ORDER

At issue before the Court is the Motion for Partial Summary Judgment filed by International Development Corporation ("IDC")[1] against the Thomas E. Proctor Heirs Trust and Margaret O.F. Proctor Trust (collectively, "Proctor").[2] Range Resources-Appalachia, LLC ("Range")[3] and SWN Production Company, LLC ("SWN")[4] have joined in IDC's Motion.

I. BACKGROUND.

This litigation has been ongoing for many years and involves numerous parties. Accordingly, the factual and procedural background outlined in this

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[1] IDC filed: (1) "International Development Corporation's Motion for Partial Summary Judgment Against Thomas E. Proctor Heirs Trust and Margaret O.F. Proctor Trust" on August 19, 2022; (2) IDC's Brief in Support of Motion for Partial Summary Judgment on October 18, 2022; and (3) IDC's Reply to Proctor's Response to IDC's Motion for Summary Judgment on October 27, 2022.
[2] Proctor filed: (1) "The Thomas E. Proctor Heirs Trust's Response to International Development Corporation's Motion for Summary Judgment" on October 14, 2022; (2) Proctor's Brief in Opposition to IDC's Motion for Summary Judgment on October 27, 2022; and (3) Proctor's Sur-reply in Opposition to IDC's Motion for Summary Judgment on November 4, 2022.
[3] Range filed: (1) Range's "Response in Support of IDC's Motion for Partial Summary Judgment" on September 19, 2022; and (2) Range's Reply to Proctor's Response to IDC's Motion for Summary Judgment on November 2, 2022.
[4] SWN filed a "Brief of SWN Production Company, LLC Joining in IDC's Motion for Summary Judgment Against the Proctor Heirs" on October 31, 2022.

Opinion is limited to parties and matters relevant to the Motion at hand and the parties contesting it.

A. Competing claims to subsurface rights.

In 1990, Laurel Hill Game and Forrestry Club ("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. In 2018, IDC petitioned this Court to set aside that judgment premised on defective service of original process in 1990. On May 30, 2018, this Court granted IDC's petition and struck the 1992 default judgment, finding that Laurel Hill failed to join an indispensable party and, therefore, that the Court did not have subject matter jurisdiction when it entered the 1992 judgment. Subsequently, numerous other parties have been joined in the litigation.[5] Thereafter, the parties 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, all of which is complicated by the fact that the first relevant transactions in the chain occurred beginning in or around 1893. Nevertheless, the parties can be aggregated into sub-groups based upon similar interpretations of the chain of title. Among those relevant here, Range Resources-Appalachia, LLC ("Range"), Laurel Hill and Williamson Trail Resources, LP ("Williamson") (collectively, the "Range Parties") contend that Laurel Hill purchased the Property in fee simple in 1919 and sold that interest to Williamson in 2009, after which Williamson leased subsurface

[5] At present, there are more than five hundred parties involved in this litigation.

rights to Range. Conversely, IDC and SWN (collectively, the "IDC Parties") contend that Laurel Hill purchased only the surface rights of the Property in 1919 and that IDC obtained the subsurface rights through predecessors in interest who obtained the subsurface rights through a series of conveyances and transfers. Finally, Proctor maintains that it is the actual owner of the subsurface rights, by virtue of reservation of the subsurface rights to Tract 1 of the Property in an 1894 conveyance by Thomas E. Proctor, Proctor's predecessor in interest.

On June 24, 2022, this Court issued an Opinion and Order in this case on cross-motions for summary judgment filed by IDC and Range. At Proctor's request, the Court limited its holding to issues affecting IDC and Range and addressed only the rights of the filing parties, while leaving adjudication of the rest of the case for another day. The dispute between IDC and Range concerned interpretation of the deeds in their respective chains of title and particularly implicated interpretation of a 1919 deed purporting to convey some interest in the Property from Central Pennsylvania Lumber Company ("CPLC")[6] to Laurel Hill.[7] The parties disputed whether the CPLC had reserved to itself subsurface rights in the Property. This Court concluded that it had and entered summary judgment in favor of IDC and against Range.

IDC now seeks adjudication of its purported rights to the subsurface estate in and under the Property as against Proctor's purported rights thereto.

B. Relevant procedural history.

On May 1, 2019, Range filed a Complaint naming the IDC Parties, Proctor and others as Defendants. In its Complaint, Range asserts that it is the owner of

[6] IDC's predecessor in interest as purported owner of subsurface rights in and under the Property.
[7] Range's predecessor in interest as purported owner of subsurface rights in and under the Property.

subsurface rights to the Property. On June 3, 2019, Proctor filed an Answer, Counterclaim and Cross-Claim to the Complaint. Proctor filed a Cross-Claim against IDC, wherein Proctor alleges that it owns subsurface rights to Tract 1 of the Property. IDC filed an Answer with New Matter and Affirmative Defenses on December 13, 2019.

Thereafter, on December 16, 2019, Range filed an Amended Complaint. Proctor did not reassert its Cross-Claim in Answer to the Amended Complaint. To date, Proctor has never filed a reply to the new matter asserted in IDC's Answer to Range's original Complaint.

IDC filed a Motion for Partial Summary Judgment against Proctor on August 19, 2022 and a Brief in Support on October 18, 2022. Proctor filed a Response to IDC's Motion on October 14, 2022 and a Brief in Opposition on October 27, 2022. IDC filed a Reply to Proctor's Response on October 27, 2022, and Proctor filed a Sur-reply in Opposition on November 4, 2022. Range filed a Response in Support of IDC's Motion on September 19, 2022 and a Reply to Proctor's Response on November 2, 2022. SWN filed a Brief Joining in IDC's Motion on October 31, 2022. Accordingly, IDC's Motion is now ripe for decision.

II. PRELIMINARY LEGAL ISSUES.

A. Indispensable parties.

Failure to join an indispensable party is a non-waivable defect that deprives the trial court of subject matter jurisdiction.[8] "[I]f all necessary and indispensable parties are not parties to an action in equity, the court is powerless to grant relief."[9]

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[8] *Northern Forests II, Inc. v. Keta Realty Co.*, 130 A.3d 19, 28-29 (Pa. Super. 2015) (citing *Sabella v. Appalachian Dev. Corp.*, 103 A.3d 83, 90 (Pa.Super.2014)).
[9] *Huston v. Campanini*, 346 A.2d 258 (Pa. 1975) (citing *Tigue v. Basalyga*, 304 A.2d 119 (Pa. 1973); *Reifsnyder v. Pittsburgh Outdoor Advertising Company*, 152 A.2d 894 (Pa. 1959)).

Proctor contends here that the County of Lycoming is an indispensable party by virtue of a 1922 tax sale of unseated lands implicating the property at issue here. There was no purchaser at the 1922 sale, so under law applicable at the time, the County purportedly became owner of the Property, including its subsurface rights, then. There has been no conveyance out of the County. As such, the County owns, or at least has a credible claim to own, the Property.

"A party is indispensable 'when his or her rights are so connected with the claims of the litigants that no decree can be made without impairing those rights.'"[10] If Lycoming County owns all or has any rights in any portion of the Property, any decision concerning whether another party has an ownership interest in all or some of the Property potentially impairs the County's rights in it.

As has been pointed out by Range, however, it has taken steps recently to join Lycoming County as a party to this litigation. The Court takes judicial notice that Lycoming County has been joined as a party in this matter. As such, the Court will not dismiss IDC's Motion for Summary Judgment on the basis that an indispensable party has not been joined in this litigation. Furthermore, the Court makes no ruling at this time on Lycoming County's ownership interest, if any, in the Property.

B. Pendency of a claim by Proctor against IDC.

Proctor contends that IDC's Motion is procedurally improper because, Proctor asserts, there is no live claim between Proctor and IDC. Range filed its Complaint on May 1, 2019; Proctor responded and filed its Answer, New Matter, Counterclaim and Cross-Claim on June 3, 2019, which included Proctor's cross-

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[10] *Northern Forests II, Inc. v. Keta Realty Co.*, *supra*, 130 A.3d at 29 (quoting *Oman v. Mortgage I.T.*, 118 A.3d 403, 406 (Pa. Super. 2015) (citing *City of Phila. v. Commonwealth*, 838 A.2d 566, 581 (Pa.2003), quoting *Sprague v. Casey*, 550 A.2d 184, 189 (Pa.1988))).

claim against IDC. On December 13, 2019, IDC filed an Answer, New Matter and Affirmative Defenses to Proctor's cross-claim. Thereafter, on December 16, 2019, Range filed an Amended Complaint. Proctor did not re-assert its cross-claim against IDC in response to Range's Amended Complaint.

Proctor asserts that IDC's motion for summary judgment is improper because there is no live claim between the IDC and Proctor. Proctor cites *Reichert v. TRW, Inc., Cutting Tools Div.* for the proposition that filing of an amended complaint renders *all* prior pleadings moot.[11] IDC disagrees, citing *American Express Banks, FSB v. Martin* and *Bollard and Associates v. Pa. Associates* for the proposition that a discontinuance of the plaintiff's claims in an action does not discontinue counterclaims[12] and cross-claims[13] or deprive the trial court of jurisdiction to adjudicate those claims.

The Court agrees with IDC and finds that Proctor's claims against IDC asserted in Proctor's June 3, 2019 cross-claim against IDC survive Proctor's filing of an amended complaint. Rule 232, Pennsylvania Rules of Civil Procedure, specifically provides that discontinuance of a plaintiff's claims against a defendant does not affect any counterclaims filed by the defendant.[14] The Superior Court has extended this to cross-claims against additional defendants by holding that although Rule 232

> does not specifically speak to the disposition of [cross-]claims against additional defendants ..., the rationale behind the rule—that a plaintiff should not be able, by voluntarily discontinuing his or her action, to affect adversely the defendant's rights with respect to separate causes of action which happen to be initiated by

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[11] *Reichert v. TRW, Inc., Cutting Tools Div.*, 611 A.2d 1191, 1194 (1992) (explaining that the filing of an amended pleading is a withdrawal of the original).
[12] *American Express Banks, FSB v. Martin*, 200 A.3d 87 (Pa. Super. 2018).
[13] *Bollard and Associates v. Pa. Associates*, 223 A.3d 698 (Pa. Super. 1997).
[14] Pa. R. Civ. P. 232(a): "A discontinuance or nonsuit shall not affect the right of the defendant to proceed with a counterclaim theretofore filed."

> counterclaim—applies equally in the case of a … [cross-]claim against an additional defendant.[15]

The fact that Proctor and IDC are co-defendants as opposed to a defendant and an additional defendant does not alter this analysis.[16] When Range amended its complaint, it discontinued the claims therein, and "as a matter of law, plaintiff's discontinuance was without legal effect upon … [defendant's cross-]claim."[17]

Proctor cites *Avery v. Cercone*[18] for the proposition that Range's amended pleading "render[s] all prior pleadings null and void."[19] Proctor argues that counterclaims and cross-claims survive only in situations in which a plaintiff "discontinues" its action pursuant to settlement or similar resolution and not when a plaintiff has amended a complaint. The Court finds this to be a distinction without a difference regarding whether claims between other parties survive the demise of the complaint. A counterclaim or cross-claim is an independent action premised on the same facts as the plaintiff's complaint but not raising the same causes of action between the same parties. Here, the issue is which of the respective parties owns the subsurface rights to the property. What happens between Proctor and IDC does not determine what happens between Range and IDC, except to the extent that the chains of title must be interpreted consistently.

Moreover, the Court is mindful of the purpose of the Rules of Civil Procedure pertaining to cross-claims among defendants.

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[15] *Ross v. Tomlin*, 696 A.2d 230, 231-32 (Pa. Super. 1997).
[16] *See, e.g., Bollard, supra*, 223 A.3d at 702: "A discontinuance of all of the plaintiff's claims in an action does not discontinue counterclaims filed by a defendant and does not deprive the trial court of jurisdiction to adjudicate those claims. Pa. R.C.P. 232(a); *American Express Bank, FSB v. Martin*, 200 A.3d 87, 91 (Pa. Super. 2018). This rule applies equally to cross-claims filed by a defendant against another defendant. *Ross v. Tomlin*, 696 A.2d 230, 231-32 (Pa. Super. 1997); *see generally* 7 Standard Pennsylvania Practice 2d § 39:32 (citing *Ross*)."
[17] *Ross, supra*, 696 A.2d at 232.
[18] *Avery v. Cercone*, 225 A.3d 873 (Pa. Super. 2019).
[19] *Id.*, 225 A.3d at 882-83.

> The applicable rules of court, including former Rule 2252(d) [pertaining to joinder of additional defendants] and Rule 1031.1 [pertaining to cross-claims], were formulated for the express purpose of "bringing together into a single law suit causes of action arising out of the transaction or occurrence or series of transactions or occurrences upon which the plaintiff's cause of action is based." ... Indeed, "[t]he general plan of joinder procedure is to adjudicate all rights growing out of a certain factual background."[20]

Here, the underlying claim by Range and the competing claims of IDC and Proctor all arise out of the same series of transactions or occurrences, *i.e.*, those constituting the chain of title to the Property and its subsurface rights. The parties' respective claims all rest on the interpretation and the legal effect, or lack thereof, of the same series of transactions and occurrences.

C. Proctor's failure to reply to IDC's New Matter.

Proctor filed its cross-claim against IDC on June 3, 2019. IDC filed an answer and new matter with affirmative defenses, endorsed with a notice to plead, to the cross-claim on December 13, 2019. To date, Proctor has not replied to IDC's New Matter. Ordinarily, every pleading subsequent to a complaint must be filed within twenty days after the preceding pleading, provided that the preceding pleading contains a notice to defend or is endorsed with a notice to plead.[21] IDC asserts that on January 2, 2020, Proctor requested an extension of time to reply to IDC's new matter while the parties awaited resolution of Range's then-pending Motion to Stay. The Motion to Stay ultimately was granted for a period of 120 days; however, it expired on or about May 13, 2020, whereupon, IDC asserts, Proctor should have filed a reply to its new matter.

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[20] *Rettger v. UPMC Shadyside*, 991 A.2d 915, 928 (Pa. Super. 2010) (quoting *Free v. Lebowitz*, 344 A.2d 886, 888 (Pa. 1975) and 3 Goodrich–Amram, Sec. 2255(d)-9, p. 107).

[21] Pa. R. Civ. P. 1026(a): "[E]very pleading subsequent to the complaint shall be filed within twenty days after service of the preceding pleading, but no pleading need be filed unless the preceding pleading contains a notice to defend or is endorsed with a notice to plead."

This Court will not enter summary judgment against Proctor on the basis that Proctor neglected to respond to IDC's new matter. Notwithstanding the rule that a party must reply to new matter endorsed with a notice to plead within twenty days, not every allegation requires a response. Generally, a party must admit or deny each averment of fact in the preceding pleading[22] but is not required to respond to conclusions of law.[23]

> "A legal conclusion is a statement of a legal duty without stating the facts from which the duty arises. A statement of the existence of a fact could be a legal conclusion if the fact stated is one of the ultimate issues in the proceeding."[24]

Further, one is not required to reply to a factual allegation that has been placed into issue already in preceding pleadings.[25] Failure to deny an averment to which a response is required is an admission of the averment;[26] however, failure to file a responsive pleading when required results only in the admission of factual allegations and not of legal conclusions.[27]

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[22] Pa. R. Civ. P. 1029(a): "A responsive pleading shall admit or deny each averment of fact in the preceding pleading or any part thereof to which it is responsive...."

[23] "While averments of fact require a denial, conclusions of law do not compel a response." *Rohrer v. Pope*, 918 A.2d 122, 129 (Pa. Super. 2007) (*citing Devine v. Hutt*, 863 A.2d 1160 (Pa. Super. 2004); *In re Estate of Roart*, 568 A.2d 182 (Pa. Super. 1989), *alloc. denied*, 588 A.2d 509-10 (Pa. 1990)).

[24] *Mellon Bank, N.A. v. National Union Ins. Co. of Pittsburgh, PA*, 768 A.2d 865, 869 n.1 (Pa. Super. 2001) (quoting *Kaiser v. Western States Administrators*, 702 A.2d 609, 614 (Pa. Commw. 1997)). "Mellon's allegation that it is an insured under the Policy is a conclusion of law based on the terms of the [insurance] contract; we do not accept it as fact.... The interpretation of that contract, including Mellon's status as an insured, is a question of law for the court's determination." *Id.* at 868-69 (citations omitted).

[25] *Watson v. Green*, 331 A.2d 790, 791-92 (Pa. Super. 1974) ("Defendant's averment in his new matter that no attorney-client relationship existed between him and the plaintiffs was merely a reiteration of paragraph six of the answer whereupon he denied that the defendant Bernstein had ever engaged him to prosecute the said action. It is apparent that this denial placed into issue the fact of whether or not Green and the plaintiffs had entered into an attorney-client relationship. Thus, no reply was needed to this allegation of the new matter since the matter was clearly placed into issue by the complaint and answer. New matter properly contains averments of facts only if they are extrinsic to facts averred in the complaint").

[26] Pa. R. Civ. P. 1029(b): "Averments in a pleading to which a responsive pleading is required are admitted when not denied specifically or by necessary implication...."

[27] *Michener v. Montgomery County Tax Claim Bureau*, 671 A.2d 285, 288 (Pa. Commw. 1996) (citing Pa. R.C.P No. 1029 and quoting *Landis v. City of Philadelphia*, 369 A.2d 746, 748 (Pa. Super. 1976)).

All of the *facts* raised in IDC's New Matter to Proctor's Cross-Claim either (1) are not extrinsic to those already raised in preceding pleadings[28] or (2) are legal conclusions because they (a) raise ultimate issues in the proceeding[29] or (b) concern interpretation of the effect of (i) a document[30] or (ii) an event.[31] The conclusions of law raised in IDC's New Matter do not require a response in any event.[32] Therefore, the Court does not believe that Proctor, by virtue of its failure to reply to IDC's New Matter to Proctor's Counter-Claim, admitted any fact that, standing alone, compels entry of summary judgment against Proctor.

III. LAW AND ANALYSIS OF THE MOTION FOR SUMMARY JUDGMENT.

A. Legal standard.

A party may move for summary judgment, in whole or in part,

> [a]fter the relevant pleadings are closed, but within such time as not to unreasonably delay trial ...
>
> > (1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or
> >
> > (2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.[33]

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[28] *See, e.g.*, IDC New Matter ¶ 100 ("After subsequent conveyances and transfers, the surface of the Subject Property, including Tract 1, was conveyed by Elk to Central Pennsylvania Lumber Company ... by Deed dated May 25, 1903 ..."). *See also* IDC New Matter ¶¶ 98-116.

[29] *See, e.g.*, IDC New Matter ¶ 98 ("IDC has a possessory interest in the oil, gas and minerals ... in and under a tract of land ..."). *See also* IDC New Matter ¶¶ 101-116.

[30] *See, e.g.*, IDC New Matter ¶ 99 ("On or about October 2, 1894, by Deed ... Proctor, joined by his wife, conveyed his interest in Tract 1 to Elk Tanning Company ..."). *See also* IDC New Matter ¶¶ 100, 111-116.

[31] *See, e.g.*, IDC New Matter ¶ 112 ("The Tax Sales divested both Proctor of their interest in the Subsurface Rights in and under the Subject Property and extinguished the Proctor Reservation"). *See also* IDC New Matter ¶¶ 101-116.

[32] Most of the allegations of IDC's New Matter are conclusions of law, *see*, *supra*, nn. 24-26, and all of IDC's affirmative defenses constitute conclusions of law. IDC Affirmative Defenses, ¶¶ 117-129.

[33] Pa. R. Civ. P. 1035.2.

As a preliminary matter to consideration of the instant Motion, the Court finds that the timing of IDC's Motion is appropriate. The relevant pleadings are closed, as determined above. Certain other pleadings are not closed, such as those involving Lycoming County, which has been joined as a party only recently, but those pleadings are not relevant here because they have no bearing on the respective rights of the parties concerning the issue presently before the Court. Because those other pleadings remain open, there is no risk that the instant Motion will delay trial unreasonably.

Once a party has filed a motion for summary judgment, the opposing party must file a response:

> (a) ... the adverse party may not rest upon the mere allegations or denials of the pleadings but must file a response within thirty days after service of the motion identifying
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> > (1) one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion or from a challenge to the credibility of one or more witnesses testifying in support of the motion, or
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> > (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]

The court may enter summary judgment against a party who fails to respond to a motion therefor.[35] "Where a motion for summary judgment has been made and properly supported, parties seeking to avoid the imposition of summary judgment must show by specific facts in their depositions, answers to interrogatories, admissions or affidavits that there is a genuine issue for trial."[36]

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[34] Pa. R. Civ. P. 1035.3(a).
[35] Pa. R. Civ. P. 1035.3(d): "Summary judgment may be entered against a party who does not respond."
[36] *Marks v. Tasman*, 589 A.2d 205, 206 (Pa. Super. 1991) (citing *Overly v. Kass*, 554 A.2d 970 (Pa. Super. 1989), *Tom Morello Construction Co., Inc. v. Bridgeport Federal Savings and Loan Ass'n*, 421 A.2d 747 (Pa. Super. 1980)).

Our Supreme Court has explained that

> "Summary judgment is properly granted where 'the pleadings, depositions, answers to interrogatories, and admission on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law'...."[37]

When considering a motion for summary judgment, a court must view the record in the light most favorable to the non-moving party and resolve all doubts as to the existence of a genuine issue of material fact against the moving party.[38] A court should grant summary judgment "only in cases where the right is clear and free from doubt."[39]

The burden is on the moving party to show that there is no genuine issue of material fact,[40] and the court's function is to ascertain whether a material issue of fact exists rather than to determine the facts.[41] Notwithstanding that, however, a document filed of record is legal evidence in all matters in which the document would be competent evidence when provision has been made by law for recording or filing the document in a public office,[42] and a properly authenticated record of governmental action or inaction is admissible evidence that the governmental action or inaction was in fact taken or omitted.[43]

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[37] *Ducjai v. Dennis*, 656 A.2d 102, 107 (Pa. 1995) (quoting *Pennsylvania State University v. County of Centre*, 615 A.2d 303, 304 (Pa. 1992) (citations omitted)), disapproved of on other grounds by *Gardner v. Erie Ins. Co.*, 722 A.2d 1041 (Pa. 1999).
[38] *Sevast v. Kakouras*, 915 A.2d 1147, 1152-53 (Pa. 2007) (citing *Jones v. SEPTA*, 772 A.2d 435, 438 (Pa. 2001)).
[39] *Marks v. Tasman*, *supra*, 589 A.2d at 206 (citing *Musser v. Vilsmeier Auction Co., Inc.*, 562 A.2d 279, 280 (Pa. 1989)).
[40] *Adamski v. Allstate Ins. Co.*, 738 A.2d 1033, 1035 (Pa. Super. 1999) (citing *Accu–Weather v. Prospect Communications*, 644 A.2d 1251 (Pa. Super. 1994)).
[41] *Swartley v. Hoffner*, 734 A.2d 915, 918 (Pa. Super. 1999) (citing *McDonald v. Marriott Corp.*, 564 A.2d 1296, 1298 (Pa. Super. 1989)).
[42] 42 Pa. C.S. § 6106.
[43] 42 Pa. C.S. § 6104.

In a quiet title action, a motion for summary judgment can be filed,[44] but the claimant must recover on the strength of his own title rather than on the weakness of his opponents' title.[45] The claimant need not establish exclusive ownership as to all others, however; "as in other cases, [he] need not go further than to make out a prima facie case."[46] In other words, the claimant need only show that his title claim is superior to his opponent's.

B. Proctor's title claim to subsurface rights in and under the Property.

Proctor's claim to the subsurface rights stems from an 1894 reservation but is complicated by a 1906 tax sale. When Thomas E. Proctor[47] originally sold Tract 1 of the Property to Elk Tanning Company in 1894, he reserved unto himself the subsurface rights thereto.

1. The 1906 tax sale.

In 1906 the Property was assessed by the real estate tax assessor as "unseated" land. "'[S]eated land' is developed or improved land whereas 'unseated land' is 'wild' and undeveloped."[48] Notwithstanding severance of the estates here, the surface and subsurface rights to Tract 1 were not separately assessed as of 1906. In 1906, Lycoming County conducted a tax sale of Tract 1, at which it sold Tract 1 as "unseated" land.

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[44] *See, e.g., Ralston v. Ralston*, 55 A.3d 736 (Pa. Super. 2012). Importantly, for present purposes, a motion for summary judgment may be appropriate to address ownership claims to subsurface rights following a tax sale. *See, e.g., Herder Spring Hunting Club v. Keller*, 143 A.3d 358 (Pa. 2016).

[45] *Albert v. Lehigh Coal & Nav. Co.*, 246 A.2d 840, 843 (Pa. 1968) (citing *Cox's Inc. v. Snodgrass*, 92 A.2d 540, 541-42 (Pa. 1957); *Blumner v. Metropolitan Life Ins. Co.*, 66 A.2d 245, 248 (Pa. 1949); *Ransberry v. Brodhead's Forest & Stream Ass'n*, 174 A. 97, 98 (Pa. 1934)).

[46] *Hallman v. Turns*, 482 A.2d 1284, 1287 (Pa. Super. 1984) (quoting *Golden v. Ross*, 186 A. 249, 249 (Pa. Super. 1936)); *see also Moore v. Commw., Dep't of Environmental Resources*, 566 A.2d 905, 907 (Pa. Commw. 1989).

[47] Proctor's predecessor in interest as purported owner of subsurface rights in and under Tract 1 of the Property.

[48] *Herder Spring Hunting Club v. Keller, supra*, 143 A.3d at 359 n.2.

Under the tax acts applicable in Pennsylvania from 1804 through 1947, when subsurface rights to a property were not assessed separately, the surface and subsurface estates were considered to be merged for tax purposes, and the tax sales of 'unseated' land included both the surface and the subsurface rights. Therefore, once the tax sale was completed, title to the surface rights and the subsurface rights were reunited and vested in the purchaser in a process referred to as a "title wash."[49] Our Supreme Court concluded that "a tax sale [of this type] extinguish[ed] all previous titles" and exclude[d] "all other claimants to the land of a prior date."[50] Thus, "[w]hen there is no separate assessment of [subsurface rights], a purchase [at a tax sale of unseated land] of the whole by the owner of the surface divests the title of the owner of the minerals."[51]

IDC now contends that the legal effect of the 1906 tax sale was to merge the surface and subsurface rights that previously had been severed and, thereafter, to convey the whole, undivided property to the purchaser at the tax sale, who was IDC's predecessor in interest. IDC notes that the assessment records in Lycoming County confirm that no separate assessment existed for the subsurface rights in and under the subject Property and that no documents exist to confirm that Proctor either prior to or at the time of the 1906 tax sale requested the County assessor to tax subsurface rights separately.

If IDC is correct, the 1906 tax sale divested Proctor of any interest that it had in Tract 1 of the Property.

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[49] *Herder Spring Hunting Club v. Keller, supra*, 143 A.3d at 367.
[50] *Id.*
[51] *Id.*

2. Proctor's counter-argument concerning the 1906 tax sale.

Proctor contends that the 1906 tax sale does not extinguish its claim to ownership of the subsurface rights. Specifically, Proctor asserts that

> The evidence demonstrates that (1) the Proctor Subsurface Estate was reported to the Lycoming county taxing authorities; (2) CPLC acknowledged that the 1906 tax sale had no impact on the separately reported subsurface estate, estopping its successors in interest, including IDC, from asserting any claim to the Proctor Subsurface Estate; (3) the tax sale purchase by Calvin H. McCauley, Jr., an agent of CPLC at the time, operated as a redemption under the law...[52]

a. Proctor contends its interest in the Property was reported to the Lycoming county taxing authorities.

Despite asserting that "the Proctor Subsurface Estate was reported to the Lycoming county taxing authorities," Proctor can point to no evidence in the record to indicate this was done. The 1894 deed reserving unto Proctor the subsurface rights was filed of record, but "[t]he [applicable tax] Acts did not impose any duty on the county commissioners to obtain information regarding the unseated land or to search through deed books to discover whether lands had changed hands."[53] Thus, the reservation in the 1894 deed is not evidence that Proctor's interest was reported to the Lycoming County taxing authorities.

Proctor also points the Court to *Commonwealth v. Thomas E. Proctor Heirs Trust*,[54] an unreported, and therefore non-precedential,[55] decision of the

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[52] Proctor's Response to IDC's Motion for Summary Judgment, ¶ 5.
[53] *Herder Spring Hunting Club v. Keller*, *supra*, 143 A.3d at 368-69 (citing *Stoetzel v. Jackson*, 105 Pa. 562, 567 (Pa. 1884)).
[54] *Commw. v. Thomas E. Proctor Heirs Tr.*, 493 M.D. 2017, 2020 WL 256984 (Pa. Commw. Ct. Jan. 16 2020), *reconsideration and reargument denied* (Feb. 13, 2020).
[55] Commonwealth Court Internal Operating Procedures, § 414, 42 Pa. C.S. "An unreported opinion of th[e Commonwealth] Court may be cited and relied upon when it is relevant under the doctrine of law of the case, res judicata or collateral estoppel." *Id.*, § 414(a). None of those doctrines apply here. "Parties may also cite an unreported panel decision of th[e Commonwealth] Court issued after January 15, 2008, for its persuasive value, but not as binding precedent." *Id.* Thus, this case is persuasive, but not precedential.

Commonwealth Court. The Game Commission commenced that action against Proctor by filing a Petition for Review in the Nature of a Complaint to Quiet Title and for Declaratory Relief in the Commonwealth Court's original jurisdiction. The property at issue there involved eight tracts of land in Lycoming County but did not include the Property. Thomas E. Proctor conveyed the eight tracts in 1894 with a similar reservation of subsurface rights to himself as there is in this case. CPLC acquired the eight tracts in 1903, and they were sold as "unseated" land at a tax sale in 1908. Calvin H. McCauley, Jr., CPLC's then-Treasurer, purchased the Premises at the 1908 tax sale and conveyed it back to CPLC in 1910.[56]

The Commonwealth Court found that there was an issue of material fact concerning whether Proctor's interest in subsurface rights was reported to the Lycoming County taxing authorities. Proctor argued there that reference to the Proctor reservation in subsequent deeds by CPLC showed the Proctor reservation was reported to the County Commissioners. Proctor also pointed to tax records of McIntyre Township which noted a separate assessment of subsurface rights,[57] as well as to evidence admitted in a 1905 trial, wherein Mr. Proctor's attorney testified that he personally looked after Proctor's properties and dealt with county treasurers to ensure the properties were properly enrolled.[58] The Commonwealth Court agreed with Proctor that these facts created an issue of material fact as to whether the Lycoming County Commissioners were aware of the reservations of rights there.[59]

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[56] *Commw. v. Thomas E. Proctor Heirs Tr., supra*, 2020 WL 256984, at *1-2.
[57] At the time, Lycoming County only taxed subsurface rights if there was active extraction of minerals. In 1908 active extraction was occurring only in McIntyre and McNett Townships, so, Proctor reasons, no other township had a reason to note a separate assessment.
[58] *Commw. v. Thomas E. Proctor Heirs Tr., supra*, 2020 WL 256984, at *5-6.
[59] *Id.*

This Court does not find the Commonwealth Court opinion to be sufficient *evidence* that the Lycoming County Commissioners were informed of the Proctor reservation here. The Property here is in Jackson Township, and it was sold at a tax sale in 1906. Thus, the facts here are not the same. Moreover, the evidence cited in that case is not part of the record in this case. A party opposing a motion for summary judgment may not rest on its allegations and must proffer *evidence* demonstrating that an issue of material fact exists that would preclude entry of summary judgment.[60] Proctor has not introduced evidence into the record demonstrating existence of an issue of material fact.

b. Proctor contends references to its 1894 reservation in subsequent deeds by CPLC estops CPLC's successors from arguing that the 1906 tax sale divested Proctor's interest in the subsurface estate.

Proctor next asserts that "CPLC acknowledged that the 1906 tax sale had no impact on the separately reported subsurface estate, estopping its successors in interest, including IDC, from asserting any claim to the Proctor Subsurface Estate." Proctor argues that the deed on which IDC's ownership rights depend, the 1919 deed conveying the Property from CPLC to Laurel Hill, specifically identifies the owner of the subsurface estate as Proctor. Accordingly, Proctor argues, CPLC's successor in interest cannot now take a contrary position.

The Court has addressed this issue at length in *Keta Gas and Oil Co. v. Thomas E. Proctor, et al.*[61] and in its June 24, 2022 Opinion and Order in this case deciding cross-motions for summary judgment filed by Range and IDC. The Court declines to revisit its decisions here. As the Court stated previously in this case:

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[60] *See* Pa. R. Civ. P. 1035.3(a).
[61] *Keta Gas and Oil Co. v. Thomas E. Proctor, et al.*, No. CV 50-571, at 13 (Lycoming Cnty. October 23, 2018), *aff'd* 1939 MDA 2018, 2019 WL 6652033 (Pa. Super. Ct. December 06, 2019).

> 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.[] 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* ..., and thus they remained CPLC's to retain or convey as it saw fit.... 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.[62]

The Court, therefore, reiterates its prior rulings and finds that the language to which Proctor refers in the 1919 deed does not resurrect Proctor's rights, is not an acknowledgment by CPLC that the 1906 tax sale had no impact on any subsurface estate, and does not estop CPLC's successors in interest, including IDC, from asserting any claim to the subsurface estate.

c. Proctor contends purchase of the Property by Calvin H. McCauley, Jr. at the 1906 tax sale operated as a redemption under the law.

Finally, Proctor claims that "the tax sale purchase by Calvin H. McCauley, Jr., an agent of CPLC at the time, operated as a redemption under the law."[63] In

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[62] *See* this Court's June 24, 2022 Opinion and Order, at 16-17.

[63] *See* 72 P.S. § 6091: "If the owner or owners of lands sold as aforesaid, shall make, or cause to be made, within two years after such sale, an offer or legal tender of the amount of the taxes for which the said lands were sold, and the costs, together with the additional sum of fifteen per cent. on the same, to the county treasurer ... and to pay it over to the said purchaser upon demand ... said owner or owners shall be entitled to recover the same by due course of law...."

support of this assertion, Proctor relies on *Commonwealth v. Thomas E. Proctor Heirs Trust*[64] and *Pennsylvania Game Commission v. Thomas E. Proctor Heirs Trust*.[65] Both of those decisions contain extensive discussions of evidence suggesting a relationship of some sort between Calvin H. McCauley, Jr. and CPLC.[66] The Commonwealth Court concluded that "while a reasonable trier of fact could conclude that Mr. McCauley ... [was] acting as CPLC's agent[], there is also evidence from which a reasonable trier of fact could conclude ... [he was] not."[67] In contrast, the federal court concluded that "[i]n much the same way McCauley declared he was acting "in trust for" CPLC when he made tax purchases in Elk County, ... he was acting on behalf of CPLC when purchasing the Josiah Haines warrant in Bradford County."[68]

Initially, the decisions upon which Proctor relies are persuasive, but they not binding as precedent on this Court. Secondly, both of those courts point to evidence suggesting a relationship of some sort between Calvin H. McCauley, Jr. and CPLC, but both acknowledge that Calvin McCauley purchased the properties at issue there, as he did here, in his own name and *not* in CPLC's name. Although he later conveyed the properties to CPLC there, as he did here, there is mere speculation that he purchased them with CPLC's funds[69] and no evidence whatsoever on the deeds themselves that he purchased the properties in trust for

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[64] *Commw. v. Thomas E. Proctor Heirs Tr.*, *supra*, 2020 WL 256984.
[65] *Pa. Game Comm'n v. Thomas E. Proctor Heirs Tr.*, 2021 WL 5759030 (M.D. Pa. December 3, 2021).
[66] *Commw. v. Thomas E. Proctor Heirs Tr.*, *supra*, 2020 WL 256984, at *8-9; *Pa. Game Comm'n v. Thomas E. Proctor Heirs Tr.*, 2021 WL 5759030, at *11.
[67] *Commw. v. Thomas E. Proctor Heirs Tr.*, *supra*, 2020 WL 256984, at *9.
[68] *Pa. Game Comm'n v. Thomas E. Proctor Heirs Tr.*, 2021 WL 5759030, at *11.
[69] *Commw. v. Thomas E. Proctor Heirs Tr.*, *supra*, 2020 WL 256984, at *8. Note, however, that the federal court decision refers to a 1914 notarized declaration in which Calvin McCauley "stat[ed] he was acting in trust for CPLC when he purchased six properties in Elk County from the county treasurer using funds provided by CPLC." *Pa. Game Comm'n v. Thomas E. Proctor Heirs Tr.*, 2021 WL 5759030, at *11.

CPLC.[70] Thirdly, Proctor did not introduce any evidence into the record here showing an association between Calvin McCauley and CPLC.[71] Absent evidence in the record, this Court is unwilling to look back more than one hundred years to conclude that Calvin McCauley purchased the Property in trust for CPLC.

Furthermore, even if Calvin McCauley was an agent of CPLC, his purchase of the Property at the 1906 tax sale did not operate as a redemption under the tax act applicable at the time.[72] In *Powell v. Lantzy*, the surface and subsurface rights to a property were severed by an 1883 conveyance with a reservation of subsurface rights. At the time of the 1883 conveyance, there were unpaid taxes on the property that been assessed previously. In 1884, after the person who purchased the property in 1883 sold it to yet another person, the property was sold as unseated land at tax sale for unpaid 1882 and 1883 taxes. The purchaser at tax sale was the current owner of the surface estate.[73] The Supreme Court held that the purchaser at tax sale purchased the entire, undivided property.[74] The Court initially noted that one cannot acquire better title at a tax sale necessitated by his own neglect in paying taxes.[75] Nevertheless, because the land was

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[70] Calvin McCauley's relationship with CPLC with respect to the Property is best expressed in the deeds filed of record. As our Supreme Court explained in the context of a contract, "[w]here parties, without any fraud or mistake, have deliberately put their engagements in writing, the law declares the writing to be not only the best, but the only evidence of their agreement." *Gianni v. R. Russell & Co.*, 126 A. 791, 792 (Pa. 1924). In the absence of evidence, this Court will not reach more than one hundred years back in time to reform a relationship when there are documents of record evidencing it.

[71] *See* Proctor's Response to IDC's Motion for Summary Judgment filed October 14, 2022 and Proctor's Sur-reply in Opposition to IDC's Motion filed on November 4, 2022.

[72] *Powell v. Lantzy*, 34 A. 450 (Pa. 1896). Note that the United States District Court for the Middle District of Pennsylvania does not agree with the Court on this point. *See Pennsylvania Game Commission v. Thomas E. Proctor Heirs Trust*, 455 F. Supp. 3d 127, 147-50 (M.D. Pa. 2020) (holding that the owner of the surface estate had the duty to pay real estate taxes on unseated lands).

[73] *Id.*, at 451.

[74] *Id.*, at 452.

[75] *Id.*, at 451 (citations omitted) ("[O]ne cannot, by a purchase at a tax sale caused by his failure to pay taxes ... acquire a better title, or a title adverse to that of other parties in interest, ... [because]

unseated, the taxes were assessed on the land rather than on the owner or owners,[76] and neither the owner of the surface estate nor the owner of the subsurface estate had any fiduciary or similar duty to the other with respect to payment of the taxes.[77] Accordingly,

> Any moral obligation to agree and jointly pay the tax, each contributing his just share, rested equally upon the owners of the different parts; but there was no legal duty on either to do this. It was their separate, not their joint, interests which were in peril. They were not interested for or with each other, and no relation of confidence existed between them which gave rise to a duty which equity will enforce through the medium of a trust.[78]

Since neither the owner of the surface estate nor the owner of the subsurface estate had the individual duty to pay the taxes himself, the surface estate owner's purchase of the property did not operate as a payment only, and, therefore, was not a redemption.[79]

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one cannot profit by his own wrong, and build up or acquire a title founded upon his own neglect of duty").

[76] "The taxes under which the sale was made in this case were on unseated lands, and there was no personal responsibility on the owner therefor. The land alone was liable." Id. (citations omitted). Note, however, that Act of June 6, 1887 imposed the obligation to pay taxes on the "owner or owners" of the unseated land. *See* 72 P.S. § 5781 (providing that the owner or owners of unseated lands shall pay taxes thereon and that, upon failure to do so, the unpaid tax shall accrue interest until paid in full or the land may be sold according to law). Importantly, the Act does not specify that the owner of the surface estate is responsible to pay, as opposed to the owner of the subsurface estate.

[77] *Powell v. Lantzy*, 34 A. at 451-52.

[78] *Id.*, at 452.

[79] *Id.* If the owner of the surface estate had a duty to pay the taxes, his payment of them at the tax sale or during the redemption period simply would have been a payment and, therefore, a redemption of the property sold at tax sale. *Id.* As such, he would have been enjoined from acquiring better title at the tax sale. *Id.*, at 451.

The federal court in *Pennsylvania Game Commission v. Thomas E. Proctor Heirs Trust*, *supra*, disagrees with this Court's application of *Powell v. Lantzy*. The federal court held that the owner of the surface estate had the duty to pay the real estate taxes on unseated land and that it could not allow the land to go to tax sale, purchase them there through an agent or straw party, and thereby gain title superior to that it possessed prior to the tax sale. 455 F. Supp. 3d at 147-50.

This Court disagrees with the federal court's position based, among other things, on the rationale behind the real estate tax laws in place at the time, which was explained by the Supreme Court in *Herder Spring*, *supra*. As the Court explained there, large tracts of land in the interior of Pennsylvania at the time were owned by speculators on the coast who neither developed nor paid taxes on the land. In response, the legislature developed a series of land and tax laws to encourage these owners to develop and pay taxes on the land rather than permitting the land to sit dormant and untaxed. The perceived unfairness that this regime of laws could create was addressed by the redemption period, which permitted a former owner of property sold at tax sale to

3. Conclusion concerning the 1906 tax sale.

This Court reiterates and will not depart from its prior ruling in this case. The Court therefore finds that the tax sale and title wash divested Proctor of its interest in the subsurface rights and that the 1919 Deed did not resurrect or create subsurface rights in favor of Proctor.[80]

4. Statute of limitations and laches.

IDC contends that any Proctor challenge to the 1906 tax sale is time-barred, as it is well beyond the applicable statute of limitations. IDC cites *Cornwall Mountain Investments, L.P. v. Thomas E. Proctor Trust*[81] for the proposition that a challenge to a tax sale based upon a voidable defect must be filed within the two year redemption period,[82] although that would not apply if the sale is void.[83] Specifically, the court found that procedural irregularities in the notice, assessment, and tax sale process make a tax sale voidable and must be raised within the redemption period, while jurisdictional defects render a sale void and need not be filed within the redemption period.[84] The Court agrees with IDC that if Proctor's challenge to the 1906 tax sale is based on procedural irregularities it is time-barred. The crux of Proctor's challenge to the 1906 tax sale, however, does not concern procedural irregularities regarding the sale itself. Accordingly, the

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pay the taxes, costs and a penalty within two years after the tax sale and, thereby, regain ownership. *Herder Spring*, 143 A.3d at 363-66. With that background in mind, this Court believes that its interpretation of *Powell v. Lantzy* is consistent with the Supreme Court's understanding, which was that the land tax system was in place to encourage development and taxation of land and to discourage the practice of parties' keeping land undeveloped and refusing to pay taxes on it.

[80] *See* this Court's June 24, 2022 Opinion and Order, at 16-17.

[81] *Cornwall Mountain Investments, L.P. v. Thomas E. Proctor Tr.*, 158 A.3d 148 (Pa. Super. 2017).

[82] Under the 1815 tax act, this period is two years from the date of sale. 72 P.S. § 6091.

[83] *Cornwall Mountain Investments, L.P. v. Thomas E. Proctor Tr.*, *supra*, 158 A.3d at 159-160.

[84] *Id.*, at 160.

Court will not find Proctor's challenge to be time-barred by the statute of limitations.[85]

IDC also argues that Proctor's challenge is time-barred by the doctrine of laches. "Laches is an equitable doctrine that bars relief when a complaining party is guilty of want of due diligence in failing to promptly institute an action to the prejudice of another."[86] For laches to apply, IDC must establish (1) a delay arising from Proctor's failure to exercise due diligence and (2) prejudice to the IDC resulting from the delay.[87]

> Laches requires not only a passage of time, but also a resultant prejudice to the party asserting the doctrine ... [and] is based on 'some change in the condition or relations of the parties which occurs during the period the complainant unreasonably failed to act.' ... '[T]he burden of proof with respect to the doctrine [of laches] is upon the party asserting the defense; in order to meet this burden, the party alleging the delay must demonstrate prejudice.' ... '[D]elay alone, no matter how long, does not itself establish laches.'...[88]

A factual determination based upon the circumstances of each case is necessary to establish laches,[89] so it generally is inappropriate for a court to enter summary judgment on the basis of laches, unless the relevant facts are not in dispute.[90]

> The required prejudice is established where, for example, witnesses die or become unavailable, records are lost or destroyed, and changes in position occur due to the anticipation that a party will not pursue a particular claim.[91]

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[85] Certain aspects of Proctor's challenge indeed may be procedural, although much of it is not. In the event the Court ever revisits this issue, it will analyze Proctor's challenge in greater depth and may find certain parts of it to be time-barred based on the statute of limitations.
[86] *Stilp v. Hafer*, 718 A.2d 290, 292 (Pa. 1998) (citing *Sprague v. Casey*, *supra*, 550 A.2d at 187). "The doctrine of laches ... is the practical application of the maxim that 'those who sleep on their rights must awaken to the consequence that they have disappeared.'" *Kern v. Kern*, 892 A.2d 1, 10 (Pa. Super. 2005) (quoting *Jackson v. Thomson*, 53 A. 506, 506 (Pa. 1902)).
[87] *Id.*, at 293 (citing *Sprague v. Casey*, *supra*, 550 A.2d at 187–88).
[88] *Patten v. Vose*, 590 A.2d 1307, 1309 (Pa. Super. 1991) (citations omitted).
[89] *Stilp v. Hafer*, *supra*, 718 A.2d at 293 (citing *Sprague v. Casey*, *supra*, 550 A.2d at 187–88).
[90] *Id.* (citing *Tudor Development Group, Inc. v. United States Fidelity & Guaranty Co.*, 768 F. Supp. 493, 496 (M.D. Pa.1991)).
[91] *Del-Val Elec. Inspection Service, Inc. v. Stroudsburg-East Stroudsburg Zoning & Codes Office*, 515 A.2d 75, 76 (Pa. Commw. 1986) (citing *Class of 200 Administrative Faculty Members v. Scanlon*, 466 A.2d 103 (Pa. 1983)). Laches may be particularly appropriate here: "It is well-settled law that the doctrine of laches is applicable peculiarly where the difficulty of doing justice arises

Although it is reasonable to suppose that facts in the nature of those referred to above could be adduced with relative ease, no such facts are present in the record before the Court right now, so the Court declines to find that Proctor's claim is time-barred by the doctrine of laches.[92]

SWN draws the Court's attention to *Pfeifer v. Westmoreland County Tax Claim Bureau*.[93] There, the gas rights to a property were sold at tax sale in 1990. Appellants learned they were owners of the gas rights in 2011 and 2012 and in 2013 they learned the gas rights had been sold at tax sale in 1990. They, accordingly, filed exceptions *nunc pro tunc* to the tax sale.[94] The Commonwealth Court held that laches barred appellants' challenge to the tax sale, since the challenge was filed twenty-three (23) years after the tax claim deed was recorded.[95] Their failure to discover their loss was a result of their lack of due diligence because "Appellants clearly could have availed themselves of knowledge of the tax sale through a simple, cursory search of any number of publicly available documents at any time in the twenty-three (23) years prior to bringing the action."[96] The Court found the long passage of time had caused demonstrable prejudice to Appellees.

> This Court is mindful of the fact that parties defending tax sales need the files and records to meet the burden of proof shifted to them. However, this Court also recognizes the incongruity caused by the Appellants' attempt to gain an advantage, from information lost by virtue of delay highlights the need to apply the doctrine of laches in a

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through the death of the principal participants in the transactions complained of, or of the witnesses or witnesses to the transactions, or by reason of the original transactions having become so obscured by time as to render the ascertainment of the exact facts impossible." *Kern v. Kern*, *supra*, 892 A.2d at 10 (citing *In re Wallace's Estate*, 149 A. 473, 475 (Pa. 1930)).

[92] This finding is made without prejudice, as the Court believes laches may be appropriate to bar Proctor's claim after further development of the record, should Proctor's claim proceed at some point in the future.

[93] *Pfeifer v. Westmoreland County Tax Claim Bureau*, 127 A.3d 848 (Pa. Commw. 2015).

[94] *Id.*, at 850.

[95] *Id.*, at 855.

[96] *Id.*

> situation such as this one. Appellants had twenty-three (23) years to ascertain their standing and assert their claim. Appellants' delay in bringing this action resulted in demonstrable prejudice to the Appellees. Allowing prior owners of tax sale properties to bring challenges to old tax sales would wreak havoc on Pennsylvania's property system.[97]

This Court finds the Commonwealth Court's reasoning in *Pfeifer* apropos of the present case but notes that the record here is not sufficiently developed to permit a party to demonstrate the necessary prejudice arising from Proctor's long delay in seeking to claim its alleged rights.

5. Collateral estoppel.

Finally, IDC claims Proctor is barred by the doctrine of collateral estoppel from raising issues related to tax sales and title wash in Lycoming County, based on this Court's decision in *Keta Gas and Oil Co. v. Thomas E. Proctor, et al.*

> Collateral estoppel applies if (1) the issue decided in the prior case is identical to one presented in the later case; (2) there was a final judgment on the merits; (3) the party against whom the plea is asserted was a party or in privity with a party in the prior case; (4) the party or person privy to the party against whom the doctrine is asserted had a full and fair opportunity to litigate the issue in the prior proceeding and (5) the determination in the prior proceeding was essential to the judgment.[98]

The Court has discussed *Keta* at length above; however, the Court does not believe that its ruling in *Keta* collaterally estops Proctor's claim in its entirety here. Although most of the elements of collateral estoppel are satisfied, the two cases involve different properties, so Proctor's claim could proceed here, for example, in the event Proctor procured evidence that the Lycoming County Commissioners had been notified of the severance of the Property's surface and subsurface

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[97] *Id.*

[98] *Llaurado v. Garcia-Zapata*, 223 A.3d 247, 253 (Pa. Super. 2019) (citing *Weissberger v. Myers*, 90 A.3d 730, 733 (Pa. Super. 2014)).

estates immediately preceding the 1906 tax sale. The record here is devoid of such evidence, however.

Collateral estoppel indeed may bar certain aspects of Proctor's claim, but the Court finds it unnecessary to analyze those issues at the present time, given its finding that Proctor's claim to the Property's subsurface estate was extinguished by the 1906 tax sale and not revived thereafter.

C. IDC's title claim to subsurface rights in and under the Property.

IDC's title claim rests upon a deed to it dated August 3, 2000[99] which purported to convey to IDC 87.5% of the subsurface rights in and under Tract 1 of the Property. In its Opinion and Order issued June 24, 2022, this Court held that the 1919 deed from CPLC to Laurel Hill conveyed only the Property's surface rights to Laurel Hill while excepting and reserving the subsurface mineral rights to the extent CPLC possessed them at the time of the conveyance.[100] In this Opinion, the Court has found that Proctor's interest in the subsurface estate of the Property was extinguished by the 1906 tax sale. As such, the court finds that IDC has made out the necessary *prima facie* case showing its claim to ownership of the subsurface estate of the Property is superior to Proctor's claim.[101] Thus, summary judgment may be entered in favor of IDC and against Proctor, as such judgment is rendered on the strength of IDC's title rather than on the weakness of Proctor's title.[102]

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[99] This deed is recorded in the office of the Lycoming County Recorder of Deeds in Book 6197, Page 315.
[100] *See* this Court's June 24, 2022 Opinion and Order, at 17.
[101] *See, e.g., Hallman v. Turns*, *supra*, 482 A.2d at 1287 (quoting *Golden v. Ross*, *supra*, 186 A. at 249) ("The claimant need not establish exclusive ownership as to all others, however; 'as in other cases, [he] need not go further than to make out a prima facie case'").
[102] *See, e.g., Albert v. Lehigh Coal & Nav. Co.*, *supra*, 246 A.2d at 843.

IV. CONCLUSION.

"Summary judgment is properly granted where 'the pleadings, depositions, answers to interrogatories, and admission on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law'...."[103] Here, Proctor did not place into the record any depositions, answers to interrogatories, admissions, affidavits, or other evidence showing that a genuine issue of material fact exists.[104] Instead, it chose to rely on the allegations in its pleadings and on decisions by other courts considering other situations.

For this reason and for the reasons set forth at length above, the Court hereby GRANTS IDC's Motion for Partial Summary Judgment and enters summary judgment in favor of IDC and SWN, which joined IDC's Motion, and against Proctor. Accordingly, Proctor's claims to any ownership rights in Tract 1 of the Property are DISMISSED with prejudice.

IT IS SO ORDERED.

BY THE COURT,

Eric R. Linhardt, Judge

ERL/bel

cc: Marc S. Drier, Esq.
Jeffrey J. Malak, Esq.
138 South Main St., P.O. Box 910, Wilkes-Barre, PA 18703
David C. Raker, Esq.
Helen L. Gemmill, Esq.
100 Pine Street, Harrisburg, PA 17101
George A. Bibikos, Esq.
5901 Jonestown Road #6330, Harrisburg, PA 17112

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[103] *Ducjai v. Dennis*, *supra*, 656 A.2d at 107 (Pa. 1995) (quoting *Pennsylvania State University v. County of Centre*, *supra*, 615 A.2d at 304).
[104] *See* Proctor's Response to IDC's Motion for Summary Judgment filed October 14, 2022 and Proctor's Sur-reply in Opposition to IDC's Motion filed on November 4, 2022.

J. C. Wilkinson, III, Esq.
200 Mountain View Lane, P.O. Box Two, Eagles Mere, PA 17731
Seth Hiller, Esq.
28 Penn Square, Lancaster, PA 17603
Laura Lange, Esq.
1670 Sturbridge Drive, Sewickley, PA 15143
Elizabeth M. Tarasi, Esq.
510 Third Avenue, 2nd Floor, Pittsburgh, PA 15219
James F. Mundy, Esq.
527 Linden Street, Scranton, PA 18503
Thomas C. Marshall, Esq. and Brandon R. Griest, Esq.
Gary Weber, Esq. (Lycoming Reporter)