



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

NO. 15-0655

STANDARD OIL COMPANY, INC.

vs.

CONSOLIDATION COAL COMPANY

Appeal of: STANDARD OIL COMPANY, INC.

PETITIONER'S REPLY BRIEF

**APPEAL FROM CIRCUIT COURT OF
WETZEL COUNTY, WEST VIRGINIA CIVIL ACTION NO. 14-C39**

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STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Petitioner continues to believe that the issues presented by this appeal are sufficiently novel and unique to necessitate oral argument pursuant to W. Va. R.A.P. 19.

SUMMARY OF ARGUMENT

This appeal addresses two errors committed by the Circuit Court. First, the Circuit Court granted summary judgment against Petitioner without considering all of the claims raised in Petitioner's Complaint. Second, the reasons cited by the Circuit Court for denying Petitioner's motion for leave to file an amended complaint misconstrued the nature of the claim Petitioner was seeking leave to raise and were contrary to the facts and circumstances before the Circuit Court.

As to the Circuit Court's first error, Respondent contends that the Circuit Court did not err in refusing to consider Petitioner's limited claims for declaratory relief because, according to Respondent, Petitioner never raised them either in its Complaint or in its response to Respondent's motion for summary judgment. In support of its position, Respondent advances its own reading of the Complaint and suggests that its reading is the only viable one. However, Respondent's reading fails to account for certain express language in the Complaint. When the legal standards applicable to motions for summary judgment are taken into account, it is clear that Petitioner's limited claims for declaratory relief were sufficiently raised. The Circuit Court was required to address all of Petitioner's claims before entering judgment against it. Because it did not, the case must be remanded to enable the Circuit Court to consider Petitioner's remaining claims.

Respondent's attempts to bolster the reasons for refusing to allow Petitioner to amend its Complaint to raise a declaratory judgment claim based on the doctrine of "first breach" are unavailing. Under the doctrine of first breach, a party committing the first breach of a contract may be prevented from enforcing that same contract in the future against the other party. The

statute of limitations that would apply if Petitioner had been seeking monetary damages for Respondent's past breaches of the Option Agreement at issue does not apply to Petitioner's declaratory judgment claim of first breach. Indeed, the statute of limitations on Petitioner's claim has not yet begun to run because Respondent has made no attempt to exercise or enforce any rights under the Option Agreement since the time Respondent breached the agreement. Similarly, Petitioner's former president cannot have waived the right to raise "first breach" because no such claim has even begun to accrue; again, because Respondent has not attempted to enforce the Option Agreement against Petitioner after breaching it. Finally, the only case cited by Respondent in support of the Circuit Court's position that Petitioner was dilatory in seeking leave to amend when it did, *Jones v. Sanger*, 217 W. Va. 564, 618 S.E.2d 573 (2005), only underscores the weakness of its position. In *Jones*, this Court found that a circuit court did not abuse its discretion by denying a plaintiff leave to file an amended complaint where the case had been in litigation for more than ten years. Here, the case had been on the docket for less than nine months when Petitioner sought leave to amend the Complaint. Further, Respondent has failed to point to any meaningful prejudice it would have suffered had leave to amend been allowed. Again, the case must be remanded to allow Petitioner to file its amended complaint.

ARGUMENT

I. The Complaint Includes Claims for Limited Declaratory Relief and the Circuit Court Erred by Granting Summary Judgment Against Petitioner Without Considering Such Claims

It is clear from the parties' respective briefs that they agree that in granting summary judgment, the Circuit Court did not consider any claims for limited declaratory relief. The record is clear on this point. (*See* AA 1-10 (Order Granting Defendant Consolidation Coal Company's Renewed Motion for Summary Judgment (the "Summary Judgment Order").)) The only question that remains is whether the Circuit Court was required to consider such claims before granting summary judgment against Petitioner. Given the great caution with which courts are to approach motions for summary judgment, Petitioner submits that it was. Accordingly, the case must be remanded for further proceedings on Petitioner's claims for limited declaratory relief.

A. Respondent's Reading of Petitioner's Complaint Ignores the Complaint's Express Language

Respondent insists that the Circuit Court was not required to consider Petitioner's claims for limited declaratory relief because Petitioner never raised them. To support its position, Respondent advances its own interpretation of the Complaint. Not surprisingly, under Respondent's reading the Complaint takes an "all or nothing" approach and does not include an alternative request for limited declaratory relief. (*See* Response Brief of Consolidation Coal Company ("Response Brief"), at 6-7.)

However, Respondent's reading ignores the relevant language of the Complaint. As the following quotation makes clear, the Complaint expressly includes claims for both broad and narrow declaratory relief:

16. This action can proceed either as a Declaratory Judgment action of the West Virginia Code (§55-13-1 et seq.) or for damages because of the following:

a. Plaintiff has attempted to sell the Leases described herein and has been unable to market them because of the impediment created by the "Option Agreement".

b. Plaintiff's proposed sale of the Leases for the sum of \$510,400.00 will not occur unless the "Option Agreement" is deemed not to apply to the subject wells.

c. Plaintiff owns additional wells and leases which would arguably be included within the "Option Agreement" and which also would be unmarketable unless the Court voids the application of such document.

WHEREFORE Plaintiff demands:

A. That the "Option Agreement" attached to this Complaint be declared "null and void" as it may apply to the Leases and Wells described in Paragraph No. 2 of this Complaint and any other wells and leases owned by Plaintiff.

(AA 21-22 (Complaint, ¶16 and prayer for relief) (emphasis added).) Respondent's construction requires the reader to ignore the phrases, "unless the 'Option Agreement' is deemed not to apply to the subject wells" and "as it may apply to the Leases and Wells . . . and any other wells and leases[.]" (*Id.*) Indeed, the Response Brief never even acknowledges the existence of this critical language. (*See* Response Brief, at 6-7.) When this language is given effect, as discussed at pages 19 and 20 of Petitioner's Brief, it is clear that the Complaint seeks not only a declaration that the Option Agreement is "null and void" in its entirety, but also more limited declarations

that the Option Agreement does not apply to the “Leases and Wells” specifically identified in the Complaint and/or to “other wells and leases owned by Plaintiff.” (AA 21-22 (Complaint, ¶16 and prayer for relief).)

B. Particularly Given the Caution Required in Summary Judgment Situations, the Case Must be Remanded to Enable the Circuit Court to Consider Petitioner’s Claims for Limited Declaratory Relief

Circuit courts are required to view motions for summary judgment “with caution.” *See Price v. Bennett*, 171 W. Va. 12, 12, 297 S.E.2d 211, 212 (1982). Accordingly, this Court has adopted strict legal standards to which circuit courts considering motions for summary judgment must adhere. For instance, summary judgment is not proper “unless the facts established show a right to judgment with such clarity as to leave no room for controversy and show affirmatively that the adverse party cannot prevail under any circumstances[.]” *Cunningham v. W. Va.-Am. Water Co.*, 193 W. Va. 450, 454, 457 S.E.2d 127, 131 (internal quotations and citations omitted; emphasis added). “[I]n reviewing an order granting a motion for summary judgment, any permissible inferences from the underlying facts must be drawn in the light most favorable to the party opposing the motion.” *Chichester ex rel. Estate of Cook v. Cook*, 234 W. Va. 183, 188, 764 S.E.2d 343, 348 (2014) (emphasis added). When considering a motion for summary judgment, a court is to consider “all papers of record and all matters submitted by both parties[.]” including the complaint. *Beard v. Beckley Coal Min. Co.*, 183 W. Va. 485, 491, 396 S.E.2d 447, 453 (1990). Of course, the need for caution was heightened here, as Petitioner’s claims were raised under the *West Virginia Uniform Declaratory Judgment Act* (the “Act”)—a statute that

expressly directs that it is “to be liberally construed and administered.” W. Va. Code, § 55-13-12 [1941] (emphasis added).¹

Under the above standards, the Circuit Court was required to read the Complaint in a light most favorable to Petitioner and to consider all of Petitioner’s claims—including its claims for limited declaratory relief—before granting summary judgment against it. Because the Circuit Court did not consider all of Petitioner’s claims, Petitioner was deprived of the opportunity to obtain important judicial determinations as to the Option Agreement’s applicability to Petitioner’s current and future leases and wells. To rectify this situation, the Court must reverse the Summary Judgment Order to the extent it entered judgment against Petitioner on Petitioner’s claims for limited declaratory relief, and remand the case for further proceedings on these claims. *See Beard*, 183 W. Va. at 491, 396 S.E.2d at 453 (reversing grant of summary judgment and remanding case for further proceedings; “In its decision to dismiss and grant summary judgment, the court . . . did not address the products liability theory. . . . [T]he court should have considered each of the grounds on which the appellant’s suit was based.”); *see also Provident Life and Accident Ins. Co. v. Bennett*, 199 W. Va. 236, 241-42, 483 S.E.2d 819, 824-25 (1997) (reversing order granting summary judgment and remanding case for further proceedings; “Neither the summary judgment order nor Provident’s brief addresses this issue. We believe that this issue creates a material factual dispute which was not in the purview of summary judgment disposition.”); *Aetna Cas. & Sur. Co. v. Federal Ins. Co. of N.Y.*, 148 W. Va. 160, 173-75, 133 S.E.2d 770, 778-79 (1963) (reversing grant of summary judgment and remanding case for further

¹ The Act’s purpose and the standards applicable to claims raised under it are addressed in detail at pages 18 and 19 of Petitioner’s Brief.

proceedings; “As previously indicated the circuit court did not consider and determine the question For that reason this Court, having no original jurisdiction but only appellate jurisdiction of this action, will not determine that question upon appeal.”)²

II. The Circuit Court’s Reasons for Refusing to Allow Petitioner to File an Amended Complaint Remain Invalid

In its Response Brief, Respondent attempts to bolster the three reasons cited by the Circuit Court for refusing to allow Petitioner to file its proposed amended complaint (the “Proposed Amended Complaint”). Each of these cited reasons was addressed in Petitioner’s Brief. (Petitioner’s Brief, at 26-29.) As discussed below, each of the reasons remain invalid.

A. Respondent’s Statute of Limitations Defense is Illusory

According to Respondent, the Proposed Amended Complaint would have prejudiced it by “eliminat[ing] the affirmative defense of the statute of limitations.” (Response Brief, at 9.) That is simply not correct. Respondent’s position would be correct if Petitioner had sought leave to add a claim that Respondent owed it the money that Respondent had failed to pay Petitioner in the past for wells previously conveyed to it under the Option Agreement. But Petitioner did not. Instead, Petitioner sought leave to assert a declaratory relief claim under application of the “rule

² To the extent Respondent may be attempting to argue that Petitioner was required to raise its claims for limited declaratory relief in response to Respondent’s motion for summary judgment (*see* Response Brief, at 7), its argument is without legal support. The cases cited by Respondent, *McKenzie v. Cherry River Coal & Coke Co.*, 195 W. Va. 742, 466 S.E.2d 810 (1995), and *Lin v. Lin*, 224 W. Va. 620, 687 S.E.2d 403 (2009), do not support such an argument, as neither addresses a situation where a circuit court entered summary judgment against a party as to all claims without actually considering all of the claims alleged in the party’s complaint. On the other hand, in *Beard* this Court did address such a situation and reversed the order granting summary judgment. *Beard*, 183 W. Va. at 488, 396 S.E.2d at 450 (“Although the appellant had listed in his complaint a separate cause of action against the appellee under a products liability theory, the court did not address such a cause of action, but nevertheless granted the motion for summary judgment in favor of the appellee.”).

of first breach”—a deeply rooted legal doctrine that prevents a party who commits the first breach of a contract from subsequently enforcing that same contract against the other party. *Hurley v. Bennett*, 163 Va. 241, 253, 176 S.E. 171, 175 (1934) (“The party who commits the first breach of a contract[] is not entitled to enforce it, or to maintain an action thereon, against the other party for his subsequent failure to perform.”) (emphasis added); *see also Blue v. Hazel-Atlas Glass Co.*, 106 W. Va. 642, 147 S.E. 22, 26 (1929).³ Under that claim, Petitioner sought a judicial declaration establishing that the Option Agreement could not be enforced against Petitioner because any future attempts by Respondent to enforce it would be subject to the defense of first breach. (AA 73 (Proposed Amended Complaint, ¶14).)

The defense of first breach had never previously arisen because Respondent had never attempted to exercise any rights under the Option Agreement following its failures to pay Petitioner for wells that were previously conveyed to it under the Option Agreement. Because Respondent had not yet attempted to use the Option Agreement to force Petitioner to sell any more wells to it, the opportunity to raise “first breach” as a defense had never arisen, and the statute of limitations could not have begun to run. It is hornbook law that a statute of limitations does not begin to run until after a cause of action (or in this case, a defense) has accrued. *See Sansom v. Sansom*, 148 W. Va. 603, 607, 137 S.E.2d 1, 4 (1964). Ultimately, allowing the amendment would not have “eliminated” any valid statute of limitations defense because Respondent did not have a valid statute of limitations defense to Petitioner’s proposed “first

³ A more detailed discussion of the doctrine of first breach is provided at pages 23 and 24 of Petitioner’s Brief.

breach” claim. That being the case, Respondent would not have been prejudiced had Petitioner been allowed to file the Proposed Amended Complaint.⁴

B. Amendment Would Not Have Been Futile

Respondent contends that amendment would have been futile because Petitioner, through its former president, purportedly waived the right to defend against future enforcement of the Option Agreement by electing not to pursue a breach of contract action seeking monetary damages against Respondent for its failure to pay for wells conveyed to it under the Option Agreement. (See Response Brief, at 11.) Because Respondent never sought to exercise any further rights under the Option Agreement, its former president could not have waived any rights to seek protection against any future attempts to enforce the Option Agreement. Petitioner could not have prospectively waived claims that had not yet accrued.

The parties’ letter agreement dated May 8, 2013—which Respondent acknowledges is “not a part of the record” (Response Brief, at 12)—does not warrant a different result. First, the letter was never before the Circuit Court. Thus, it played no part in the Circuit Court’s decision to refuse to allow Petitioner to file the Proposed Amended Complaint.

Moreover, because the letter was not attached to or referenced in the Proposed Amended Complaint, it would have been error for the Circuit Court to have considered the letter in ruling on Petitioner’s Motion to File Amended Complaint. Where a circuit court denies a motion for leave to amend on grounds of futility, the court is to apply the same standard that would have

⁴ Respondent’s reliance on *Kappa Sigma Fraternity, Inc. v. Kappa Sigma Fraternity*, 587 S.E.2d 701 (Va. 2003), and *Maynard v. Board of Educ. of Wayne County*, 178 W. Va. 53, 357 S.E.2d 246 (1987), is misplaced. Neither of those cases involved a declaratory judgment claim based on “first breach” in connection with a contract that had not been acted upon following a material breach.

applied to a motion to dismiss the proposed pleading. See *United States ex. rel. Ahumada v. NISH*, 756 F.3d 268, 274 (4th Cir. 2014); *Platten v. HG Bermuda Exempted Ltd.*, 437 F.3d 118, 132 (1st Cir. 2006); *Alvin v. Suzuki*, 227 F.3d 107, 121 (3d Cir. 2000) (“An amendment is futile if the amended complaint would not survive a motion to dismiss for failure to state a claim upon which relief could be granted.”).⁵ Rulings on motions to dismiss are reviewed under the *de novo* standard. *Bowden v. Monroe Cnty. Comm’n*, 232 W. Va. 47, 50-51, 750 S.E.2d 263, 266-67 (2013). The “allegations of the complaint must be taken as true” and the circuit court, “in appraising the sufficiency of a complaint on a Rule 12(b)(6) motion, should not dismiss the complaint unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Id.* at 51, 750 S.E.2d at 267 (citations omitted; emphasis in original). See also *Dimon v. Mansy*, 198 W. Va. 40, 47–48 n.5, 479 S.E.2d 339, 346–47 n.5 (1996) (“[T]he singular purpose of a Rule 12(b)(6) motion is to seek a determination whether the plaintiff is entitled to offer evidence to support the claims made in the complaint.”). Finally, in considering a motion to dismiss under Rule 12(b)(6), the circuit court may only consider the complaint, its exhibits, documents referred to in but not attached to the complaint, and matters that are susceptible to judicial notice. *Forshey v. Jackson*, 222 W. Va. 743, 747, 671 S.E.2d 748, 752 (2008). Under the above standards, it would have been an error for the Circuit Court to have considered the letter in ruling on Petitioner’s Motion to File Amended Complaint.⁶

⁵ While this matter has not been addressed by this Court previously, “[t]raditionally, this Court has utilized decisions of federal courts when interpreting and applying our Rules of Civil Procedure.” *Kiser v. Caudill*, 215 W. Va. 403, 410 n.4, 599 S.E.2d 826, 833 n.4 (2004).

⁶ Even if the letter actually had been before the Circuit Court, and even if the Circuit Court had been permitted to consider it in ruling on the Motion to File Amended Complaint, its

C. Petitioner's Conduct was Not Dilatory

Respondent's contention that Petitioner was dilatory in seeking leave to amend its Complaint also lacks merit. The only case cited by Respondent in support of its position, *Jones v. Sanger*, 217 W. Va. 564, 618 S.E.2d 573 (2005), is readily distinguishable. (See Response Brief, at 13.) In *Jones*, this Court concluded that a circuit court did not abuse its discretion in denying a plaintiff leave to file an amended complaint where the case had been in litigation for over ten years. *Id.* at 571, 618 S.E.2d at 580. Here, the case had been active for less than nine months and Petitioner had only known of the facts giving rise to its additional claim for two months when it sought leave to amend its Complaint. Moreover, Respondent has failed to identify any meaningful prejudice it would have suffered if leave to amend had been granted. Petitioner respectfully submits that under these facts and circumstances, it cannot reasonably be found to have been dilatory in seeking to amend its Complaint. See *Dzingski v. Weirton Steel Corp.*, 191 W. Va. 278, 287, 445 S.E.2d 219, 228 (1994) (affirming circuit court's decision permitting plaintiff to amend his complaint to assert a new claim "two weeks before trial and six and one-half years after the action was begun[;]" "Unless the amendment of the pleading will prejudice the opposing party by not affording him an opportunity to meet the issue, it should be

significance would have been questionable. The letter does not contain a statement that the parties were in compliance with and had not breached their respective obligations under the Option Agreement. Nor does the letter state that either party is waiving any defenses to the Option Agreement's enforcement. As stated in the letter itself, its purpose was to express the parties' "agreed upon understanding and clarification" of the Option Agreement. (AA 120-121 (Exhibit A to Pending Motion to Supplement).) Based on these circumstances, the letter, standing alone at such an early stage of the proceedings, would not have been sufficient to justify a finding a waiver. See *Bowden*, 232 W. Va. at 51, 750 S.E.2d at 267 (the circuit court should not dismiss a complaint under Rule 12(b)(6) "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief").

allowed so as to permit an adjudication of the case on its merits”) (quotations and citations omitted).

CONCLUSION

The Circuit Court committed reversible error in two respects. First, the Circuit Court erred in granting summary judgment without first considering Petitioner’s claims for limited declaratory relief. Second, the Circuit Court committed reversible error by refusing to permit Petitioner to file an amended complaint to add an additional declaratory judgment claim based on the legal doctrine of “first breach.” Under these circumstances, Petitioner Standard Oil Company, Inc. respectfully requests that the Court reverse the Circuit Court’s grant of summary judgment as it relates to Petitioner’s request for limited declaratory relief, reverse the Circuit Court’s denial of Petitioner’s Motion to File Amended Complaint, and remand the case for further proceedings.

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Dated: February 9, 2016

CERTIFICATE OF SERVICE

The undersigned hereby certifies that two true and correct copies of the foregoing **Petitioner's Reply Brief** have been served by first class mail, postage prepaid, on this the 9th day of February, 2016 on the following:

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