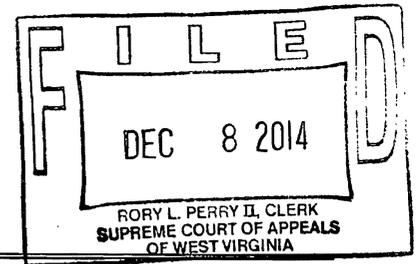


No. 14-0922



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

At Charleston

GEOLOGICAL ASSESSMENT & LEASING AND WILLIAM CAPOUILLEZ

Petitioners,

v.

CECIL L. HICKMAN

Respondent.

From the Circuit Court of Ohio County, West Virginia
Civil Action No. 12-C-11

PETITIONERS' BRIEF

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ASSIGNMENTS OF ERROR

1. The Circuit Court erred in examining the merits of the Hickmans' claims against the Defendants Geological Assessment & Leasing (GAL) and William Capouillez and in making Findings of Fact and Conclusions of Law concerning the merits of those claims, when the Circuit Court explicitly found an enforceable arbitration provision was both procedurally and substantively conscionable and applicable to the case and all the parties.

2. The Circuit Court erred in making findings of fact that the Defendants, Geological Assessment Leasing, (GAL) and William Capouillez were aware and had knowledge that the Plaintiff wanted to be on the same lease as his siblings and that the said Defendants failed to ensure this, when the record reflects that these Defendants never had this information communicated to them.

3. The Circuit Court erred in concluding that the 2005 Great Lakes Lease, signed on December 21, 2005, by Mr. Hickman's siblings, which was not signed by Hickman, was the "controlling contract" between Mr. Hickman, as lessor, and not the 2006 Great Lakes Lease that Mr. Hickman did sign with Great Lakes on July 19, 2006.

STATEMENT OF THE CASE

I. STATEMENT OF FACTS

This is an appeal from an August 7, 2014, order of court wherein the Circuit Court of Ohio County, the Honorable David J. Sims presiding, was addressing whether arbitration clauses among several leases provided that this matter was to be adjudicated in arbitration. While ultimately concluding that the Court was without jurisdiction and ordering that the case be transferred to arbitration, the court first evaluated the merits of key aspects of the case, addressed

key issues in the case, and made findings before sending the case to arbitration only for “any issues [that] remain with regard to the Chesapeake lease.” (Order of Court, Conclusion of Law Paragraph 58, Appendix p. 836.)

This case arose from a complaint filed by the Plaintiff, Cecil Hickman, alleging that he and his three siblings were each one-fourth undivided owners of a certain parcel of land in Ohio County, West Virginia. The Plaintiff claims that on or about December 21, 2005, he and his siblings all agreed together to lease their 143.77 acre parcel of land for oil and gas exploration and sought to enter into a five year lease. (See Plaintiff’s Complaint, paragraphs 1, 3 and 21; Appendix pp. 1, 2, 4). While the Plaintiff’s siblings signed a lease at a meeting in December, 2005, with Great Lakes, now known as Range Resources, the Plaintiff was not present at this meeting and concedes he did not sign the lease “until July 19, 2006.” (Plaintiff’s Complaint, paragraph 25; Appendix p. 5). Plaintiff alleges the Co-Defendant, Great Lakes Energy, LLC was responsible for this delay and further claims Great Lakes Energy fraudulently altered the effective date of the lease. (Plaintiff’s Complaint paragraph 25; Appendix p. 5). While having not yet filed an Answer, Great Lakes Energy nevertheless denies this.

Despite the claims against Great Lakes that they caused the delay in signing and fraudulently altering the document, Plaintiff also claims the herein petitioners Geological Assessment & Leasing (hereinafter “GAL”) and William Capouillez owed a fiduciary duty to him in regards to the lease. (Plaintiff’s Complaint, paragraph 19; Appendix p. 4). He claims that between December 2005, and July 19, 2006, the petitioners were negligent in their handling of the lease and in particular failing to ensure the lease of the Plaintiff mirrored the dates of his siblings. (Plaintiff’s Complaint, paragraphs 23 and 55-63; Appendix pp. 4, 9 and 10). While it is unclear exactly when the Plaintiff alleges the claims against GAL and Mr. Capouillez arose and

in his complaint does not allege exactly when or how the fiduciary relationship was consummated, it is clear Plaintiff was or should have been aware as of January, 2006, that the lease dates would be different from those of his siblings (see generally Deposition of Cecil Hickman p. 46 – 49, Appendix pp. 104 and 105). It is also clear that Mr. Hickman never communicated to GAL and/or Capouillez his intention to have his lease match his siblings, particularly with respect to having the same date of execution.

The core of the Plaintiff's claim against all Defendants is the fact that the five year lease signed on July 19, 2006, was assigned to Chesapeake and was still in effect at the time the Hickman siblings lease expired in December 2010.¹ The Hickmans then negotiated for and ultimately signed a lease on January 5, 2011, with Chesapeake that included a higher up-front signing bonus and greater production royalties. However, Mr. Hickman later surrendered the lease he signed in January, 2011, as Chesapeake did not approve of it and maintained the July 16, 2006, lease was still in effect.

During the window between December, 2010, and July 19, 2011, Chesapeake began drilling operations on the Hickmans' property. In effect, this meant that the Plaintiff, unlike his siblings who were benefitting from a lease signed in January, 2011, was operating under the terms of a lease signed in July, 2006 (i.e., he was precluded from obtaining higher royalty payments and a second up-front signing bonus.)

The issues surrounding the lease signed by Mr. Hickman in January, 2011, and its connection with the lease signed by the Plaintiff on July 19, 2006, is what gives rise to the Plaintiff's claims in the case, including any colorable claim against the herein Petitioner for negligent consulting.

¹ The Lease signed in December, 2005 had an arbitration clause as did the Lease signed by the Plaintiff in July 2006.

The lease signed in January by Mr. Hickman contained an arbitration clause. It is from this lease that the Court ultimately found there was a valid, enforceable arbitration clause that applied to the entire case and all Defendants including the non-signatory defendants, such as the herein Petitioners. (Order of Court, Conclusion of Law 56 and 59, Appendix pp. 836 and 837).

II. PROCEDURAL HISTORY

Plaintiff initiated this lawsuit by filing a complaint in January, 2012. As noted above, the Complaint sought to sort out a legal situation involving various leases that had been signed by the Plaintiff, Cecil Hickman, on property jointly owned by him and his three siblings.

On or about April 18, 2012, having previously secured an extension to file an answer and/or response to the complaint, the Petitioners filed a Motion to Dismiss, or In the Alternative to Compel Arbitration. The Motion to Dismiss asserted that the matter was governed by an arbitration agreement within the lease and thus should be dismissed. The Co-Defendants, Chesapeake Appalachia, L.L.C., Great Lakes Energy Partners, L.L.C., now known as Range Resources, Red Sky Land, L.L.C., Red Sky – West Virginia, L.L.C. and Terry L. Murphy filed similar motions. On June 7, 2012, Judge Recht conducted a hearing on the various pending motions before him and then signed an Order dated July 6, 2012, deferring ruling on each of the Motions to Dismiss and/or Compel Arbitration and ordered discovery to be conducted on the factual issues related to the arbitration clause. The Order set a deadline for the completion of this discovery of November 7, 2012. That deadline was then subsequently extended by agreement.

After the limited discovery originally ordered by Judge Recht was completed, the various Defendants proceeded with filing dispositive motions which again sought to have the case transferred to arbitration. GAL and William A. Capouillez filed a renewed Motion to Dismiss or In the Alternative to Compel Arbitration or In The Alternative Motion for Summary Judgment.

The motion first and foremost sought that the matter be dismissed and transferred to Arbitration. In the event that the Court did not believe that Arbitration was warranted, GAL and Capouillez sought outright Summary Judgment based on the concessions made by Mr. Hickman at his discovery deposition that was limited to the question of the arbitrability of the case. The Motions were briefed and heard before Judge Sims on May 16, 2014.

On June 26, 2014, Judge Sims sent counsel for all parties a letter outlining his views and asking the parties to submit a proposed Findings of Fact and Conclusions of Law. After such proposed Findings of Fact and Conclusions of Law were submitted to the Court, the Court issued an Order on August 7, 2014. It is from that Order that the current Appeal has been filed. The Co-Defendants in the case also filed similar appeals.

SUMMARY OF ARGUMENT

The Circuit Court committed a number of reversible errors, predominately surrounding the simple fact that when confronted with a set of Motions to Compel Arbitration, the Court made numerous findings beyond the scope of its authority.

The Court should have simply determined whether there was an arbitration provision contained in a lease that was (1) valid and binding on the Plaintiff, Mr. Hickman; and (2) encompassed all the claims made by Mr. Hickman. While the Circuit Court did in fact find that the Chesapeake lease signed in January, 2011, by Mr. Hickman contained a valid arbitration agreement that was binding and applied to all the Defendants, it then proceeded to make Findings of Fact and Conclusions of Law that directly addressed many of the substantive aspects of Mr. Hickman's claim. Therefore, the Circuit Court went beyond the scope of its authority as mandated by State ex rel TD Ameritrade, 692 S.E.2d 293 (W.Va. 2010), and therefore the Order

should be reversed as to all of the findings beyond finding a valid, applicable arbitration clause and ordering arbitration.

Likewise the Court made a specific finding that the herein Petitioners GAL and William Capouillez were aware and had knowledge that the Plaintiff wanted the same lease as his siblings when signing a lease agreement in July, 2006. However, the record reflects that these Petitioners never had that information communicated to them. Again, this is outside of what the Circuit Court should evaluate when reviewing a Motion to Compel Arbitration, but also the record reflect that this party did not know or have reason to know the Plaintiff's views. And to the extent that there remains a question of fact on this issue, it is to be decided by the arbitration panel with appropriate jurisdiction over this dispute.

Finally, this Circuit Court erred in finding that the July, 2006, Great Lakes lease was not controlling, but rather the December 21, 2005, lease controlled when in fact Mr. Hickman did not sign the December 21, 2005, but rather signed the July 19, 2006, lease.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Oral argument is necessary pursuant to the criteria in West Virginia Rule of Appellate Procedure 18(a). GAL and William Capouillez respectfully submit this matter presents sufficiently unique and procedural issues that merit oral argument. Therefore, the Petitioners request that the case be set for Rule 19 oral argument.

ARGUMENT

A. Standard of Review.

This Court's review of the Order entered by the Circuit Court is *de novo*. See Painter v. Peavy, 192 W.Va. 189, 451 S.E.2d 755, Syl. Pt. 1 (1994) ("A circuit court's entry of summary judgment is reviewed *de novo*"). As this Court articulated in Painter, "[t]he circuit court's function at the summary judgment stage is not to weigh the evidence and determine the truth of the matter, but is to determine whether there is a genuine issue for trial." Painter, 192 W.Va. at 190, 451 S.E.2d at 756, Syl. Pt. 3.

In addition, as this appeal centers on GAL and Capouillez's request that the Circuit Court honor an arbitration agreement, this Court's review of the Circuit Court's Order is *de novo* on those issues. See Riffe v. Home Finders Assocs., Inc., 205 W.Va. 216, 517 S.E.2d 313, Syl. Pt. 2 (1999), (The interpretation of an insurance contract, including the question of whether the contract is ambiguous, is a legal determination that, like a lower court's grant of summary judgment, shall be reviewed *de novo* on appeal.).

B. The Circuit Court erred in examining the merits of Mr. Hickman's claims against the Defendants Geological Assessment and Leasing and William Capouillez, and in making Findings of Fact and Conclusions of Law concerning the merits of those claims, when the Circuit Court explicitly found an enforceable arbitration provision was procedurally and substantively conscionable and applicable to the case.

As this court stated in Syllabus Point 5 to Grayiel v. Appalachian Energy Partners, 736 S.E.2d 91 (W.Va. 2012), the trial court's authority on a motion to compel arbitration is limited to determining two threshold issues: (1) whether a valid, binding arbitration agreement exists; and (2) whether the claims at issue fall within the scope of the arbitration agreement. Citing Syllabus Point 2 of State ex rel. TD Ameritrade v. Kaufman, 692 S.E.2d 293, 298 (W. Va. 2010).

Here, the Circuit Court determined that (1) this matter had a valid, enforceable and controlling lease; (2) the arbitration clause in the said lease is neither procedurally nor substantively unconscionable, and is, therefore, valid and enforceable; and (3) that under common law principles of contract and agency, all the parties herein shall have their claims arbitrated.² (Order of Court, Conclusions of Law 45, 56, and 59, Appendix pp. 833, 836 and 837). As such, the only other inquiry by the Circuit Court should be whether Mr. Hickman's claims fall within the scope of that arbitration provision.

Mr. Hickman's claims center on his allegation that he is entitled to certain rights and payments under the Chesapeake Lease. (Appendix p. 20). Rather than simply confirm that, however, the Circuit Court made certain numerous Findings of Fact and Conclusions of Law that went far beyond this limited inquiry. Because of that, the Order should be reversed and remanded.

1. Mr. Hickman's claims fall squarely within the scope of the arbitration agreements.

First, trial courts are to construe doubts concerning the existence of an agreement to arbitrate or the scope of issues for arbitration in favor of arbitration. See State ex rel. Clites v. Clawges, 685 S.E.2d 693, 700 (W. Va. 2009). The FAA's directive "is mandatory;" courts have "no choice but to grant a motion to compel arbitration where a valid arbitration agreement exists and the issues in a case fall within its purview." Adkins v. Labor Ready, Inc., 303 F.3d 496, 500 (4th Cir. 2002).

This Court emphatically noted in State ex rel. TD Ameritrade, the following:

² The herein Petitioners maintain that the claim against them arise both as a result of the Chesapeake Lease signed by Mr. Hickman in January, 2011, and which is relied on by the Circuit Court, but also under the lease signed by the Plaintiff on July 16, 2006, which also contains an analogous arbitration clause. However, with the court finding that the claims against the herein parties go to arbitration anyway under the principles of contract agency, there is no need to visit the July 16, 2006, lease. Thus, only if this Court were revisiting this part of the Judge Sims' ruling, would the herein Petitioners caution that the 2006 lease provides for arbitration, too.

The law is well-settled "that, in deciding whether the parties have agreed to submit a particular grievance to arbitration, a court is not to rule on the potential merits of the underlying claims." AT & T Technologies, Inc. v. Communications Workers, 475 U.S. 643, 649, 106 S. Ct. 1415, 89 L. Ed. 2d 648 (1986). Discussing the general rule that courts are to decide the threshold issue of arbitrability (i.e. whether there is an enforceable agreement to arbitrate), the United States Supreme Court recognized the limited nature of that initial determination: "The courts, therefore, have no business weighing the merits of the grievance, considering whether there is equity in a particular claim, or determining whether there is particular language in the written instrument which will support the claim." 475 U.S. at 650 (quoting United Steelworkers v. American Mfg. Co., 363 U.S. 564, 568, 80 S. Ct. 1343, 4 L. Ed. 2d 1403 (1960)).

State ex rel. TD Ameritrade, 692 S.E.2d at 296-297.

Here, at the core, Mr. Hickman's lawsuit centers on his allegation that he is entitled to certain rights under the Chesapeake Lease that was signed by him and his siblings in 2011. He claims that lease should control. As to GAL and Capouillez, while he alleges they owed him a duty related to the lease he signed on July 16, 2006, he maintains they contributed to the issues he experienced over the Chesapeake Lease signed by him in 2011. The core problem being that the 2011 lease was not ratified by Chesapeake, apparently because of Chesapeake's application of the July 16, 2006, lease. And while Mr. Hickman apparently disputes Chesapeake's decision to apply the July 16, 2006, lease over the one he signed in 2011, that dispute, which spills over and is a basis for a claim as well against the herein petitioners, falls squarely within the arbitration provision in the Chesapeake Lease that the Circuit Court found to be enforceable.

That arbitration provision states:

ARBITRATION. In the event of a disagreement between Lessor and Lessee concerning this Lease or the associated Order of Payment, performance there under, or damages caused by Lessee's operations, the resolution of all such disputes shall be determined by arbitration in accordance with the rules of the American Arbitration Association. Arbitration shall be the exclusive remedy

and cover all disputes, including but not limited to, the formation, execution, validity, and performance of the Lease and Order of Payment. All fees and costs associated with the arbitration shall be borne equally by Lessor and Lessee.

Under the clear and unambiguous language of this provision, any “disagreement” concerning “this Lease or the associated Order of Payment” or “performance” under the lease “shall be determined by arbitration[.]” Thus, the dispute, “fall[s] within the substantive scope of the arbitration agreement.” State ex rel. TD Ameritrade, 692 S.E.2d at 298.

Therefore, the Circuit Court need not and should not have conducted any further inquiry. Mr. Hickman’s claims fell within the substantive scope of the arbitration provision in a controlling Lease, thus they are to be addressed by arbitration. However, the Circuit Court, instead, went far beyond this. It actually *sua sponte* raised a Motion for Summary Judgment for the Plaintiff and then proceeded to make a number of findings that directly affect the very issues that are subject to arbitration. For example, the Circuit Court found that the 2005 Great Lakes Lease “was the controlling contract between Plaintiff and his siblings, as lessors, and Great Lakes, as lessees” -- even though Mr. Hickman did not sign the 2005 Great Lakes Lease until July 19, 2006. (Appendix. p. 19). The Circuit Court found that Capouillez and GAL failed to ensure that the Great Lakes Lease was the same for the Plaintiff and his siblings.” (Order of Court, Findings of Fact 19, Appendix p. 8). It found that Capouillez and GAL knew or should have known that the Plaintiff and his siblings desired to be included on one lease. (Order of Court, Conclusions of Law 25, Appendix p. 831). It found there was no meeting of the minds with regard to the lease signed by Hickman on July 16, 2006. And the Circuit Court ended up determining that “the Chesapeake lease is the controlling contract by and between Plaintiff and his siblings, as lessors, and Chesapeake, as lessee. (Order of Court, Conclusions of Law 36, Appendix p. 836). In other words, the Circuit Court already made determinations and findings on

many substantive claims made by Mr. Hickman in his Complaint, attempted as much as possible to resolve all issues, and merely referred any loose strings to arbitration.

2. The Circuit Court's findings violated the severability doctrine.

The Circuit Court's actions clearly violate the severability doctrine, which "permits trial courts to address challenges to an arbitration clause but reserves to arbitrators challenges to the contract as a whole." State ex rel. TD Ameritrade at Syl. Pt. 3. Here, the Circuit Court should only have determined whether an arbitration provision in a lease was valid. Instead, it went much further and examined the validity of the 2005 Great Lakes Lease, the 2006 Great Lakes Lease, the Chesapeake Lease, and the February, 2011, Lease, all of which should have been issues that were reserved to the arbitration panel. See State ex rel. TD Ameritrade, 692 S.E.2d at 255. ("The law is clear that the trial court had no authority to rule on any issue other than whether arbitration of Mr. Salamie's claims was required under the applicable contracts. [citation omitted] By addressing issues that are expressly reserved for arbitration, the trial court exceeded the scope of its authority.").

In State ex rel. TD Ameritrade, Inc., the trial court was confronted with a Motion to Compel Arbitration filed by Ameritrade and a Motion for Summary Judgment filed by Mr. Salamie. The trial court ruled on the Summary Judgment before expressly ordering the matter to arbitration and ordering the arbitrators to "follow the directive of this court." This Honorable Court, when reviewing the Circuit Court, concluded under the severability doctrine that the trial court had "no authority to rule on any issue other than whether arbitration of Mr. Salamie was required under the applicable contract." Id. This Court continued stating that "by addressing issues that are expressly reserved for arbitration, the trial court exceeded the scope of its authority." Id.

Here, the court *sua sponte* raised a Motion for Summary Judgment on behalf of the Plaintiff as in TD Ameritrade, the plaintiff had a Motion for Summary Judgment pending.³ And thus like the trial court in State ex rel. TD Ameritrade, the Circuit Court here went too far. As this Court did in TD Ameritrade, the Order should be reversed and remanded with instructions to strike all Findings of Fact and Conclusions of Law that do not directly relate to the issue of whether a controlling arbitration provision is valid and enforceable.

3. **When the Circuit Court found that a valid and binding arbitration agreement existed, and that the claims at issue fall within the scope of that arbitration agreement, it should have referred Mr. Hickman's claims to arbitration without making extraneous findings of fact and conclusions of law.**

As noted above, the Circuit Court explicitly found the “arbitration clause neither procedurally nor substantively unconscionable and is, therefore, valid and enforceable.” It also, at least implicitly, found that the claims asserted by Mr. Hickman against the Defendants fell within the scope of the arbitration and/or all the defendants and the claims against them were sufficiently intertwined that the parties should all arbitrate. (“Therefore, after the entry of this Order, if any issues remain with regard to the Chesapeake lease, the Court grants Defendants’ various Motions to Compel Arbitration of the remaining issues and accordingly orders this matter stayed pending arbitration.”). (Order of Court, Conclusions of Law 58, Appendix p. 836). Under this Court’s explicit instructions in State ex rel. TD Ameritrade, that was all the Circuit Court should have done. Instead, it went much further and, like the trial court in TD Ameritrade, made certain findings of fact and conclusions of law that look to be binding on the arbitration tribunal.

³ In Order of Court, Conclusion of Law 8 (Appendix p. 827) the trial court stated “the court may grant summary judgment to the plaintiff, the adverse party to said motions for summary judgment, where there exists no genuine issue of material fact on an issue in his favor despite the fact that he has not filed any motion for summary judgment.”

Like this Court did in TD Ameritrade, the Order should be reversed and remanded with instructions to strike all findings of fact and conclusions at law that do not directly related to the issue of whether the arbitration provision under the Chesapeake Lease is valid and enforceable.

C. The Circuit Court erred in finding that the Defendants, GAL and William Capouillez were aware and had knowledge that the Plaintiff wanted to be on the same lease as his siblings and that the said Defendants failed to ensure this, when the record reflects that these Defendants never had this information communicated to them.

As noted above, the Circuit Court went beyond its discretion in addressing other facts, but assuming *arguendo*, that it did not, which these Petitioners deny, then its findings are simply not supported by the record on the issue of the knowledge these Defendants had. Specifically, the court found in Conclusion of Law 25 that “Capouillez and GAL, knew or should have know that the plaintiff and his siblings desired to be included on one lease.” (Appendix p. 831.)

The facts and record reflect there is no evidence that Plaintiff ever communicated to GAL or Mr. Capouillez his desire to have the lease back-dated, or otherwise to parallel the dates of his siblings. Plaintiff’s deposition testimony makes it clear that no such communication occurred as the Plaintiff admits the following, undisputed facts:

- Mr. Hickman **never** spoke to William Capouillez prior to the date of his deposition in this matter, nor has he ever written or exchanged documents or emails with him. (*See generally*, Hickman Depo. Appendix p. 94).
- Mr. Hickman testified that his siblings met with Mr. Capouillez and signed the lease in December, 2005, but that he did not attend this meeting and thus did not enter into any contractual relationship with William Capouillez or his company at that time. (*Id.* at p. 31; 94-96; Appendix pp. 100 and 116).

- Mr. Hickman's siblings did not have a power of attorney or any legal document authorizing them to sign or speak on his behalf. (*Id.* at p. 95:16-18, Appendix p. 116).
- He acknowledged that he did not believe his siblings "signing the lease on [his] behalf was an option." (*Id.* at p. 95:14-15, Appendix p. 116).
- Plaintiff explained that when he received the documents in July 2006, he simply signed them and sent them in. He never talked with anyone in the industry about the issue of the dating of the lease or his desire to have the terms be applied retroactive to December, 2005. (*Id.* at p. 43-44, 45; Appendix pp. 103 and 104).

Thus, Mr. Capouillez did not know or have reason to know that Mr. Hickman wanted to be on the same lease as his siblings as found by the Judge. There is an absence of evidence of any such communications with Mr. Capouillez. Therefore, as a matter of law, he cannot be expected to have known that Plaintiff had any concern whatsoever about the effective date of his lease. And at the very least, even if someone could cite to evidence, there is a factual dispute that would preclude the court making this determination as, again, this Court articulated in Painter, "[t]he circuit court's function at the summary judgment stage is not to weigh the evidence and determine the truth of the matter, but is to determine whether there is a genuine issue for trial." Painter, 192 W.Va. at 190, 451 S.E.2d at 756, Syl. Pt. 3. And as such, this finding of the court, in particular, should be struck.

D. The Circuit Court erred in concluding that the 2005 Great Lakes Lease signed on December 21, 2005, by Mr. Hickman's siblings, which was *not signed* by Mr. Hickman, was the "controlling contract" between Mr. Hickman, as lessee, and Great Lakes, as Lessor and not the 2006 Great Lakes Lease that Mr. Hickman *did* sign with Great Lakes on July 19, 2006.

Even though there was no ambiguity in the 2006 Great Lakes lease, Mr. Hickman admitted that he did not raise any specific issues with regards to that lease and that he had an opportunity to negotiate the terms of that lease. The Circuit Court, nonetheless, concluded that the 2006 Great Lakes Lease was “procured due to a mistake on the part of Plaintiff and Great Lakes” and that, as a result, that lease is “void as a matter of law[.]” (Conclusions of Law 28 and 29, Appendix p. 831). In addition, the Circuit Court found that the 2006 Great Lakes Lease lacked “mutual assent to material terms, i.e., the effective date[.]” even though Mr. Hickman testified he signed the 2006 Great Lakes Lease on July 19, 2006, had it notarized the same date, and had no issues with its terms.

Moreover, again under the severability doctrine, described above, the validity of the 2006 Great Lakes Lease, as a whole, should have been left for the arbitration tribunal. As with the February 2011, Lease, the Circuit Court’s substantive consideration of the 2006 Great Lakes Lease should have been left to arbitration.

CONCLUSION

For the reasons detailed above, the Defendants, GAL and Capouilez ask that this Court reverse the Order entered by the Circuit Court and remand with directions to grant the Motion to Compel Arbitration and refer the claims against this party to arbitration without prejudice or restriction to the extraneous findings.

Respectfully submitted,



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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

GEOLOGICAL ASSESSMENT & LEASING
AND WILLIAM CAPOUILLEZ,

Petitioners,

v.

No. 14-0922

CECIL L. HICKMAN,

Respondent.

CERTIFICATE OF SERVICE

Service of the *PETITIONERS' BRIEF and APPENDIX RECORD* was had upon the following by sending true copies thereof by regular mail, postage prepaid, at their last known addresses this 5th day of December, 2014, as follows:

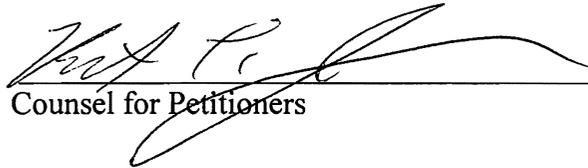
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