

IN THE CIRCUIT COURT OF TYLER COUNTY, WEST VIRGINIA

ASCENT RESOURCES - MARCELLUS, LLC,

Plaintiff,

vs.

CIVIL ACTION NO. 16-C-25-C

BETTY HADLEY, an individual;
and THE UNKNOWN DEVISEES, HEIRS, SUCCESSORS,
AND ASSIGNS OF ROY D. HADLEY, a deceased individual;
BETTY HADLEY, CO-EXECUTOR OF THE ESTATE OF
ROY D. HADLEY; and ROY D. HAUGHT, CO-EXECUTOR
OF THE ESTATE OF ROY D. HADLEY

Defendants.

FILED
MAR -5 2019
Candy L. Warner
Tyler Co. Circuit Clerk

**ORDER DENYING SUMMARY JUDGMENT
ON DECLARATORY JUDGMENT ACTION**

On a prior day, came Plaintiff Ascent Resources - Marcellus, LLC, (hereinafter "Plaintiff"), by counsel, Kenneth E. Tawney, Esq.; Defendant Roy Haught, Co-Executor of the Estate of Roy D. Hadley, by counsel, F. M. Dean Rohrig, Esq.; and Defendant Betty Hadley, individually and as Co-Executor of the Estate of Roy D. Hadley, by counsel Justin Craft, Esq., for the hearing on Plaintiff's motion for summary judgment on declaratory judgment action ("Plaintiff's Motion").

Plaintiff seeks an order pursuant to W. Va. Code §55-13-1, et. seq., declaring that Plaintiff has the implied right to pool or unitize the subject oil and gas lease on the subject lands with oil and gas interests in other lands and to develop the lands jointly. The Court, having considered the parties' pleadings, motions, and supporting documents, and having heard and considered the oral arguments from counsel, hereby DENIES Plaintiff's Motion for Summary Judgment seeking an implied right to pool or unitize the oil and gas lease issue in this matter with other mineral and leasehold interests for the purpose of developing oil and gas.

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FINDINGS OF FACT

1. The minerals at issue consist of the oil and gas in and under a tract measuring 94 acres, more or less, identified as Parcel No. 13 on Tax Map 3 in McElroy District, Tyler County, West Virginia (hereinafter, the "Subject Minerals").
2. By oil and gas lease (the "Lease") dated February 6, 1980, and recorded in the Office of the Tyler County Clerk in Deed Book 224, at Page 669, Mazie B. Cunningham leased all of her right, title, and interest in the Subject Minerals to D. & H. Oil Company with the lease terms spelled out in said lease.
3. The Plaintiff is successor in interest to D. & H. Oil Company, and has the right to develop and to produce the Subject Minerals in accordance with the lease terms.
4. The Plaintiff also owns an undivided 50% of the Subject Minerals in fee.
5. The Defendants are successors in interest to the original Lessor, Mazie B. Cunningham, and collectively own an undivided 50% interest in the Subject Minerals in fee.
6. As a result of the leasehold and fee ownership interests, Plaintiff has the right to develop the Subject Minerals under the 94 acre tract of land.
7. The Lease is silent as to whether there is an express right to pool or unitize the Lease with other leaseholds and mineral interests and to develop them jointly with other tracts of land.
8. The parties to this suit have not reached an agreement with respect to a new modification or ratification amending the Lease regarding pooling and unitization.
9. The Lease at issue is the sole written instrument upon which the Court is asked to determine the legal rights and status of each of the parties.

10. There is no evidence that the Plaintiff cannot develop the minerals underlying the tract at issue in the absence of pooling and unitization.
11. The Court will abstain from summarizing the terms of the Lease, as there is no argument over the express terms of the Lease.

CONCLUSIONS OF LAW

A. Standard of Review

1. Summary judgment is appropriate and shall be granted in the event of a showing “that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” W. Va. R. Civ. P. 56(b) (2016). For the reasons set forth below, the Court determines that there is no genuine issue as to any material fact in this matter, and that the Plaintiff is entitled to judgment as a matter of law.

B. Jurisdiction

2. Pursuant to West Virginia Code § 55-13-1, *et seq.* (the “Uniform Declaratory Judgments Act”), the Legislature vested the circuit courts with the power to declare the rights, status and other legal relations of parties to a written agreement, either before or after a breach of the agreement. West Virginia Code §§ 55-13-1, 55-13-3.
3. “Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise an obtain a declaration of rights, status, or other legal relations thereunder.”
4. The Lease between the parties does not grant an express right to pool or unitize the respective oil and gas interests of each of the parties through the terms of the Lease.

5. The subject Lease was executed in 1980, and since this time, the parties have operated without incident or need for clarity in the 39 years under its operation absent the Plaintiff's motion for summary judgment on the declaratory action filed and argued in 2016.
6. Under these circumstances, there can be no argument that the terms of the Lease are unclear and ambiguous necessitating the Court's interpretation. Further, neither party in this civil action has put forth any argument that the Lease is unclear and ambiguous.
7. As such, the Court finds that the terms of the current Lease are clear and unambiguous, and should not be subject to the Court's interpretation. "It is not the right or province of a court to alter, pervert or destroy the clear meaning and intent of the parties as expressed in unambiguous language in their written contract or to make a new or different contract for them." Syl. Pt. 3, *Cotiga Development Co. v. United Fuel Gas Co.*, 147 W.Va. 484, 128 S.E.2d 626 (1962)." Syl. Pt. 2, *Bennett v. Dove*, 166 W.Va. 772, 277 S.E.2d 617 (1981).
8. A valid written contract that expresses the parties' intent in plain and unambiguous language "is not subject to judicial construction or interpretation but will be applied and enforced according to such intent." Syl. Pt. 1, *Cotiga Dev. Co. v. United Fuel Gas Co.*, 147 W. Va. 484, 485, 128 S.E.2d 626, 629 (1962).
9. The Court concludes it should not seek out the "customary" terms and conditions for pooling and unitization clauses where the written instrument is clear and unambiguous in that it does not include any such terms therein. Syl. Pt. 4, *Cotiga Dev. Co. v. United Fuel Gas Co.*, 147 W. Va. 484, 485, 128 S.E.2d 626, 629 (1962).

10. As to the Plaintiff's argument that the implied right to pool and unitize exists under West Virginia law, the Court concedes that implied covenants and implied rights are an integral part of oil and gas law, and that the West Virginia law recognizes certain implied covenants in oil and gas leases including an implied covenant to market. *Wellman v. Energy Resources, Inc.*, 210 W. Va. 200, 557 S.E.2d 254, 265 (2001); an implied covenant to develop. *Jennings v. Southern Carbon Co.*, 73 W. Va. 215, 80 S.E. 368, 370 (1913) and *St. Luke's United Methodist Church v. CNG Development Co.*, 222 W. Va. 185, 663 S.E.2d 639, 647 (2008); and an implied covenant to protect against drainage. *Jennings, supra, Parish Fork Oil Co. v Bridgewater Gas Co.*, 51 W. Va. 583, 591, 42 S.E. 655, 658 (1902), and *Ohio Fuel Oil Co. v. Greenleaf*, 84 W. Va. 67, 75, 99 S.E. 274, 278 (1919).
11. The Court also does not disagree with the proposition that West Virginia law encourages the development of mineral interests; however to make such a broad determination that the implied right to pool and unitize exists under West Virginia common law is not for a circuit court to decide. The West Virginia legislature has addressed forced pooling and unitization in proposed and enacted legislation, but the West Virginia code is silent on forced pooling and unitization where there is valid and existing contract that is silent on such. If the West Virginia Legislature wants to address this issue during its current session, it is more than welcome, but this Court will not.
12. Unlike the implied covenants and rights previously discussed, the implied right to pool and unitize is not necessary for the development and production of the subject minerals; To find that the current Lease confers upon the Plaintiff an implied covenant of pooling

and unitization would materially alter the terms of the clear and unambiguous language of the Lease without fair consideration for such terms.

13. The Court finds that to recognize an implied covenant of pooling and unitization would place a burden upon the Subject Mineral estate that was never contemplated by the original parties to the Lease and is not reflected in the terms of the agreement.

14. The Court is not swayed by the Plaintiff's argument that pooling and unitization is necessary for the economically feasible production of the Subject Minerals. Absent the Plaintiff's assertions to the contrary, the record is devoid of any evidence that Subject Minerals are not being developed, in violation of the contractual terms, without the Court recognizing an implied right to pool and unitize.

15. If horizontal wells are the only alternative to ensure the develop and production of the Subject Minerals without incurring outrageous expense, the parties need to return to the negotiating table to see if they can reach an amendment as to pooling for due consideration.

16. This Court does not wish to serve as an obstacle against West Virginia's public policy in favor of development of our natural resources, but this Court will not overturn more than a century of the state's common law to avoid this fate.

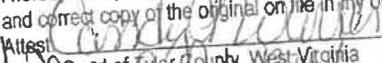
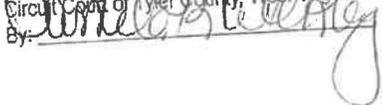
Upon said **Findings of Fact and Conclusions of Law**, and after mature consideration, it is hereby accordingly **ORDERED, ADJUDGED, AND DECREED** as follows:

1. The Plaintiff's Motion for Summary Judgment on the Declaratory Judgment Action is **DENIED**.
2. This Order is a final order in accordance with Rule 54(b) of the West Virginia Rules of Civil Procedure.

The Circuit Clerk of this Court shall transmit attested copies of this Order to the parties through their respective counsel of record.

ENTER this 4th day of March, 2019


The Honorable Jeffrey D. Cramer
Circuit Court Judge of Tyler County
2nd Judicial Circuit, State of West Virginia

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.
Attest:  Clerk
Circuit Court of Tyler County, West Virginia
By:  Deputy