

IN THE CIRCUIT COURT OF FAYETTE COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

FRASURE CREEK MINING, LLC,
a West Virginia limited liability company,

Petitioner and Counterclaim Defendant,

vs.

Civil Action No.: 20-C-142
Presiding: Judge Dent
Resolution: Judge Nines

POCAHONTAS LAND, LLC,
a Virginia limited liability company,
POCAHONTAS SURFACE INTERESTS, LLC,
a Virginia limited liability company,

Respondents, Counterclaim Plaintiffs and
Third-Party Plaintiffs,

vs.

DEEP WATER RESOURCES, LLC,
a West Virginia limited liability company, and
NEW TRINITY COAL, INC.,

Third-Party Defendants.

**ORDER DENYING DEEP WATER RESOURCES, LLC AND NEW TRINITY COAL,
INC.'S MOTION TO DISMISS THIRD-PARTY COMPLAINT**

This matter came before the Court this 16th day of August 2021, upon Third-Party Defendants, Deep Water Resources, LLC and New Trinity Coal, Inc.'s Motion to Dismiss Third-Party Complaint. The Third-Party Plaintiffs, Pocahontas Land, LLC and Pocahontas Surface Interests, LLC (hereinafter "Third-Party Plaintiffs" or "Pocahontas"), by counsel, J. Thomas Lane, Esq., and Third-Party Defendants, Deep Water Resources, LLC and New Trinity Coal, Inc., by counsel, R. Scott Long, Esq., have fully briefed the issues necessary. The Court

dispenses with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process. So, upon the full consideration of the issues, the record, and the pertinent legal authorities, the Court rules as follows.

FINDINGS OF FACT

1. By coal lease dated September 1, 2017, Pocahontas and Deep Water Mining, LLC entered into a lease which relates to the mining of coal in the Page/Kincaid area of Fayette County, West Virginia (hereinafter "the Lease")¹. Said Lease leased to Deep Water the sole and exclusive mining rights on property owned by Pocahontas, referred to by the parties as the Pocahontas Property. Plaintiff Frasure Creek Mining, LLC is not a party to the Lease, but is the operator and permit holder with the West Virginia Department of Environmental Protection (WVDEP) with respect to the mining of the coal covered by the Lease.

2. This matter surrounds the claims in the Complaint, wherein in this case, on December 30, 2020, Plaintiff Frasure Creek Mining, LLC (hereinafter "Plaintiff" or "Frasure Creek") filed a Verified Petition for Preliminary and Permanent Injunction in Fayette County, West Virginia. The Verified Petition sought an order to enjoin Pocahontas from interfering in any efforts of Frasure Creek to engage in remediation activities as required by the State of West Virginia. Pocahontas answered the Petition and filed a Counterclaim and Third-Party Complaint against Frasure Creek, Third-Party Defendants Deep Water Resources, LLC, (hereinafter "Deep Water") and New Trinity Coal, Inc. (hereinafter "New Trinity"). The claims against New Trinity seek a declaration that New Trinity is bound by the terms of the Lease and to pierce the corporate veil claim amongst all three entities. The sole claim against Deep Water is to pierce the corporate

¹ The Court notes Third-Party Defendant New Trinity is guarantor under the Lease.

veil. On February 25, 2021, New Trinity and Deep Water moved to dismiss the Third-Party Complaint on the basis that Pocahontas' claims against those entities are not derivative of the claims in Frasure Creek's Verified Petition.

3. The case was subsequently referred to the Business Court Division and assigned to the undersigned. On June 17, 2021, Pocahontas filed Pocahontas' Response in Opposition to Deep Water Resources, LLC and New Trinity Coal, Inc.'s Motion to Dismiss The Third-Party Complaint. On June 28, 2021, Deep Water and New Trinity filed their Reply to Pocahontas' Response in Opposition to Deep Water Resources, LLC and New Trinity Coal, Inc.'s Motion to Dismiss Third-Party Complaint.

4. Meanwhile, on a prior day, after Pocahontas answered the Petition and filed a Counterclaim and Third-Party Complaint against Frasure Creek, Frasure Creek filed a "Counterclaim to the Counterclaim", in which it sought to assert a cause of action for tortious interference against Pocahontas. The Court, after briefing on a motion to dismiss this pleading, agreed that a "Counterclaim to the Counterclaim" was an inappropriate vehicle for Plaintiff to bring a claim against Defendant and granted Frasure Creek's request for leave to amend the Complaint (Petition) in this civil action to bring such a cause of action instead. The Order on this issue is being entered by the undersigned contemporaneously with this Order.

5. The Court finds the issue ripe for adjudication.

CONCLUSIONS OF LAW

The instant motion was filed under Rule 14 of the West Virginia Rules of Civil Procedure. Rule 14 of the West Virginia Rules of Civil Procedure governs third-party procedure. Rule 14 provides, in pertinent part:

(a) When Defendant May Bring in Third Party. At any time after commencement of the action a defending party, as a third-party

plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff.

W. Va. R. Civ. P. 14.

The West Virginia Supreme Court of Appeals has held that a third-party complaint filed pursuant to Rule 14(a) of the West Virginia Rules of Civil Procedure is proper only when the party to be joined is or may be liable to the third-party plaintiff for all or part of the original plaintiff's claim(s) against the third-party plaintiff. A third-party complaint is not proper merely because it arises from the same transaction or occurrence that is the subject matter of the original plaintiff's complaint against the defendant. Syl. Pt. 1, *Braxton Lumber Co. v. Lloyd's Inc.*, 238 W. Va. 177, 793 S.E.2d 341 (2016).

The Court considers that Pocahontas has argued that the claims in the original Petition are now moot, because the parties have reached an agreement with respect to access to the properties. *See* Def's Mot., p. 4. Further, Pocahontas avers that the Petition sought only injunctive relief and did not seek any monetary damages. *Id.* at 3.

However, the Court considers that it is granting Frasure Creek's request² to amend its Complaint to properly plead its tortious interference cause of action³. Both stem from access to the property, and therefore, ultimately, to the Lease. The original Petition sought to enjoin Pocahontas from prohibiting Frasure Creek's access to the Pocahontas Property. Similarly, the additional claim for tortious interference, which the Court has granted leave to be pled in an amended complaint, involves the issue of Frasure Creek's access to the Pocahontas Property.

² See Findings of Fact, ¶4, *supra*.

³ The Court's review of the original Petition recognizes that it did not demand monetary damages; however, the addition of a tort cause of action like tortious interference, which would implicate monetary damages, renders this argument moot.

Therefore, the Court concludes that the Third-Party Complaint satisfies Rule 14(a) as all claims in the action appear to derive from access to the property, and therefore, ultimately, to the underlying Lease. The access to the Pocahontas property which Frasure Creek centers its claims around derives wholly from the mining/operating and related permitting rights conveyed to Deep Water under the Lease, but apparently actually mined by Frasure Creek under the Lease (instead of Deep Water). While the Court recognizes Frasure Creek was not the Lessee or a signatory to the Lease, the claims relate to the Lease in that the access issue is directly related to Frasure Creek's mining and operating the coal on the Pocahontas property. Frasure Creek does not own the Pocahontas property and can only claim not only access, but mining, permitting, or reclamation rights in connection with the Lease in which it apparently was able to operate, mine, permit (and therefore, be required by the DEP to perform reclamation) in lieu of Lessee Deep Water. *See* Def's Resp., p. 7. Accordingly, the Court concludes that the third-party complaint is legally-supported. In that vein, the Court considers the purpose of Rule 14 "to eliminate circuitry of actions when the rights of all three parties center upon a common factual situation." Syllabus Point 3, in part, *Magnet Bank v. Barnette*, 187 W.Va. 435, 419 S.E.2d 696 (1992). *See also Howell v. Luckey*, 205 W.Va. 445, 449, 518 S.E.2d 873, 877 (1999) ("[O]ne of the primary goals of any system of justice [is] to avoid piecemeal litigation which cultivates a multiplicity of suits and often results in disparate and unjust verdicts.") *cited by Walker v. Option One Mortg. Corp.*, 220 W. Va. 660, 666, 649 S.E.2d 233, 239 (2007).

The Third-Party Complaint satisfies Rule 14(a) as all claims in the action appear to derive from access to the property, and therefore, ultimately, to the Lease. The Court, when considering the claims as they relate to the access issue and the Lease, however, is mindful of *Braxton's* holding that a "third-party complaint is not proper merely because it arises from the same

transaction or occurrence that is the subject matter of the original plaintiff's complaint against the defendant". Syl. Pt. 1, *Braxton Lumber Co. v. Lloyd's Inc.*, 238 W. Va. 177, 793 S.E.2d 341 (2016). The Supreme Court in *Braxton* articulated and further explains this rationale, opining that "Rule 14(a)'s terms are not met just because a defendant's claim against a third-party arises out of the same general set of facts as the original plaintiff's claim against the defendant.¹¹ "[D]erivative liability is central to the operation of Rule 14. It cannot be used as a device to bring into a controversy matters which merely happen to have some relationship to the original action." *Id.* at 181, 345.

However, if Frasure Creek's position is sustainable, Deep Water and New Trinity, rather than Pocahontas could be liable for whatever relief Frasure Creek seeks in connection with the tortious interference claim. Deep Water is the named Lessee, and was required by the Lease to obtain permitting in its own name. *See* Def's Resp., p. 3. Discovery could reveal that Deep Water violated the Lease by allowing Frasure Creek to mine the property under the Lease and obtain permitting in its own name. *See* Def's Resp., p. 8. But for Deep Water's actions, Frasure Creek would have no claim or need to access the Pocahontas property for remediation. Further, the Court considers the third-party complaint's piercing the corporate veil claim, which relates to the manipulation of corporate form between these entities. The Court finds this also would relate to the business entities' relationship, including how and why Frasure Creek was apparently able to mine and operate the Lease instead of the Lessee. This appears to be a unique factual situation between these entities. Therefore, the Court concludes this is more than "merely happen[ing] to have some relationship to the original action", and instead, the allegations all revolve around the rights and obligations of the parties and actual operators of the Pocahontas property, including the obligation imposed by the State of West Virginia to perform remediation, and also including

the rights and obligations of the Lessor and Lessee of the Lease, as well as that of the Guarantor of the Lease. *Braxton*, at 181, 345.

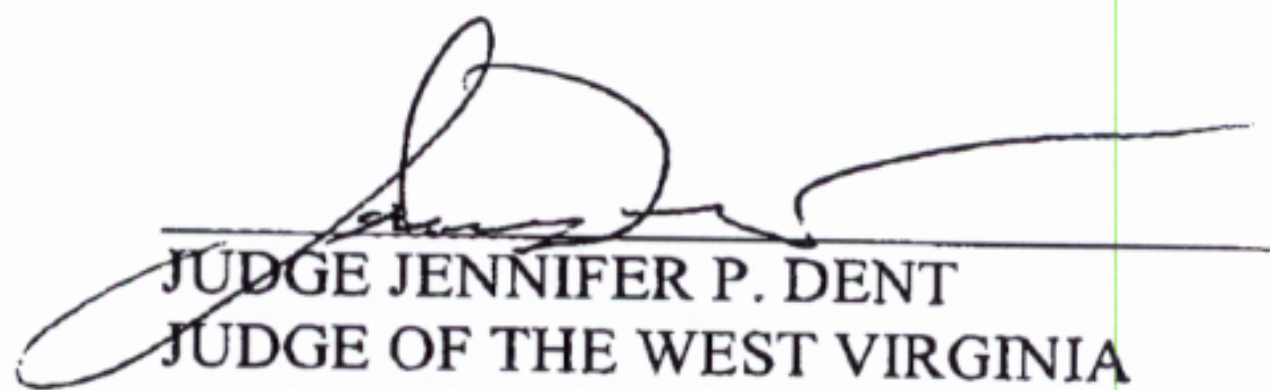
For all of these reasons, the Court finds dismissal of the Third-Party Complaint under Rule 14 would be inappropriate. Therefore, the instant motion must be DENIED.

CONCLUSION

Accordingly, it is hereby ADJUDGED and ORDERED that Third-Party Defendants, Deep Water Resources, LLC and New Trinity Coal, Inc.'s Motion to Dismiss Third-Party Complaint is hereby DENIED.

The Court notes the objections and exceptions of the parties to any adverse ruling herein. The Clerk shall enter the foregoing and forward attested copies hereof to all counsel, to any *pro se* parties of record, and to the Business Court Central Office at Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

August 16, 2021
date of entry


JUDGE JENNIFER P. DENT
JUDGE OF THE WEST VIRGINIA
BUSINESS COURT DIVISION