

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

FILED

2022 NOV 15 AM 10:50

JOSEPH M. RUCKI

EQT PRODUCTION COMPANY,

Petitioner,

vs.

Civil Action No.: 22-P-6  
Presiding: Judge Wilkes

MATTHEW R. IRBY, as STATE TAX  
COMMISSIONER of WEST VIRGINIA,  
THE HONORABLE ERIC BUZZARD,  
Assessor of Marshall County, and THE  
COUNTY COMMISSION OF MARSHALL  
COUNTY, Sitting as a Board of Assessment  
Appeals,

Respondents.

ORDER GRANTING RESPONDENTS' MOTIONS TO DISMISS

This matter came before the Court this 15<sup>th</sup> day of November 2022, upon  
*Respondents West Virginia State Tax Commissioner and Marshall County Assessor's Motion to  
Dismiss "Petition for Appeal of Petitioner EQT Production Company" And This Administrative  
Appeal and Motion to Dismiss the County Commission of Marshall County Sitting as a Board of  
Assessment Appeals.* The Petitioner, EQT Production Company, by counsel, Craig A. Griffith,  
Esq., and Respondents, Matthew Irby, West Virginia State Tax Commissioner and Eric Buzzard,  
Marshall County Assessor, by counsel, R. Terrance Rodgers, Esq., and the County Commission  
of Marshall County, sitting as a Board of Assessment Appeals, by counsel, Joseph R. Canestraro,  
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. This matter surrounds the claims in the Petition for Appeal of Petitioner EQT Production Company, wherein Petitioner, EQT Production Company (hereinafter “Petitioner” or “EQT”), appealed a decision before the Marshall County Commission, sitting as a Board of Assessment Appeals, before whom EQT protested the property tax appraisal of EQT’s 27 producing horizontal natural gas wells in Marshall County by the West Virginia Department of Revenue, State Tax Department, Property Tax Division and property tax assessment by the Marshall County Assessor. *See* Pet., ¶4; *see also* Pet., ¶2. Specifically, EQT argued that nonparty Chevron USA, Inc. (hereinafter “Chevron”), from whom it purchased the aforementioned 27 wells, had erroneously reported gross receipts for natural gas liquids on its property tax returns for 2021, and as a result of the inclusion of receipts from natural gas liquids in valuing wells, EQT’s wells were overvalued. *Id.* at ¶¶7-8.

2. On June 2, 2022, Respondents, Matthew R. Irby, as West Virginia State Tax Commissioner and Eric Buzzard, as Marshall County Assessor, filed the instant Respondents West Virginia State Tax Commissioner and Marshall County Assessor’s Motion to Dismiss “Petition for Appeal of Petitioner EQT Production Company” And This Administrative Appeal, arguing this administrative appeal should be dismissed on the grounds that this Court does not have jurisdiction because EQT does not have standing because the wells at issue in this case were owned by Chevron by all relevant times for the assessments which are subject of this administrative appeal. *See* Resp.’s Mot., p. 1-2.

3. On June 6, 2022, Respondent The County Commission of Marshall County, sitting as a Board of Assessment Appeals filed its own Motion to Dismiss the County

Commission of Marshall County Sitting as a Board of Assessment Appeals, making the same argument.

4. On July 20, 2022, EQT filed a Response to both motions to dismiss, arguing West Virginia Code gives it standing to bring this appeal as an aggrieved party. *See Resp.*, p. 2. Additionally, EQT argues its contractual obligation with and to Chevron to pay the assessed taxes cements its status as an aggrieved party, conferring standing. *Id.* at 5.

5. On August 8, 2022, Respondents, Matthew R. Irby, as West Virginia State Tax Commissioner and Eric Buzzard, as Marshall County Assessor, filed their Reply, arguing EQT does not have standing as an aggrieved third party, and it does not have standing based on contract, as parties cannot confer jurisdiction on any court by agreement. *See Reply*, p. 1, 7.

6. This action was referred to the Business Court Division and on September 12, 2022, by Order Assigning Presiding Judge to Case, the undersigned was assigned to this administrative appeal.

7. The Court finds the issue ripe for adjudication.

#### **STANDARD OF LAW**

First, this matter comes before the Court upon a motion to dismiss under Rule 12(b)(6). “The trial 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.” Syl. Pt. 3, *Chapman v. Kane Transfer Co., Inc.*, 160 W.Va. 530 (1977). “Since the preference is to decide cases on their merits, courts presented with a motion to dismiss for failure to state a claim construe the complaint in the light most favorable to the plaintiff, taking all allegations as true.” *Sedlock v. Moyle*, 222 WVa. 547, 550, 668 S.E.2d 176, 179 (2008). “We recognized, however, that



liberalization in the rules of pleading in civil cases does not justify a carelessly drafted or baseless pleading.” *Par Mar v. City of Parkersburg*, 183 W.Va. 706, 711 (1990).

A motion to dismiss under Rule 12(b)(6) enables a circuit court to weed out unfounded suits.” *Williamson v. Harden*, 214 W.Va. 77, 79 (2003).

### **CONCLUSIONS OF LAW**

At issue in this matter is whether EQT has standing to challenge the assessments on the wells for Tax Year (“TY”) 2021, when Chevron owned the wells at all times relevant to the TY 2021 assessment. The Court notes that Chevron is not a party to this action. EQT admits in its Petition for Appeal that Chevron owned the producing wells, but asserts that the purchase agreement between EQT and Chevron provided that EQT would pay any property taxes associated with the wells for tax year 2021. *See* Pet., p. 3 (footnote 2). The Court notes that Respondents aver that EQT did not place the contract provision in evidence and did not make it part of the Assignment, Bill of Sale and Conveyance which it placed in the public record. *See* Reply, p. 10 (footnote 8). The Court also notes the contract/purchase agreement has not been provided as an exhibit to the Petition for Appeal or to the instant motion or EQT’s response to the instant motion. For purposes of this Order’s analysis, the Court will analyze the issue of whether or not EQT has standing based on EQT’s purported agreement with Chevron that it would pay the taxes for TY 2021.

“[S]tanding is defined as ‘[a] party’s right to make a legal claim or seek judicial enforcement of a duty or right.’ ” *Findley v. State Farm Mut. Auto. Ins. Co.*, 213 W. Va. 80, 94, 576 S.E.2d 807, 821 (2002) (quoting Black’s Law Dictionary 1413 (7th ed. 1999)). “One specific aspect of standing is that one generally lacks standing to assert the rights of another.” *State ex rel.*

*Leung v. Sanders*, 213 W. Va. 569, 578, 584 S.E.2d 203, 212 (2003), cited by *Pavone v. NPML Mortg. Acquisitions, LLC*, 246 W. Va. 418, 874 S.E.2d 21, 25 (2022).

Generally speaking, “[s]tanding is an element of jurisdiction over the subject matter.” *State ex rel. Paul B. v. Hill*, 201 W. Va. 248, 256, 496 S.E.2d 198, 206 (1997), citing 21A Michie’s *Jurisprudence Words & Phrases* 380 (1987). Additionally, subject matter jurisdiction may be raised in any appropriate manner ... and at any time during the pendency of the suit or action. *State ex rel. TermNet Merch. Servs., Inc. v. Jordan*, 217 W. Va. 696, 700, 619 S.E.2d 209, 213 (2005).

Moreover, parties cannot confer jurisdiction on this Court directly or indirectly where it is otherwise lacking. Syl. Pt. 2, in part, *James M.B. v. Carolyn M.*, 193 W. Va. 289, 291, 456 S.E.2d 16, 18 (1995). The parties can not confer jurisdiction on any court by agreement. Syl. Pt. 2, *Belcher v. Belcher*, 151 W. Va. 274, 274, 151 S.E.2d 635, 635 (1966).

In this matter, EQT seeks to amend the Returns for Tax Year 2021 to remove income attributed to the sale of natural gas liquids. *See* Mot., p. 5. EQT claims in the Petition that Chevron had erroneously reported gross receipts for natural gas liquids on its property tax returns for 2021, and as a result of the inclusion of receipts from natural gas liquids in valuing wells, EQT’s wells were overvalued. *See* Pet., ¶¶7-8. Importantly, at the time of assessment for Tax Year 2021, Chevron was the owner of the subject wells, and Chevron reported income/prepared the West Virginia Oil and Gas Producer/Operator Returns (hereinafter “Returns”).

In the briefing, the parties discussed a variety of published and unpublished West Virginia cases regarding standing in the realm of a spouse’s credit card contract (*L.A. Pipeline Constr., Inc. v. Glass Bagging Enterprises, Inc.*, No. 15-0970, 2016 WL 6304570 (W. Va. Oct. 27, 2016)), a previous owner’s challenge to a deficiency in a tax lien sale (*Harper v. Smith*, 232 W. Va. 655, 753 S.E.2d 612 (2012)), and a non-owner’s standing to challenge a homeowners’ association for



failure to maintain records (*DeBlasio v. Stone*, No. 11-1152, 2012 WL 6097653 (W. Va. Dec. 7, 2012)).

The Court, having reviewed the relevant law and cases, is not persuaded that EQT has standing. Only a taxpayer can challenge the taxes it owes, not a third party, and a third party does not become a party liable to the taxing authorities by virtue of a private contract. The cases discussed have not proven otherwise.

The Court finds that because Chevron was the title owner for all relevant times related to the Tax Year 2021 assessments, EQT subsequently purchased the wells from EQT and purportedly made a private agreement with Chevron that EQT would pay the taxes for Tax Year 2021 when they became due, that this does not confer jurisdiction or standing upon EQT to challenge Chevron's tax liability for Tax Year 2021. Any obligation EQT has to pay the tax amounts is an obligation of EQT to Chevron (by agreement), not an obligation to the taxing authorities. The contract (which the Court has not seen) which purportedly transfers the responsibility to pay the TY 2021 taxes to EQT only acts as an effective transfer between EQT and Chevron, and has not effected a change in responsibility from the perspective of the taxing authorities.

In sum, the Court finds that the sale of the subject wells to EQT by Chevron, even though the sale supposedly memorialized an agreement between the two entities wherein EQT would pay Chevron's taxes for TY 2021, does not alter the fact that the tax liability is Chevron's tax liability, the Returns filed by Chevron with the Tax Commissioner are Chevron's Returns, or the fact that the Returns were filed by Chevron because it was Chevron's responsibility to file the Returns and pay the property taxes due for TY 2021.

The Court addresses EQT's arguments that West Virginia Code § 11-3-25 confers standing upon it, as EQT argues it is an aggrieved party to this tax assessment via its contract with Chevron.

West Virginia Code § 11-3-25 reads in part, that:

Any person claiming to be aggrieved by any assessment in any land or personal property book of any county who shall have appeared and contested the valuation or whose assessment has been raised by the county court above the assessment fixed by the assessor, or who contested the classification or taxability of his property may, at any time up to thirty days after the adjournment of the county court, apply for relief to the circuit court of the county in which such books are made out . . . .

The Supreme Court of Appeals of West Virginia analyzed standing and "any person claiming to be aggrieved" from West Virginia Code § 11-3-25 in *Tug Valley Recovery Ctr., Inc. v. Mingo Cnty. Comm'n*, 164 W. Va. 94, 261 S.E.2d 165 (1979). The question of who has standing to appeal an assessment under this statute boils down to definition of the term "any person . . . aggrieved." *Tug Valley Recovery Ctr., Inc. v. Mingo Cnty. Comm'n*, 164 W. Va. 94, 100, 261 S.E.2d 165, 169 (1979).

Although the Court agrees that *Tug Valley* does carve out an exception wherein an appeal is not limited to an owner of assessed property, a careful reading of *Tug Valley* reveals it does not create an exception where one entity contracts with the taxpayer and thereupon is conferred its standing to contest that taxpayer's overvaluation of a tax assessment or tax liability.

*Tug Valley* allowed non-property owner county residents to contest assessment of one of the largest mineral owners in their county that owned property that was undervalued. Petitioners there, as county residents, claimed the assessment caused "injuries resulting from (1) discriminatory treatment as taxpayers (in that their property was more likely to be assessed at actual value than was Cotiga's), and (2) deprivation of governmental services (which assumably would flow from the additional tax revenue generated by any increased property assessment)."



*Tug Valley Recovery Ctr., Inc. v. Mingo Cnty. Comm'n*, 164 W. Va. 94, 97, 261 S.E.2d 165, 168 (1979). *Tug Valley* involved two consolidated tax appeals. *Id.* at 95-96. The Supreme Court looked at West Virginia Code § 11-3-25, which the Petition was based on, and examined and analyzed the phrase “any person...aggrieved”. *Id.* at 100. In doing so, the Supreme Court was careful not to create such an “interpretation that would open the doors to vexatious and frivolous demands, and interfere with the orderly reassessment of property under standard operating procedures”. *Id.* at 105. It stated that implicit in its holding was that every taxpayer and every person affected by the tax base, which the county residents were, has a financial interest in seeing that all property in the district be properly taxed, stating that the rationale is that the interests of all members of the community are affected by the system of tax assessment. *Id.* It continued to state that if one party is under assessed, the resulting injury is to all other members of the taxing district who are discriminatorily assessed and denied the benefits of full and equitable taxation. *Id.*

That is not the situation in the case at bar. Although the Court agrees that *Tug Valley* does describe a situation wherein an appeal is not limited to an owner of assessed property, the case does not establish that EQT is an “aggrieved party” here. Importantly, EQT is arguing overassessment, not underassessment as in *Tug Valley*, where the Supreme Court described that the underassessment of one party created a resulting injury to all other members of the taxing district who are discriminatorily assessed and denied the benefits of full and equitable taxation. Instead of benefiting all residents of Marshall County, EQT seeks to correct its alleged overvaluation only to benefit itself. Plainly, the benefit of increasing “the total tax base [to] yield higher revenues, thus improving the quality and quantity of services for all county residents” so central to *Tug Valley's* rationale, is missing. *See* Reply, p. 4-5; *see also Tug Valley*, at 106. The



Court finds that EQT does not have standing as a third-party under *Tug Valley's* analysis of an aggrieved party.

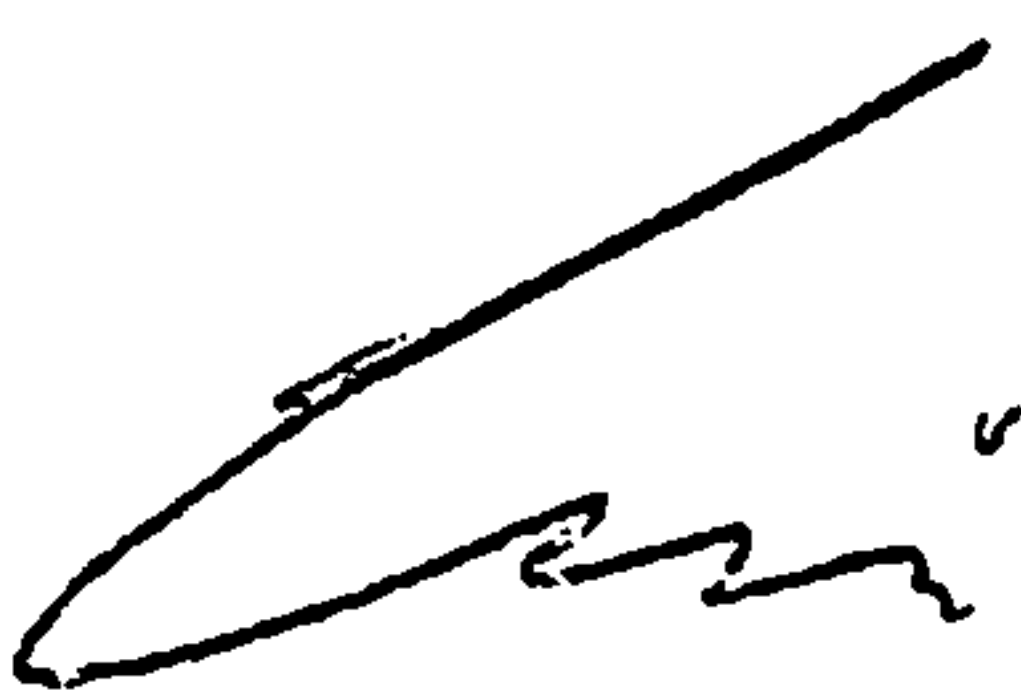
For all of these reasons, the Court finds the instant motion must be GRANTED.

### **CONCLUSION**

Accordingly, it is hereby ADJUDGED and ORDERED that Respondents West Virginia State Tax Commissioner and Marshall County Assessor's Motion to Dismiss "Petition for Appeal of Petitioner EQT Production Company" And This Administrative Appeal and Motion to Dismiss the County Commission of Marshall County Sitting as a Board of Assessment Appeals are hereby GRANTED. This is a FINAL ORDER. There being nothing further to accomplish in this matter, the Clerk is directed to retire this matter from the active docket.

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.

November 15, 2022  
\_\_\_\_\_  
date of entry

  
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JUDGE CHRISTOPHER C. WILKES  
JUDGE OF THE WEST VIRGINIA  
BUSINESS COURT DIVISION