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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA 2015 NOV 20 AM 8:48

ANNE E. MOORE, an individual,

Plaintiff,

v.

H3LLC, a West Virginia limited liability
Corporation, and MICHAEL HOEFT, in
his individual capacity and as manager of
H3LLC, and DOES 1 THROUGH 25,

Defendants.

CIVIL ACTION NO.: 15 C 2056

JUDGE: Kaufman

COMPLAINT FOR:

1. BREACH OF CONTRACT;
2. BREACH OF CONTRACT;
3. VIOLATION OF W. Va. §39B-1-101 et. Seq;
4. NEGLIGENCE; and
5. TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONSHIP

Plaintiff, Anne E. Moore, ("Plaintiff") alleges:

PRELIMINARY ALLEGATIONS

The Parties

1. Anne E. Moore is the lawful owner of record of a one-half interest in the mineral rights underlying 115 acres, namely Map – Parcel 9999-03101700, Book No. 370, page number 283, in the Cove District of Barbour County, West Virginia.

2. Defendant, H3LLC, is a West Virginia limited liability company with its principal place of business in Cabell County, West Virginia, and doing business in Kanawha County, West Virginia.

3. Upon information and belief, Defendant, Michael Edward Hoeft, is a resident of Mason County, West Virginia.

4. The true names and capacities of the Defendants sued herein as Does 1 through 25, inclusive, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious

names. Plaintiffs will seek leave of court to amend this complaint to allege the true names and capacities of the Doe Defendants when they have been ascertained.

Jurisdiction and Venue

5. Jurisdiction and venue exist before this Court pursuant West Virginia Code §56-1-1.

Factual Allegations

6. In or around June of 2013, the Plaintiff received an offer to lease her ½ interest in 115 acres of mineral rights in Barbour County, West Virginia, from a firm in Morgantown, West Virginia (hereinafter "proposed lease"). The proposed lease was between the Plaintiff and MarKey, LLC of Wexford, Pennsylvania.

7. The terms of the proposed lease were \$100 per net acre per year for a period of ten (10) years, plus a one-eighth (1/8) royalty. The instructions indicated that if the Plaintiff signed and provided all of the documentation, her check would arrive in 120 days from the date of return. Therefore, the proposed lease was an offer that upon acceptance by the Plaintiff was binding on both parties to the lease.

8. Not being an experienced oil and gas attorney, the Plaintiff sought the advice of Forrest Jones, an attorney in Charleston, West Virginia, with whom the Plaintiff was familiar. At the instruction of Mr. Jones, the Plaintiff dropped off a copy of the proposed lease at Mr. Jones' office.

9. Some days thereafter, the Plaintiff received a call from Mr. Jones advising her that Mr. Jones had a client, the Defendant, H3LLC, who were experts in the field of oil and gas leases and that the Plaintiff should seek the opinion of H3LLC as to whether the proposed lease was a good one. Mr. Jones stated that he would send the lease to his client and that he would have his client call Ms. Moore.

10. Some days thereafter, the Plaintiff received a call from someone at H3LLC. Ms. Moore explained to H3LLC what she had explained to Mr. Jones. She was told that H3LLC would obtain the lease from Mr. Jones' office, but that she needed to sign a contract and power of attorney with H3LLC to hire them. She was emailed a contract, which the Plaintiff signed and returned to H3LLC.

11. During the period of August 2013 to June 2014, the Plaintiff heard nothing from H3LLC. She called on at least one occasion and was told that there was no information available for her yet.

12. On or about June 10, 2014, the Plaintiff sent a letter to H3LLC stating unequivocally that she needed an opinion on the proposed lease.

13. Shortly after receiving the letter, the Defendant, Michael E. Hoeft, personally called the Plaintiff, apologizing and stating that he hadn't seen the proposed lease. Mr. Hoeft personally promised the Plaintiff to evaluate the lease and protect the Plaintiff's interests pursuant to the contract and power of attorney.

14. The Plaintiff immediately called Mr. Jones' office and was assured that another copy would be provided to Mr. Hoeft and that Mr. Hoeft and/or his company was in contact with Mr. Jones' office at least once per week.

15. Again, another year went by with no word and in July of 2015, the Plaintiff called Mr. Hoeft, who, again, acted as if he didn't know what lease the Plaintiff was referring to.

FIRST CAUSE OF ACTION

**(Breach of Written Contract Against Defendants H3LLC, Michael Hoeft
and Does 1 through 5, inclusive.)**

16. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 15, inclusive.

17. The Defendant, H3LLC offer to contract with the Plaintiff to "negotiate an Oil & Gas Lease Agreement ("Lease") for the property(ies) listed below, which offer was accepted by the Plaintiff. The objective of the contract was "to obtain a Lease effecting the most advantageous available economic terms and provisions for the properties relative to the oil & gas leasing offers within the area on the date of execution of this Agreement."

18. The Defendant, H3LLC, breached this agreement by ignoring the proposed lease offered to the Plaintiff, which was an advantageous available economic benefit, by failing to attempt to negotiate better terms than the proposed lease with the proposer of the lease, by not advising the Plaintiff whether the lease was an advantageous one, and in other ways.

19. The Plaintiff was damaged by the breach of the contract in an amount equal to the benefit of the proposed lease, that is, \$57,375 (the amount of rent of the 10 year lease), lost royalties in an amount to be proven hereafter, the benefit of leases available at that time with better terms, incidental and consequential damages, and other damages awardable by the Court.

SECOND CAUSE OF ACTION

**(Breach of Oral Contract Against Defendants H3LLC, Michael Hoeft
and Does 6 through 10, inclusive.)**

20. Plaintiff realleges each and incorporates by reference the allegations contained in paragraphs 1 through 19, inclusive.

21. The Defendant, Michael E. Hoeft, entered into an oral contract with the Plaintiff during the telephone conversation in June of 2014, whereby the Defendant offered to review the lease and to pursue it if it seemed to be advantageous and Plaintiff accepted such offer.

22. The Defendant breached the 2014 oral contract by failing to review the lease, failing to pursue better terms from the proposer of the lease, failing to advise the Plaintiff as to whether the lease was advantageous, and in other ways not herein enumerated.

23. The Plaintiff was damaged by the breach of the contract in an amount equal to benefit of the proposed lease, that is \$57,375 (the amount of rent of the 10 year lease), lost royalties in an amount to be proven hereafter, incidental and consequential damages, and other damages awardable by the Court.

THIRD CAUSE OF ACTION

**(Violation of West Virginia Code §39B-1-101 *et. seq.*,
Against Defendants H3LLC, Michael E. Hoeft,
and Does 11 through 15, inclusive.)**

24. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 23.

25. The Defendant, H3LLC, sought from the Plaintiff, and received from the Plaintiff, a Limited Power of Attorney to represent her interests in the lease of the one-half interest in the 115 Acres of mineral rights in Barbour County, West Virginia.

26. Pursuant to common law, contract, and statute, Defendant, H3LLC, owed to the Plaintiff various duties, including, but not limited to, the duty of loyalty, of safeguarding the Plaintiff's interests with respect to the mineral rights and the value thereof, the duty to act in accordance with the Plaintiff's reasonable expectations, the duty to act with care, competence and diligence, and to act so as to not create a conflict.

27. The Defendant, H3LLC, breached its duties to the Plaintiff by putting its own interests and the interests of Defendant, Michael E. Hoeft, before those of the Plaintiff, by failing to act with loyalty, by failing to safe-guard the Plaintiff's interests in the lease with respect to the mineral rights, by failing to act in accord with the Plaintiff's reasonable expectations that it would enter into the lease if it was advantageous or negotiate better terms if possible, and in other ways not specifically enumerated herein.

28. As a result of the violation of duties, including the violation of statute, the Plaintiff is entitled to damages, including, but not limited to, those set forth in West Virginia Code §39-1-117, namely the difference in lease value of the mineral rights in August of 2013 and the present, together with attorneys fees and costs.

FOURTH CAUSE OF ACTION

(Negligence Against Defendants H3LLC, Michael Hoeft,

and Docs 16 through 20, inclusive.)

29. Plaintiff realleges and incorporates the allegations contained in paragraphs 1 through 28, inclusive.

30. The violation of statute serves as the basis for an action for negligence against the Defendant. Therefore, the Defendant, H3LLC, is guilty of negligence and liable therefore to the Plaintiff for damages as a result of such negligence.

31. Additionally, the Defendants, H3LLC and Michael E. Hoeft, owed a common law duty of due care to the Plaintiff when they undertook to represent her interests and to review the proposed lease, advise her thereon, and/or negotiate better terms.

32. The Defendants, H3LLC and Michael E. Hoeft, individually, breached their individual duties to the Plaintiff, directly and proximately causing damage to the Plaintiff, including, but not limited to: past and future lost revenues, annoyance, aggravation and inconvenience.

FIFTH CAUSE OF ACTION

(Tortious Interference with Prospective Business Relationship Against

Defendants H3LLC, Michael Hoeft and

Does 21 through 25, inclusive.)

33. Plaintiff realleges and incorporates the allegations contained in paragraphs 1 through 32, inclusive.

34. The Plaintiff had received an offer of contract for the lease of her mineral rights that all she need do was sign and provide the requisite documents and she would have had a binding lease.

35. The Defendants, H3LLC and Michael E. Hoeft, as manager of H3LLC and individually, intentionally interfered with the Plaintiff's prospective lease by promising to advise her or negotiate better terms and then, not once, but twice, ignoring the lease, not

reviewing the same, not considering the same, not following up on the same, and by doing nothing.

36. Such intentional interference with a prospective business relationship by the Defendants, or one of them, caused the Plaintiff to lose the value of the proposed lease to the end that the Plaintiff's mineral rights are now not leased in a time where leases are now more difficult or impossible to obtain.

37. The intentional interference by the Defendants with the Plaintiff's advantageous prospective business relationship directly and proximately caused damage to the Plaintiff, including, but not limited to: past and future lost revenues, annoyance, aggravation and inconvenience.

38. The Defendants acted intentionally, and/or with gross negligence and/or willfully in such interference.

39. In addition to the damages already set forth herein, the Plaintiff seeks an award of punitive damages against the Defendants, H3LLC and Michael E. Hoeft, individually.

WHEREFORE, the Plaintiff respectfully requests that this Court:

1. Award her the diminution in lease value of her mineral rights;
2. The lost amount of the lease, including rent and royalties;
3. Her attorneys fees and costs;
4. Her consequential and incidental damages;
5. Her damages based upon negligence;
6. Her statutory damages;

7. Punitive damages; and
8. Such other and further relief as the Court deems just and fit.

DATED: 11/17/15

UNDERWOOD LAW OFFICES

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THE PLAINTIFF DEMANDS A TRIAL BY JURY.