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

FILED IN Circuit Clerk's Office
this 16th day of
May 2019 at 4:07
Joseph M. Rucki, Clerk

KRP MARCELLUS I, LLC,
RIVERCREST ROYALTIES II, LLC,
DIVERSIFIED ROX MINERALS, LLC,
BRD ROYALTY HOLDINGS, LLC and
AMON G. CARTER FOUNDATION,
collectively known as KIMBELL GROUP,

Plaintiffs,

vs.

CIVIL ACTION NO.: 18-C-215
Presiding: Judge Michael D. Lorensen
Resolution: Judge Christopher C. Wilkes

CHEVRON U.S.A. INC.,
a Pennsylvania corporation,
TH EXPLORATION, LLC,
a Texas limited liability company, and
DOE CORPORATION 1-20,

Defendants.

ORDER DENYING DEFENDANT TH EXPLORATION, LLC'S MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT

This matter came before the Court this 16th day of May 2019, upon Defendant TH Exploration, LLC's Motion to Dismiss Plaintiffs' Amended Complaint. The parties 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 causes of action alleged in the Amended Complaint filed March 4, 2019, alleging causes of action for breach of contract, tort, and declaratory

judgment related to certain oil and gas conveyances covering approximately 53,000 acres in Marshall County, West Virginia. *See* Compl. Specifically, Plaintiffs have alleged in the Amended Complaint that Defendant Chevron has assigned all of its right, title, and interest in and to a portion of its leases to Defendant TH Exploration, LLC, while reserving an overriding royalty interest, a conveyance that was entered into during a period allegedly covered by a tolling and standstill agreement between the parties. *Id.* at ¶29.

2. On March 26, 2019, Defendant TH Exploration, LLC (hereinafter "Defendant" or "TH Exploration") filed the instant Motion to Dismiss Amended Complaint.

3. On April 8, 2019, Plaintiffs KRP Marcellus I, LLC, Rivercrest Royalties Holdings II, LLC, Diversified Rox Minerals, LLC, BRD Royalty Holdings, LLC, Amon G. Carter Foundation, and Kimbell Art Foundation (hereinafter "Plaintiffs" or "Kimbell") filed Kimbell Group's Response to TH Exploration, LLC's Motion to Dismiss Plaintiffs' Amended Complaint.

4. On April 18, 2019, Defendant filed its Reply in Support of Motion to Dismiss Plaintiffs' Amended Complaint.

5. The Court now finds the instant Motion is ripe for adjudication.

STANDARD OF REVIEW

6. This matter comes before the Court upon a partial motion to dismiss. Motions to dismiss are governed by Rule 12(b)(6) of the West Virginia Rules of Civil Procedure. "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 W.Va. 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).

7. 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

Failure to Join Indispensable Parties

1. First, Defendant argues dismissal is proper because Plaintiffs failed to identify and join indispensable parties to this litigation. *See* Def's Mem., p. 5. Specifically, Defendant argues Plaintiffs wrongfully have named unidentified "Doe Corporations 1-20", alleging they "represent those corporations which received a working interest in the encumbered leaseholds from Chevron through assignments and conveyances, some of which may not be of record...". *Id.* Defendant alleges this is an "attempt" to use "stand-ins for indispensable parties that could be identified by a title search". *Id.* Defendant argues it is improper to include these unnamed defendants because the assignees of the leaseholds should be readily identifiable to Plaintiffs based upon a title search. *Id.*

2. Rule 12(b)(7) allows for dismissal for failure to join a party under Rule 19, which states that a person shall be joined as a party if feasible. W. Va. R. Civ. P. 19(a). Further, the West Virginia Supreme Court of Appeals has held that "[g]enerally, all persons who are materially interested in the subject matter involved in a suit, and who will be affected by the result of the proceedings, should be made parties thereto, and when the attention is called to the absence of any such interested persons, it should see that they are made parties before entering a

decree affecting their interests." *State ex rel. One-Gateway Assocs. V. Johnson*, 208 W. Va. 731, 542 S.E.2d 894 (2000).

3. At this stage, discovery has not shed light on the identity of such assignees, especially with regard to those which Defendant admits may not be of record. More factual development at this stage is needed. Certainly, at this stage in the litigation, the Court is not entering any decree which affects the parties' interests at this time. The Court finds Plaintiffs have satisfied their burden under Rule 8 of setting forth a plain statement that assignees of a working interest in the subject leaseholds may not be identifiable at this time because such conveyances may not have been recorded. *See* Compl., ¶4. Discovery would be the logical next step to identifying any indispensable "Doe" corporation defendants, and this Court will not preclude this by dismissing the Complaint on this basis before discovery has truly commenced. Accordingly, Defendant's motion to dismiss is denied on the basis of failure to join indispensable parties.

Contract and Quasi-Contract Causes of Action

4. Next, Defendant contends that Plaintiffs' contract and quasi-contract related claims should be dismissed because they fail to state a claim upon which relief could be granted. *See* Def's Mem., p. 7. Specifically, Defendant contends Plaintiffs fail to aver facts to support their breach of contract cause of action (Count VII) because it did not allege facts to support the elements of breach or damages because it did not allege production from the leases. *Id.* at 7-8. Further, Defendant contends Plaintiffs' cause of action for accounting (Count II) should be dismissed as it's not an independent claim, but rather a request for relief contingent on the success of the breach of contract cause of action. *Id.* at 9-10. Finally, Defendant argues Count IX, Plaintiffs' claim for unjust enrichment, should be dismissed because it is based on the terms

of the contracts. *Id.* at 10. Plaintiffs, on the other hand, aver their Complaint provides ample detail and support to state a claim under Rule 8's notice standard. *See* Pl's Resp., p. 10. The issues will be taken in turn.

Count VII: Breach of Contract

5. As stated, Defendant contends Plaintiffs fail to aver facts to support their breach of contract cause of action (Count VII) because it did not allege facts to support the elements of breach or damages because it did not allege production from the leases. *See* Def's Mem., p. 7-8. The Court notes in their Reply, Plaintiffs have indicated that they are withdrawing their request to dismiss Count VII for failure to plead production, based upon the fact that some of the wells that impact the leases have gone into production. *See* Reply, p. 4. For this reason, Count VII, Breach of Contract, shall not be dismissed. Accordingly, Defendant's motion as to this count is dismissed as moot.

Count II: Accounting

6. Next, Defendant contends Plaintiffs' cause of action for accounting (Count II) should be dismissed as it's not an independent claim, but rather a request for relief contingent on the success of the breach of contract cause of action. *See* Def's Mem., p. 9-10. Defendant claims the cause of action for accounting is contingent on the success of the claim for breach of contract, and the breach of contract claim fails because Plaintiffs failed to allege production. *Id.*

7. Because, as discussed, *supra*, Defendant has withdrawn its motion to dismiss as to the breach of contract claim, the Court finds that the motion to dismiss must also be denied as to Count II, Accounting. Because the breach of contract claim did not fail because Plaintiffs did not allege production, likewise, the accounting claim should not be dismissed on this basis. For

this reason, Defendant's motion as to Count II is denied, and Count II, Accounting, shall not be dismissed.

Count IX: Unjust Enrichment

8. Finally, Defendant argues Count IX, Plaintiffs' claim for unjust enrichment, should be dismissed because it is based on the terms of the contracts. *See* Def's Mem., p. 10. Specifically, Defendant argues Plaintiffs cannot maintain the breach of contract claim and unjust enrichment claim where an express contract exists. *Id.* Here, Defendant contends the claims related to purported rights in overriding royalty interests are governed by contract. *Id.* Plaintiffs, on the other hand, argue this is an alternate argument only. *See* Pl's Resp., p. 15.

9. Rule 8 of the West Virginia Rules of Civil Procedure governs the general rules of pleading. Rule 8(a) provides, in pertinent part: "A pleading which sets forth a claim for relief, whether an original claim [or] counterclaim…shall contain (1) a short a plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the pleader seeks. *Relief in the alternative or several types may be demanded.*" W. Va. R. Civ. P. 8(a) (emphasis added).

10. Further, Rule 8(e) provides, in pertinent part: "A party may set forth two or more statements of a claim…alternately or hypothetically, either in one count…or in separate counts….A party may also state as many separate claims…as the party has regardless of consistency and whether based on legal or on equitable grounds or on both." W. Va. R. Civ. P. 8(e)(2).

11. Additionally, the West Virginia Supreme Court of Appeals has stated that alternative claims or defenses are allowed. Specifically, the West Virginia Supreme Court of Appeals has held that "[t]his rule gives parties considerable latitude in framing their pleadings

and expressly permits claims or defenses to be pled alternatively...". *Arnold Agency v. West Virginia Lottery Comm'n*, 206 W. Va. 583, 526 S.E.2d 814 (1999).

12. In *Highmark W. Va., Inc. v. Jamie*, the West Virginia Supreme Court of Appeals found that although a physician could not recover twice for the same injury in a dispute with a health insurance company, he was not precluded from pleading more than one theory of recovery; in fact, Rule 8 specifically authorized alternative pleading. 221 W. Va. 487, 655 S.E.2d 509 (2007).

13. In light of Rule 8 and the relevant case law, the Court finds Plaintiffs have validly pled Count IX in the alternative. A review of the Amended Complaint confirms this claim meets the pleading requirements of Rule 8. *See Barker v. Traders Bank*, 152 W. Va. 774, 166 S.E.2d 148 (1981)(This rules contemplates a succinct complaint containing a plain statement of the nature of the claim...). For this reason, Defendant's Motion to Dismiss is denied as to Count IX.

14. The Court notes that Defendant proffered an alternate argument in support of its motion to dismiss Count IX: Defendant alleged Count IX should be dismissed because Plaintiffs have not averred facts to support the claim because they did not allege production. *See* Def's Mem., p. 10-11. Because Defendant concedes in its Reply that production has occurred, and has withdrawn its motion as to the cause of action for breach of contract on this basis, the Court finds this argument must also fail.

Tort Causes of Action - Count X: Slander of Title and Count XI: Trespass to Chattel

15. Next, Defendant contends Count X, Plaintiffs' claim for slander of title, and Count XI, Plaintiffs' claim for trespass to chattel, should be dismissed pursuant to the gist of the action doctrine. *See* Def's Mem., p. 11. Plaintiffs, on the other hand, aver these causes of action are not barred by the gist of the action doctrine because claims arise from tort and property law

principles rather than the agreement, and these causes of action could be brought as alternative arguments. *See* Pl's Resp., p. 15, 19.

16. Generally, under the gist of the action doctrine, recovery in tort will be barred when any of the following factors are demonstrated:

> (1) where liability arises solely from the contractual relationship between the parties; (2) when the alleged duties breached were grounded in the contract itself; (3) where any liability stems from the contract; and (4) when the tort claim essentially duplicates the breach of contract claim or where the success of the tort claim is dependent on the success of the breach of contract claim.

Gaddy Eng'g Co. v. Bowles Rice McDavid Graff & Love, LLP, 231 W. Va. 577, W.Va.586, 746 S.E.2d 568, 577 (2013) (internal citations omitted). Succinctly stated, whether a tort claim can coexist with a contract claim is determined by examining whether the parties' obligations are defined by the terms of the contract. *Id. citing Goldstein v. Elk Lighting, Inc.*, No. 3:12–CV–168, 2013 WL 790765 at *3 (M.D.Pa.2013).

17. Here, the Court has found above in the preceding section that our Rules of Civil Procedure clearly demonstrate that a Plaintiff may bring alternate causes of action. For this reason, dismissal of Count X and Count XI is not appropriate at this time. Accordingly, the Court declines further analysis of Count X and Count XI's viability under the gist of the action doctrine. Defendant's Motion to Dismiss is denied as to Count X and Count XI.

18. Additionally, the Court addresses Defendant's alternate argument that Plaintiffs fail to state a claim for slander of title because they do not satisfy the elements because the claim is based upon two recorded assignments from Defendant Chevron. *See* Def's Mem., p. 12-13. A review of Count X of the Complaint, the slander to title cause of action, reveals that Plaintiffs have met their burden under Rule 8(a)'s notice pleading standard. Plaintiffs have laid out the

elements for slander to title in the Amended Complaint, and put forth sufficient factual allegations claiming that certain leases "were placed of record for the purpose and design of removing or clouding title to [Plaintiffs'] overriding royalty interests". *See* Compl., ¶¶101-105.

19. Further, the Court does not find Defendant's argument that the claim is precluded and must fail because it's based upon a recorded document convincing. In *TXO Prod. Corp. v. All. Res. Corp.*, the elements of slander title were satisfied when TXO "record[ed] a quitclaim deed which it knew to be frivolous". 187 W. Va. 457, 466 (1992). Here, Plaintiffs alleged in the Amended Complaint that the assignments, extensions, and renewals related to certain leases in this litigation was done "[i]n an attempt to further cloud [Plaintiffs'] title to its overriding royalty interests." *See* Compl., ¶108. Looking at the pleadings in the light most favorable to the Plaintiffs, the Court must find that Plaintiffs have met their burden.

20. Finally, the Court addresses Defendant's alternate argument that Plaintiffs failed to state a claim for trespass to chattel because they did not allege production and Defendant avers only produced oil can be considered personal property. *See* Def's Mem., p. 14-15. Because Defendant concedes in its Reply that production has occurred, and has withdrawn its motion as to the cause of action for breach of contract on this basis, the Court finds this argument must also fail.

CONCLUSION

In conclusion, based upon the above set forth Findings of Fact and Conclusions of Law, the Court finds that Plaintiffs' claims set forth in the Amended Complaint shall not be dismissed; therefore, Defendant's motion shall be denied.

WHEREFORE, it is hereby **ORDERED** and **ADJUDGED** that Defendant TH Exploration, LLC's Motion to Dismiss Plaintiffs' Amended Complaint is hereby **DENIED.**

The Court notes the objections of the parties to any adverse ruling herein.

The Clerk is directed to enter this Order as of the date first hereinabove appearing, and send attested copies to all counsel of record, as well as to the Business Court Central Office at Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

ENTERED this 16th day of May 2019.

Michael D. Lorensen
Business Court Division

A Copy Teste:
Joseph M. Rucki, Clerk
By Donna Cross Deputy