

**IN THE CIRCUIT COURT OF PLEASANTS COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION**

**BB LAND, LLC, a West Virginia Company,
and JB EXPLORATION 1, LLC, a
West Virginia Company,**

Plaintiffs,

vs.

**Civil Action No.: 18-C-2
Presiding: Judge Lorensen
Resolution: Judge Wilkes**

**BLACKROCK ENTERPRISES, LLC,
a West Virginia Company, and
MICHAEL L. BENEDUM,**

Defendants.

FILED IN OFFICE

MAR 29 2021

**WILLIE FARNSWORTH
CIRCUIT COURT CLERK
PLEASANTS COUNTY**

TRIAL ORDER

On the 2nd day of March, 2021, this matter came on before the Court for a jury trial in the Pleasants County Courthouse, Saint Marys, West Virginia. The Plaintiff was present by its counsel, Geoffrey Bracken, Rhonda Weiner, Vi Tran, Josef Horter, Charles Bailey, its in-house counsel Joseph Jenkins, and by its corporate representative Randy Broda. The Defendant was present by its counsel Brian Swiger, Brian Glasser, and Jack Budig, and by its corporate representative Michael Benedum.

1. The Court conducted jury selection. The venire was brought into the courtroom and the panel was sworn to their oath on voir dire by the Clerk. A jury pool of ten regular panel members and an alternate panel of four jurors was called by the Clerk, who drew names from the wheel.

2. Voir dire by the Court commenced. Following voir dire with the jury pool in the courtroom, the Court and counsel conducted individual voir dire in the jury room. Six jurors and two alternates were pronounced qualified and seated.
3. The Clerk swore the jury to try the case. Thereafter, the Court excused the remainder of the jury panel who were not selected as jurors to try the case. The Court excused the jurors for a lunch break.
4. Outside of the presence of the jury, counsel for Defendant proposed that the trial be tried in phases, with the fraudulent inducement and breach of contract portions being tried to the jury, while the Court would then determine the issue of whether a mining partnership exists and damages, potentially to include specific performance, based on the jury's determination on the issues of fraudulent inducement and breach of contract. There was no objection by counsel for the Plaintiff. The parties stipulated that the Court will determine damages.
5. After the jury was brought back in, the Court gave the pretrial instructions to the jurors. Following the pretrial instructions, Mr. Bracken and Mr. Swiger presented opening statements to the jury. Following opening statements, this matter proceeded with the Plaintiff's case-in-chief.
6. The following witness was called by the Plaintiff, duly sworn: Brian Paugh. At 5:00 p.m. the Court dismissed the jury for the day. Outside the presence of the jury, counsel for Defendant asked the Court to instruct the witness not to speak with counsel during the evening. After recessing to chambers, the Court determined that such request would be denied, for reasons more fully set forth on the record.

7. On March 3, 2021, the second day of trial commenced. At 9:12 a.m., the jury was brought back in the direct examination of Mr. Paugh continued. At 4:04 p.m. the direct examination of Mr. Paugh concluded. The cross-examination of the witness by Mr. Swiger began at this time. At 5:11 p.m. the Court dismissed the jury for the day.
8. On March 4, 2021, the third day of trial commenced. At 9:09 a.m., the jury was brought back in the cross examination of Mr. Paugh continued. At 4:05 p.m. the cross-examination of Mr. Paugh concluded. The re-direct of the witness by Ms. Weiner began at this time. At 4:39 p.m. the Court dismissed the jury for the day. There being no other matters to discuss, the proceedings then adjourned for the day.
9. On March 5, 2021, the fourth day of trial commenced. At 9:03 a.m., the jury was brought back in the re-direct of Mr. Paugh continued. At 10:03 a.m. the re-direct of Mr. Paugh concluded. The re-cross of the witness by Mr. Swiger began at this time.
10. At 10:05 a.m., Plaintiff, by Mr. Bracken, called its second witness, Sara Hacker, to testify by deposition. At 11:08 a.m., Plaintiff, by Mr. Bracken, called its third witness, Michael Benedum. At the end of the day, the Court dismissed the jury for the day. There being no other matters to discuss, the proceedings then adjourned for the day.
11. On March 8, 2021, the fifth day of trial commenced. At 9:09 a.m., the jury was brought back in the direct examination of Mr. Benedum continued.
12. At 11:57 a.m., he Court excused the jurors for a lunch break. Outside of the presence of the jury, Plaintiff proposed an instruction regarding the LAA being terminable at-will by either party. The Court declined to make such an instruction, opining that the Court is reluctant to instruct the jury in the middle of trial on an issue they would be

determining at the end. The Court ruled that it would hold instructions of law until the end of trial. The Court then discussed the verdict form with counsel. At 12:04, recess was taken for a lunch break. At 1:05 p.m., the jury was brought back in the direct examination of Mr. Benedum continued.

13. At 1:23 p.m., the direct examination of Mr. Benedum concluded and Mr. Swiger began his cross-examination of the witness. A sidebar was held wherein counsel raised the issue of a motion in limine ruling regarding excluding language where Mr. Broda used an expletive regarding "getting his books". The jury was briefly recessed so that Mr. Swiger could instruct Mr. Benedum about the Court's ruling on this issue before he answered a question about this. At 1:36 p.m., the jury was brought back in and Mr. Benedum answered the question.
14. At 4:53 p.m. the Court dismissed the jury for the day. At 5:02 p.m., counsel for Plaintiff raised its Motion to Quash Subpoena. Plaintiff's sought a ruling by the Court to quash the subpoena issued by Defendants upon William Crichton V in the trial in this matter. William Crichton VI was called as a witness, duly sworn. He testified there was no dual representation, that Mr. Crichton V has done partition work for Mr. Broda. The Court denied the motion to quash, for reasons more fully set forth on the record. The proceedings then adjourned for the day.
15. On March 9, 2021, the sixth day of trial commenced. At 9:04 a.m., the jury was brought back in the cross-examination of Mr. Benedum continued by Mr. Swiger. At 9:07 a.m., the cross-examination concluded and Mr. Bracken commenced redirect of the witness. At 10:18 a.m., this redirect was concluded.

16. After a short recess for a morning break, at 10:35 a.m., Plaintiff, by Ms. Tran, called its fourth witness, duly sworn, Teresa Ritter. There was a sidebar regarding Mr. Swiger's objection on the basis, wherein the Court sustained the objection for the time being and ruled that Ms. Tran could ask questions related to the truth of the matter asserted regarding Brett Benedum and deeds. At 11:12 a.m., the direct examination of Ms. Ritter concluded. After a short recess, at 11:21 a.m., Mr. Swiger conducted a cross examination of Ms. Ritter. The cross examination concluded, and Ms. Tran commenced her redirect, which concluded at 11:36 a.m.
17. Plaintiff, by Mr. Bracken, then called its fifth witness, Carol Bailey, by deposition. At 11:44 a.m., this deposition reading was concluded and Plaintiff, by Mr. Bailey, called Plaintiff's sixth witness, duly sworn: Randy Broda.
18. At 2:15 p.m., the jury was recessed for an afternoon break. Outside the presence of the jury, Mr. Glasser brought up an issue regarding the jury notebooks. He objected to the notebooks including the Plaintiff's demonstrative timeline included. Counsel for Plaintiff averred that he showed counsel for Defendants the contents of the notebooks, and mentioned that the timeline was also on the easel. This timeline was marked as Defendant's Exhibit 160 for identification purposes. The parties agreed the matter would be discussed further outside of the presence of the jury after the jury was dismissed for the day.
19. At 2:36 p.m., the jury was brought back in, and Mr. Bailey continued the direct examination of Mr. Broda. At 4:57 p.m. the Court dismissed the jury for the day. At 4:58 p.m., counsel for Defendant re-called Mr. Benedum, duly sworn, back to the stand for the purpose of mining partnership questions, which did not need to be asked

in the jury's presence. At 5:08 p.m., Mr. Swiger concluded his questioning on this issue, and Mr. Bracken began his cross-examination of Mr. Benedum raised its Motion to Quash Subpoena. At 5:05 p.m., Mr. Bracken concluded, and Mr. Swiger had no re-direct. The Court dismissed the jury for the day.

20. At 5:06 p.m., counsel resumed conference regarding the demonstrative timeline contained in the juror's notebooks. Counsel for Defendant, Mr. Glasser, argued that as a remedy, he wanted the timeline removed. The Court instructed the bailiff to remove the timeline from each juror notebook and put them on the bench. The Court then placed the timelines in a sealed envelope in the presence of counsel and handed the sealed envelope to the Clerk to keep for the duration of trial. The Clerk was instructed to destroy the contents of the envelope at the conclusion of the trial, when the juror notepads would be destroyed. After this, the proceedings then adjourned for the day.

21. On March 10, 2021, the seventh day of trial commenced. At 9:02 a.m., the jury was brought into the courtroom and the Court instructed the jury that it directed the removal of the timeline from each juror's notebook. At 9:06 a.m., Mr. Bailey continued the direct examination of Mr. Broda. At 10:21 a.m., his direct examination was concluded and the jury was excused for a morning recess. Outside the presence of the jury, the Court heard argument from counsel for Defendant, Mr. Swiger, regarding Mr. Bailey opening the door on a \$500 million line of credit obtained by Mr. Broda. Mr. Bailey objected, but the Court overruled this objection, for reasons more fully set forth on the record. At 10:42 a.m., the jury was brought into the courtroom and Mr. Swiger commenced his cross-examination of Mr. Broda. At 1:36

p.m., Mr. Swiger concluded this cross-examination, and Mr. Bailey began his redirect of the witness. At 1:47 p.m. Mr. Bailey concluded the redirect, and there was a short afternoon recess.

22. At 2:00 p.m., the Plaintiff, by Ms. Tran, called Plaintiff's seventh witness, duly sworn: Wes Casto. At 2:56 p.m., Ms. Tran concluded this direct examination, and Mr. Glasser began cross-examination of Mr. Casto for Defendants. At 3:10 p.m., Mr. Glasser concluded his cross-examination and Ms. Tran began her redirect of the witness, concluding at 3:11 p.m.
23. An afternoon recess was taken and at 3:29 p.m., Plaintiff, by Mr. Bracken, called its eighth witness, duly sworn: Roger Griffith. At 3:41 p.m., Mr. Bracken concluded his direct examination, and Mr. Glasser began his cross-examination of Mr. Griffith. At 4:00 p.m., this cross-examination concluded, and at 4:00 p.m., the Plaintiff rested its case.
24. Counsel for Defendant indicated it did not have any witnesses ready to testify that day, and so the Court dismissed the jury for the day. Outside the presence of the jury, Mr. Glasser presented a motion for a directed verdict on behalf of Defendants. This motion was brought on the fraud in the inducement claim. The Court heard argument from Mr. Glasser and Mr. Bracken. The Court recessed to chambers to consider the motion. Thereafter, the Court reconvened the proceedings and GRANTED the motion, and noted Plaintiff's exceptions, with the Court's findings more fully set forth on the record.
25. Mr. Glasser also moved to strike the testimony of Roger Griffith because counsel for Plaintiff did not qualify him as an expert. The Court denied this motion. Mr. Glasser

also moved for a directed verdict on the mining partnership. The Court heard argument from Mr. Glasser and Mr. Bracken. The Court ruled it would take this motion under advisement at this time, as the Court would be determining the mining partnership issue. There being nothing further to take up, at 4:37 p.m., proceedings adjourned for the day.

26. On March 11, 2021, the eighth day of trial commenced. Before the jury was brought into the courtroom, Ms. Weiner stated she had a motion to exclude Mr. Morgan, Defendant's expert. Mr. Glasser explained that he would testify as to maps, and provided the maps to Plaintiff's counsel to view. Conference was also had regarding bringing witnesses Mr. Carr and Ms. Hacker out of order to accommodate witness schedules. At 9:10 a.m., the jury was brought into the courtroom and Defendant, by Mr. Swiger, called its first witness, duly sworn: Sara Hacker. At 9:25 a.m., a break was taken from the testimony and Defendant, by Mr. Swiger, called its second witness, duly sworn: Mr. Carr. At 9:57 a.m., Mr. Swiger completed his direct examination of Mr. Carr, and Mr. Bailey began his cross-examination. At 10:10 a.m., Mr. Bailey concluded his cross-examination of Mr. Carr, and Mr. Swiger commenced his redirect. At 10:12 a.m., Mr. Swiger concluded his redirect. Following a brief recess for a morning break, at 10:37 a.m., Ms. Hacker was recalled to conclude her testimony.
27. At 1:36 p.m., Mr. Swiger concluded his direct examination of Ms. Hacker. Ms. Tran then commenced her cross-examination of the witness. At 2:20 p.m., Ms. Tran concluded her cross-examination, and Mr. Swiger commenced his redirect until his conclusion of the same at 2:22 p.m. Ms. Tran then commenced her re-cross

- examination until she concluded at 2:25 p.m. After a brief recess, Ms. Weiner objected outside of the presence of the jury to defense witness Mr. Morgan's maps. The maps were deemed admitted as to geographic information systems. At 2:50 p.m. Defendant, by Mrs. Glasser, called its fifth witness, duly sworn: John Morgan. The maps were admitted without objection by Ms. Weiner as to the narrow use of for geographic information systems. Further, Defendant's Exhibits 163, 164, 165, and 168 were admitted without objection. At 3:12 p.m., Mr. Glasser concluded his direct examination of Mr. Morgan, and Ms. Weiner began her cross-examination. At 3:26 p.m., Ms. Weiner concluded her cross-examination and the defense rested.
28. The Court dismissed the jury for the day with instructions to return in the morning for jury instructions and its deliberation. Outside of the presence of the jury, Plaintiff/Third-Party Defendant moved for Judgment as a Matter of Law under Rule 50 of the West Virginia Rules of Civil Procedure on Defendant's claim of conversion and quantum meruit, which was pled in the alternative. Thereupon, counsel for Defendant agreed these counts should be dismissed, and the Court granted the same. The Court notes a separate agreed order on these causes of action was submitted and entered on March 12, 2021.
29. Counsel for Defendant, Mr. Glasser, also requested the Court to instruct the jury that the LAA was not terminated in 2015. The Court heard oral argument from Mr. Bracken and Mr. Glasser on the issue, and declined to make such an instruction, finding that when (if any) termination occurred is a jury determination, with the Court's findings more fully set forth on the record. The Court also found that there would be no fee-shifting in this matter, and that each side would bear the costs of the

trial. Thereafter, Plaintiff, by Ms. Weiner, presented oral argument on the issue of mining partnership.

30. Conference was had regarding jury instructions and the verdict form. The Court and counsel reviewed the instructions, jury charge, and verdict form and counsel suggested certain changes, some of which the Court granted and incorporated into the jury instructions, jury charge, and verdict form. Proposed instructions submitted by counsel were either included, included as amended, or not included in the Court's jury instructions, jury charge, and verdict form, as set forth in the Court's jury instructions, jury charge, and verdict form. At , 7:10 p.m., proceedings adjourned for the day.

31. On March 12, 2021, the ninth day of trial commenced. The jury was brought into the courtroom, and the Court read the jury instructions and jury charge to the jury. Mr. Bracken and Mr. Swiger delivered their closing arguments, as well as their rebuttal closing arguments. The alternate jurors were dismissed with appreciation from the Court. At 11:34 a.m., the jury retired to the jury room and began their deliberations. Thereafter, at 4:04 p.m., the jury notified the Court it had reached a verdict and the jury returned to the courtroom. Court resumed with the reading of the verdict which is set forth on the verdict form titled *Special Interrogatories to the Jury* as filed with the Clerk on March 12, 2021.

32. The answers to the Special Interrogatories returned by the jury read as follows:

We the jury on the issues joined, do answer the following questions according to the instructions of law given:

1. Do you find by a preponderance of the evidence that Blackrock Enterprises, LLC, materially breached the Lease Acquisition Agreement?

Yes x No

2. Do you find by a preponderance of the evidence that JB Exploration 1, LLC, or its successor BB Land LLC, materially breached the Lease Acquisition Agreement?

Yes x No

3. Do you find by a preponderance of the evidence that BB Land LLC gave reasonable notice of termination of the Lease Acquisition Agreement?

Yes x No

4. We find by a preponderance of the evidence that BB Land gave reasonable notice of the termination of Lease Acquisition Agreement, on the following date:

December 11, 2017
Date

5. We find by a preponderance of the evidence that the following party committed the first material breach of the Lease Acquisition Agreement?

 x Blackrock Enterprises LLC

 JB Exploration 1, LLC and/or BB Land LLC

6. We find by a preponderance of the evidence that the first material breach of the Lease Acquisition Agreement, occurred on this date:

2-4-14
Date

/s/ Kayla R. Spitzer
Foreperson

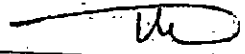
3-12-21
Date

33. The jury confirmed that this indeed was the verdict of all six of them. Counsel did not request that the jury be polled. The Court directed the clerk to file the verdict form.

34. WHEREUPON, the jury was dismissed with appreciation from the Court. The proceedings then adjourned.

The Court directs the Circuit Clerk to distribute attested copies of this order to all counsel of record, and to the Business Court Central Office at West Virginia Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

ENTER: 3-29-21


JUDGE MICHAEL D. LORENSEN
JUDGE OF THE WEST VIRGINIA
BUSINESS COURT DIVISION