

In the Circuit Court of Pleasants County, West Virginia

**BB LAND, LLC AND JB
EXPLORATION 1, LLC,**)
Plaintiff,)
)
vs.))
)
BLACKROCK ENTERPRISES, LLC,)
MICHAEL L. BENEDUM,)
Defendants)
)

Case No. CC-37-2018-C-2

PHASE II TRIAL ORDER

CAME the parties, in the Phase II Bench Trial in this matter, commencing on the 22nd day of September, 2021 at 9:00 a.m. before the undersigned in the Berkeley County Judicial Center, Courtroom B, 380 West South Street, Martinsburg, West Virginia.

Charles Bailey, Esq., Geoffrey Bracken, Esq., and Vi Tran, Esq. appeared for the Plaintiffs. Brian Swiger, Esq. and Brian Glasser, Esq. appeared for the Defendants.

1. Counsel for Plaintiff, Ms. Tran, stated on the record that Plaintiffs' Motion to Strike Defendants' Expert Witness John S.L. Morgan, filed on or about September 17, 2021, is withdrawn.
2. Mr. Bracken delivered an opening statement on behalf of Jay-Bee. Mr. Swiger delivered an opening statement on behalf of Blackrock.
3. The following witness was called by Plaintiff, BB Land, by counsel Mr. Bracken, duly sworn: Randy Broda.
4. Thereafter, during the testimony of Mr. Broda, the Court admitted the following exhibits into evidence, without objection: Plaintiff's Exhibit 201 (Jay-Bee Well List), Plaintiff's Exhibit 202 (spreadsheet showing delayed rental payments), Plaintiff's Exhibit 203

(Payout Statement dated September 15, 2021), Plaintiff's Exhibit 204 (well revenue spreadsheet), and Plaintiff's Exhibit 205 (Email from Kenneth Tawney dated June 2, 2017 with attached letter).

5. Thereafter, the Court recessed for a brief break.
6. Following the break, the direct examination of Mr. Broda continued.
7. Thereafter, during the testimony of Mr. Broda, Plaintiff utilized Demonstrative Exhibit 1 (Exhibit A to a Quitclaim Assignment between Blackrock and BB Land showing Shimer and Grim leases) and Demonstrative Exhibit 2 (Exhibit A to a Quitclaim Assignment between Blackrock and BB Land showing Pethel leases). Also during the testimony of Mr. Broda, the Court admitted the following exhibit into evidence, without objection: Plaintiff's Exhibit 207 (Letter from Antero Resources dated February 25, 2021).
8. Following the direct examination of Mr. Broda, his testimony continued with his cross-examination by Mr. Swiger. During the testimony of Mr. Broda, the Court admitted the following exhibits into evidence, without objection: [Defendant's Exhibit 219 \(Bona Fide Future Use Requests\)](#), [Defendant's Exhibit 126 \(Affidavit of Randy Broda\)](#), [Defendant's Exhibit 128 \(Affidavit of Randy Broda\)](#), [Defendant's Exhibit 229 \(Memorandum of Oil and Gas Lease Agreement for Shimer Tract dated November 5, 2013\)](#), [Defendant's Exhibit 227 \(Affidavit Filed Pursuant to W. Va. Code §22-6-8 and 22-6A-5\(a\)\(5\)\)](#), [Defendant's Exhibit 228 \(Affidavit Filed Pursuant to W. Va. Code §22-6-8 and 22-6A-5\(a\)\(5\)\)](#), and [Defendant's Exhibit 224 \(Affidavit Filed Pursuant to W. Va. Code §22-6-8 and 22-6A-5\(a\)\(5\)\)](#).
9. During the cross-examination of Mr. Broda, the Court recessed for a lunch break.
10. After the lunch break, the cross-examination of Mr. Broda resumed, but Mr. Swiger had no further questions. Testimony of Mr. Broda continued with re-direct examination by Mr. Swiger.

11. Thereafter, testimony of Mr. Broda continued with a re-cross examination by Mr. Swiger.
During the testimony of Mr. Broda, the Court admitted the following exhibit into evidence, without objection: Defendant's Exhibit 209 (Credit Line Deed of Trust).
12. The following witness was called by Plaintiff, BB Land, by counsel Ms. Tran, duly sworn: Wes Casto. Without objection, Mr. Casto was qualified as an expert in the valuations of wells at issue in this dispute and as a rebuttal expert. Mr. Casto's qualifications were put forth on the record during Phase I in this matter.
13. Thereafter, during the testimony of Mr. Casto, Plaintiff utilized Demonstrative Exhibit 3 (Slides for Mr. Casto's Report). Also during the testimony of Mr. Casto, the Court admitted the following exhibit into evidence, without objection: Plaintiff's Exhibit 204A (revised version of well revenue spreadsheet).
14. Thereafter, the Court recessed for a brief break.
15. After the break, the direct examination of Mr. Casto continued.
16. Following the direct examination of Mr. Casto, his testimony continued with his cross-examination by Mr. Glasser.
17. After the cross-examination of Mr. Casto, the Court recessed for a brief break.
18. Following the break, the re-direct examination of Mr. Casto by Ms. Tran began.
19. Following the re-direct examination of Mr. Casto, his testimony continued with his re-cross-examination by Mr. Glasser.
20. After the examination of Mr. Casto concluded, the Plaintiff rested.
21. At this point, the proceedings adjourned for the day.
22. On the 23rd day of September, 2021, this matter came on before the Court for day two of the bench trial in this civil action.
23. The following witness was called by Defendant, Blackrock, by counsel Mr. Glasser, duly sworn: John Morgan. Following qualifying questions by Mr. Glasser, and *voir dire* by

Ms. Tran, the Court qualified Mr. Morgan as an expert in the field of the evaluation of revenue streams from the production of minerals, over the objection and motion to strike raised by Ms. Tran, for reasons set forth more fully on the record.

24. Thereafter, during the testimony of Mr. Morgan, Defendant utilized Demonstrative Exhibit DDEM1 (Graphs showing performance of wells), Demonstrative Exhibit DDEM2 (John Morgan's Valuation Summary With and Without Buy-In), Demonstrative Exhibit DDEM3 (Spreadsheet titled Blackrock – With No Buy-In), and Demonstrative Exhibit DDEM4 (Map of Pad 5 North Marcellus A 8/15/19).
25. Following the direct examination of Mr. Morgan, the Court recessed for a brief break.
26. After the break, Mr. Morgan's testimony continued with cross-examination by Ms. Tran.
27. Thereafter, the Court recessed for a brief break.
28. Following the break, the cross-examination of Mr. Morgan resumed.
29. Thereafter, the re-direct examination of Mr. Morgan commenced.
30. Following the re-direct examination of Mr. Morgan, the Court recessed for a lunch break.
31. After the lunch break, the following witness was called by Defendant, Blackrock, by counsel Mr. Swiger, duly sworn: Stephen Holmes. Following qualifying questions by Mr. Swiger, the Court qualified Mr. Holmes as an expert in the field of mineral appraisals, without objection.
32. Thereafter, during the testimony of Mr. Holmes, Defendant utilized tables from page two of Mr. Holmes's expert report as a Demonstrative Exhibit, without moving to admit the expert report into evidence at this time.
33. Following the direct examination of Mr. Holmes, his testimony continued with cross-examination by Mr. Bracken.
34. Thereafter, the Court recessed for a brief break.

35. Following the break, the cross-examination of Mr. Holmes resumed.
36. Following the cross examination of Mr. Holmes, the re-direct examination of Mr. Holmes commenced. Mr. Holmes was also subject to re-cross examination.
37. At this point, the Defendant rested.
38. Thereafter, Plaintiff, by counsel Mr. Bracken, re-called Mr. Broda as a rebuttal witness and began his direct examination.
39. After the direct examination, the cross-examination of Mr. Broda by Mr. Swiger commenced.
40. At this point, Plaintiff rested.
41. Thereafter, the Court gave the parties the choice with regard to closing arguments, to either present their closing arguments orally or in writing. Both Plaintiff and Defendant elected to present their closing arguments in writing.
42. The Court ordered that counsel submit their closing arguments along with or in the form of proposed Orders, with findings of fact and conclusions of law, and their written closing arguments as follows: Plaintiff's written closing argument, as well as any Plaintiff or proponent of an issue's proposed order, with findings of fact and conclusions of law, is to be submitted 30 days after the transcript is sent to counsel. Thereafter, Defendant's written closing argument, as well as any Defendant or non-proponent of any issue's proposed order, with findings of fact and conclusions of law, is to be submitted 30 days after that. Follow this, any proponent of an issue has 15 days in order to file a reply, if desired.
43. Whereupon the proceedings were adjourned.

The Court notes the objections and exceptions of the parties to any adverse findings or rulings herein. 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: September 24, 2021

/s/ Michael Lorensen

Circuit Court Judge

3rd Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courtswv.gov/e-file/ for more details.