

IN THE SUPREME COURT OF
APPEALS OF WEST VIRGINIA

January 1998 Term

No. 24200

POCAHONTAS MINING COMPANY LIMITED PARTNERSHIP,
Plaintiff Below, Appellant

v.

OXY USA, INC., CARDINAL RESOURCES, INC.,
R & B PETROLEUM, INC., and JAMES J. BOYLE,
Defendants Below, Appellees

Appeal from the Circuit Court of McDowell County
Honorable W. Kendrick King, Judge
Civil Action No. 93-C-373

REVERSED AND REMANDED

Submitted: January 14, 1998
Filed: March 31, 1998

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R & B Petroleum, Inc., and
James J. Boyle

The Opinion of the Court was delivered PER CURIAM.

JUSTICE WORKMAN concurs and reserves the right to file a concurring opinion.

Justices McCUSKEY and MAYNARD dissent and reserve the right to file a dissenting opinion.

SYLLABUS

“Where the issue on appeal from the circuit court is clearly a question of law or involving the interpretation of a statute, we apply a *de novo* standard of review.”

Syllabus Point 1, *Chrystal R.M. v. Charlie A.L.*, 194 W.Va. 138, 459 S.E.2d 415 (1995).

Per Curiam¹

This is an appeal by Pocahontas Mining Company from an order of the Circuit Court of McDowell County dismissing a fraud claim which Pocahontas Mining Company asserted against Cardinal Resources, Inc., formerly known as R & B Petroleum, Inc. The circuit court found that Pocahontas Mining Company did not plead fraud with the particularity required by Rule 9(b) of the West Virginia Rules of Civil Procedure.

On appeal, Pocahontas Mining Company claims that it did assert its fraud claim with the particularity required by Rule 9(b) of the West Virginia Rules of Civil Procedure and that the circuit court erred in dismissing its claim. After reviewing the issue raised and the record in this case, we conclude that the circuit court did err in dismissing the fraud claim. The judgment of the circuit court is, therefore, reversed, and this case is remanded for further development.

On May 21, 1993, the appellant, Pocahontas Mining Company, filed a complaint in the Circuit Court of McDowell County in which it alleged that the appellee, Cardinal Resources, Inc., formerly known as R & B Petroleum, Inc., acting pursuant to the provisions of a proper oil and gas lease, but without notice to Pocahontas Mining, drilled a well on a parcel of property owned by Pocahontas Mining in McDowell County. The

¹We point out that a per curiam opinion is not legal precedent. *See Lieving v. Hadley*, 188 W. Va. 197, 201 n.4, 423 S.E.2d 600, 604 n.4 (1992).

complaint also alleged that Cardinal Resources produced natural gas from the well without paying appropriate royalties. Pocahontas Mining claimed that Cardinal Resources had made misrepresentations about the location of the well in applying for a permit to drill it, and Pocahontas Mining suggested that the actions of Cardinal Resources constituted fraud.

In an amended complaint filed on June 3, 1993, Pocahontas Mining changed the language of the original complaint as it related to fraudulent activity. The amended complaint stated that the documentation provided by R & B Petroleum, Inc., relating to the location of the well in question, was false.² Pocahontas Mining in a second amended complaint filed on February 16, 1996, stated that “[t]he actions of defendants as aforesaid constitute fraud and a breach and forfeiture of the aforesaid lease agreement”

Pocahontas Mining Company later filed a “Bill of Particulars” in which it provided details of the alleged false representations.³

²The amended complaint stated:

In applying for the permit for Well GP-4, defendant R & B Petroleum, Inc., provided *false* documentation and surveys to the Office of Oil and Gas indicating that the well was located on property owned by Georgia Pacific Corporation when, in fact, the property and the oil and gas underlying the property was owned by plaintiff and remains owned by plaintiff since that time. (Emphasis added.)

³The “Bill of Particulars” stated:

1. Defendant Cardinal Resources, Inc. (“CRI”), then R & B

Petroleum, Inc., as agent and nominee of R & B Petroleum Partnership-1975 ("Partnership-1975") and R & B Petroleum Partnership-1979B ("Partnership-1979B"), and with the knowledge of the predecessor of defendant OXY USA, Inc. ("OUI") and defendant James J. Boyle ("Boyle"), President of R & B Petroleum, Inc. And General Partner of Partnership-1975 and Partnership-1979B, drilled the GP-4 well on the plaintiff's land in 1980.

2. Defendants CRI, OUI and Boyle knew, at the time of the drilling of the GP-4 well or within fourteen (14) months thereafter, that the well was located on the plaintiff's land.

3. Defendants CRI, OUI and Boyle knew that the well application filed with the State of West Virginia did not name plaintiff as owner of the surface or oil and gas where the well was located and that plaintiff did not get notice of the drilling of the well. The well plat correctly locates the well on the location map filed with the application, but incorrectly identifies the property owner.

4. Defendants CRI, OUI and Boyle, acting in a scheme of fraud and deceit, failed to disclose to plaintiff and concealed and withheld notification to plaintiff that the well was located on plaintiff's land.

5. Beginning in 1981 or 1982 and continuing until at least 1992, defendant CRI, then R & B Petroleum, Inc., sold the gas from the GP-4 well and collected the sales price and, with the knowledge of Boyle, paid working interest payments to Partnership-1975 and Partnership-1979B, and overriding royalty payments to OUI or its predecessor lessee. No landowner royalty was paid to plaintiff or any third party by the defendants.

6. The actions of defendants as aforesaid constituted a scheme of fraud and deceit which violated plaintiff's rights, by lease or statute (or both), to be notified of the drilling of the well, to object to the location of the well, to be paid and obtain royalty payments over a period of approximately ten (10) years, and to otherwise protect its interest. Plaintiff did

not learn of the existence of the GP-4 well on its land until June of 1991.

After the filing of the second amended complaint, Cardinal Resources moved to dismiss the fraud claim on the ground that fraud was not pled with the particularity required by Rule 9(b) of the West Virginia Rules of Civil Procedure. This question was renewed after the filing of the “Bill of Particulars,” and the circuit court, after hearing the positions of the parties, concluded that fraud was not pled with sufficient particularity.⁴ The court stated:

The Court finds that the plaintiff’s fraud claim has not been stated with the degree of specificity or particularity required by the West Virginia Rules of Civil Procedure and the applicable case law in that regard.

The court, accordingly, granted the motion of Cardinal Resources and dismissed the claim.

As previously stated, in the present appeal Pocahontas Mining Company claims that the circuit court erred in dismissing the fraud claim.

⁴The question of whether a “Bill of Particulars” is a pleading, as defined by Rule 7(a) of the West Virginia Rules of Civil Procedure, which could be considered in determining whether the pleadings asserted fraud with the particularity required by Rule 9(b) of the West Virginia Rules of Civil Procedure, was not raised on appeal. However, because the circuit court permitted its filing and considered its allegations in connection with the particularity issue, and because this was not assigned as error, we also consider the allegations of the “Bill of Particulars” in reviewing the lower court’s decision. This should in no way suggest that this Court recognizes a “Bill of Particulars” as a proper pleading in this context.

In Syllabus Point 1 of *Chrystal R.M. v. Charlie A.L.*, 194 W.Va. 138, 459 S.E.2d 415 (1995), this Court held that:

Where the issue on appeal from the circuit court is clearly a question of law or involving the interpretation of a statute, we apply a *de novo* standard of review.

As a general rule, the West Virginia Rules of Civil Procedure permit the assertion of claims by “short and plain statements.” R.C.P., 8(a). Rule 9(b) of the Rules, however, specifically requires that “[i]n all averments of fraud . . . the circumstances constituting fraud . . . shall be stated with particularity” The same requirement is included in Rule 9(b) of the Federal Rules of Civil Procedure, the rule on which West Virginia’s Rule 9(b) is based. *See* 5 Wright and Miller, Federal Practice and Procedure: Civil 2d § 1297 (1990).

In *Hager v. Exxon Corporation*, 161 W.Va. 278, 241 S.E.2d 920 (1978), this Court examined the rationale behind the requirement of Rule 9(b) that fraud be stated with particularity. The Court concluded that fraud is of such gravity that the strict requirements of Rule 9(b) were included to afford a party charged with fraud an opportunity to prepare an adequate defense.

A careful examination of the complaints filed in the present case, as well as the “Bill of Particulars” filed by the appellant, shows that the appellant is alleging that the appellee, Cardinal Resources, Inc., or R & B Petroleum, Inc., its predecessor, made intentional misrepresentations of fact about the location of the well in issue. Specifically, the first amended complaint clearly states that Cardinal Resources, Inc., or R & B Petroleum, Inc., provided “*false* information and surveys that the well was located on property owned by Georgia Pacific Corporation ” The complaints further allege that Cardinal Resources, Inc., or R & B Petroleum, Inc., willfully refrained from paying royalties due to Pocahontas Mining Company. It is also clear that Pocahontas Mining is claiming that, by wilfully concealing the true location of the well, Cardinal Resources or R & B Petroleum attempted to conceal the fact that a well had been drilled on the Pocahontas Mining property and that the misrepresentation was calculated to dissuade Pocahontas Mining from objecting to the location of the well and seeking the royalties due.

Although this Court believes that fraud was somewhat inartfully pled, we conclude that fraud was asserted with sufficient particularity to afford Cardinal Resources, Inc., reasonable notice of the nature of the claim. The Court also believes that the evidence was sufficiently developed to raise such genuine issues of material fact as to require submission of the case to a jury.

Since the pleadings were sufficient to afford Cardinal Resources, Inc., an opportunity to prepare an adequate defense, the purpose underlying the Rule 9(b) requirement of pleading fraud with particularity, as discussed in *Hager v. Exxon Corporation, supra*, was realized, and the trial court erred in granting the motion of Cardinal Resources, Inc., to dismiss the fraud claim on the ground that it was not adequately pled.

The judgment of the Circuit Court of McDowell County is, therefore, reversed, and this case is remanded for further development.

Reversed and Remanded.