

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

FILED
2019 MAY 8 AM 11:19
CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

SHONK LAND COMPANY LLC,

Plaintiff,

v.

Civil Case No.: 18-C-193

Presiding: Judge Wilkes

Resolution: Judge Lorensen

CABOT OIL & GAS CORPORATION, and
CARBON WEST VIRGINIA COMPANY LLC,

Defendants.

**ORDER GRANTING DEFENDANT CARBON WEST VIRGINIA COMPANY
LLC'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON COUNT II AND
DENYING SHONK LAND COMPANY'S MOTION FOR SUMMARY
JUDGMENT ON COUNT II AND STIPULATED DISMISSAL OF COUNT III
AND DISMISSING CARBON WEST VIRGINIA AS A PARTY DEFENDANT**

Upon review of Carbon West Virginia Company LLC's ("Carbon WV") Motion for Partial Summary Judgment and Shonk Land Company LLC's ("Shonk") Motion for Summary Judgment on Count II – Lease Termination for Non-Payment of Royalties and the briefing submitted by all parties, the Court having heard counsels' arguments and being otherwise fully advised, and for good cause having been shown, hereby orders that Defendant Carbon WV's Motion is GRANTED and Plaintiff Shonk's Motion is DENIED, and the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT:

1. The Larner Lease contains the following habendum clause: "[Lessor] hereby demises and grants unto the lessee for a term of ten (10) years (and so long thereafter as oil or gas is produced from the land hereinafter described and the rentals,

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royalties and payments hereinafter specified are paid by the lessee as hereinafter provided)”

2. There is ambiguity as to whether the Larner Lease contains a royalty payment deadline.

3. Carbon WV has tendered \$190,795.47 in royalty payments representing amounts owed for each production month from November 2017 through the present. Shonk has not consented to Carbon WV’s presence on the Leases and has sued Cabot in Count I on that basis. And, Shonk has rejected payments from Carbon WV so as to not acquiesce in the purported assignment.

CONCLUSIONS OF LAW:

1. However, there is no need to resolve the ambiguity, because, as a matter of law, the late payment of royalties does not terminate the Larner Lease pursuant to its habendum clause because reverter clauses receive a heightened level of scrutiny and because the language in the habendum clause does not expressly state that if the conditions are not met, the estate reverts back to the grantor.

2. Since termination of the Larner Lease pursuant to its habendum clause was the relief sought under Count II, and because Shonk is not seeking any monetary remedy under Count II, Defendant Carbon West Virginia’s Motion for Summary Judgment on Count II of Plaintiff’s First Amended Complaint is GRANTED;

3. Plaintiff’s Motion for Summary Judgment of Count II – Lease Termination for Non-Payment of Royalties is DENIED;

4. Forfeitures of estates are not favored in law. The right to forfeit must be clearly stipulated for in terms, else it does not exist. Every breach of a covenant or condition does not confer it upon the injured party. It never does, unless it is so provided in the instrument. Such breaches are usually compensable in damages, and, if a forfeiture has not been stipulated for, it is presumed that the injured party intended to be content with such right as is conferred by the ordinary remedies. The broken covenant or condition relied upon for forfeiture must be found not only in the instrument, by clear and definite expression, but also within the forfeiture clause, by such expression. A covenant or condition merely implied, or an express one not clearly within the forfeiture clause, will not sustain a claim of forfeiture by reason of its breach. *Bethlehem Steel v. Shonk Land Co.*, 169 W.Va. 310, 314-15, 288 S.E. 2d 139, 142 (1982).

5. Thus, as a matter of law, equitable relief in the form of lease termination or voiding, annulling, rescinding or otherwise cancelling the assignment of the Larner and Williams leases is not available for Count I's alleged breach of the assignment provisions of the December 2015 Ratifications entered into between Cabot Oil & Gas and Shonk.

6. Plaintiff has voluntarily withdrawn Count III of Plaintiff's First Amended Complaint without acquiescing that the royalty payments were made properly; accordingly, Count III of Plaintiff's First Amended Company is DISMISSED with prejudice;

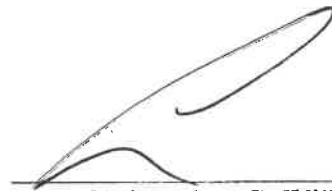
7. The dismissal of Count II and Count III in no way impairs Shonk's ability to collect the \$190,795.47 in royalty payments tendered but not accepted by Shonk from both Cabot and Carbon WV.

8. There are no remaining claims in this civil action against Carbon West Virginia, LLC. Therefore, Carbon West Virginia LLC is dismissed as a party defendant in this civil action.

9. In accordance with West Virginia Rule of Civil Procedure 54(b) there is no just cause for delay in entering this final judgment on behalf of the Defendant, Carbon West Virginia LLC, as to dismissal of Counts II and III of this civil action and as to dismissal of Carbon West Virginia LLC as a party defendant to this civil action. This order serves as a FINAL JUDGMENT on Counts II and III of the Plaintiff's First Amended Complaint and as to dismissal of Carbon West Virginia LLC as a party to this civil action. *Plaintiff's objections are noted and preserved.*

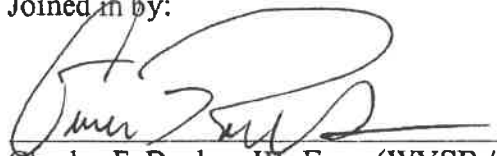
10. The Clerk is ordered to enter this Judgment forthwith and without further notice. The Clerk is directed to send a certified copy of this Order to all counsel of record.

Entered this 6 day of May 2019.


Hon. Christopher C. Wilkes
Circuit Judge, Business Court Division

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 7th
DAY OF May 2019.
Cathy S. Gatson CLERK
KANAWHA COUNTY, WEST VIRGINIA

Joined in by:



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Date: 5/6/19

Certified copies sent to:

☒ counsel at record

☐ person

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With no indication

By: J. Reynolds

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Other directions accomplished:

Deputy Clerk