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IN THE COURT OF COMMON PLEAS
WASHINGTON COUNTY OHIO

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2014 APR -9 PM 2:31
WASHINGTON CO. OHIO

GARY D. MARSHALL, ET AL.,
Plaintiff,

CASE NO. 13 OT 287

vs.

JUDGE RANDALL G. BURNWORTH

BEEKAY COMPANY, ET AL.,
Defendant.

RULING ON MOTIONS FOR
SUMMARY JUDGMENT

This case comes before the Court on three (3) Motions for Summary Judgment filed February 27 and 28, 2014 and responses filed thereafter. The motions were filed by Plaintiffs, Defendant Kirk Lafferre, dba Sandbar Oil & Gas Company, and Defendants collectively referred to as the Kidd heirs.

The core facts are not at issue. Plaintiffs own real property in Liberty Township, Washington County, Ohio totaling ninety-nine (99) acres. The tracts are subject to two (2) oil and gas leases, the Miller lease dated March 29, 2001 and the Burton lease dated April 1, 2004. The leases have been assigned and at this time Sandbar Oil & Gas Company holds the leases from the surface to the bottom of the Germantown Sand (approximately 1200 feet). Sandbar has asserted it currently operates fifteen (15) wells on the property and that they produce in paying quantities with royalties paid to Plaintiffs. Plaintiffs do not challenge the assertion.

At issue in this case is whether Defendants Kidd heirs have breached an implied covenant to explore and develop the deep rights reserved in the August 11, 1960 assignment or have abandoned those rights. "The rights and remedies of the parties to an oil or gas lease must be determined by the terms of the written instrument, and the law applicable to one form of lease may not be, and generally is not, applicable to another and different form. Such leases are contracts, and the terms of the contract with the law applicable to such terms must govern the

rights and remedies of the parties." Harris v Ohio Oil Co. (1897) 57 Ohio St. 118, 129, 48 N.E.

502. Ohio law has several generally recognized implied covenants in oil and gas leases.

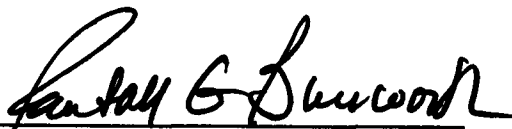
Tedrow v Shaffer 24 Ohio App 343, 155 N.E. 510; Beer v Griffith 61 Ohio St. 2d 119, 399 N.E. 2d

1227. The implied covenants are not applicable where they are expressly disclaimed in the provisions of the lease. Bilbaran Farm, Inc. v Bakerwell, Inc. (2013) 12 CA 21, 993 N.E. 2d 796.

The primary terms of the leases in this case were two (2) years (Miller) and one (1) year (Burton). The secondary term was "and as much longer as oil or gas is found in paying quantities thereon". That the conditions of the secondary terms continue to be met is undisputed. The parties are the "heirs, successors, executors, administrators and assigns" referred to in the final paragraph of the leases. None of the parties in the early 1900's could have foreseen the current development of shale. The reservation of the deep rights by the assignors in 1960 was indeed fortuitous to their heirs. Until the Ohio Supreme Court rules otherwise, parties in this situation will be bound by the terms of agreements made by their predecessors. Without a pooling or unitization agreement it would appear that the parties will need to cooperate if anyone is to enjoy the looming prosperity.

Viewing the evidence before the Court in the light most favorable to the non-moving party, the Court cannot find that reasonable minds could come to but one conclusion favoring Plaintiffs. Plaintiff's Motion for Summary Judgment is DENIED. By the same standard, the Court finds that reasonable minds could come to but one conclusion and that is that the original leases are still valid and in full force and effect as to all depths and all formations. Defendant Sandbar's Motion for Summary Judgment is GRANTED as is the Motion for Summary Judgment of the Kidd heirs.

Costs assessed to Plaintiffs. Attorney for Kidd Lafferre to journalize.


Judge Randall G. Burnworth

c. Atty. J. Addison
Atty. R. Bays
Atty. M. Carlisle, K. Justice