

COMMON PLEAS COURT
IN THE COURT OF COMMON PLEAS NOBLE COUNTY, OHIO
NOBLE, OHIO

2013 FEB -6 AM 9: 53

TAMMY L. DICKSON, ET AL
Plaintiff

Karen P. Starr
CASE NO. 212-0051

VS
CHESAPEAKE ACE ACQUISITION, ET AL
Defendant

JOURNAL ENTRY

This matter is before the Court upon motion of the Plaintiff for summary judgment.

FACTS

The material facts of this case are undisputed. On or about October 21, 2008, Annabelle West entered into an oil and gas lease with Anschutz Exploration Corporation covering certain real property located in Buffalo Township, Noble County, Ohio. Annabelle warranted in the lease that she owned the property, and had full authority to enter into the lease. Anschutz subsequently assigned the lease to Defendant Chesapeake Exploration, L.L.C.'s predecessor in interest, Chesapeake AEC Acquisition, L.L.C. by assignment recorded December 15, 2010. Chesapeake Exploration, L.L.C., the successor by merger to Chesapeake AEC Acquisition, L.L.C., assigned to Triad Hunter, L.L.C., certain rights in the lease.

On or about September 20, 2011, Defendant Chesapeake Operating, Inc., tendered a check in the amount of \$1,513.18 to Annabelle to extend the primary term of the Lease by three years, as is specifically permitted by the terms of the Lease. Chesapeake subsequently recorded a Notice of Extension of Oil and Gas Lease on October 26, 2011.

On November 16, 2011, Plaintiffs (who had obtained the check from Annabelle) returned the check to Chesapeake, along with a letter notifying Chesapeake for the first time that Annabelle owned only a life estate in the property, and that they believed Annabelle had no right to lease the property.

Chesapeake was then informed by Plaintiffs that they owned a future interest in the property subject to the Lease as remaindermen.

LAW AND ANALYSIS

This Court must decide, what, if any validity there is to lease for oil and gas, when the lease is signed only by a life tenant and not any of the remaindermen.

A life tenant possesses legal title. *In re Estate of Wernet*, 61 Ohio App. 304,306 (5th Dist. 1938). A life tenant has the power to convey all, or any portion of, the life estate. *Howell v Howell*, 122 Ohio St. 543,549 (1930); *Mithoff v Fritter*, 1 Ohio N.P. (n.s.) 433, 14 Ohio Dec. 321, 1904 WL 727 (Franklin C.P. 1904). The assignee, transferee, or lessee of a life tenant has an estate that is no greater than that of the life tenant and is entitled to the same privileges, and is subject to the same burdens and disabilities, as the life tenant. *McMillan's Lessee v. Robbins*, 5 Ohio 28 (1831); *Howell*, 122 Ohio St., at 550-51. Thus, tenants for life may make leases for any lesser term, and any lease executed by a life tenant will be limited to the term of the life tenancy. *Douglas v. Stackhouse*, 5th Dist. Case NO. 199 CA00130, 1999 Ohio App. LEXIS 3876, at *3 (August 16, 1999); *Frank v. Shultz*, 6th Dist. Case No. WD-94-052, 1995 Ohio App/ LEXIS 1980, at *8-10 (May12, 1995) (unreported).

A life tenant is entitled to full possession, use, and enjoyment of the property, but may not permanently diminish in value the estate that is to be left to the remaindermen. 41 O. Jur. 3d., Estates, Powers, and Restraints on Alienation § 57; *Kenton Gas & Electric Co. v. Dorney*, 17 Ohio C.C. 101, 9 Ohio Cir. Dec. 604 (1898). Such actions would constitute waste on the property. *Underwood v. Lowe*, 6TH Dist. No. S-84-30, 1985 Ohio App. LEXIS 7969, at *4-6 (June 7, 1985).

As to minerals on the property, while a life tenant is in current possession of the property, a life tenant cannot "develop the minerals, either personally or through a lessee, by reason of the fact that this constitutes

waste.” *Quadrant Exploration, Inc. v. Estate of Greenwood*, 4th Dist. No. 82 X 29, 1983 Ohio App. LEXIS 14550, at *5 (Aug. 15, 1983). The remaindermen, however, are similarly limited in their rights—because they are not “ presently entitled to possession of the land,” they are also without right to develop the minerals. *Id.* Thus, neither the remaindermen nor the life tenant can develop the minerals on the property without the consent of the other. *Id.*; see also *Fourth & Central Trust Co. v. Woolley*, 31 Ohio App. 259,262 (1st Dist. 1928) (“The other five-sixth of the interest, together with the remaindermen, could not have proceeded with the extraction of the oil and gas from the land without the consent of the life tenant; this for the reason that she is in possession of that part of the estate.”), In other words, the life tenant and owner of the future interest each hold the right to “enjoin the other from conducting drilling operations on the property.” *Id.*

Here, only the life tenant has signed an oil and gas lease, and if exploration were done or underway, Ohio Law would provide a remedy. See ORC Section 2105.20 which provides:

A tenant for life in real property who commits or suffers waste thereto, shall forfeit that part of the property, to which such waste is committed or suffered, to the person having immediate estate in reversion or remainder and such tenant will be liable in damages to such person for the waste committed or suffered thereto.

In this case, no exploration has been done and none is underway.

This Court is asked to decide that when only a life tenant signs an oil and gas lease, the lease is void. Indeed, the Court is cited to *Foster v Foster*, 5th Dist. Nos. 79-CA-19,-21, 1980, Ohio App. LEXIS 13298 (July 31, 1980).

Wherein, the Court stated:

••• it is apparent that any subsequent oil and gas leases conveyed by the life tenant ••• without the written assent

of the remaindermen, would be void.

That statement, in and of itself, appears to be internally inconsistent. How can one assent to something that is void? If there is nothing then there is nothing to assent to.

Black's Law Dictionary defines void as follows:

Null; ineffectual; nugatory; having no legal force or binding effect; unable, in law, to support the purpose for which it was intended. *Hardison v Gledhill*, 72 Ga. App. 432, 33 S.E. 2d 921,924.

There is this difference between the two words "void" and "voidable": *void* in the strict sense means that an instrument or transaction is nugatory and ineffectual so that nothing can cure it; *voidable* exists when an imperfection or defect can be cured by the act or confirmation of him who could take advantage of it. The term "void," however, as applicable to conveyances or other agreements, has not at all times been used with technical precision, nor restricted to its peculiar and limited sense, as contradistinguished from "voidable"; it being frequently introduced, even by legal writers and jurists, when the purpose is nothing further than to indicate that a distinction between the terms "void" and "voidable," in their application to contracts, is often one of great practical importance; and, whenever entire technical accuracy is required, the term "void" can only be properly applied to those contracts that are of no effect whatsoever, such as a mere nullity, and incapable of confirmation or ratification.

The word "void," in its strictest sense, means that which has no force and effect, is without legal efficacy, incapable of being enforced by law, or has no legal or binding force, but frequently the word is used and construed as having the more liberal meaning of "voidable."

Additionally, the weight of authority appears to be that a lease from either the life tenant or the remaindermen to a third party, is not void, but rather grants that lessee the same rights in the property owned by the life tenant or the remaindermen. That is "the execution of a lease or mineral conveyance by either the life tenant or the remaindermen merely effects a transfer to the lessee or transferee of the veto power of the grantor on development by the other." *Quadrant Exploration*, 1983 Ohio App. LEXIS 14550, at *5.

Thus, "the lessee of the life tenant alone may not develop the minerals, but may prevent development by the owner of the future interest or by his lessee." *Id.* (emphasis added). Defendants do not dispute Plaintiff's

contention that the *development* of the mineral interest under this lease, absent the consent of the remaindermen, would constitute waste and would result in forfeiture of the life tenant's interest and thus voidance of the lease. But *the lease itself is not void*—it simply acts to obtain the rights from one-half of the necessary parties. Development will not occur until the remaindermen either consent to this lease or sign a new lease for their interests.

This approach is followed in a number of other producing states, and other treatises that have commented on the issue. In *MCZ, Inc.* the Texas Appellate Court found that:

Neither a life tenant nor a remaindermen can alone execute a valid mineral lease without the joinder of the other. However, the proposition is not the equivalent of a holding that a lease by either the life tenant or the remaindermen, without the joinder of the other is a nullity •••None of the authorities cited by appellees states that a lease by a life tenant alone is ineffective to bind whatever executory interest the life estate owner has or may thereafter obtain in the property.

707 S.W. 2d 672, 679-80 (Tex. App. Houston [1Dist.] 1986)
(internal citation omitted)

The Supreme Court of Mississippi reached a similar conclusions when addressing remainderman's right to lease his interest:

Although such a leasehold interest may not be enjoined in absence of consent of the other owner, it is not correct to say that such leases are void in a strict sense. The interests of both a life tenant and remaindermen are alienable, and the lessee merely stands in the shoes of his respective lessor. It has been held that a lease from a life tenant is not intrinsically bad because it may contemplate waste. Even though the lessee from a life tenant may be enjoined by the remainderman from conducting geophysical operations, the lessee has the right to acquire
Hathorn v Amoco Prod. Co., 472 So.2d 403, (Miss. 1985)
(citing *Hemmingway*, *The Law of Oil and Gas*, § 5.2, 175-76 (1971)).

Additionally, Professor Kuntz's treatise on oil and gas law, which has been cited by Ohio courts in the context of life estates, has reached a similar conclusion:

It necessarily, follows that, in the absence of the grant of a special power and in the absence of special circumstances, neither the life tenant nor the owner of the future interest has the power to confer the right to extract oil, gas or other minerals on a lessee. This does not mean, however, that they cannot transfer some rights to a lessee. Although it has been said that if a life tenant attempts to lease, the lessee has no obligation under the lease and acquires "no interest whatever," and it has been said that lease by the life tenant "is void and of no effect," *a contention of a remainderman that a lease granted by the life tenant should be declared void as a matter of law because the remainderman did not join therein has been expressly rejected.* It should be apparent that a lease executed by the life tenant or by the owner of a future interest, acting alone, is a valid and binding lease as between the parties to such lease. This is apparent from the cases which deal with the subject of ratification of such a lease and which deal with the effect of a person acquiring the separate leases from the life tenant and from the owner of the future interest.

* * *

Although the lessee of the life tenant alone or of the owner of the future interest alone does not have the right to enter and develop the property, such lessee does acquire an interest in the estate of the lessor to the extent that such estate is alienable. In the instance of the oil and gas lease, such a lessee would undoubtedly acquire the right to enter and develop if consent is secured from the owner of the complementary interest. Moreover, without such consent, he would also acquire the right to insist that no one else enter to develop the land for oil and gas during the existence of such lease....

1-8 Kuntz, Law of Oil and Gas § 8.4 (emphasis added).

Finally, a life tenant has an interest that can be conveyed and, at least tacitly, Plaintiffs admit that in the case of an oil and gas lease, the life tenant has an interest that must be conveyed. See Plaintiffs' reply memorandum

where in Plaintiffs' state that by voiding the lease in question, that "would permit the LIFE TENANT and remaindermen to execute a new, valid oil and gas lease for the exploitation of minerals." (emphasis added).

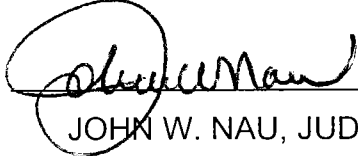
Also, why would the signing of an oil and gas lease by a life tenant some 4 years ago be void, but be okay today, when there has been no change in the law?

Also, are Plaintiffs arguing that when interests in real estate are owned by different individuals, all have to sign the same piece of paper; that individual interests can not be conveyed by separate instruments?

CONCLUSION

This Court does NOT find that reasonable minds could come to but one conclusion, a conclusion that would be adverse to the Defendants.

The motion for Summary Judgement is denied.


JOHN W. NAU, JUDGE