UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Hans Michael Corban,

Plaintiff,

v. **Case No. 2:13–cv–246**

Chesapeake Exploration, L.L.C. *et al.*, **Judge Michael H. Watson**

Defendants.

OPINION AND ORDER

This diversity action requires the Court to determine which parties are entitled to the oil, gas, and mineral rights that lie below about 164.5 acres of property located in Harrison County, Ohio ("the Property"). The parties have filed cross-motions for summary judgment. ECF Nos. 35, 36. In addition, Plaintiff filed a Motion for Leave to File Supplemental Authority, which Defendants do not oppose, and Defendants also move for leave to file supplemental authority. ECF Nos. 41, 43. For the following reasons, the Court **GRANTS** the parties' respective motions for leave to file supplemental authority, **DEFERS** final ruling on the summary judgment motions, **CERTIFIES** two questions of Ohio law to the Supreme Court of Ohio, and **STAYS** the proceedings pending the outcome of certification.

I. PROCEDURAL HISTORY

On February 12, 2013, Plaintiff Hans Michael Corbin ("Plaintiff") filed a complaint against Defendants Chesapeake Exploration, LLC ("Chesapeake"), CHK Utica, LLC ("CHK"), Total E&P USA, Inc. ("Total"), and North American Coal Royalty Company ("North American") in the Common Pleas Court of Harrison County, Ohio, seeking a declaratory judgment, to quiet title to the oil and gas rights under his surface estate, a permanent injunction, and alleging conversion. Defendants removed the case to federal court on March 15, 2013 on the basis of diversity jurisdiction. Defendants answered with counterclaims against Plaintiff seeking declaratory judgment and to quiet title in their favor. Countercls., ECF Nos. 6, 7. Plaintiff filed an Amended Complaint on June 13, 2013, adding Dale Pennsylvania Royalty, LP ("Dale Pennsylvania"), and Larchmont Resources, LLC ("Larchmont") as defendants as well as a claim for unjust enrichment. Discovery ensued, and Cross motions for summary judgment have been filed.

II. FACTS

Both Plaintiff and Defendants set forth the undisputed facts in their respective summary judgment motions. Given the facts, however, the parties dispute who is the legal owner of the oil, gas, and mineral rights beneath the Property.

In July of 1959, The North American Coal Corporation ("NACoal") conveyed the Property to Orelen H. Corban and Hans D. Corban, excepting all

oil, gas, and mineral rights (the "Mineral Rights")[1] to itself and its successors and assignees. The Property has been frequently transferred since 1962.

A. The Surface Rights

In 1962, Orelen Corban conveyed his interest in the Property to Carol Ann Corban by quit claim deed. Carol Corban and her husband then conveyed their interest in the Property to Hans D. Corban by quit claim deed in 1967. This transaction made Hans D. Corban the sole owner of the surface rights in the Property. In 1980, Hans D. Corban conveyed the Property to Gretchen A. Corban by quit claim deed. Gretchen Corban then conveyed the Property to Plaintiff Hans Michael Corban in 1999 via a quit claim deed that stated it was "subject to conditions, restrictions and easements if any, contained in prior instruments of record."

B. The Mineral Rights

As noted above, NACoal reserved its interest in the Mineral Rights in the 1959 transaction to Orelen and Hans D. Corban. In January 1974, NACoal entered into an oil and gas lease for a primary term of ten years with National Petroleum Corporation ("the 1974 lease"). The lease was recorded on February 6, 1974. American Exploration Company obtained a permit to drill for oil and gas on lands covered by the 1974 lease in April of 1974, and in May of 1975, National Petroleum Corporation assigned the lease to American Exploration

[1] The Court refers to mineral interests generally as "mineral interests" and to the specific mineral interests at issue in this case as "Mineral Rights."

Company. American Exploration Company then assigned the 1974 lease to C.E. Beck, acting for and on behalf of RSC Energy Corporation, in 1978. There was no production under the 1974 lease, and the Mineral Rights presumably reverted back to NACoal at the end of the lease in 1984.

NACoal then entered into a second oil and gas lease for a primary term of five years with C.E. Beck, and that lease was recorded in February 1984 (the 1984 lease"). RSC Energy Corp. obtained a permit to drill for oil and gas in January of 1985.[2] C.E. Beck thereafter assigned the 1984 lease to Carless Resources, Inc. which assignment was recorded in May of 1985. There was no production under the 1984 lease, but C.E. Beck or Carless Resources, Inc. paid the requisite delay rentals to NACoal throughout the primary term of the 1984 lease (i.e., in 1985, 1986, 1987, 1988). Following the expiration of the 1984 lease, the ownership of the oil and gas rights reverted back to Bellaire, formerly known as NACoal, in January 1989.

Bellaire then transferred the mineral estate to North American in 2008 by quit claim deed.

In January 2009, North American leased the oil and gas rights to Mountaineer Natural Gas Company ("Mountaineer"), which lease was recorded in 2010 ("the 2009 lease"). In May 2010, Mountaineer assigned the 2009 lease to Dale Property.

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[2] Defendants' motion for summary judgment states the date as January 1984, a year before the lease was recorded. The Court considers this likely a typographical error, but in any event, the date the permit was obtained is not material to the case.

A well was built in 2010, completed in 2011, and began production in June 2011 pursuant to the 2009 lease.

In October 2010, Dale Property assigned its interest in the 2009 lease to Ohio Buckeye Energy, L.L.C. ("Ohio Buckeye"), reserving a royalty interest. Dale Property then assigned its royalty interest to Dale Pennsylvania in 2011.

In October 2011, Ohio Buckeye transferred a portion of its interest in the 2009 lease to Larchmont, and it assigned other portions of its interest to CHK in 2012 and 2013.

In December 2011, Ohio Buckeye merged with Chesapeake, transferring its remaining interest in the 2009 lease to Chesapeake. Chesapeake transferred a portion of its interest in the 2009 lease to Total in 2011, which assignment was recorded in May 2012.

In sum, Plaintiff is the sole owner of the surface rights to the Property, and he also claims ownership of the Mineral Rights beneath the Property. Chesapeake is the record owner of the oil and gas rights beneath the Property, and CHK, Total, Dale Pennsylvania, Larchmont, and North American are lessees of those rights.

III. STANDARD OF REVIEW

The standard governing summary judgment is set forth in Federal Rule of Civil Procedure 56(a), which provides: "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."

The Court must grant summary judgment if the opposing party fails to make a showing sufficient to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *see also Van Gorder v. Grand Trunk Western R.R., Inc.*, 509 F.3d 265, 268 (6th Cir. 2007).

When reviewing a summary judgment motion, the Court must draw all reasonable inferences in favor of the nonmoving party, who must set forth specific facts showing there is a genuine issue of material fact for trial, and the Court must refrain from making credibility determinations or weighing the evidence. *Matsushita Elec. Indus. Co.*, 475 U.S. 574, 587 (1986); *Pittman v. Cuyahoga Cnty. Dept. of Children and Family Servs.*, 640 F.3d 716, 723 (6th Cir. 2011). The Court disregards all evidence favorable to the moving party that the jury would not be required to believe. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150–51 (2000). Summary judgment will not lie if the dispute about a material fact is genuine, "that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Barrett v. Whirlpool Corp.*, 556 F.3d 502, 511 (6th Cir. 2009).

IV. APPLICABLE LAW

In this diversity case, the Court must apply the substantive law of the forum state. *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). In doing so, this Court is bound by the decisions of the state's highest court. *Pennington v. State Farm*

Mut. Auto Ins. Co., 553 F.3d 447, 450 (6th Cir. 2009). If the state's highest court has not directly addressed the issue, however, this Court must predict how the state's highest court would resolve the matter. *Andrews v. Columbia Gas Transmission Corp.*, 544 F.3d 618, 624 (6th Cir. 2008). In that case, the decisions of the state's intermediate appellate courts are deemed authoritative, unless there is a strong showing that the state's highest court would reach a different result. *Id.*

V. ANALYSIS

The parties agree that this case is governed by the Ohio Dormant Mineral Act ("ODMA"), Ohio Revised Code § 5301.56. The ODMA, enacted in 1989, operates to return dormant, severed mineral interests to the surface land holder ("surface land holder") by placing a twenty-year limit on dormant mineral interests. In other words, when someone other than the surface land holder obtains the sub-surface mineral interests, that mineral interest holder ("mineral interest holder") is deemed to have abandoned the mineral interests if those interests lay dormant for twenty years, at which time they revert back to the surface land holder. The Ohio General Assembly amended the statute and changed the manner in which the mineral interests return to the surface land holder effective 2006.

Under either version of the ODMA, a twenty-year clock begins to run the moment that the mineral interests are acquired by someone other than the surface land holder. If twenty years run in which the interests are dormant and

there is no "savings event" under § 5301.56(B), the mineral interests vest in the manner prescribed by the statute. A § 5301.56(B) savings event restarts the twenty-year clock from the date of the event.

The 1989 ODMA does not specify when the preceding twenty-year period begins for purposes of calculating the abandonment clock, nor does it specify any method for vesting of the mineral interests in the surface land holder. That statute provided a three year grace period under which a mineral interest holder could maintain his interest. The three year grace period in this case expired on March 23, 1992.

In contrast, the 2006 ODMA specifically requires that notice be given by the surface land holder to the mineral interest holders of record before the mineral interests can vest in the surface land holder and states that it is the preceding twenty years from the date the surface land holder gives notice to the mineral interest holder that is at issue for abandonment. Ohio Rev. Code § 5301.56(B), (E) (2006). Once notice is given, the mineral interest holder has sixty days to either file a claim in the office of the county recorder to preserve the interest under § 5301.56(B)(3)(e) or file an affidavit identifying a savings event under § 5301.56(B)(3). If the mineral interest holder fails to file a claim to preserve the mineral interests or identify a savings event within sixty days, the mineral interests vest in the surface land holder upon memorialization of the abandonment in the county record. Ohio Rev. Code § 5301.56(H)(2).

The parties dispute both whether the 1989 or 2006 version of the ODMA governs this case and whether a savings event has occurred at all.

A. The Supreme Court of Ohio Should Determine Whether the 1989 Version or the 2006 Version of the ODMA Applies to Actions Brought After Enactment of the 2006 Amendments but Alleging that Rights Vested Prior to Enactment of the 2006 Amendments.[3]

Not surprisingly, the parties dispute which version of the ODMA applies to the instant case. Defendants argue the 2006 version applies because it was the law in effect at the time Plaintiff brought suit in 2013, and the Court must apply the law as it exists at the time of the claim. Because Plaintiff has not complied with the procedural requirements established in the 2006 amendments by providing the requisite notice,[4] Defendants argue his claim fails.

Plaintiff contends the Mineral Rights automatically vested in him in either 1992 or 2005 but in any event under the 1989 version of the ODMA. Because the Mineral Rights automatically vested in him on one of those dates, he contends the 2006 version of ODMA is inapplicable. Moreover, he argues the 2006 amendments cannot be applied retroactively to divest him of his property rights.

Defendants respond that the 2006 amendments are not retroactive because they are remedial in nature and that the legislature is free to condition

[3] The Court notes that which version of the ODMA applies is also at issue in *Chesapeake v. Buell.*

[4] Plaintiff does not argue that he has satisfied the procedural requirements established in the 2006 amendments.

the continued retention of even vested rights on affirmative steps established in the 2006 amendments.

The Supreme Court of Ohio has not directly addressed this issue. The decisions of the common pleas courts of Ohio are split on the issue of which version of the ODMA applies to claims brought after the amendments but claiming that rights vested prior to the amendments. On the one hand, *M&H Partnership v. Hines*, Case No. CVH-2012-0059, 9 (Harrison Cnty. Common Pls. Ct. Jan. 14, 2014) and *Dahlgren v. Brown Farm Properties, L.L.C.*, Case No. 13CVH27445 (Carroll Cnty. Common Pleas Ct. Nov. 5, 2013) hold that the 2006 ODMA controls a claim of abandonment that is first made after the 2006 amendments.

M&H Partnership based its holding in part on the Seventh District opinion *Dodd v. Crosky,* 2013 WL 5437365 (Ohio Ct. App. 7th Dist. Sept. 23, 2013). As noted below, the Seventh District has since changed course on this issue.

The *Dahlgren* court noted that as late as November 2013, neither that court nor the parties had found "any appellate decision that decides whether or when to apply the 1989 version of [ODMA] for an abandonment claim filed after the 2006 amendment," but it noted that the seventh district applied the 2006 version without discussion in *Dodd*.[5] *Dahlgren*, at 13–14. The *Dahlgren* court then discussed the history and purpose of the Ohio Marketable Title Act

[5] The Supreme Court of Ohio has permitted a discretionary appeal from *Dodd v. Croskey*, 138 Ohio St. 3d 1432 (2014), but that appeal does not seem to concern the issue of which version of the ODMA applies.

("OMTA"), of which the ODMA is a part, and held that unless a surface land holder implemented or enforced a claim of abandonment prior to the effective date of the 2006 amendments, the surface land holder must comply with the 2006 procedural requirements to enforce a claim of abandonment brought after 2006. This is so even when the surface land holder claims that the abandonment occurred prior to the 2006 amendments. *Id.* at 14.

Conversely, several other common pleas court decisions applied the 1989 ODMA in cases like this one. *See, e.g.*, *Shannon v. Householder*, Case No. 12CV226, at 6–7 (Jefferson Cnty. Common Pleas Ct. July 17, 2013); *Marty v. Winkler*, Case No. 2012-203, at 10 (Monroe Cnty. Common Pleas Ct. Apr. 11, 2013) (finding abandonment under both versions of the Act); *Walker v. Noon*, Case No. 2120098, at *3 (Noble Cnty. Common Pleas Ct. Mar. 20, 2013) ("Any discussion of R.C. 5301.56, effective June 30, 2006 is moot, because as of June 30, 2006, any interest of Defendant in the oil and gas had been abandoned."); *Wendt v. Dickerson*, Case No. 2012 CV 0135, at 16–17 (Tuscarawas Cnty. Common Pleas Ct. Feb. 21, 2013) (applying 1989 version).

The only appellate court to face the issue is the Seventh District. In *Dodd*, the Seventh District applied the 2006 version of the ODMA without discussion. 2013 WL 5437365. Just last month, though, it expressly considered the issue of whether the 1989 version or the 2006 version of the ODMA applies to claims brought after 2006 but alleging that rights vested under the 1989 version of the Act. *Walker v. Shondrick-Nau*, 2014 WL 1407942, at *5–6 (Ohio Ct. App. 7th

Dist. Apr. 3, 2014) (appeal from *Walker v. Noon*). The court concluded that the 2006 ODMA applies only prospectively and cannot have affected any right that was previously acquired under the 1989 ODMA. *Id.* at *6 (citing Ohio Rev. Code §§ 1.48, 1.58(A)(1)(2)). As such, it concluded the 1989 version applied. *Id.* at *9. Thus, the only appellate court to have considered the issue in similar circumstances decided that the 1989 version applies.

In addition to citing contrasting case law on the direct issue at hand, the parties cite Ohio statutes and cases concerning retroactivity generally. These principles, however, do not point to a clear result in this case. On the one hand, Defendants argue the 2006 ODMA is applied only prospectively because Plaintiff's suit was not filed until after the statute was amended. On the other hand, Plaintiff contends the Mineral Rights vested in him sometime prior to the amendments and that even prospective application of the amended statute would implicate retroactivity because it would divest him of his property rights. Because of that, the lack of controlling precedent from the Supreme Court of Ohio, the fact that the only Ohio appellate court to consider the issue has been internally inconsistent, and the split in common pleas court decisions, this Court finds the best course of action is to certify this important question of state law to the Supreme Court of Ohio. Rule 9.01(A) of the Practice Rules of the Supreme Court of Ohio allows a federal court to certify questions of Ohio law to the Supreme Court if the analysis may be determinative of the proceeding and there is no controlling precedent in the decisions of the Supreme Court of Ohio. Which

version of the ODMA applies in this case may be determinative of the outcome of the proceeding, because Plaintiff does not argue he has met the procedural requirements contained in the 2006 amendments. Further, there is no controlling precedent in the decisions of the Supreme Court of Ohio on this issue.

B. It is Not Necessary to Determine Whether the Assignment of an Oil and Gas Lease is a Title Transaction that Qualifies as a Savings Event under ODMA, and the Supreme Court of Ohio Should Determine Whether a Delay Rental Constitutes a Title Transaction.

Additionally, the parties dispute whether the Mineral Rights were the subject of savings events which preclude a finding of abandonment.

The parties agree that, assuming the 1989 version of ODMA applies,[6] § 5301.56(B)(1)(c)(i) provides the only potential basis for a savings event. Section 5301.56(B)(1)(c)(i) requires that "the mineral interest has been the subject of a title transaction that has been filed or recorded in the office of the county recorder of the county in which the lands are located" within the preceding twenty years.

The ODMA does not define the term "title transaction." Nonetheless, the OMTA defines the term "title transaction" as "any transaction affecting title to any interest in land, including title by will or descent, title by tax deed, or by trustee's, assignee's, guardian's, executor's, administrator's, or sheriff's deed, or decree of

[6] Defendants argue that savings events occurred in the twenty-year period prior to 2006, but as Plaintiff concedes he has not met the procedural requirements under the 2006 amendments, it will be unnecessary to determine if a savings event occurred during that period if the Supreme Court of Ohio determines the 2006 version of ODMA applies. The Court therefore focuses its "savings event" analysis on the 1989 version of ODMA.

any court, as well as warranty deed, quit claim deed, or mortgage." Ohio Rev. Code § 5301.47(F). Although the OMTA definition of a title transaction is broad, for our purposes it is limited by the language of the ODMA, which requires that the mineral interest be the *subject of* a title transaction which has been filed or recorded in order for the title transaction to qualify as a "savings event." Ohio Rev. Code § 5301.56(B)(3)(a).

The parties disagree about whether the Mineral Rights were the subject of a title transaction. Defendants argue the Mineral Rights were the subject of several title transactions that qualified as savings events and preserved Defendants' interests. Specifically, Defendants argue that the execution of an oil and gas lease, assignment of an oil and gas lease, and unrecorded expiration of an oil and gas lease are title transactions that qualify as savings events under the ODMA. Defendants also argue that the payment of delay rentals during the primary term of an oil and gas lease is a title transaction that qualifies as a savings event.

Plaintiff argues that neither the execution of an oil and gas lease, nor the unrecorded expiration of an oil and gas lease, nor the assignment of an oil and gas lease constitute a title transaction that qualifies as a savings event. Plaintiff argues that no savings event occurred in the twenty years preceding the effective date of the ODMA, and when the grace period expired on March 22, 1992, the Mineral Rights automatically vested in him. Alternatively, Plaintiff argues that even if the recorded execution and assignment of oil and gas leases constitute

savings events, the mineral interest was leased to C.E. Beck on January 16, 1984, assigned to Carless Resources, Inc. on April 11, 1985, and the assignment was recorded on May 30, 1985. There were no further recorded leases or assignments until 2010. Plaintiff argues that even if the expiration of an oil and gas lease constitutes a title transaction, it does not constitute a savings event unless it is recorded. As the expiration of the 1984 lease in 1989 was not recorded, Plaintiff argues the expiration was not a savings event. Thus, Plaintiff argues the Mineral Rights vested in him on May 30, 2005 at the latest (twenty years from May 30, 1985).

The Court need not consider the contrasting arguments with respect to whether the assignment of an oil and gas lease constitutes a title transaction at this time, because even if the assignment of an oil and gas lease constitutes a title transaction, the Mineral Rights at issue in this case were assigned via a recorded assignment on May 30, 1985. Starting the twenty-year clock from the date of the recorded assignment would yield an abandonment date of May 30, 2005, before the amendments to the ODMA were enacted and before the Mineral Rights were next conveyed.

Accordingly, even if the recorded assignment of an oil and gas lease constitutes a title transaction which qualifies as a savings event, the May 30, 1985 recorded assignment would not preclude a finding of abandonment in this case. It is not necessary, therefore, to determine in this case whether the

recorded assignment of an oil and gas lease constitutes a title transaction which qualifies as a savings event under ODMA.

Rather, at issue is whether the payment of delay rentals during the primary term of an oil and gas lease constitutes a title transaction that qualifies as a savings event under the ODMA.

After the lease was assigned on May 30, 1985, C.E. Beck or Carless Resources, Inc. paid delay rentals in 1985, 1986, 1987, and 1988 in order to avoid early termination of the lease. The effect of those payments depends both on whether they are considered savings events and whether the recorded execution and unrecorded expiration of the 1985 lease are savings events.

If the recorded execution or subsequent assignment of the lease were savings events but neither the unrecorded expiration of the lease nor the delay rentals constitute savings events, then the abandonment clock would begin on May 30, 1985 at the latest and run on May 30, 2005, before the 2006 amendments.

On the other hand, if either the recorded execution or subsequent assignment were savings events and the delay rentals are also savings events, then the clock runs not from the recorded execution or assignment on May 30, 1985 but rather from the date of the last delay rental in 1988. Thus, even if the unrecorded expiration of the 1984 lease does not constitute a savings event, then as long as the delay rentals constitute savings events, there would be no abandonment until after the 2006 amendments were effective (i.e. any

abandonment after the 1988 delay rental would be in 2008). That means Plaintiff would have to follow the procedural requirements in the 2006 ODMA before vesting could occur. To make matters even more complicated, as the mineral estate was transferred again in 2008, there could possibly be no abandonment at all if the 2008 transfer occurred within the twenty-year clock from the date of the 1988 delay rental.

Defendants' argument that delay rentals constitute title transactions, and thus savings events, reads as follows:

> Each of the annual payments from the lessee to NACoal in 1985, 1986, 1987, and 1988 operated to restart the twenty-year abandonment period by precluding reversion of the mineral estate to NACoal during the primary term of the 1984 Lease. Had those payments not been made – and nothing obligated the lessee to make them – the primary term of the 1984 Lease would have terminated early, and fee simple determinable title to the oil and gas would have transferred back to NACoal. Instead, the primary term of the Lease was maintained each year by payment of delay rentals, and each such transaction necessarily "affect[ed] title to an interest in land" under the recorded 1984 Lease. Ohio R.C. § 5301.47.

Defs.' Mot. Summ. J. 17, ECF No. 36. Defendants further argue in their response in opposition to Plaintiff's motion for partial summary judgment that during the primary term of the 1985 lease, "[f]or five years, NACoal was actively collecting rent for the oil and gas under plaintiff's property, and thus maintaining its interest. It would be nonsensical to hold that NACoal had begun to 'abandon' its interest at any time before the termination of the lease and the return to NACoal of its oil and gas rights in 1989." Defs.' Resp. 19, ECF No. 38. Defendants provide no citation to any cases that have held that the payment of

delay rentals pursuant to an oil and gas lease constitute title transactions that qualify as savings events under ODMA. Indeed, they concede that no Ohio court has addressed the issue.

As noted, Plaintiff fails to address the argument at all.

Given the dearth of Ohio authority on this novel legal argument, the best course of action is to certify this question of Ohio law to the Supreme Court of Ohio. Rule 9.01(A) of the Practice Rules of the Supreme Court of Ohio allows a federal court to certify questions of Ohio law to the Supreme Court if the analysis may be determinative of the proceeding and there is no controlling precedent in the decisions of the Supreme Court of Ohio. As discussed above, depending on the Supreme Court of Ohio's conclusions regarding the recorded execution and unrecorded expiration of oil and gas leases, the analysis of whether delay rental payments constitute title transactions that qualify as savings events may be determinative of the proceeding. In addition, there is not only a lack of controlling precedent from the Supreme Court of Ohio but also a lack of any precedent from any Ohio court on this issue. The Court will therefore certify this question of Ohio law to the Supreme Court of Ohio.

C. The Supreme Court of Ohio Has Accepted for Review the Questions of Whether the Execution of or Expiration of an Oil and Gas Lease is a Title Transaction That Qualifies as a Savings Event Under ODMA.

As noted above, Defendants argue that both the recorded execution of an oil and gas lease and the unrecorded expiration of an oil and gas lease are title transactions that qualify as savings events under the ODMA. Plaintiff argues that

the recorded execution of an oil and gas lease is not a title transaction and that even if the expiration of such a lease is a title transaction, where the expiration is not recorded, it does not comport with the requirements of § 5301.56(B)(3)(a) to qualify as a "savings event."

The Court considered similar arguments in *Chesapeake Exploration, L.L.C. v. Buell*, Case No. 2:12–cv–916. In that case, the Court concluded that the issues could not be resolved through statutory interpretation. Moreover, the Court found that Ohio law is unsettled as to whether an oil and gas lease creates a fee simple determinable and gives the lessee ownership of the oil and gas estate or is merely a license and therefore not a title transaction because it does not convey title. The Court noted that two Supreme Court of Ohio cases have taken divergent views of the nature of oil and gas leases, but neither concerns whether a lease of severed subsurface mineral rights is a title transaction under the ODMA.[7] Because the context of the statute is important and no Ohio court has considered the nature of an oil and gas lease under the ODMA, the Court certified the questions to the Supreme Court of Ohio. The Supreme Court of Ohio accepted certification and thus will answer the following questions:

1. Is the recorded lease of a severed subsurface mineral estate a title transaction under the ODMA, Ohio Revised Code 5301.56(B)(3)(a)?

[7] See Opinion and Order 18–19, ECF No. 60, in Case No. 2:12–cv–916 (comparing *Harris v. Ohio Oil Co.*, 48 N.E. 502, 506 (Ohio 1897) *with Back v. Ohio Fuel Gas Co.*, 113 N.E.2d 865 (Ohio 1953)).

2. Is the expiration of a recorded lease and the reversion of the rights granted under that lease a title transaction that restarts the twenty-year forfeiture clock under the ODMA at the time of the reversion?

Decision, *Chesapeake Exploration, L.L.C. v. Buell*, Case No. 2014-0067 (Ohio 2014).

The answers to those questions will apply with equal force to the case *sub judice*.

VI. CERTIFICATION REQUIREMENTS

A. The Certified Questions

For the reasons set forth above, the undersigned certifies the following additional questions of state law to the Supreme Court of Ohio pursuant to Rule 9.01 of the Rules of Practice of the Supreme Court of Ohio:

1. Does the 2006 version or the 1989 version of the ODMA apply to claims asserted after 2006 alleging that the rights to oil, gas, and other minerals automatically vested in the surface land holder prior to the 2006 amendments as a result of abandonment?

   AND

2. Is the payment of a delay rental during the primary term of an oil and gas lease a title transaction and "savings event" under the ODMA?

B. The Information Required by Ohio State Supreme Court Rule § 9.02(A)

Because the Court is certifying two questions to the Supreme Court of Ohio, the Court provides the following information in accordance with Ohio State Supreme Court Rule § 9.02(A)–(E).

1. **Name of the case:** Please refer to the caption on page 1 of this order.

2. **Statement of facts:** Please refer to § II of this order for a full recitation of the pertinent facts.

3. **Name of each of the parties:**

   a. Plaintiffs: Hans Michael Corban.

   b. Defendants: Chesapeake Exploration, L.L.C.; CHK Utica, L.L.C.; Larchmont Resources, L.L.C.; Dale Pennsylvania Royalty, L.P.; North American Coal Royalty Company; and Total E&P USA, Inc..

4. **Names, Addresses, Telephone Numbers, and Attorney Registration Numbers of Counsel for Each Party:**

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5. **Designation of Moving Party:** Because neither side has sought certification, the Undersigned designates Plaintiff as the moving party.

C. Instructions to the Clerk

In accordance with Rule 9.03(A) of the Rules of Practice of the Supreme Court of Ohio, the Clerk of the United States District Court for the Southern District of Ohio is hereby instructed to serve copies of this certification order upon counsel for the parties and to file this certification order under the seal of this Court with the Supreme Court of Ohio, along with appropriate proof of service.

VII. CONCLUSION

For the foregoing reasons, the parties motions for leave to file supplemental authorities are **GRANTED**. The Court **CERTIFIES** two questions of Ohio law to the Supreme Court of Ohio in accordance with Ohio State Supreme Court Rule § 9.01. Further, this case will be **STAYED** pending the outcome of the proceedings in the Supreme Court of Ohio. The Clerk shall terminate ECF Nos. 41 & 43.

IT IS SO ORDERED.

MICHAEL H. WATSON, JUDGE
UNITED STATES DISTRICT COURT