

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

EQT PRODUCTION COMPANY,
Plaintiff,

v.

JOHN OPATKIEWICZ, RICHARD
SAWYERS, ELEANOR SAWYERS,
ALBERT P. RIPPEL, LUCILLE S. RIPPEL,
RONALD A. RIPPEL, DEBRA S. RIPPEL,
MARGARET S. GOETTEL, WILLIAM
BEINLICH, SUSAN BEINLICH, JOHN M.
BALLA, NANCY J. BALLA, RONALD J.
BEINLICH, CAROLYN BEINLICH, LOUIS
C. FINE, LINDA J. FINE, LISA ISTVANIK,
LORRAINE C. MOSSBURG, GLENN R.
DYER, MARGARET R. DYER, GLENN
DYER, LINDA A. DYER, PHILLIP A.
LOVEJOY, TERRAINN LOVEJOY,
WILLIAM S. MCCALL, GAIL ANN
MCCALL, ROBERT J. LONG, MICA R.
LONG, PAUL M. WILLIAMS, SANDRA L.
WILLIAMS, DEXTER A. STOCKDILL,
TAMMY LYNN STOCKDILL, TIMOTHY
M. ANGOTTI, JR., SUSAN ANGOTTI,
JANET M. ANGOTTI, EUGENE FINE,
GARY FINE, ELIZABETH GREENWOOD,
THOMAS D. PRENTICE, FLORENCE H.
PRENTICE, TRACY J. WERNER,
MATTHEW T. WERNER, LINDA L. PIPP,
JOHN RIPPEL, THOMAS REPASKY,
HELEN REPASKY, RIVERVIEW GOLF
COURSE, INC., HAROLD POLAND,
GINGER POLAND a/k/a GINGER L.
GEARY, JANET ECKE, KEVIN JONES,
MELISSA S. JONES, PHILIP SCHWIRIAN,
MARY LOU SMITH, CHRISTINE SMITH,
ERIC STROTMAN, and BETTY JANE
CLINE,

Defendants.

CIVIL DIVISION

G.D. No. 13-013489

Hon. Christine Ward

MEMORANDUM

Copies Sent To:

Counsel for Plaintiff:

Patricia L. Dodge, Esq.
Chad I. Michaelson, Esq.
Ryan James, Esq.
Antoinette C. Oliver, Esq.
MEYER, UNKOVIC & SCOTT
535 Smithfield Street, Suite 1300
Pittsburgh, PA 15222

Counsel for Individual Defendants:

C. James Zeszutek, Esq.
Brandon D. Coneby, Esq.
Nicholas J. Godfrey, Esq.
DINSMORE & SHOHL
One Oxford Centre
301 Grant Street, Suite 2800
Pittsburgh, PA 15219

Counsel for Riverview Golf Course:

Joseph F. Rodkey, Jr., Esq.
FOWKES RODKEY
732 Allegheny River Boulevard
Oakmont, PA 15139

14 SEP 10 10:00 AM
FILED

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

EQT PRODUCTION COMPANY,

CIVIL DIVISION

Plaintiff,

G.D. No. 13-013489

v.

Hon. Christine Ward

JOHN OPATKIEWICZ, et al.,

Defendants.

MEMORANDUM

I. Summary

On July 22, 2013, Plaintiff EQT Production Company ("EQT") filed a Complaint for Declaratory Judgment, requesting that this Court enter a judgment in its favor on several issues relating to EQT's rights to develop properties subject to sixteen Oil and Gas leases which EQT holds and to which the Defendants, or their predecessors in interest, are parties (the "Oil and Gas Leases" or "Leases"). On January 27th, 2014, those Defendants which have been contesting EQT's right to develop the Leases (the "Answering Defendants") filed a Motion for Partial Judgment on the Pleadings specifically contesting EQT's claim that it has the right to jointly develop multiple contiguous Oil and Gas Leases by horizontal deep drilling pursuant to the terms of section 34.1 of the Pennsylvania Oil and Gas Lease Act. 58 Pa.C.S. § 34.1. Specifically, Answering Defendants argue that section 34.1 of the Oil and Gas Lease Act violates the Pennsylvania Constitution at article I, section 17, article I, section 10, and article I,

section 1, as well as the Fifth and Fourteenth Amendments and the Contract Clause of the United States Constitution. EQT filed a Cross-Motion for Partial Judgment on the Pleadings on the same issues, and this Court heard argument on the Motions on March 17, 2014.

Upon consideration of the motions, briefs, and arguments of the parties, and for the reasons set forth below, this Court denies Answering Defendants' Motion and Grants EQT's Cross-Motion, concluding that section 34.1 of the Oil and Gas Lease Act does not violate the Constitution of the Commonwealth of Pennsylvania nor the United States Constitution, and that as such, where EQT has the right to develop multiple contiguous oil and gas leases separately, it may develop those leases jointly by horizontal drilling unless expressly prohibited by a lease.

II. Factual Background

a. The Parties

Plaintiff EQT Production Company is a Pennsylvania corporation with its principal place of business at 625 Liberty Avenue, Suite 1700, Pittsburgh, Pennsylvania. EQT is in the business of exploring for, developing, and producing natural gas and other resources. EQT claims to possess the right, title, and interest to the oil and gas interests conveyed by the Oil and Gas Leases.

The Defendants are fifty-seven individual landowners who have leased their oil and gas rights in contiguous plots of land in Allegheny County, in an area referred to as

the Bunola area, to EQT. The Answering Defendants are forty-three of those landowners who have been contesting EQT's rights and methods of developing the natural gas reserves conveyed by the Leases.

b. The Leases

Of the sixteen leases, fourteen (Lease Nos. 101438, 101599, 101819, 102074, 102075, 102077, 102078, 102079, 102113, 102140, 102141, 102142, 102143, and 102151) do not explicitly permit nor prohibit joint development with contiguous properties. Of the remaining two leases, Lease No. 914091 specifically allows for joint development, and Lease No. 102747 included language regarding joint development, but this language appears to have been stricken from the lease prior to execution. Answering Defendants' Motion does not encompass Lease 914091, and EQT's Cross-Motion does not encompass Lease 102747.

c. Pennsylvania Oil and Gas Lease Act, Section 34.1

Senate Bill 259 was signed into law as P.L. 473, No. 66, on July 9, 2013, and became effective September 9, 2013. The law amended the Act of July 20, 1979 (P.L. 183, No. 60) commonly known as the "Pennsylvania Oil and Gas Lease Act" (the "Act"), codified at 58 Pa.C.S. §§ 33.1 *et seq.* As amended, section 34.1 states:

Where an operator has the right to develop multiple contiguous leases separately, the operator may develop those leases jointly by horizontal drilling unless expressly prohibited by a lease. In determining the royalty where multiple contiguous leases are developed, in the absence of an agreement by all affected royalty owners, the production shall be allocated

to each lease in such proportion as the operator reasonably determines to be attributable to each lease.

58 Pa.C.S. § 34.1.

III. Discussion

There are two relevant legal standards that guide this Court in addressing the parties' motions for judgment on the pleadings. First, in order to grant a motion for judgment on the pleadings, the Superior Court of Pennsylvania has held that:

Entry of judgment on the pleadings is permitted under Pennsylvania Rule of Civil Procedure 1034, which provides that "after the pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for judgment on the pleadings." Pa.R.C.P. 1034(a). A motion for judgment on the pleadings is similar to a demurrer. It may be entered when there are no disputed issues of fact and the moving party is entitled to judgment as a matter of law. In determining if there is a dispute as to facts, the court must confine its consideration to the pleadings and relevant documents.

Consolidation Coal Co. v. White, 875 A.2d 318, 325 (Pa. Super. 2005) (citations omitted).

Second, with respect to a constitutional challenge to legislation, the Pennsylvania Supreme Court has enunciated the standard as follows:

When faced with any constitutional challenge to legislation, we proceed to our task by presuming constitutionality in part because there exists a judicial presumption that our sister branches take seriously their constitutional oaths. *See* 1 Pa.C.S. § 1922(3) ("In ascertaining the intention of the General Assembly in the enactment of a statute the ... presumption [is] [t]hat the General Assembly does not intend to violate the Constitution of the United States or of this Commonwealth."). Indeed, a legislative enactment will not be deemed unconstitutional unless it clearly, palpably, and plainly violates the Constitution. Any doubts are to be resolved in

favor of a finding of constitutionality. Accordingly, a party challenging the constitutionality of a statute bears a very heavy burden of persuasion.

Stilp v. Commonwealth, 905 A.2d 918, 938-39 (Pa. 2006) (citations omitted).

The Answering Defendants have argued three constitutional challenges to section 34.1.

a. Ex Post Facto and Impairment of Contracts

First, answering Defendants believe that applying section 34 to leases created before it became effective would violate article I, section 17, of the Pennsylvania Constitution, and Article I, Section 10 of the United States Constitution, which bar the passage of any *ex post facto* law, or any law impairing the obligation of contracts. Pa. Const. art. I, § 17; U.S. Const. art I, § 10. EQT argues that it already has the right to jointly develop contiguous leases, and as such the pertinent part of section 34.1 merely clarifies existing rights, which means it neither impairs obligations of contracts nor is considered an *ex post facto* law. This Court finds that, under Pennsylvania case law, the latter argument is correct.

All the Leases grant EQT, with some variations in phrasing, the exclusive right to produce oil and gas on the land. The interest in the oil and gas portion of the subsurface estate transferred therein is substantial; Pennsylvania case law holds that an oil and gas lease is a transfer of realty, creating an estate in real property severing the gas and oil from the rest of the estate. Lesnick v. Chartiers Natural Gas Co., 899 A.2d

1282, 1284 (Pa.Super. 2005).¹ Though the leases may reserve certain rights, and the law may place restrictions on the developer's activities, Answering Defendants present no support for their claim that they have implicitly retained the right to dictate the manner of EQT's subsurface development of its lease. As this Court noted in our Memorandum deciding Plaintiff's Motion for Preliminary Injunction in this case, Answering Defendants have little right to dictate the manner of EQT's use of the *surface* estate while it is developing the subsurface estate, as long as EQT's methods are reasonably necessary. Belden & Blake Corp. v. Commonwealth, 969 A.2d 532-33 (Pa. 2009). So long as the lessors' rights granted by lease and law are not impinged upon, the lessee has broad powers to develop the oil and gas estate as it sees fit, including crossing property lines between contiguous leases while engaging in horizontal drilling.

If a statute does not abridge any existing rights or create any new ones, but merely clarifies existing rights, it does not impair the obligations of contracts, and the presumption against retrospective application of legislation does not apply. Sorace v. Sorace, 665 A.2d 125 (Pa.Super. 1995). Therefore, section 34.1 does not violate article I, section 17 of the Pennsylvania Constitution, nor Article I, Section 10 of the United States Constitution.

¹ Though the title conveyed is initially inchoate, if oil or gas is produced under the lease, the estate vests. Hite v. Falcon Partners, 13 A.3d 942, 945 (Pa.Super. 2011).

b. Taking of Private Property

Next, Answering Defendants argue that section 34.1 deprives them of property rights, and amounts to a taking without compensation in violation of article I, section 10 of the Pennsylvania Constitution, and the Fifth Amendment of the United States Constitution. Pa. Const. art. I, § 10; U.S. Const. amend. V. EQT counters that section 34.1 doesn't deprive any lessors of any property rights at all.

The property right that Answering Defendants claim to lose under section 34.1 is the right to determine whether or not their property may be developed jointly. They argue that the right to have their property developed individually, which was transferred in the leases, "in no way carries with it the right to have their property developed in common with others" but do not cite any authority for their position. Answering Defs.' Br. Supp. Partial J. on Pleadings, p. 11. As discussed above, Pennsylvania case law provides that unless specifically retained, an oil and gas lease transfers from the lessor to the lessee the right to determine how to develop the oil and gas estate of the lease. Following, as we must, the judicial presumption in favor of the constitutionality of legislation as found in Pennsylvania law, this Court concludes that the property right that the Answering Defendants claim section 34.1 deprives them of was already transferred to EQT in their leases, and as such section 34.1 does not violate article I, section 10 of the Pennsylvania Constitution, nor the Fifth Amendment of the United States Constitution.

c. Fundamental Rights

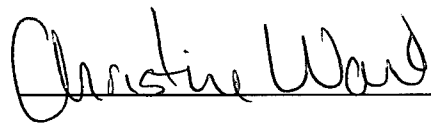
Finally, Answering Defendants argue that, in restricting their ability to negotiate whether their land will be jointly developed or not if the issue is not mentioned in the lease, section 34.1 violates their inherent and infeasible right to possess and protect property, and thus violates article I, section 1 of the Pennsylvania Constitution, and the Fourteenth Amendment of the United States Constitution. Pa. Const. art. I, § 1; U.S. Const. amend. XIV. Again, EQT contends that Answering Defendants or their predecessors-in-interest negotiated away that right when they negotiated leases granting broad rights to develop their oil and gas estates.

As discussed in more detail *supra*, this Court has determined that Answering Defendants no longer retain the right to negotiate the joint development of their leases, because that right was transferred when the Leases were executed. Therefore, there is no basis for finding that section 34.1 violates article I, section 1 of the Pennsylvania Constitution, or the Fourteenth Amendment of the United States Constitution.

IV. Conclusion

In conclusion, this Court concludes that under well-established Pennsylvania case law, section 34.1 of the Pennsylvania Oil and Gas Lease Act does not create, abridge, or expand any rights, but merely clarifies existing law. Consequently, this Court finds that section 34.1 of the Pennsylvania Oil and Gas Lease Act is not unconstitutional, and that where EQT has the right to develop multiple contiguous oil and gas leases separately, it may develop those leases jointly by horizontal drilling unless expressly prohibited by a lease.

BY THE COURT:

 J.

Christine Ward, J.

Dated: April 8, 2014